Culture, Community, Comparison: Approaching Law in the Pluriverse

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'The discoverer perceives relational patterns of functional analogies where nobody saw them before, as the poet perceives the image of a camel in a drifting cloud.' (Arthur Koestler 1989: 529)

Introduction

'All legal theories offer merely partial perspectives. Each theory highlights some matters while ignoring others. A theory is produced from a certain standpoint and reflects a certain range of experience. It may persuade us that matters should be seen from its perspective and that, for the moment, other perspectives should be ignored. Perhaps this is because it develops impressively the image that it presents – sharply, carefully, in illuminating detail. It enables us to make sense of a certain picture of law, to see this picture as informative and interesting, conveying important knowledge, even though we know that it is presented from one viewpoint only, and that the phenomena portrayed would appear differently from another perspective. To evaluate theories should not be to criticize them for giving one picture of experience rather than another. It should be to ask how illuminating is the picture offered. How much does it allow us to see, and how clearly? And how can we go beyond it, locating it in relation to insights

provided by other theories? In other words, how can we broaden the perspective the theory offers, not trivialising or dismissing it, but fitting it into a broader picture, albeit one that may never be complete?' (Cotterrell 1999: 204)

Contemporary legal theory – and more generally, contemporary social sciences – see a fragmentation in the production of knowledge. This is partly due to the fact of hyperspecialization of knowledge endeavours in current academia. Partly, it is due to the fact that new sources of knowledge make their entry into the academic field. There are many, but no generally accepted grand narratives on law and society to date. At the same time, maybe because of this very lacking of an overarching theory or system that would elicit consensus, one observes an increase in multi-, inter- or trans-disciplinary studies (see Ost and van de Kerchove 1987). These studies, although formally attached to different disciplinary streams (sociology, anthropology, law…), to a certain degree emancipate themselves from the stronghold of any of the disciplines they draw upon, thus inventing new ways of looking at the legal landscape (see Eberhard 2008). This does not mean that the solid anchoring that diverse disciplines provide becomes irrelevant. Nevertheless, it implies that disciplinary boundaries and affiliations should not obscure the researcher's vision of a new unfolding horizon of meaning. 'Intellectual advance in social studies now often occurs by *ignoring* disciplinary prerogatives, boundaries and distinctions' notes Roger Cotterrell (2006: 6). 'The need is not, however, to weaken the ties of sociolegal studies to academic sociology (…). It is to ensure that those inevitable ties in no way hamper imaginative enquiries across *all* available sources of social insight.' (Cotterrell 2006: 6)

Staying rooted while opening up to wider horizons, and thus also realizing through the dialogue with others the pluralism of one's own rootedness, seems to be the current rising horizon, a pluralist and increasingly intercultural and dialogical horizon (Vachon 1997, 1998), which I approach in my work as a pluriverse (Eberhard 2013a). Pluralism, pragmatism, inter-approaches – be they interdisciplinary or intercultural – comparison, dialogue, analysis and imagination, perspective and prospective are part of this rising horizon of thought and action.

Although he does not formulate his quest in these terms, from my point of view, Roger Cotterrell is one of the thinkers who have contributed and continue to contribute to draw out some of the patterns, the motives, the insights from the pluriverse into the socio-legal field.

There is a fine balance to strike between 'general' and 'specific' knowledge, between approaches focusing on 'global' and 'local' knowledge (Cotterrell 2006: 19ff). After having presented and synthesized the pluralistic landscape of legal theory and of the sociology of law in its more theoretical endeavours (Cotterrell 2003, originally published in 1989; 1992), Roger Cotterrell started on a quest of providing a new way of looking at socio-legal realities through the prism of 'community', at least since the mid 1990's (Cotterrell 1996; 1997; 1999; 2006). By doing so, he little by little explored a meaningful way of making 'one camel', 'community', appear out of the existing drifting 'theoretical clouds'.

I met Roger Cotterrell at the beginning of this endeavour. His quest is to contribute to an empirical legal theory (Cotterrell 2003: 3), which is on the one hand addressing the pluralism of our individual and collective existences, and on the other hand does not shy away from the moral dimensions of socio-legal research. This contribution comes through his 'Law and Community' horizon that initially drew me to his work and helped me to formalize some of my intuitions and to reveal another 'camel' in the socio-legal cloudscape: the pluriverse. And in his more recent work on culture and comparison (Cotterrell 2006a; 2006b; 2007; 2008), a new set of bridges toward my own work has appeared.

There is a shared outlook in both of our empirical legal theories, but also inevitable differences since mine is not rooted in the sociology but in the anthropology of law,[1] especially in its Francophone version as reflected in the work of the Laboratoire d'anthropologie juridique de Paris (LAJP / University Paris 1 Panthéon-Sorbonne) as chiefly represented in the writings of Michel Alliot (see for example 2003) and Étienne Le Roy (see for example 1999; 2004; 2011), and complemented by a critical legal theory as promoted by François Ost and Michel van de Kerchove (1987). In a nutshell, despite fundamental differences, both our approaches highlight the emergent pluralist condition we are living in and the necessity to relate our legal theories to lived experiences. The main difference in our respective *empiric legal theories*,[2] besides his

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[1] For a succinct introduction to my approach in English see Eberhard 2001, 2009, 2012a.

