

19/07/2001

## **Opening up Spaces for Peace A Dialogical and Transmodern Approach**

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(pour la rencontre scientifique de l'Institut International de Sociologie Juridique à Oñati, 3 et 4 avril 2000,  
“Cicatriser les violences. Les processus de restructuration idéologique, sociale et juridique de sociétés traumatisées  
par les guerres et les menaces d'éclatement”,  
first draft of a paper to be published in the *Indian Socio-Legal journal*)

### **Abstract**

***Keywords : Openings, Peace, Dialogue***

Peace is fundamental. It is not merely a fundamental problem or a fundamental question. It is fundamental in the sense that it forms an intrinsic part of Reality, that it is one of its foundations. After a first approach to Peace, we will put it in perspective through a Buddhist point of view. This will permit us to open ourselves up to a dialogical and transmodern approach to Law and to the “cultures of Peace”. The dialogical approach, based on a willingness and on an attitude of listening, will permit us, following Raimon Panikkar's distinction, to emancipate ourselves from our current dialectical approaches. In this sense we understand by a “transmodern approach” a “going through” and beyond modernity through opening ourselves to different cultural traditions and to human experiences which do not pertain to the modern realm *par excellence* : Reason or *logos*.

### **Résumé**

***Mots clefs : Ouvertures, Paix, Dialogue***

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La Paix est fondamentale. Ce n'est pas uniquement un problème fondamental ou une question fondamentale. Elle est fondamentale dans le sens qu'elle fait intrinsèquement partie de la Réalité, qu'elle en est un fondement. Après une première "prise de contact" avec la "problématique" de la Paix, nous la mettrons en perspective à travers un éclairage bouddhiste ce qui nous permettra ensuite de nous ouvrir à une approche dialogale et transmoderne du Droit et des "cultures de la Paix". L'approche dialogale, basée sur l'écoute, nous permettra de nous émanciper de nos approches dialectiques selon une terminologie de Raimon Panikkar. Dans ce sens la "démarche transmoderne" que nous concrétiserons dans cet article a le sens d'une traversée de la "modernité" par l'ouverture à des expériences culturelles différentes et à des expériences humaines n'appartenant pas au domaine moderne par excellence : celui de la Raison, du *logos*.

*"A tibetan story narrates that a monk renounced to his samsaric and delusioned life and decided to live in a cave in order to meditate continuously. Before this he had not stopped thinking about pain and suffering. His name was Ngonagpa from Langru, the Black Face from Langru, the one who never smiles and always sees the black side of life. He spent many years in retreat, very solemn and deadly honest, until one day, while looking at the altar, he noticed that somebody had deposited a turquoise there as a gift for him. While he was contemplating the present, he saw a mouse who approached crawling and tried to take away the turquoise. But it did not manage to do so. It came back with a second mouse, and together they tried to move this big piece of turquoise, but they did not succeed. So both started to squeek, and eight other mice joined them, and finally managed to draw the big gem to their whole. At this sight, for the very first time, Ngonagpa from Langru started to smile and to laugh. And this was his first approach of opening up, a sudden flash of illumination ."* (Trungpa 1996, 120-121)<sup>1</sup>.

Reflecting on Peace needs to be grounded in a profound approach. One cannot limit oneself to reflect upon external peace between human beings without addressing the issue of the inner peace in every one of us. Peace is of concern to all of us, at every moment and it should not be considered as solely a remedy to situations of conflict or of open violence. It is thus an extremely serious and

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<sup>1</sup> All quotations have been translated into English from the original versions by the author.

fundamental question. But if we approach it in a “deadly earnest” way, we run the risk to miss it. Indeed, as Raimon Panikkar (1995, 7) notes, Peace cannot be given, it can only be received. And this demands for a receptive and open attitude. We first have to empty our cup before filling it with fresh tea. In the same way, we first have to empty ourselves of our prejudging and of our conceptualizations if we want to receive Peace. Or at least we have to let go a bit our fixations and our attachments to our mental frames which are so dear to us. If the latter do give us a feeling of security, they ultimately freeze space and do not allow for the natural and spontaneous unfolding of things. What seems primordial to us in any approach to Peace is thus the space that can welcome it, and which can permit its birth and its growth. As we will show, our modern approaches to Law are not very conducive for the emergence of this kind of spaces when it comes to the issues of the pacification of societies torn apart by violence or more simply when we intend to think of the conditions which could allow a society to reproduce itself peacefully. Thus, it seems important to render this approaches more dialogical, which fundamentally means that they are opened up to the dimension of “listening”. In order to do so, we will somehow have to go through modernity in order to be able to deal with our “here and now” : “we have to get aware of the limits that emerge from our experiences of society crises (...) and we must find solutions adapted to the rediscovered complexity, which implies finding solutions as well in premodernity as in modernity itself, as also sometimes positing that only radically new solutions, that can neither be referred to premodern tradition nor to modernity, have to be sought for.” (Le Roy 1998, 3). In this article we will especially approach the going through<sup>2</sup> modernity through an opening up to different cultural experiences and to human experiences which do not belong to the modern domain *par excellence* : Reason, or *logos*. After a first acquaintance with the question of Peace, we will put it into perspective through a buddhist viewpoint. This will then allow us to open up to a dialogical and transmodern approach to Law and to the “cultures of Peace”.

