TOWARDS AN INTERCULTURAL LEGAL THEORY: THE DIALOGICAL CHALLENGE

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ABSTRACT

The aim of the article is to present to a predominantly Anglophone audience current work in French/Quebecois legal anthropology. This work attempts to build an epistemology for an intercultural legal theory and is opening up a dialogical approach to Law, which goes beyond the mere project of an intercultural legal theory. In order to do so, the article presents the LAJP's (Laboratory of Legal Anthropology of Paris) move towards a non-ethnocentric science of Law followed by a presentation of Panikkar's and Vachon's contributions on the 'dialogical method' which clarify the epistemological foundations of a pluralist approach to Law and lead to a presentation of Etienne Le Roy's theory of 'multilegalism' [*multijuridisme*]. The whole approach and its relevance are then illustrated through examples on the local, national and global planes in the fields of youth justice, French legal cooperation, land law and human rights and international penal law.

INTRODUCTION

MORE THAN 20 years ago, Etienne Le Roy (1979), in an article reacting from a French perspective to the newly published collective work *Social Anthropology and Law* dedicated to Max Gluckman, stressed the importance of a dialogue between Anglo-Saxon and French perspectives on legal anthropology. He noted

> From a French standpoint the major conclusion that may be drawn from the book is the relative continuity in Anglophonic legal anthropology of the conceptual and methodological categories inherited both from the functional and cultural schools in anthropology and from Common Law legal practice. [. . .] On the whole, the authors appear to underestimate the importance of the

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> epistemological aspects of a truly comparative approach. The task of transforming the 'anthropology of conflict' into a real anthropology of law therefore still remains to be accomplished. Conversely, the richness of empirical data and the advantages of monographic study that these papers demonstrate should contribute to a reevaluation of French legal anthropology, which doubtless has suffered in the past from equally unjustified excesses in the opposite direction. It is thus by a dialogue between our complementary perspectives that the most fruitful work may be done in the future. (Le Roy, 1979: 69–70)[1]

Nowadays, as we are more and more confronted by the challenges of approaching complex legal phenomena, and invited – to use André-Jean Arnaud's terms (1990) – to 'rethink Law for a postmodern era', Le Roy's invitation has lost nothing of its relevance. On the contrary, the creation of institutions such as the European Academy of Legal Theory in Brussels[2] (which has now been followed by the creation of an African Academy of Legal Theory), the International Institute for the Sociology of Law in Oñati and the Réseau Européen Droit et Société[3] all bear witness to the need for interdisciplinary and intercultural approaches to law. In these institutions, seeds for new, dialogical approaches to Law are planted. Taking the example of the European Academy of Legal Theory in Brussels: its students and professors come from all over the world; teaching is bilingual in English and French; subjects taught range from theory of law and legal semiotics to legal anthropology or economic analysis of law. What emerges are 'inter-' approaches stemming from a confrontation between different disciplines and legal cultures. As Roger Cotterrell (1996: 48) notes, these confrontations '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'.

And the challenge is not merely intellectual. As our world is getting smaller and smaller, it appears that one of the most important tasks of our time is to address the issue of interculturality in the field of law. This implies an opening up to genuine intercultural dialogue that permits us to understand and to articulate the diverse legal experiences of the people(s) of the world. Let us sketch out here three examples on the global, national and local levels where to engage in dialogical 'inter-' approaches becomes more and more urgent. We will come back to these examples at the end of the article in order to show how the dialogical and intercultural approach and theorization we will be developing can help to shed new light on them.

On the global level, the foundations of the theory of human rights are shaking as they are more and more questioned by diverse cultural traditions, especially since the Vienna world conference on human rights in 1993. Minorities claim their cultural rights to their own identity and to self-determination, pointing to a contradiction of human rights caught between universalist and relativist tendencies. How is it possible to break the deadlock of the universalism/relativism paradigm and to engage in a pluralistic approach to human rights? How can human rights be turned into a symbol truly shared by all cultures? If we further keep in mind that they are only more or less respected in western contexts we also need to address the question of how to

move from a theory of human rights to their praxis. Might it be that it is our concept of human rights and of law itself that needs rethinking?