[2] 'For convenience, I term legal philosophy's contributions to legal theory *normative legal theory* and sociology of law's contributions to it *empirical legal theory*' writes Roger Cotterrell (2003: 3), and I am extending his definition here to include anthropology which is sometimes understood as 'comparative sociology'.

being rooted more in sociology and mine in anthropology, is that Roger Cotterrell's approach to Law and society appears more structuralist when compared to my more 'dynamic phenomenology' of Law, which is deeply influenced by Étienne Le Roy's dynamic anthropology of law (Le Roy 1999).

In this chapter, I would like to elicit a dialogue, or at least to share some major insights that could serve as starting points for a dialogue between Roger Cotterrell's 'community' and my 'pluriverse' approach, and in a broader sense between rather sociologically and anthropologically informed legal theories, and last but not least between the Anglophone and Francophone worlds of research. In order to do so, I will start – in anthropological fashion – by setting the stage through locating my own discovery of law. By doing so, I will also pay tribute to how our teachers inspire us and sustain us in our quest for knowledge. This personal account will illustrate the process of (scientific) research through a concrete example that may inspire the younger readers of this volume in their own explorations. Research is not only an objective, intellectual pursuit; it is also an existential path that is enriched and sometimes fundamentally oriented by certain encounters, moulded by circumstances. Leaving a familiar universe for a pluriverse seemed paramount to me in order to understand the pluralist mystery of Law (Eberhard 2013a). I have formalized the pathway from one to the other through what I sometimes call four cultural or existential disarmaments:[3] alterity, complexity, interculturality and humanity. I also refer to the latter as four poles between which legal anthropologists meander in their research and teaching activities. These cultural disarmaments, or poles on the journey of discovery of Law, can be related to Roger

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[3] For the notion of 'cultural disarmament' see Panikkar 1995a.

Cotterrell's interests in culture, community and comparison. They will constitute the focal points of my exploration.

1. Discovering Law

'Law is assumed to be socially significant, although the nature of this significance, and what kinds of study can best reveal it, are always controversial matters. Law has long been thought worth studying for its intrinsic philosophical or social interest and importance, which relates to but extends beyond its immediate instrumental value or professional relevance. In this sense, law is 'a great anthropological document' (Holmes 1899: 444).' (Cotterrell 2003: 1-2)

My anthropological interest in Law[4] initially led me to specialize in comparative law (especially between French and German law – Eberhard 1994). It was only in 1995, after a year spent in India, that I became aware of the dire need for intercultural dialogue in the organization of our living together, be it on the global or local scales,[5] and that I explicitly turned to the study of the anthropology of Law. Interestingly enough, remaining in touch with realities of how to act in the world – and thus being

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[4] Whenever I write 'Law' with a capital 'L', I refer to the anthropological 'legal phenomenon', often referred to in French as *juridicité* and of which "law", "state law" is but one of many expressions. The distinction will become clearer in the following pages.

[5] My interest in comparative law first crystallized during a comparison of German and French Law in my *Magister Legum* (LLM) thesis in 1993-1994 (Eberhard 1994). The next year at the Jawaharlal Nehru University in Delhi where I was introduced not only to international relations but also to anthropology deepened my interest in pluralism and pragmatism that was triggered by this first research.

highly aware of the social, historical, cultural, political stakes of one's research –
actually fuels theoretical investigation and often leads to fundamental research. My
quest to move towards an intercultural legal theory that would contribute to ways of
rethinking a more dialogical living together on the local and global planes, by linking
the anthropology of Law with more general approaches in the field of legal theory, led
my path to cross that of Roger Cotterrell at the European Academy of Legal Theory in
Brussels.

It was 1996. I had just completed my DEA (*diplôme d'études approfondies* – equivalent
to a LLM) in legal anthropology at the LAJP. I had explored the conditions for a more
dialogical and intercultural living together in the then emerging new era of a pluripolar
globalization through the lens of the *problématique* of human rights in the intercultural
dialogue. I subsequently developed this in my doctoral research at the LAJP from 1997
to 2000. My Master's thesis, supervised by Étienne Le Roy (Eberhard 1996), made me
aware that in order to rethink human rights – which I equated at that time to a kind of
Grundnorm of the global legal system – it was necessary to rethink Law itself… and
even the underlying modern world vision. But how could one go about this? In order to
acquire the necessary tools for the needed work of deconstruction / reconstruction and
the rooting necessary to engage in meaningful intercultural dialogue on Law, it seemed
necessary to complement my previous studies with a year at the European Academy of
Legal Theory in Brussels, which provided an international and interdisciplinary Masters
(LLM) in the theory of Law. Three books were required reading for the programme:
Hans Kehlsen's *Reine Rechtlehre* (1960), Hart's *Concept of Law* (1994), and Roger
Cotterrell's *Politics of Jurisprudence* (2003).

I was seduced by Roger Cotterrell's introduction to legal theory. His concise, simple to read and nonetheless very insightful and contextualized presentation of the different authors and their theories became imprinted on my mind: in his book, theories were not presented as abstract systems but as dynamics of seeking knowledge embedded in broader social and historical contexts, all having their respective merits and limitations. This approach remained one of the horizons for my subsequent studies and then research in legal theory: always try to understand legal theories in an 'anthropological way', from within and in their contexts; then confronting them with different research experiences, just as anthropologists would compare different cultural experiences.