### **First Approaches to Peace**

Peace is fundamental. It is not only a fundamental problem or a fundamental question. It is fundamental in the sense that it is an intrinsic part of Reality, it is one of its foundations (cf Vachon 2000, 18). This does not seem to be the way that we usually do approach it. We rather have a tendency

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<sup>2</sup> this « going through » implies that we find ourselves at a different place after our journey than where we started from, and thus not in « modernity » any more, although it may still influence us.

to see it as something exterior, something “extra”, something which is not defined by reference to itself but in reference to something else. We tend to see Peace as an absence of conflict, or even as absence *tout court* : no irritations, no noise, no preoccupations. In this direction we can see Peace as something dead, inert : it is the immobility which silences the weapons, which freezes our aggressions. That is the kind of Peace as it is incarnated by the *Leviathan*, to whom we have surrendered all our powers, all our personal violences so that it provides us Peace through its omnipotence and its “monopoly of legitimate violence”. But there lies a problem with such an approach. Life is permanent creation, permanent change and flux, permanent game. How can a dead Peace be reconciled with the dance of life ? How can Peace be reconciled with the idea of an order which imposes itself ? What kind of game are we playing when we want to freeze reality in order to feel secure ? Is it really Peace that we are experiencing this way<sup>3</sup>.

We can also tend to associate the idea of Peace with that of non-violence. But again we are facing a problem : does Peace not imply to do violence to our own violence which must be restrained ? Does it not imply that we start a crusade against “violence” and Evil ? Does it not imply that we do everything which lies in our hands in order to protect it, to restore it, to bring it to those who lack it ? This questions confront us with a paradox, with a seemingly unsurmountable contradiction.

Could it be that in order to deepen our understanding of Peace we may have to accept to return to square one of our human existence, to leave beside for some time a reflexion too “legal” or too “anthropological”, or even too “scientific”, if we understand by the latter an approach aiming at rendering Reality rationally intelligible ? It may well be that our difficulty in approaching Peace is linked to the fact that we essentially tackle it through a conceptual, rationalizing framework, instead of trying to get a first hand experience. Thus, we may be invited to put aside provisionnally our usual concepts and the defined goal of our research so that we can open ourselves up to a different way of approaching Peace which can then permit us to draw some insights for our practices of Law and for our ways of envisaging “cultures of Peace”.

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<sup>3</sup> It may be interesting to refer this questions to Mayor (1997) who notes that « *A lasting peace is the prerequisite for the enjoiment of all human rights and duties. This peace is not that of silence, that of silent or ‘silenced’ men and women, but that of freedom - and thus of just laws - that of joy, of equality, of solidarity, where every citizen counts and where all citizens live together and share.* » (1997, 1).

In order to do so we are invited to a certain “letting go” which should not be mistaken for indifference. It could well be that we are so obsessed with finding solutions that we are completely closed to Reality, and that we thus hinder its harmonious unfolding. Martial arts, which - paradoxically it could seem at first sight - are also ways of Peace, can teach us a great deal in that sense. If we enter a fight with our fears and our hopes, with our memories and our expectations, we cannot get in touch with the situation in an appropriate way. It is our fears, our frustrations, our desires which will express themselves and we will no longer be able to dance with and through the situations which present themselves to us. So we have to let go, just be here and now - which has given rise to the notion of “action in non-action”. The fighting activity can be intense but is in fact ultimately an expression of non-action, of Peace, of space. One can say that “letting go”, or detachment, constitutes an opening up to the situation as it is and permits appropriate, just and skilful action. It is the very contrary of an attitude of indifference or of ignorance in front of a situation. Indeed the latter is rather characteristic of an attitude of “non-letting go”, of a clinging to our thoughts and to our feelings which ultimately makes us indifferent towards the situations as they present themselves to us. This understanding of things is basically and before all experimental and does become paradoxical only at the moment where it is put into words and where one tries to transmit it by relying solely on words - in the same way as the apparent paradox of a martial art as a way of Peace. This teaching of the martial arts of action in non-action, of opening up to the “here and now” in order to engage in an appropriate and harmonious way into the situations of life is also at the core of buddhist teachings and finds applications in all our domains of activity.

The Buddha, after having attained enlightenment but before having started to teach, said : “*A profound and limitless peace, this is the teaching I found. But nobody would understand it, and thus I will remain silent in the forest.*” (quoted in Trungpa 1981a, 31). Chögyam Trungpa (1981a, 31-32) comments on this passage noting that : “*This was the moment of the final attainment of true compassion, and he understood his ability to create the exact situation. Until then, he always had the desire to teach (...) And it is there, at the very moment where he decided to leave the world and to retire into the forest, exactly at that moment that a real feeling of true, completely impersonal compassion arose in him. He did not think of himself anymore as a person having a teaching to give ; he was not aware of being a master anymore ; he did not have the idea of saving people anymore ; but he was ready to accomodate with any situation that would present itsef, whatever it could be, and to use it spontaneously.*”

It is this letting go, this opening up to situations, the opening up to our lives, the opening up to Reality which seem to lie at the core of Peace<sup>4</sup>. We have started to evoke the buddhist tradition and we will continue to draw on it in the following pages in order to approach this “opening up”. There is a double reason for this choice. First of all the buddhist tradition is a tradition that we happen to know quite well. Second, it is a very direct, very down to earth tradition, whose aim is to see things “as they are”. The point is not to dream about a better world, to make the world we are living in better, but simply to open up to the world as it is, and by starting to recognize the reality of suffering. This kind of approach seems to be a good antidote to our current approaches which tend to be very promethean. But it is not the one and only one. It is just one tradition amongst others shedding light from one possible perspective on the question of the opening up to our existential dynamics (see for example Panikkar 1996).