On the national levels, the illusions of the realization of the *État de Droit* or Rule of Law all over the world, through a transplantation of the western state model have been shattered. Even those who still believe that the western model is the answer acknowledge the need to take local traditions into consideration. And more radical approaches are emerging which question the whole endeavour of an institutional transfer and reflect upon indigenous alternatives to the *État de Droit* or Rule of Law. In the French context it seems paramount to rethink completely French legal cooperation with its former colonies (Le Roy and Kuyu, 1997). 'Official justice' represents only the tip of the 'legal' iceberg in the African states. The judiciary in Francophone Africa is not able to play its role of officially and definitively settling the conflicts between its citizens, and fails to express the demands of law and justice of the populations. Further the French centralized and monolithic system is unable to cope with African pluralism. Again it seems paramount to open up the approaches to law and justice through a radically different, intercultural, perspective.

On the very local level, justice can no longer be considered as just if it fails to take into account the different world visions of the citizens. In western societies we are more and more confronted by the issue of interculturality through the need to open up our justice to the representations of immigrant populations in order to be able to reach solutions that can be understood and considered as being just by both the host country and the immigrants. This requirement seems especially important and challenging in a French context that negates communities and is based on an individual model of integration, where only the state and the individuals are taken into account (Rouland, 1994). It could be shown in the field of youth justice that in the French judiciary and legal approach there seems to be a taboo of 'alterity' that needs to be overcome. Here again we thus seem to face a dialogical challenge in order to open up our theories of Law to interculturality.

A lot still needs to be done to foster interdisciplinary and intercultural legal research. In that perspective, despite its aim to enlighten the intercultural and dialogical challenge for legal theory, this article is intended to be an invitation to dialogue to our Anglophone colleagues. Indeed the gap between Anglophone and Francophone legal research nowadays still seems to need to be bridged. If lack of communication can partly be understood as the consequence of the difficulty inherent in the dialogue between different cultural traditions – Anglo-Saxon approaches to Law being formed through a common law view, the Francophone ones through a continental systemic view, the Anglophone more 'down to earth' and the Francophone more inclined towards 'grand theories' – there seems to be an even more obvious problem: the language problem.

We will therefore try to present to a predominantly Anglophone audience current work in Francophone legal anthropology which is attempting to build an epistemology for an intercultural legal theory in continuity of the

project for a 'non-ethnocentric science of Law' advocated by Michel Alliot (1983a), founder of the Laboratoire d'Anthropologie Juridique de Paris (LAJP; Laboratory of Legal Anthropology of Paris). We will also present research advocating an intercultural, dialogical approach to Law, which goes beyond the project of an intercultural legal theory as we will show. Indeed the latter is not only aimed at translating non-western legal experiences in the frame of western jurisprudence, thus opening the path to a western intercultural legal theory. It more radically challenges the western approach and opens up new horizons of thought by raising our awareness of the fact that there are societies that think of their reproduction, their conflict resolution, in terms other than terms of 'Law'. The dialogical approach relies on the insights gained by Raimon Panikkar in his research on interreligious and intercultural dialogue. These have been applied to more 'legal' problematics in a very thought-provoking manner by Robert Vachon from the Intercultural Institute of Montréal.[4]

It may have struck the reader that in this article we are dealing with legal theory, although an intercultural one. Indeed, many anthropologists accord only low priority to the theoretical legal project and prefer to focus on ethnographic description or to work on 'dispute processes' which seems to them a more cross-culturally valid, less ethnocentric subject of study than law (Le Roy 1989; Snyder 1996: 136). Nevertheless – and fully aware of the methodological requirements and constraints – I consider that legal anthropology has much to offer to legal theory. By shedding its light on legal phenomena (Law with a capital L) from the perspective of different cultural traditions, or from the perspective of the actors rather than of the legal system, and thus training the legal eye to see what usually remains unseen, permits the adoption of the 'critical external' point of view advocated by François Ost and Michel van de Kerchove (1987: 50–1) for their critical theory of law.

But let us be very clear right from the start. What we mainly try to communicate here is a certain approach [*une démarche*] to Law which is open to intercultural dialogue, questioning and enrichment. We are not intending here to propose an 'intercultural legal theory'. The aim is just to make a dialogical proposal to a possible constitution of such a theory to complement current, rather monocultural, legal theory. If such an intercultural theory will ever see the light it will only be through actual dialogue between specialists from different cultures. In this light, this presentation of Le Roy's 'multilegalism' should also be seen as a model open to enrichment and which we think may be fruitful for others' research rather than a final point.