The mid-nineties were also the time when Roger Cotterrell started to develop his "law and community" approach. He shared it in a seminar at the European Academy of Legal Theory, which I attended. His theory was then in its infancy. He had just published *Law's Community* (1996) in whose final chapter one is invited to 'imagine law's community' (p 315 ff). He shared with me a first draft of his article 'A Legal Concept of Community' that was to be published in 1997 in the *Canadian Journal of Law and Society*. For me this work was very important and the timing prescient.

I was looking for a framework that could welcome anthropological approaches to Law into a legal theory framework. My main aim was to contribute to the move of anthropological insights from the 'edges of law' (Rouland 1993) to its core, to the core of debates in legal theory at large. For me, pluralism, intercultural dialogue, praxis, relationships between the global and the local were not just peripheral anecdotes to the

only real and important law: state law. On the contrary, they were essential aspects for rethinking a humane contemporary living together. The 'legal system' could definitely not provide a framework for my endeavour – the promise of a 'communitarian horizon' seemed more appealing (Eberhard 2000).

François Ost and Michel van de Kerchove's work on a dialectical legal theory (1988 and 2002) allowed me to start to present legal anthropology as a dialogical theory of Law – in continuation with their work but also in contrast to it, taking it further for intercultural settings. Their approach to law as game (van de Kerchove and Ost 1992) allowed me to build bridges with Étienne Le Roy's emerging dynamic approach to law reflected in his model of the *jeu des lois*, the 'game of laws'. At that time, Étienne Le Roy had not yet developed his *jeu des lois* into a general theoretical framework.[6] It had only been presented as a convenient tool to share field data[7] in a comprehensive and clear way without reducing the complexity of the encountered situations.

So here I was, with my own questions of how to rethink our current socio-legal paradigms in order specifically to approach the question of human rights in intercultural dialogue in a meaningful way. The two emerging approaches of the *jeu des lois* and of 'law as community' were clearly useful in doing so, despite – or rather because – they were yet not too developed, giving me more scope to use and adapt them for my own purposes. 'Community' and 'game' became the two pillars for a pluralist paradigm of

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[6] This would only happen a few years later with the publication of his *Le jeu des lois. Une anthropologie 'dynamique' du Droit* (1999).

human rights thought, and more generally for legal theory. I first presented them in the central part, 'Our Human Community: Towards a Plural and Praxis Oriented Human Rights Paradigm', of the Master thesis in legal theory that I wrote under the supervision of Roger Cotterrell (Eberhard 1997: 47 ff).

The concept of 'community' provided a 'milieu' in which the phenomenological and dynamic approach to Law developed at the LAJP could make sense in the framework of legal theory (see Eberhard 2000). It must be emphasized that such a vision of 'law's community' is far from being natural to continental European legal theorists who are deeply embedded in highly state-centered visions of law.[8] The Anglo Saxon detour (also including the debates between Communitarians and Liberals) thus allowed me to build bridges and to open up doors in Francophone legal theory which would have remained closed if I had not on the one hand delved into Anglophone research for inspiration, and on the other had not also published in English allowing me to develop insights of community in an environment where this was acceptable (insights to which I could then refer in my French publications).

The Anglophone detour and enrichment allowed me to lay down the foundations on which to develop my actor oriented, pluralist and intercultural approach to Law, which little by little took shape in a *Tao* or *Do* of anthropology of Law, a path of discovery of

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[7] In two settings: land law issues in Africa (Le Roy 1996) and issues of youth socialization in France and in Africa (Le Roy 1995; 1997).

[8] In a French context 'community' even was – and still largely is – a taboo concept as it is associated with communalism, the ghettoization of particularisms and is basically seen as a fundamental attack to the universalist Republican pact of 'liberté, égalité, fraternité'.

the legal pluriverse between alterity, complexity, interculturality and humanity (see Eberhard 2010, 2011, 2013a).[9]

2. Culture and the discovery of alterity

In his writings, Roger Cotterrell is highly critical of the usefulness of 'culture' as an analytical tool in legal theory as 'the concepts of culture and legal culture are of limited *explanatory* value for sociolegal studies.' (Cotterrell 2006a: 8). In his introduction to *Law, Culture and Society*, Roger Cotterrell (2006a: 9) points out that Chapter 5, which introduces the concept of legal culture, is 'one of the few almost entirely negative and critical studies I have written.' Even in the next chapter on 'Law in Culture', where he develops a more positive approach, he argues that in order that it can appropriately be dealt with *juristically*, it is necessary 'to break "culture" down into component parts and see it as expressed in different types of social relations of community.' (Cotterrell 2006a: 97). He (2006b: 2) also notes that 'One of the hardest challenges for legal studies today is to decide how to deal with the idea of culture, integrating it into legal thinking but avoiding the kind of reification that treats culture as monolithic, a causal factor in itself, or an explanation of legally relevant behaviour (…)'

Roger Cotterrell's critical stance towards culture is widely shared in anthropological circles – albeit anthropologists remain to be seen from outside as the specialists in

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[9] The Anglophone reader who does not understand French, may find it beneficial to complement the subsequent developments – which must remain rather succinct due to space constraints – by reading Eberhard 2001, 2002a, 2002b, 2009a, 2012d.