### **Dynamics of the ego / Dynamics of Law**

It will not be possible here to give a detailed account of the buddhist teachings. We will therefore limit ourselves to share some basic teachings of “buddhist psychology” which are related to the development of the ego. The latter will allow us to shed light on the notions of “opening up”, of “space”, and of Peace. This will then permit us through putting them into relation with our ways of dealing with “Law” to put into perspective the dialogical praxis of Law and the footsteps towards cultures of Peace which we will then be proposed.

The reader will first of all become aware of the fact that one of the most fundamental *problématiques* in the buddhist approach to the development of the ego is the relationship between “Space” and “Form”, and in a certain way of “the putting in Form (or shaping) of Space”, which also poses the question of the Space that can exist within Form. This reflexion thus refers to our legal *problématique* when we want to tackle the question of Peace. Indeed, as we have already announced it and as we will continue to develop it, Peace is fundamentally linked to Space, to Openness. But Law, to use Bourdieu’s formula about codification, consists in “putting in form (shaping) and putting forms” (“*mettre en forme et mettre des formes*” - 1986a, 41) and legal authority (*l’autorité juridique*) is the

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<sup>4</sup> See the chapters « *Lâcher-prise* », « *La voie ouverte* » and « *Le sentier du Bodhisattva* » in Trungpa 1996.

“form *par excellence* of legitimate symbolic violence whose monopoly pertains to the State and which can be assorted with the exercise of physical violence (*“forme par excellence de la violence symbolique légitime dont le monopole appartient à l’État et qui peut s’assortir de l’exercice de la force physique.”* - 1986b, 3). In this perspective the essence of law (at least in the way as we conceive of it in the West) appears as violent, as the tendency to freeze, to reify space, to impose a frame of analysis, a form of being upon it. At the very core of an anthropological approach to Law who understands the legal phenomenon, as that “which permits the putting into form and the putting of forms to the reproduction of humanity”, if we enrich Bourdieu’s definition by another definition borrowed to Pierre Legendre<sup>5</sup>, we are also confronted to the *problématique* of “freedom and limitation”, of “putting into form and improvisation, and even more so if we share a “game perspective” such as illustrated in Étienne Le Roy’s *Jeu des lois* (1999) which gravitates around the notion of “game”, this “creative in-between” also addressed by Michel van de Kerchove and François Ost in their *Le droit ou les paradoxes du jeu* (1992)<sup>6</sup>.

We hope that the precedent clarifying of our premises will now help the reader to enter more easily in the following presentation - which, we are very much aware of it, could seem quite disturbing at first sight - and permit him/her to assess its relevance in an approach to Peace from the stand point of the anthropology of Law.

Before presenting the ego in a buddhist perspective, we should maybe remind the reader that the basis of the buddhist path is constituted by the practice of meditation which fundamentally consists in being here and now, in opening up to the present situation, and to have a direct experience of Reality. It is therefore before all an experimental path, and an experimental approach to knowledge. All masters insist on the necessity of practice - a merely intellectual study of the teachings cannot lead to their profound understanding. According to Kalou Rinpoché (1993, 47), “*The principal study of the mind cannot be carried out through theory ; one must draw on the practical experience of meditation, observe again and again this mind in order to penetrate its true nature.*” and for Chögyam Trungpa (1994, 154) “*philosophers have often got lost by trying to know the truth on the mode of being of things*

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<sup>5</sup> For Pierre Legendre (quotes in Le Roy 1998a, 39), Law is « the dogmatic art of knotting together the social, the biological and the unconscious in order to secure the reproduction of humanity » (*l’art dogmatique de nouer le social, le biologique et l’inconscient pour assurer la reproduction de l’humanité* »). This definition constitutes the guiding line of Legendre 1985.

<sup>6</sup> In order to illustrate but also to put into perspective this developments it can be interesting to read Ost 1997.

*instead of establishing a relationship with them on the level of perception. The result is that they ended up by theorizing everything completely, without knowing what could be the real experience that one has of things as they are. If one theorizes about the existence of the world, about its solidity, about its eternal character etc..., one shuts oneself off a big slice of one's own experience, because one is too much occupied in proving or establishing the foundations of one's philosophical position. To an extent, by the way, that one gets more interested in the foundations of one's own position rather than in its relationship with the earth."*

Thus, right from the start the limits of the intellect (which does not at all mean its uselessness - on the contrary) in order to understand and to approach our existential situations in an appropriate way is stated.

From a Buddhist point of view, the development of the ego occurs through five stages, and the ego is nothing else but the grouping together of these five stages, of the five *Skandha* or five aggregates. Our mind primordially has a spacious character (stage 1). The fundamental terrain from where our ego develops is space, fundamental openness, fundamental freedom, primordial intelligence<sup>7</sup>. *"We are this space, we are one with it, with vidya, the intelligence and the openness."* But *"As it is spacious, one wants to dance (...) we start to spin and to whirl around a little more than necessary to express space. It is at this moment that one gets selfconscious, conscious that 'I' am dancing in the space. At this point, space is not space anymore as such. It gets solidified. Instead of being one with space, we feel it as a separate entity. This is the first experience of duality (...)"* (Trungpa 1996, 130). At this moment the discovery of Form, of the "other" happens (stage 2). We discover solid space and we forget the fundamental space. *"We ignore it completely, which is called avidya. A means 'negation' and vidya 'intelligence', thus it is 'on-intelligence'. Because this extreme intelligence got transformed into the perception of solid space, because this sharp, precise and luminous intelligence has become static, it is called avidya, 'ignorance'."* (Trungpa 1996, 131). This second stage of the development of the ego, the stage of Form/Ignorance has three aspects : first we conclude to our own separate existence on the basis of our experience of duality. Then we believe that things have always been like that, that we have always existed in the mode of separation. Finally we start to see ourselves as an exterior object, *"which leads to the primary notion of the 'other'. One starts to entertain a relationship with the so-called*

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<sup>7</sup> The following developments are more particularly based on the chapters « *Le développement de l'égo* » and « *Les six mondes* » in Trungpa 1996. Also see Trungpa 1981b.