Let us note, in order to avoid possible misunderstandings, that while speaking in terms of 'Law' or 'legal phenomena', we do not postulate an a priori universality of Law, and thus proceed in a 'logic of subtraction' resulting from a comparison of other cultures to the western standard. Indeed, in this perspective, our own legal experience would be considered as a universal standard self sufficient to understand other cultures' legal constructions: experiences not entering in our frame of understanding would thus be subtracted from our analysis or at least would be construed as an inferior form

of the 'real thing'. We very much agree with Surya Prakash Sinha, who writes:

> At any given period in history since its civilized beginnings, there have always existed three or four civilizations contemporaneously. Each is characterized by a coherent life-style extending over a large geographical area and over a long period of time. It is possible to discern the most fundamental principle of life for each civilization and, consequently, the most central principle of its social organization. Law is one of those principles, but only one of them. Law is not a synonym for social organization. Rather it is a particular form of it. That particularity resides in the historically generated values of Western civilization, as noted below. (Sinha, 1995: 31–2)

As the reader will see, we are advocating an additive logic in order to propose models that can help to approach the 'mystery' of Law as 'legal phenomena' through a crossing of different cultural perspectives (cf. Le Roy, 1998b: 37). In this way, light is shed on realities left unseen through monocultural approaches.

Such an additive and intercultural approach may permit us to enrich our understanding of Law in western societies as well as to deepen our understanding of how different societies reproduce themselves and handle their conflicts. Le Roy (1994: 680) notes that as soon as one leaves a specific legal culture sharing common roots and where the original matrix can be reconstructed, comparison of resemblances and differences between 'legal cultures' does not make sense any more and can only lead to ethnocentric constructions. A truly intercultural approach may thus also prove useful in the endeavour of a genuine, non-ethnocentric comparison between different cultural traditions.

We are aware that our whole journey towards an intercultural theory of Law remains embedded in its western birthplace, but as we will show, part of an intercultural theory of Law as we conceive of it is precisely to acknowledge a pluralism that cannot be reduced to any kind of unity and thus calls for dialogical and diatopical hermeneutics in which search for homeomorphic equivalents and a clear consciousness of our respective *topoi* of discourse are paramount. In other words, if we want to open ourselves up to dialogue (a meeting, confrontation, articulation of logics; *dia-logoi*) we must recognize the diversity of our standpoints (*topoi*) in the world and the original perspectives that stem from them. We are therefore necessarily invited to embrace a pluralist outlook on Reality and our interpretation of the other must take into account his or her way of looking at things. It may be that he or she does not have the same concepts as we have (ex: 'law') and therefore a search for 'functional equivalents discovered through a topological transformation' or homeomorphic equivalents is necessary (Panikkar, 1984a: 29) Thus, if we are extremely aware of the relativity of our perspective, we are nevertheless convinced that through locating it in its context it can help to enlighten our perceptions of Law. No one can speak out of nowhere. But, through the rooting of our discourses in their respective perspectives,

genuine dialogue between those perspectives becomes possible and the 'mystery' of Law may thus little by little be approached in its complexity – the intercultural approach [*démarche*] thus appears possible and seems highly desirable.

We will start by presenting the LAJP's move towards a non-ethnocentric science of Law. We will then put this endeavour in perspective through Panikkar's and Vachon's contributions on the 'dialogical method' which will clarify the epistemological foundations of a pluralist approach to Law. This will awaken us to the pluralist challenge it constitutes and will allow a differentiation between an 'intercultural legal theory' and an 'intercultural approach to Law', the latter constituting a much more radical epistemological break than the former, but the former facilitating a translation of the insights gained through the intercultural endeavour in western legal science in order to enrich it. We will then illustrate the enrichment of western legal theory through intercultural and anthropological approaches to Law by presenting Le Roy's theory of 'multilegalism' [*multijuridisme*]. Finally we will take up again the three legal issues on the global, national and local planes sketched out above and show how our intercultural approach and theorization apply to them.

A NON-ETHNOCENTRIC SCIENCE OF LAW?