culture. Generally speaking, in current anthropological approaches, 'culture' has evolved into such a fluid, dynamic and changing phenomenon, that it may appear to have lost any analytical usefulness. 'Over the last two decades, anthropology has elaborated a conception of culture as unbounded, contested, and connected to relations of power, as the product of historical influences rather than evolutionary change. Cultural practices must be understood in context, so that their meaning and impact change as their context shifts. (…) Cultures consist not only of beliefs and values but also practices, habits, and commonsensical ways of doing things. They include institutional arrangements, political structures, and legal regulations. As institutions such as laws and policing change so do beliefs, values, and practices. Cultures are not homogeneous and 'pure' but produced through hybridization or creolization.' (Merry 2006 : 14-15). The deconstruction of essentialized approaches to 'culture' was certainly paramount. At the same time the semantic inflation of the term contributed to discredit the notion itself. Ted C. Lewellen (2002: 49) sums up the current situation in anthropological circles thus: 'The Debate Over "Culture" Goes on (… and on… and on…)' before daring to generalize: 'Nobody likes the concept, but few want to do away with it altogether.'

A few years ago, I was invited to give a lecture on legal anthropology to a class of about 300 students, half coming from a law background and half from an anthropology background. In order to initiate the class, I asked the jurists to explain to the anthropologists what law was about and vice versa. It was intriguing that culture was not mentioned by any of the anthropology students as distinctive of their disciplinary perspective. When I brought up the point, it did not elicit agreement. The anthropology students perceived culture as something to be deconstructed, rather than a fundamental or even useful tool of their scientific discipline. With the overemphasis on

deconstruction, something very valuable and essential seemed to have been lost. A new blind spot was appearing. In my writings, I have pointed out the danger of idealized and essentialized approaches of the 'other', and even the paradox of approaching pluralism and human diversity through the notion of culture (Eberhard 2011: 101-113; 2013a: 103 ff). But, what was I witnessing in this classroom? Was not something important getting lost? What is the important reality that 'culture' points to?

Roger Cotterrell provides an insight into this question. He sees a justification for a specific use of the notion of culture such as in the work of Pierre Legrand (see for example Legrand 1996, 2011), especially in comparative endeavours: '(…) Pierre Legrand's approach contextualizes the traditional comparative law concern for contrasting legal styles of different families of law into a much broader focus on legal cultures as distinctive *mentalities* – 'modes of understanding reality' (…) – informing all aspects of the particular civilization in which law is embedded in a specific time and place. (…) The concept of legal culture in this usage can evoke a sense of rich and complex difference that is important in appreciating, *in a general, preliminary way*, variation between modes of legal understanding or legal styles of analysis and interpretation, even if the elements of difference remain aggregated, diffuse or indistinct and ultimately of unspecified individual significance.' (Cotterrell 2006a: 140). This insight provides a bridge to understanding the legal anthropologists' concern with 'culture' and a framework to understand why I consider it to be an important 'cultural disarmament' in the anthropological discovery of Law.

Legal anthropology shares a lot in common with sociological and comparative approaches to law. Nevertheless, it differentiates itself from them on one major point: it

does not take the existence of 'law' for granted. The scope of pluralism runs much deeper in anthropological research than in any other. Developing sensitivity towards different 'modes of understanding reality' is paramount. In the legal field, the legal anthropologist may even be pushed beyond 'legal pluralism' towards a fundamentally pluralist approach to Law (Eberhard 2003, 2005b, 2013a). Why is this so?

Originally, anthropology dealt with societies 'other than the modern ones'. It was a study of 'them' by 'us', as anthropology was originally a Western endeavour to discover the 'other'. Thus, anthropology – and this is a major difference with sociology[10] – dealt with societies that did not share a similar cultural matrix, that did not necessarily have concepts such as 'law', 'rights', 'state', 'individual', etc. An obvious problem arose for legal anthropology: how to compare different societies in regard to certain aspects, such as 'law', without a theory of what one is comparing? Does it make sense to look for law in contexts where there is no reference to law? *Ubi societas, ibi ius*, "where there is a society, there is law" the jurist would argue. But how to define it? Initially, definitions were based on 'our law' and the 'others' experiences were contrasted to this standard. This comparative attempt – despite being deeply rooted in an evolutionist outlook that put the achievements of Western culture at the summit of evolution and posited them as goals to be sought and little by little attained by all other societies of the world – turned out to be highly ethnocentric and scientifically unsatisfying: it painted a picture of other societies' Law only in terms of what they lacked in comparison to an a priori established standard with no transcultural validity. African Law, for instance, was depicted as non-written, non-systematized, non-distinct from other spheres like morals or religion, non-specialized in terms of institutions and

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[10] Comparative law also, although dealing with law from all over the world, up to now has overwhelmingly only been comparing the modern constructs of law in the diverse national settings of the world (but see Menski 2006).

professionals, etc. in direct opposition to our own law (see the comprehensive yet succinct introduction to Freeman and Napier 2008: 1 ff).