*‘outer’ world (...) one starts to create the world of forms.” (Trungpa 1996, 132). Let us note that “ignorance” should not be confused with stupidity. “(...) ignorance is very intelligent, but it is a completely one way intelligence. (...) one only reacts to one’s own projections instead of simply seeing what is. There is no situation of letting be because one constantly ignores what one is.” (Trungpa 1996, 132-133).*

The next step is the building of a protection mechanism for our ignorance, Sensation (stage 3). Whenever something happens (which we perceive in an essentialized way - as we have lost our fundamental openness - as exterior to ourselves, as ‘other’) we attempt to feel if it is something pleasant, something menacing or something neutral. And we thus engage in Perception / Impulsion. *“We start to get fascinated by our own creation, the static colours and the static energy. We want to establish a relationship with them. Thus we gradually start to explore our creation. (...) Sensation transmits its information to the control center, this is the act of perception. According to this information, we form judgements, we react.” (Trungpa 1996, 133-134).* If the perceived things seem menacing we want to reject them, if they are pleasant we want to attract them, if they appear neutral we remain indifferent. These perceptions are thus at the origins of three forms of impulses : hate, desire and stupidity.

But Perception / Impulse remains an automatic reaction to a intuitive sensation and *“In order to protect ourselves and to delusion ourselves integrally, correctly, we need the intellect, the capacity to name and to categorize objects.” (Trungpa 1996, 134).* Thus the next development of the ego is the Concept (stage 4). It permits us to label things and situations and to put them in our diverse conceptuel boxes as good, bad, beautiful, ugly etc. It is at this stage that the development of the ego starts becoming something different from a simple process of action / reaction and becomes more sophisticated and much heavier. *“We start to make the experience of intellectual speculation, we confirm ourselves and interpret things by placing ourselves in logical and interpretable situations. The fundamental nature of the intellect is very logical. (...) It will have a tendency to work with the aim to establish positive conditions : in order to validate our experience, to interpret our weaknesses in terms of strength, to fabricate a securing logic, in one word, to confirm our ignorance.” (Trungpa 1996, 134-135).*

Then follows the fifth and last stage of the development of the ego, Consciousness. The latter

will not be of direct interest to us in the continuation of our argument and we rather present it here in order to have the whole picture. At this stage the intuitive intelligence of the second stage, the energy of the third stage and the intellectualization of the fourth stage mingle and give birth to thoughts and emotions. The mental model becomes irregular and unpredictable. It is marked by the “Six Worlds” or six psychological states which colour our daily experiences : the claustrophobic and aggressive World of Hell, the World of the Hungry Ghosts characterized by insatiable hunger for things that one can never get, the Animal World characterized by stupidity, the Human World of discriminating passion, the World of the Jealous Gods of competition and insecurity and the World of the Gods characterized by autoabsorption. In the Buddhist tradition this six Worlds constitute the circle of *samsara*, the karmic chain reaction of dualist thought. As long as we have not cut the roots of ignorance we are bound to stay imprisoned in this cycle of neverending deaths and rebirths<sup>8</sup>. Let us note that in a Buddhist perspective “enlightenment” consists in a rediscovery of our fundamental open, spacious and intelligent nature (stage 1) which is always present. It therefore consists before all in a dissipation of our ignorance through the rediscovery of the “fundamental ground” and not in the adding of a new experience to our ego.

This presentation seems interesting to us from the point of view of an anthropology of Law for whom the “legal stakes” are “the things that a society considers as being vital for its individual and collective reproduction” (“*ceux qu’une société tient pour vitaux dans la reproduction individuelle et collective*” - Le Roy 1999, 159 ss). Indeed, we can see it as a parable of our “legal way of getting in touch” with Reality. Fundamentally we live (stage 1). But in order to live in our physical, social, intellectual environment we are led to establish limits, rules (stage 2). The aim of the latter is to value what is important to us (which seduces us) and to avoid what we consider as menacing. In the domains towards which we are indifferent our “Law” remains “stupid” in the sense that it is not interested in the question and thus ignores it (stage 3)<sup>9</sup>. Follows an intellectualization and conceptualization process (stage 4) which in the Western context (and even more so in the continental european traditions) leads to an implementation of “legal systems” and to a “systemic” and essentialized reading of Law, and beyond that, a disformed reading of social reality through the legal-systemic prism<sup>10</sup>. Finally (stage 5), as jurists who believe in their own constructs, who have materialized and essentialized them, we find

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<sup>8</sup> This process is illustrated by the Wheel of Life. See for example French 1995, 71.

<sup>9</sup> See in this context Rouland 1989.