What could it mean to speak of a non-ethnocentric science of Law? Is it not a contradiction in terms? How can we deal in a non-ethnocentric way with an issue that is put from the perspective of our own culture? How can we postulate a priori that 'Law' is something universal? How can we be sure that by postulating 'Law' as a reality, by putting it as the object of our investigation, we are not cutting off from the very beginning every possibility of a genuine intercultural dialogue? And, more generally, what do we mean when we speak of 'Law'?

Let us start by sketching out the epistemological problems we are facing when trying to move towards an intercultural theory of Law by drawing on the experience of the LAJP. We will then be ready to approach Alliot's theory of legal archetypes and logics.

A WORKING DEFINITION OF LAW

We are not intending in this article to propose any final conclusions or definitions and are rather trying to share an approach, to retrace the evolution of a methodology. So let us start by briefly sketching out how the need emerged in the LAJP to reflect upon a non-ethnocentric science of Law through the necessity to build models that could permit the comparison between European (especially French) and African experiences (Le Roy, 1986, written in 1982). A good introduction to our reflection may be the little narrative

through which Michel Alliot introduced his seminal article about a non-ethnocentric approach to African 'custom':

> There were people playing on all the tables, and often for lots. The night had been long and the smoke which had invaded the gambling joint prevented seeing from one table to the other. One would have had to move, and would then have been filled with wonder by the variety. Every table was playing a different game [. . .] All of a sudden the belote players left their table to observe the bridge table. One of them returned quite quickly having noticed that the bridge players did not know the rules of the game (he was thinking of the rules of belote) and committed many mistakes: optimistic and benevolent, he thought that they would end up learning them and know how to play. Having observed them for a little longer, one of his friends understood that they were not playing belote but some other game: he noted the way in which they ordered the cards and played them and rejoined the other to announce his discovery. It is then that the third belote player, having guessed that you need to know the rules of bridge in order to understand the game, asked the players about them: they handed him a manual, and added that it will not be enough to read it carefully – he will need long practice before he could pretend to know bridge.
>
> Thus go human societies. Each one is playing a particular game which the others struggle to decipher. (Alliot, 1985: 79)[5]

Every culture plays its own game – to realize this was already a difficult achievement and demanded great effort. As Le Roy (1998b: 33) notes, thinking the other as merely the opposite of oneself (which also usually means as inferior to oneself) and failing thus to discover the 'Other' in his originality behind the other was a general practice in colonial africanist science. The approach to African custom is a good example. For a long time it has been constructed as primitive, not yet perfect, law because of its lack of independence from the rest of social life and its oral character. In comparison to western written Law, constituting an autonomous social field, it could only be perceived as imperfect. And the first reaction of the colonial administrators was to write it down in codes, thus turning it into a *droit coutumier* [customary law], which froze it and destroyed its original logic. To break out of such ethnocentric constructions, a clear need for an epistemological break and for an emancipation from a conception of Law too much linked to our western view was thus strongly felt at the LAJP.

We needed to break out of a trap that Louis Dumont explicated as the principle of the 'encompassing of the contrary'. Dumont formulated this concept in order to explain the fate of hierarchy in our modern ideology based on the idea of equality. According to Dumont (1983/1991: 140–1), hierarchy has not disappeared in our modern societies but it is occluded by the myth of equality: what we value is implicitly constructed as the point of reference for a general category encompassing different values. For example in the encounter of cultures we construct the other as our equal, encompassing him or her in the general category of humankind. But at the same time the implicit reference from which our image of 'humankind' is constructed is our own standpoint. Thus the different values and modes of organization are explicitly

constructed as equal to ours. If we have Law, other societies too must have Law. Nevertheless, the reference being our own values and conceptions, implicitly the others' values and conceptions are in fact constructed as hierarchically inferior. Their originality is disqualified and often the image of the other, of their values, conceptions and institutions, consists but in the reversed and inferiorized image of ourselves and of our values, conceptions and institutions, as we have noted in reference to African custom above. So the first step in order to engage in a non-ethnocentric science of Law was to try to emancipate research from the 'encompassing of the contrary'. In order to do so, in an article fundamental for all the ulterior work of the LAJP, Alliot proposes a definition of Law as 'legal phenomenon', which according to him can be observed in all societies and refers neither to the state, nor to a formulation of rules, nor to rationality:[6]