In the Francophone context, Michel Alliot was influential in questioning this approach. He called for a move towards a non-ethnocentric theory of Law (see Alliot 1983, 1985). His theory did not discard a reference to 'law', in favour for example of 'conflict resolution' which some considered less biased. A change of denomination was not sufficient. It appeared primordial to address the underlying epistemological problems. Michel Alliot proposed defining 'Law' in a phenomenological way, starting from a premise that is beautifully captured in his aphorism: *Dis-moi comment tu penses le monde; je te dirai comment tu penses le Droit* (Alliot 2003: 87), implying that our ways of perceiving the world influence our understanding and organization of it. For Michel Alliot and the researchers of the LAJP, including Étienne Le Roy and myself, 'Law' – which I usually write with a capital 'L' in order to differentiate it from state law – became this phenomenon that puts forms, and puts into forms, the reproduction of humanity and the solving of conflicts in the domains a society considers as being vital. It must be understood that this working definition is especially relevant on the comparative levels of ethnology or anthropology, but may be less relevant in ethnographic descriptions which intend to portray the emic point of view and do not have to bother about the questions of comparison in order to further more general ethnological or anthropological knowledge.[11]

This approach runs parallel to the diatopical and dialogical approach developed by the intercultural philosopher Raimon Panikkar who first presented it in the legal field three

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[11] I refer here to ethnography, ethnology and anthropology as the three moments of the anthropological endeavour as outlined by Claude Lévi-Strauss, from the collection of data, through regional comparisons to a general understanding of the human being in society. See Lévi-Strauss 1995 : 413, and for more specific elaborations in the field of legal anthropology Eberhard 2013a : 97 ff.

decades ago, in a very influential article exploring if human rights were a Western concept (Panikkar 1982).[12] Raimon Panikkar, as Michel Alliot, emphasized that asking if other cultures have the same institutions as we have is meaningless. All cultures do not share the same outlook and questions. Hence, it is more fruitful to dig down to similar existential problematics and to try to understand how they are played out in diverse cultural contexts. Without naming it a diatopical and dialogical approach, this is exactly what Michel Alliot did when he proposed his phenomenological working definition of Law and suggested study of how this phenomenon manifested in different contexts. In Michel Alliot's work, what Raimon Panikkar (1982: 29 ff) termed a search for homeomorphic equivalents, a search for existential functional analogies from one culture to another, led to a theory of legal archetypes that still constitutes a structuralist foundation for all the subsequent work of the LAJP. I cannot develop this theory here, but I invite readers to familiarize themselves with it in my article *Towards an Intercultural Legal Theory. The Dialogical Challenge* (Eberhard 2001) where I have presented it in connection with the challenges of a diatopical and dialogical approach to Law.

Suffice it to state here that European conceptions of what it is to be human, of what Law is about, are not universal. The recognition of alterity is a challenge to our ethnocentrism. It represents a first cultural disarmament: the realization that our culture, although it wraps itself in a universalistic vision, is but one perspective, among others, to apprehend our existence, and to live. This is not only an ethical wake up call. It also entails an epistemological shift: otherness introduces us to a pluralist world, it invites us to leave the universe of Reason for a pluriverse of being.

Structuralist comparisons, such as Michel Alliot's theory of legal archetypes, constitute an important step to raise awareness of the legal pluriverse by pointing to the existence

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[12] On the use of this method in the legal field see: Vachon 1990; Le Roy 1990; Eberhard 2011: 183-198.

of very different cosmo-visions informing very different legal visions. When anthropology started to orient its gaze towards modern societies and non-Western anthropology started to emerge, this pluralism, this awareness of alterity, shifted from its geographical location to a special sensitivity for anthropologists. At least until recently, every anthropologist's training involved fieldwork in a cultural context different from their own – usually involving an important cultural shock, an existential shock bearing intellectual consequences, the major one being a raised awareness to 'otherness', to logics, world-visions, representations, social constructions, institutions, informing action even within the same social setting. In this dynamic, Michel Alliot's theory of legal archetypes turned into a stepping stone towards a more dynamic approach which would make law appear in a completely new light. Étienne Le Roy's theory of *multijuridisme* ('multilegalism') and of a tripodic Law (Le Roy 1999: 189 ff), which evolved on this basis, hints towards the plural nature of Law itself: Law is not only made up of general and impersonal norms and an imposed order. It also relies on models of conduct and behaviour and a negotiated order, as well as on systems of lasting dispositions to action, or *habitus*, and an accepted order, not to forget the ongoing contestation of established orders, which continuously challenge the status quo and demand to see law as process (Moore 1983). In this view, Western law, state law, appear only as folk systems among many others that crystallize in different ways the underlying anthropological phenomenon of 'Law', or as Étienne Le Roy prefers to call it, *juridicité*.[13]

After this first disarmament, a second one awaits us: the disarmament of complexity. Culture is only one element amongst others to be taken into consideration in order to understand the dynamics of Law. Pluralism not only lies in the coexistence of diverse,

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[13] See Le Roy 2011: 26-27; Le Roy 2004; and the special issue of the *Cahiers d'anthropologie du Droit*, Paris, Karthala, 2006.

but neatly separated and homogeneous different systems. Pluralism lies at the core of all existence. It is a dynamic reality that can only be approached through a processual method, as for example through Étienne Le Roy's *jeu des lois*, 'game of laws' approach. It is obvious that the 'legal system' does not constitute a very adequate intellectual ecosystem for such a pluralist and existential approach. The horizon of community provides a more fertile ground.