<sup>10</sup> See de Sousa Santos’ idea of Law as a map of misreading (1988).

ourselves in a state of “unconscious paranoia” which pushes us to maintain ourselves and to maintain our creation in front of the situations of life with which we have to deal. Thus we are incapable to think differently about ways to approach the challenges that are facing us. We condemn ourselves to develop what already exists, to spread and to complexify our system more and more until the point where it becomes unbearable and where we get aware of its ineffectivity and of the need for it to be rethought - or even until the point where we even have to rethink our questions themselves and not only our answers. To make a link with legal theory : after the illusions of modernity, we find ourselves confronted to the “postmodern” challenge, or rather to the “transmodern” challenge to borrow Étienne Le Roy’s term which we prefer and under whose auspices we have placed this article (Arnaud 1990, de Sousa Santos 1995, Le Roy 1999). This challenge may be frightening. But we do not really seem to have the choice. We will have to confront it. And in order to do so it seems important to stop hurrying. To let go. To sit down and to open up.

### **Opening up to Listening and to a Dialogical Approach to Law**

We have now reached our predicament as an anthropologist of Law : indeed does not his/her approach consist in getting imerged in a situation, in opening up to it, in playing the game that consists in accepting to be a child again who must learn the processes of socialization of the surroundings where he / she finds him / herself. If generally speaking, legal approaches start from the point of view of Law, of the legal system, the anthropologist of Law on the contrary - even though he remains sensitive to the former legal point of view - starts from the point of view of the actors, of society, or even of *universitas*. It seems indeed that the notion of society can turn out to be misleading as it is too much informed by a contractual (the social contract), institutionalizing and even “statist” view of our “living together”<sup>11</sup>. It biases our approaches of different “societies” who do not share our cultural matrix. Further it falsifies the perception we have of our own society, as we accept the prism of *societas* as an objective reality, and forget about the fact that it is a specific worldview. It thus seems tempting to

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<sup>11</sup> See in that line Bauman 1987 and more especially the chapter « Gamekeepers and gardeners » which illustrates the transformation of *universitas* into *societas* through modernity, even though the author does not use this specific terminology. Also see Vachon 1997, 16 ss. Let us note that the notion of « universitas » can also be misleading on a certain level as it may turn our attention to a set of representations and may lead us to forget a little about our practices. See the discussion in Eberhard 2000a, 305-310.

follow Louis Dumont (1991, 98-99) who privileges an approach in terms of *universitas* : “Societas (...) evokes a contract through which the composing individuals have ‘associated’ in a society. (...) This way of thinking (...) considers society as consisting of individuals who are anterior to the groups or to the relations that they constitute or ‘produce’ among themselves more or less voluntarily. (...) universitas, ‘whole’, would fit much better than ‘society’ the opposite view (...) according to which society with its institutions, values, concepts, language, is sociologically anterior to its particular members (...)”

In relationship to our anthropology of Law, this approach implies to break with approaches of the “legal phenomenon” which refer more or less implicitly to the model of *societas* and which make us perceive it before all as a set of general and impersonal rules applying to individuals in a uniform way. We must emancipate ourselves from this reductionist view by opening ourselves up to the “legal phenomenon” as it appears when looked at through the prism of *universitas*. That is the approach that Étienne Le Roy has followed, first implicitly, then recently more explicitly (Le Roy 1999, 384 ss), when he proposed the theory of “multilegalism” (*multijuridisme*) and of a tripodic Law (*droit tripode* - Le Roy 1998 ; 1999 : 189 ss). His anthropological and intercultural approach led him to consider that the legal phenomenon could not be reduced to **general and impersonal rules** which we value in our tradition in which are the expression of an imposed order only. Other “societies” value different approaches : custom of traditional African societies for instance is founded on **models of conduct and behaviour** and reveals a negotiated order<sup>12</sup>. In the Confucian tradition marked by autodiscipline and the respect of rites (*li*) **systems of lasting dispositions** or *habitus* which reveal an accepted order are valued<sup>13</sup>. Further, if different cultural traditions value this three “feet” of Law differently, the latter are nevertheless present in all traditions and seem to constitute the fundamentals of the “legal phenomenon” (see Le Roy 1999 : 202).

This multilegal reading of Law, which certainly can still be refined, seems fundamentally dialogical, in Raimon Panikkar’s (1984a) sense. It thus emancipates itself from a reductionist “dialectical” framework (also in Panikkar’s sense) in which we remain usually imprisoned. We can state if we simplify a little that approaching the legal phenomenon through the prism of *societas* reveals

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<sup>12</sup> To get a feeling for the traditional African way of « thinking Law » see for example Alliot 1985 ; Eberhard & Ndongo 2001.

<sup>13</sup> To get a feeling for the traditional Chinese way of « thinking Law » see for example Li 1997 and 1999.

a fundamentally dialectical worldvision, whereas through approaching it through the prism of *universitas* we enter a dialogical approach.