> Being, is struggling, individually or collectively. But no one can fight on one front of his domain as long as he is not assured of peace on all its other borders. And the fighting of its members is not without danger for the group. In the domains a society considers as vital – and thereupon every society has its own conception – its existence is only possible insofar as its members control, to the extent they can, these struggles or at least the practices that result from them. Living in society, is therefore not only struggling, it is also agreeing on the legitimacy or the illegitimacy of these practices and on the consequences that shall be given to them. Social life calls for consensus. The phenomenon is general because it is linked to the nature of the individual (struggle) and to the requirements of life in society (consensus). [. . .]
>
> The law of a society is thus ordered around the limits of the spheres of action of all the domains it considers as vital: it is at the same time consensus on these limits and practices, aimed at, or succeeding in, confirming or displacing them.
>
> Thus defined, law is not linked by its nature to the existence of a state, nor to the formulation of rules, nor to the recognition of its rationality. (Alliot, 1983a: 85–6)

This working definition of Law as 'struggling and the consensus on the outcomes of the struggling in the domains a society considers as being vital' proposed by Alliot (1983a: 83) can be complemented by two other short definitions of Law which may shed light on the way it is approached at the LAJP: Law as 'putting in form (shaping) and putting forms' borrowing Bourdieu's definition of codification (1986: 41) and Legendre's definition of Law as 'the dogmatic art of knotting together the social, the biological and the subconscious to assure the reproduction of humanity' (quoted in Le Roy, 1998b: 39). Building on those two definitions, we could say that in the LAJP Law is often approached as that which puts forms on humanity's reproduction and puts it into form. It seems worth adding that we are not intending to give here an ultimate definition of Law. The point is rather to locate our own perspective so that it can enrich other perspectives on Law. As Rouland (1989: 90) reminds us: 'On ne peut définir le droit, mais seulement le penser' [Law cannot be defined but can only be thought of]. So let us now see how we could engage in a genuine dialogue between different ways of 'thinking law'.

'THINKING GOD, THINKING LAW' … LEGAL ARCHETYPES AND LOGICS[7]

In his attempt to propose the bases to a non-ethnocentric science of Law, Alliot underlines a fundamental methodological requirement. This is that, in order to understand the form and meaning of the institutions of another society one must not relate them to the institutions of one's own society, but must relate them to the universe of the society in which they are being observed (1983a: 91). Further, he insists on the fact that this universe is not only the visible universe – law is not just the outcome of the economic relations of a society or a mere expression of politics – but especially the invisible universe of a society through which it gives sense to its life and constructs its relationship 'to the world'. It is the latter that gives coherence and meaning to the former: the visible can only be understood in reference to the invisible, not only as a whole but also in its particular manifestations (Alliot, 1983a: 91). Alliot (1983a: 90) points out that, if societies have one thing in common, it is that they:

> each construct their own mental universe, carrying fundamental models which produce meaning, which are revealed through the vision of the visible and the invisible of each of its members, through his/her vision of peoples, of his/her society, of the groups to which he/she belongs and with whom he/she is in relation, and his/her vision of him/her self. Each partial view refers to the others and sheds light on them. But the view a society has of the world and of itself explains more specifically the legal [*juridique*] behaviour and the limits of the legal [*les limites de la juridicité*].

Starting from this insight that we can sum up in the aphorism that 'Thinking God is thinking Law', where 'God' must be understood as a metaphor for the ultimate causality principle which we see as organizing the world we live in, Alliot tries to work out different legal archetypes and logics constituting fundamentally different ways to see the world and thus also 'Law'. It is an understanding of the relationship between archetypes and logics (and different logics can be at work in the same society) which can enable the construction of 'models' of different societies' Law (Alliot, 1983a: 113–17). Before presenting those different archetypes and logics it may be appropriate to remember that they are not a 'reality out there' in order to avoid essentializing them. They are just models[8] that stem from observing the ways people live and conceive their lives in different societies. This enables us to shed light on the way they deal with what we conceive of as the 'legal' [*le juridique*].