3. Community and the discovery of complexity

How does one deal with the complexity of legal pluralism in contemporary societies? If the recognition of alterity made us aware of the existence of pluralism, the second disarmament, complexity, urges us not to remain stuck in structuralist simplifications but to approach Law in its dynamic manifestations. Community is a refreshing paradigm to welcome such a praxis oriented and dynamic approach to Law. It emphasizes the participation of all in the legal game, not only a few chosen ones. It echoes current demands for 'participation' that lie at the core of the nowadays fashionable approaches in terms of 'governance' and 'sustainable development' which increasingly question and challenge classical stato-centred approaches to Law (see Eberhard 2005, 2008, 2010, 2012, 2013b).

'The main challenge that faces the legal imagination at the present time is to envisage what 'law's community' might be; to draw on the vast accumulated experience of modern legal regulation to imagine and to work towards regulatory structures that are responsive to local moral milieu and that clearly reflect the diversity of social experience of citizens. This is a task of making law morally meaningful as an aspect of

everyday existence, rather than an alien intrusion, an inaccessible resource, or a special component only of particular professional or commercial settings.' (Cotterrell 1996: 21).

This invitation to imagine a pluralist and praxis related milieu for a more dialogical approach to Law first inspired me to explore Roger Cotterrell's work in relationship to my own endeavour to move towards more dialogical approaches to Law. His work revealed to me ongoing debates in the Anglophone world between liberals and communitarians, which back then did not really have equivalence in Francophone scholarship. Even more importantly, it brought home the point that it may be scientifically legitimate and heuristic to deepen the notion of community in legal studies. This was very welcome news. Indeed, one of the main challenges of my work on human rights and intercultural dialogue consisted in breaking out of the fetters of the universalism versus relativism alternative. Was there no other way to approach things than in terms of the principle of non-contradiction? Were we really facing an either / or situation? Or, was it possible to engage with a more pluralist approach? Was it possible to emphasize the complementarity of differences over the principle of non-contradiction? It appeared to me that the universalism versus relativism dilemma was very much a modern Western construct which reflected a modern legal system *problématique*: how to reduce chaos to order by reducing diversity to unity through the imposition of a universal system of norms (see Bauman 1987). It reflects the archetype of submission that according to Michel Alliot typifies the modern Western legal experience, especially in continental European legal systems. But other archetypes exist. The archetype of differentiation, characterizing many traditional African

societies,[14] is based on the recognition of pluralism as the foundation of social life. In order to maintain social harmony, it emphasizes the responsibility of all actors and the negotiation of solutions, rather than the imposing of an external order. It seemed more hospitable to the new dialogical approach to Law I was seeking.

Roger Cotterrell's work on community encouraged me to propose a communitarian paradigm for legal theory inspired by traditional African communitarian legal experiences: community as a horizon allowing an emancipation from the legal system view which, in my eyes, had led continental European jurists to become blind to the realities of their world and thus unable to cope with its challenges (see Eberhard 2000).[15] 'An emphasis on community values is thus, in contemporary conditions, an emphasis on the localized as against the centralized, and on diversity as against uniformity. (…) To postulate, with some sociological sensitivity, the utility of a concept of community is necessarily to recognize diversity in social arrangements and radical pluralism in moral life as the essential conditions of existence of those areas of moral agreement that can underpin social solidarity today.' Cotterrell (1996a : 322)

Today, as universalism versus relativism debates get replaced by a focus on 'glocal' dynamics, e.g. dynamics articulating diverse global and local fluxes and realities, such an approach becomes increasingly relevant and audible. The current stress on

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[14] Alliot 1980; 1983; 1985 – for the communitarian model see more specifically Alliot 1980.

[15] The interested Anglophone reader can deepen this endeavour of emancipation from the modern legal system point of view to a more pluralist horizon through the discovery of community in Eberhard 1997: 45-78. In French, the reader can refer to my use of community for a complex approach to human rights in between local and global dynamics in Eberhard 2011: 291-492.

'reponsibilization' and participation of actors in the elaboration and application of collective action through 'governance' and 'sustainable development', potentially also paves the way for broadened, pluralist perspectives on Law (see Eberhard 2005a, 2008, 2013a). Indeed, 'governance' emancipates legal *problématiques* from the State's shadow and from the legal paradigm in its strict sense. 'Sustainable development', closely related to 'good governance' in the global discourse that can be seen as its 'economic translation', also becomes an increasingly holistic enterprise taking into account social, environmental and even cultural stakes besides the economic ones. In such contexts pluralist and community oriented legal theory appears increasingly pertinent to understanding the possible contributions communities can make to Law, and to step out of purely statist views of Law in order to include what is often referred to as non-state law or alternative practices of law (see Cotterrell 1996a : 296; Eberhard 2010: 147ff).

Roger Cotterrell deepened his approach from a 'system' or 'structural' point of view by starting to operationalize the general notion of community into four ideal types: traditional community (living in the same geographical space or sharing the same language), instrumental community or community of interest, community of belief and affective community (Cotterrell 2006a: 68-70). He subsequently applied this model in his sociologically informed approaches to comparative law (Cotterrell 2006a: 79 ff) and recently in order to shed new light on the question of 'embeddedness' in the economic field (Cotterrell 2013).