If we follow Raimon Panikkar<sup>14</sup>, the dialectical approach to Reality is characterized by the feeling that the latter can be completely exhausted by the lights of Reason : we can know it entirely and in an objective way. This vision is thus oriented by our faith in the allpowerfulness of Reason, from which springs a believe in the universality of our concepts which organize Reality, and in the last extent a belief that Reality is limited or reduced to the conceptions that we have of it. This dialectical approach also implies a notion of absolute mastery of the Real through the manipulation of concepts<sup>15</sup> and tends to see pluralism as a conceptual problem to be overcome or solved through the research of synthesis rather than a fundamental quality of Reality where things are what they are, and this only in their mutual interdependence. We do not accept the irreducible part of “mystery” in our lives and we do not really acknowledge the fact that the different “subjects” that we are, also form part of that Reality. But one will never be able to reduce subjects to mere objects of knowledge. Therefrom stems the necessity, in order to get a more complete view of Reality, to listen to the testimonies that others bear on it and to engage into dialogical dialogue with them aiming at a mutual unveiling, at a discovery/transformation of oneself through the discovery/transformation of the “other”. The dialogical approach thus opens up to another dimension of Reality : next to the *logos*, there is also the domain of the *mythos*<sup>16</sup>. As Robert Vachon (1995c, 7) notes by quoting Raimon Panikkar, “*Life is more than signification (meaning) (...) The conceptual approach must have its place, but neither the primacy nor the monopoly. (...) Mythical consciousness is anterior to logical consciousness. We do not only have the eyes of intelligence to see, but also the ears of the heart to feel, to hear the unthinkable.*”<sup>17</sup>

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<sup>14</sup> For further developments see Eberhard 1999a ; 2000a : 109 ss ; 2001. For a quick presentation of the dialectical and the dialogical paradigm see Eberhard 1998.

<sup>15</sup> See for the example the introduction « The Quest for Order » of Zygmunt Bauman’s *Modernity and Ambivalence* (1993), and more specifically p 7. About the impact of this way of thinking on the Jewish genocide see Bauman 1991.

<sup>16</sup> « *Myth is the invisible horizon on which we project our conceptions of the Real.* » (Panikkar 1979 : 30). It is « *that in which we believe, without believing that we believe in it.* » (Vachon 1995a, 38).

<sup>17</sup> He adds (1995c, 9) : « *We are so much used to reduce consciousness to logical consciousness that we have become prisoners and slaves ; we do need conceptual frames for everything. It is as if we fled direct experience of reality, and consequently the interpretation of experience in the light of direct experience. It is as if we were afraid of reality and of its transparency. But, reality is before all a mystery of freedom in relationship to consciousness. It cannot be reduced to the*

It seems to us that these lessons are of utmost importance when one reflects upon Law (the legal phenomenon) in relationship with the *problématique* of Peace. It seems, indeed, that when dealing with the reconstruction of societies which have gone through wars or even genocides, the focalisation on only “official law”, national or international, is not only insufficient but can reveal itself counterproductive to a certain extent. As we noted with Sara Liwerant in a study on international law confronted to crimes against humanity and genocides (1999) these experiences confront us to the unspeakable (*indicible*) and the unthinkable (*impensable*). Even as scientists writing on the topic we felt blocked and we were confronted with an impossibility to say, or write. It seems important to note that, because often in conferences and seminars one eludes the unspeakable and unthinkable - or when one deals with them, it is to talk of them, to conceptualize them. If the importance of this work of speech and of conceptualization should not be minimized, it seems nevertheless necessary not to lose sight of this other aspect of experience. Concerning the legal approach to genocides and to crimes against humanity we noted (p 6) that :

*“The penal rule presents itself and is received as a reflexion on the essence of the genocidal logic, whereas it does not permit the transition from the unthinkable to the thought. The qualification work which is now being carried out by the lawyers of the international tribunals continues to constitute an obstacle to an interrogation on the essence of the genocides as law limits itself at naming through designating a legal qualification. This boils down to superposing a putting into form of a newly redefined reality, which eludes all other possibilities of interrogation. A redefinition of reality through the imposition of a symbolic order cannot be equated to its ‘nomination’ in the symbolic sense. Nevertheless this ‘putting into forms’ permits the illusion of a resolution of the problem. It is in that sense that one can say that law, the form par excellence of symbolic violence, does not embody a symbolization but prolongues the unthought (l’impensé) by a non-confrontation to the unthinkable (l’impensable).”*

It thus seems paramount to adopt a more humble approach when we are confronted to the reality of human suffering. It is not the judgement of the genociders alone that can permit the reconstruction of the “social link” (*lien social*) even though they may be an important contribution to it.

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*latter. It demands that our consciousness leaves room for myth, which is the vehicle of the mystery, and for symbol, which is the instrument of myth. »*

And this is furthermore so if justice is perceived as exterior and if the populations concerned feel dispossessed of it<sup>18</sup>. One must take the conceptions of justice and of Law of the involved populations seriously regarding the involved populations as much in reference to the way of dealing with their past as concerning the perspectives for the building of a new shared future. It thus seems paramount in an African context for example to open up the Western conceptions of Law which inform not only the international law but also the official law of the African states themselves through a dialogue with indigeneous conceptions which value more negotiated and accepted orders rather than the imposed one (Le Roy 1999, 202). In the Rwandese context, one could thus follow six principles of judiciary policy based on indigeneous conceptions which had been proposed by Étienne Le Roy in a report for the Centre International pour les Droits de la Personne et le Développement Démocratique de Montréal (1996 - summarized as follows in Eberhard & Liwerant 1999, 13)<sup>19</sup> :

*“(1) center the process of pacification on the oralization of the reality of the genocide and not on the judiciary pursuit (poursuite judiciaire) of those responsible, (2) to value the socio-legal relationships which are based on values of sharing inside of the group that saw the conflict arise, (3) to work for the rehabilitation of the traditional principle of complementarity of differences in order to be able to rethink a complementarity between Hutu and Tutsi, (4) make space again for pluralism by recognizing the pluralism of the human being (through his/her inscription in multiple networks) and by reintroducing the pluralism of power, (5) to restore their Laws to the groups so that they can work out the models of conduct and behaviour which make sense to them and last but not least (6) to always initially prefer to an imported solution a solution which emerges through the internal confrontations and negotiations of the group.”*

We will not be able to take this reflexion any further here, but we would like to stress the importance in an African context to engage in a genuine dialogue between our idealist Western view of law and the “jurisdiction of speech” incarnated in the African “palabre” in order to reflect upon the pacification of the societies. Such a dialogue could maybe contribute to a refounding of the African

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<sup>18</sup> Concerning the experience of the International Penal Tribunal of Rwanda see for example Eberhard & Liwerant 1999.