The researchers of the LAJP chose a different path for approaching Law in a pluralist and dynamic way, without falling into the trap of continuing to be caught in unitary constructions (see Eberhard 2003; 2005b). Instead of reasoning in terms of entities such as 'states', 'societies', 'cultures', 'fields', 'systems', 'clusters' or 'communities' and trying to unveil their pluralist and complex interactions, they chose to study given situations, *problématiques*, such as land law issues, youth justice, the rule of law (*état de droit*), human rights, mediation, etc. in global and local contexts in a processual way. They aimed at revealing the rules of the game, the tripodic Law in action as it emerges through the study of all the relevant actors and dynamics, and their interactions, in given situations. As mentioned in the introduction to this chapter, Étienne Le Roy first modeled this field approach in terms of a 'game of laws' (*jeu des lois*) in the contexts of land law issues in African contexts and questions of youth justice and socialisation in Africa and Europe (Le Roy 1995, 1996, 1997), before using it as the general framework for his *dynamic anthropology of law* (Le Roy 1999).

The *jeu de lois* allows one to study Law in a dynamic and pluralist way and to reveal the complex nature of legal regulation in different situations.[16] It widens the 'legal scope' to embrace what a law and community approach would call the 'law of communities', which is often referred to in other terms such as 'living law', 'alternative practices of law', etc. 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 steps: 1. statuses, 2. resources, 3. conducts, 4. logics, 5. scales, 6. processes, 7. forums, 8. orders, 9. stakes, 10. the rules

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[16] Indeed legal pluralism is not a static reality. It is a dynamic interplay, an ever on going process. See Moore 1983, Le Roy 1999, von Benda-Beckmann 2006.

of the game (Le Roy 1999, p. 35 ff).[17] It does not try to establish the embeddedness of Law. Rather, it starts from the very assumption that, from an anthropological perspective, "Law is not what is in the books. It is what the actors do", as Étienne Le Roy continually reminded his students in his teachings. The state and its institutions are only one set of actors, and state law only one of the manifestations of the underlying plural legal phenomenon, Law or *juridicité*.

The reader may wonder why there is no special entry for culture, although the whole model stems from the aim to move towards a non-ethnocentric approach to legal phenomena. Let us recall that the entry point of the game are the actors and the aim of the *jeu des lois* is to study their interactions. Different aspects of culture thus make their entry into the analysis while examining the different steps which are of course influenced by cultural representations and practices. Thus there is no need for a specific, entry for 'culture' or 'identity' – which is also a safeguard against potential culturalist and essentialist deviations.

In order to analyse Law in any context, the model draws on different disciplinary inputs such as sociology, economics, geography, history, etc., tying them together around the quest of an anthropological understanding of the legal phenomena at work in a given situation. It is thus of an interdisciplinary nature. Being open to culture, it is also an intercultural model, although more on the level of an intercultural legal theory than of an intercultural approach to Law (see Eberhard 2001 for this distinction). Although having taken us already quite a long way from traditional ethnocentric approaches to

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[17] For a presentation in English see Eberhard 1997: 69-78.

Law, it must be emphasized that the *jeu des lois* still reflects an anthropocentric 'social sciences' approach. But other world-visions are less anthropocentered and more cosmocentered or theocentered than ours (Panikkar 1993). Another location could change the whole perspective on the legal game giving it more cosmic or divine twists. Thus, I have argued elsewhere (Eberhard 2011: 400-416) that in order to remind us of this positioning, it would be useful to introduce another first square before the current one: the square of our metaphysical positioning (see in this context Panikkar 1999). This leads us beyond intercultural legal theory into the realm of an intercultural approach to Law (see Eberhard 2001) and introduces us to our next disarmament: interculturality.

4. Comparison and the discovery of interculturality

'(…) it may be that the only way in which knowledge in the human sciences generally (including the study of law) can escape being limited by the particular configurations of power in the human activities that make possible each of these specific disciplines (…) is by confrontation *between* disciplines, or – to put it in another way – the effective challenging of the mechanisms sustaining the discipline-effect of these fields. Intellectual confrontations of disciplinary knowledge fields may be possible to advance knowledge beyond that encompassed by each of them. It should follow, however that any such effective confrontation will not merely add to knowledge but ultimately *transform the terms in which knowledge is sought and conveyed* by disrupting the taken-for-granted foundations of the disciplines involved.' (Cotterrell 1996: 47-48).

Recognizing *alterity* is like opening up our own window on the world more in order to deal with constructs coming from a different window. *Interculturality* gives credit to the fact that opening up one's window on the world wider in order to see things to which our attention is drawn from the perspective offered by another cultural window is nevertheless not to be equated with looking at the world through that other cultural window. The translation of a different culture's perspective into one's own, necessarily translates the latter. The recognition of indigenous people's rights by the predominant Western world-view, for example, transforms their claims into anthropo-centred claims on collective rights. It is not really able to deal with the cosmic aspect of these approaches to life and to 'Law'. So, an important question – beyond the opening up of socio-legal sciences to alterity and complexity – another issue needs to be addressed: how to deal with the more radical intercultural pluralism that can never be unified into any system? What happens between windows? A dialogue between Chinese and European partners may happen in English. But once the dialogue is over, how does each of the partners take home what they shared? How do they fit it into their language and world-vision and translate it into their Law? We can know various languages. But we cannot speak them all at the same time. Our general perception may be increased by knowing different linguistic, cultural and legal universes. But as soon as we speak and theorize we enter one of them. Our window may be more open than that of people who never looked through another window. But this increased openness does not make the other windows vanish. They continue to coexist.

In the meeting of cultures, comparison – which we have already dealt with above – is not enough. Comparison may be a first step in the discovery of the other. It allows an awakening to alterity. But it immediately raises questions as to what we compare. We discover a fundamental pluralism that challenges our own self-understanding. From comparative, the endeavour little by little becomes 'imparative'. For Raimon Panikkar (1998: 119) this means that beyond comparing, we learn from other existential

experiences[18]... and actually get transformed in this dialogical process.

There is no intellectual 'solution' to pluralism. In its profound sense, a pluralist theory is a contradiction in terms. Indeed, the effective confrontation of radically different perspectives, such as those stemming from cultures that do not share the same matrix, does not merely add to knowledge but ultimately *transform the terms in which knowledge is sought and conveyed* by disrupting the taken-for-granted foundations of what knowledge is about, and how it is approached and shared. It obliges us to recognize the importance of *praxis* next to our theories. This is quite a blow to our intellectual academic self-understanding. In a dialogical horizon, as I like to tell my students: "Questions are not voids to be filled. They are plenitudes to be discovered." As space is limited, I will simply open up a window to pluralism, by quoting Raimon Panikkar whose intercultural explorations lie at the foundation of my own intercultural theory and approach to Law.

'No purely theoretical solution can ever be adequate to the problem of pluralism; and this almost by definition. A problem which has a theoretical answer is not a pluralistic problem. (…) Pluralism is today a human existential problem which raises acute questions about how we are going to live our lives in the midst of so many options. Pluralism is no longer just the old schoolbook question about the One and the Many; it has become a concrete day-to-day dilemma occasioned by the encounter of mutually incompatible worldviews and philosophies. Today we face pluralism as the very practical question of planetary human coexistence. (…) The problem of pluralism arises only when we feel – we suffer – the incompatibility of differing worldviews and are at

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[18] See also in this context Vachon 1998, and my attempt to put into practice such an imparative approach

the same time forced by the *praxis* of our factual coexistence to seek survival. The problem becomes acute today because contemporary *praxis* throws us into the arms of one another; we can no longer live cut off from one another in geographical boxes, closeted in neat little compartments and departments, segregated into econonomical capsules, cultural areas, racial ghettoes, and so forth. (…) Puralism is not the mere justification for a plurality of opinions, but the realization that the real is more than the sum of all possible opinions. (…) We may feel disoriented in the face of so many 'orients', so many compasses, medicines and prophets. Yet we should not be resigned and try to withdraw into selfish individualisms, but instead recognize that Man himself and Reality are pluralistic (neither monistic nor dualistic), and thus that the immense variety of what appear to be conflicts (when viewed dialectically) can be transformed (I would even say converted, but this is not an automatic process) into *dialogical tensions* and *creative polarities*. All that is needed is for us to experience, to touch, to reach that very core of reality which makes us so differently unique that we are each incomparable, and so uniquely unique that all our differences appear as so many colourful beams of unfathomable light.' (Panikkar 1995b: 55, 56, 57, 86, 87).

5. The pluriverse and the discovery of humanity

The disarmament of *interculturality* leads us to a fourth existential disarmament which is closely related to the discovery of the pluriverse: the recognition that we are humans. Initially, I found this pole important as my intercultural experiences made me aware of how much my discovery of pluralism was rooted in a Western universal outlook on

in Eberhard 2012a.

humanity. As a Western jurist and anthropologist, I was intrigued and challenged by pluralism because I believed in a 'universal human nature'… which paradoxically does not exist as such but manifests in a myriad of ways. It is precisely our unity that commands respect for our diversity – this was the starting point and paradox of my whole initial research endeavour on human rights and intercultural dialogue. But this premise is only one amongst many. It is not a universal. Thus, though fundamental in my approach in order to balance all my emphasis on diversity, I hesitated to call it the pole of 'universality'.

Little by little it appeared to me that what was increasingly important in the pluriverse from my perspective was the recognition of our shared humanity. If universality points to abstracts, humanity points to our real lives and encompasses both our individual and collective experiences and beyond. Most importantly, the recognition of our *humanity*, this last existential disarmament on our Tao, Do or Way of legal anthropology (see Eberhard 2011: 11 ss; 2013a: 351 ss) is closely related to an attitude of humility. We are not Gods. We are not perfect. We are not immortal. We are not beyond suffering. As human beings, we are incomplete, fragile and open beings. This fragility is not a weakness. It is the very condition of our openness to ourselves, others, our environment and beyond. The horizon of humanity hints at the fundamental fragility of the human condition and invites us to a very humble approach to life. A humble approach of critical self-awareness, individual and collective, coupled with a sense of the ensuing responsibilities, is what it points to. Our lives are mysteries, individually and collectively. For me: 'Life is not a void to be filled. It is a plenitude to be discovered.' Let us discover it. Together.

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[19] I would like to apologize to the reader for the very selective bibliography and the overrepresentation of Roger Cotterrell's publications, and my own publications, and those that very directly inspired my scientific path. This is due to the limited space available and the fact that this contribution is foremost an intellectual dialogue between Roger Cotterrell's and my approach to Law.

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