<sup>19</sup> Let us note that nowadays we seem to be moving toward a recognition of the importance of an articulation of international penal law with popular legal mechanisms in the Rwandese context as the adoption of the organic law n°40/2000 of 26/01/2001 setting up « GACACA Jurisdictions » and organizing prosecutions for offences constituting the crime of genocide or crimes against humanity between october 1, 1990 and december 31, 1994 shows.

state (Le Roy 1997) which could turn it into a guarantor for Peace<sup>20</sup> ? Further it seems primordial, as we already noted in the article written with Sara Liwerant (1999), to extend the dialogical requirement on a larger level of our conceptions of Law, even in contexts which can seem more “monocultural”. Indeed if the African *détour* has permitted to reveal some shortcomings of Western Law in the process of the pacification of African societies such shortcomings do also exist in Western settings, as the experience of the International Penal Tribunal for Ex-Yugoslavia shows. We must draw all the implications of the theory of multilegalism and accept that in Europe also, societal reproduction rests - or I would prefer to say “walks” - on three feet. Especially in the cases where we are confronted by the breaking up of societies which necessitates the renegotiation of a new shared “project of society” it seems important not to neglect - or even to value - the negotiated order and to bother about the creation of forums where all can express themselves.

We consider that in order to contribute to the healing of the violence and to the reconstruction of the social link in societies traumatized by wars and the menace of breaking apart and more generally in order to rethink the foundations for a more harmonious “living together” (at more “local” as well as on more “global” scales), *a receptive attitude of listening, an opening up to oneself, to the others and to the world*, and thus a dialogical attitude, are at the roots of Peace. But it seems, as we have noted above, that our modern approaches to Law are to a large extent non-dialogical : modern law is posited as universal, thus excluding right from the start the dialogue with different conceptions ; it reflects a unitarist imposed order made up of general and impersonal norms which must apply uniformly to all. It lies in the hands of specialists who “know” - and the citizens thus get somehow dispossessed of it. It does not seem fundamentally open to negotiation and to the taking into account of the actors in their “alterities”. Further, it is quite essentialist and it essentializes in turn the realities it touches which are “legalized” through its contact (for an illustration just think of the theories of law as an autopoietic system). At its contact identities freeze, their permanent and ongoing negotiation becomes impossible and thus the shared invention of a future in a complementarity of differences becomes difficult<sup>21</sup>. These insights have led me in a broader reflexion on Human rights in a context of globalization which should

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<sup>20</sup> Concerning the requirement to always settle the reflexion on legal policies in-between the four poles of legal archetypes, legal logics, practices of the actors and « projects of society » (« *projets de société* ») see Eberhard 1999b.

<sup>21</sup> The example of India seems particularly instructive in regard to the fixation and crystallization of identities through the importation of the modern world view and of its legal, political and economical organization. See for example Heuzé 1993, Madan 1997, Nandy et al. 1997.



not just be Westernization (see Eberhard 1999a ; 2000a), to approach them as one tradition of Peace which must enter into dialogue with the other traditions of Peace of our world. This has led me to complement an approach in terms of universality by an approach in terms of pluriversality, which is anchored in a pluralist paradigm that values the complementarity of differences, dialogue and negotiation and which is inspired by the communitarian model of traditional African societies (Eberhard 2000a : 221 ss ; Eberhard 2000b). To rethink Human rights as one way of / to Peace amongst others and which almost mutually be enriched through dialogue and thus to leave an approach in terms of “human rights a solutions which impose themselves self-evidently” leads us through a *cultural disarmament* to open up to “cultures of Peace”.

### **Towards Cultures of Peace ?**

Let us come back to a Buddhist perspective in order to introduce this last developments on Peace :

*“Love, or compassion, the open way, are implicated in ‘what is’. In order to develop love - universal love, cosmic love, you can call it as you wish - we have to accept the totality of the situation of life as it is, the luminous and the obscure, good and evil. One has to open up to life, to communicate with it. Maybe one does struggle to develop, to achieve peace and love : ‘We will succeed, we will spend thousands of dollars to spread the doctrine of love everywhere, we are going to proclaim love.’ All right, proclaim, spend your money, but what about the feverishness and the aggression which underlie your action ? Why do you want to force us to accept your love ? Why mix it up with so much strength and precipitation ? If your love moves at the same speed and with the same élan as the hate of the others, something is not right. It looks as much alike as two peas in a pod. So much ambition is linked to proselytism. That is not an open situation, a communication with things as they are. The ultimate meaning of the words ‘peace on earth’ consists in suppressing at the same time the notions of war and peace, and to open ourselves integrally and completely up to the negative and positive aspects of the world. (...)*

*The action of the bodhisattva<sup>22</sup> resembles a reflection of the moon in a hundred bowls filled with water, such that there is a hundred moons, one in each bowl. The moon, nor any other, aims at illuminating the bowls. But for a mysterious reason, there are one hundred reflections of the moon in*

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<sup>22</sup> The one who walks the path of illumination out of compassion for all sentient beings.

*the one hundred bowls. Openness requires this kind of absolute faith in confidence in oneself. The open situation of compassion works that way, rather than trying on purpose to create a hundred moons, one in each bowl. (...) The bodhisattva acts, spontaneously, this is the open way, the open communication does not include any precipitation, any fight.” (Trungpa 1996, 107-109)*

UNESCO has proclaimed the year 2000, the International Year for a Culture of Peace. We would like to share here a few blueprints for the possible emergence of cultures of Peace (which we prefer to decline in the plural form) through building on the teachings of Buddhism and of legal anthropology exposed above. As we noted in an article which explained the pluralist and dialogical requirement of an approach to human rights in an intercultural setting, it seems paramount to emancipate ourselves from the Western legal prism to tackle our contemporary issues of our “living together” in all the dimensions of our relationships with our fellow human beings, with nature, with the future generations, with Peace, life, the “divine” (Eberhard 1999a, 276). As long as we keep on reasoning solely in terms of “rights to” (to identity, to peace ...) or in terms of “rights of” (of minorities, of future generations ...), or on a broader scale as long as we will continue to approach our existential problems (our reproduction, violence, freedom, peace) exclusively through the Western legal prism, we will remain shut off important parts of our human experience. We do agree with Raimon Panikkar (1984b, 3) for whom “*There is no culture, tradition, ideology or religion today which can, let us not even say solve the problems of humanity, but speak in its name. Dialogue and human exchanges leading to a mutual fecundation must necessarily intervene.*”

But if we are convinced of the necessity of a dialogical opening up (which is before all an opening up to listening) in order to be able to receive Peace together, a certain number of prerequisites seem unavoidable and more especially the ones of a cultural disarmament and of the acceptance (from a Western perspective) of the idea of *transmodernity*, a going through our modernity. As Robert Vachon (1995b, 39) tells us, if all peace is cultural, the fact of reducing it solely to the cultural conception that one can have of it, constitutes an obstacle to Peace, and transforms culture into a weapon<sup>23</sup>. That is why he proposes a double cultural disarmament, both horizontal and vertical (

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<sup>23</sup> For the link between interculturality and Peace see Vachon 1995b : 36 ss ; 2000 ; Panikkar 1995. It could also be enriching to put all these developments into perspective by referring them to the contributions to the thematic issue of the *Bulletin de liaison du Laboratoire d'Anthropologie Juridique de Paris*, n° 25, september 2000, dealing with « Human rights and cultures of Peace ».

Vachon 1985, 38-39 ; 1995b, 40-41).

Horizontally, we must deabsolutize our respective cultures and we must relativize them, though recognizing that they do represent for each of us our anchoring point, the symbolic reference point of our dialogues (our *topoi*<sup>24</sup>) : *“We must ensure (...) that the question of Peace is not put forward, described or defined starting from the categories, postulates and presuppositions (myths) of one culture only, but starting from all cultures which are present.”* (Vachon 1995b, 40). This implies that to reflect upon intercultural foundations of Peace by turning our attention is not only to its diverse socio-economic, legal-political and religious dimensions but also to the epistemological, anthropological and cosmological foundations that exist in the diverse human traditions. Concerning Law, this horizontal disarmament invites us to go beyond a mere intercultural theorization of Law and to complement it by an intercultural approach. Indeed, if intercultural theorization of Law translates intercultural teachings into the frame of Western socio-legal science (see for example Étienne Le Roy’s theory of multilegalism), an intercultural approach to Law takes us further in the sense that it accepts in the process of the dialogue to abandon the Western references and to accept other frames of reference, which can be more cosmo- or theocentred than the Western approach which remains very anthropocentred. It also accepts that in the process new frameworks are invented and that they do not necessarily need to have any kind of universal validity. It is important to stress that intercultural theorizations and intercultural approaches to Law are as far as we are concerned to be seen as eminently complementary (see Eberhard 2001a).

Vertically, cultural disarmament consists in *“liberating Life (and thus one’s own life) from the exclusive grip of a single culture of Peace or of the sum of cultures of Peace, but by going through them. (...) Peace is neither only about preserving our traditional cultures, nor about opening up to modernity or to postmodernity, nor even about accepting our different ways of living, of co-existing in a mutual indifference or in a resigned tolerance. It requires encounter, understanding (i.e. standing under), a common horizon, a new vision. But this requires that together we recognize a center - a circle - which transcends the understanding that one can have of it at a given moment in space and time. To sum up, in order to have peace, one cannot start from the presupposition that one knows what peace is. Neither before walking the path of peace, neither while walking it, nor after having walked it.”* (Vachon 1995b : 40-41)

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<sup>24</sup> On the question of cultural *topoi* and of « diatopism » see Vachon 1990 and Eberhard 2000a, 129 ss.

But at least we shall develop a consciousness of what Peace cannot be, of what cannot lead to Peace as it blocks our openness to the situations of life. And this consciousness should be the measure against which to hold our conceptions of Law. Fundamentally, as Raimon Panikkar (1995, 102-103) notes, despite of all obstacles, the way to Peace consists in wanting to walk it and the desire for Peace can be equated to the desire for dialogue which refers us to an attitude of listening, of openness. And so we will conclude with Raimon Panikkar (1995, 103 “*Si vis pacem, para teipsum. (Would you have peace ? Prepare yourself).*”

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