Alliot, starting from the Chinese, (ancient) Egyptian and African, Islamic and western universes, distinguishes three archetypes and two logics.[9] The Chinese archetype (Alliot, 1983a: 92–4) is characterized by 'identification'. In the Confucian universe the world is infinite in time and space, vanishes and manifests itself anew in huge cosmic periods through an internal dynamism. There are no external laws guiding it. It rather spontaneously

unfolds itself through the harmonious interplay of the *yin* and the *yang* (Alliot, 1983a: 92). In this world view human and cosmic order are interrelated. Through autodiscipline, which is the inscription of 'Man' in the cosmos, harmony between them is sought. Identification is sought in the sense that the ideal is to join the way of the universe, the *Tao*, through spontaneously living one's own way. The autodiscipline necessary to one's perfection is acquired through education and through the following of the rites [*li*]. *Fa* [law], as imposition of an order of constraint, thus only plays a very relative role in the organization of social relationships. It is reserved either for those strangers who do not know the rites, or for those who do not respect them (Le Roy, 1995a: 16).

The Egyptian/African archetype (Alliot, 1983a: 95–8) is characterized by 'differentiation'. Before the world was created there was chaos. Different forces emerged out of this chaos which finally also led to the creation of the visible world and of Man. Plurality is at the origin of the universe. Harmony is not a stable equilibrium but the never ending – and also fragile – interplay of all these different forces which are not seen as contradictory but as mutually complementary (a little like *yin* and *yang* but with more than two forces). 'Man' has an important role in contributing to the harmony of the universe. Order in the society is seen as the result of the harmonious relations between its different groups (e.g. farmers, blacksmiths), and the existence of these different groups, far from being seen as a threat to unity, is seen as its condition: it is because of the differences that the different groups become indispensable to each other. There is no idea of an outer, exterior order. The ideal is always to solve the problems within the group that saw them arise in order to restore its harmony through negotiation (Le Roy, 1995a: 19).

The Islamic/western archetype (Alliot, 1983a: 98–102) is characterized by 'submission'. The world has been created from 'outside' by a unique and eternal creator and is governed by (his) laws. These laws are the same for all and order results from the equal submission of everybody to them. Society is somehow decentred. The responsibility for its future lies in a higher instance, God or the state. Addressing an Anglophone audience, it may be appropriate to note that if we seem to share the same archetype of submission there is nevertheless a fundamental difference between the vision of law of the heirs of the reform and of the counter-reform. If in the latter's imaginary, the state has taken God's place and is the central reference for thinking about Law, it seems that for the former the state is rather the 'devil' and it is Law incarnated by the lawyer that constitutes the central reference (Le Roy, 1998c: 11–12; also Eberhard, 1999c: 11–12). In any event, what remains is the idea that Law is something that is being imposed on us and to which we have to submit.

Alliot further distinguishes two fundamentally different legal logics (1983a: 103–12) now theorized as functional and institutional logics, the former being in continuity with the archetype of differentiation and the latter with the archetype of submission (Le Roy, 1998d). Indeed, if we value Being over Becoming, Alliot notes that traditional African Law, custom, does not

know beings destined to accomplish functions but thinks in terms of functions which determine beings. These different outlooks lead to different organizational logics: in the institutional logic there is an abstraction of Law from the real contexts and it is seen as something preexisting to the situations to which it has to be 'applied'. To this idealistic outlook on Law the functional logic crystallized in custom opposes a more pragmatic view on Law. Law is linked to concrete objectives which have to be attained through a negotiation of the involved partners and thus relies on practices informed by shared models of conduct and behaviour. As Alliot notes:

> Custom is not a being, like a set of laws would be: it is the way to be, to speak, to act, permitting everyone to contribute at his best to the preservation of the cohesion of the group. There are no rules which could strictly speaking be called legal: even in the vital domains which define Law, custom cannot be abstracted from what we call morals, religion, conventions which give it a superior power to accomplish its function. Furthermore, this same function of cohesion often entails avoidance of the invocation of custom: the ideal is not to let conflicts lead to an open confrontation. And if the latter cannot be avoided, a solution is sought, not so much by relying on previously fixed rules, but in conformity to what is perceived case by case, as being in the interest of the group. (Alliot, 1985: 87)

ENGAGING IN INTERCULTURAL DIALOGICAL DIALOGUE ON LAW: THE TEACHINGS AND CHALLENGES OF PLURALISM

The developments above have raised our awareness to the fact that in order to understand Law as legal phenomenon we cannot start from any a priori definition of Law. Law is not a universal. That which accomplishes similar functions to what we call Law or the legal phenomenon is constructed differently in different cultures and can only be understood if replaced in the original contexts, world views and logics. It seems thus necessary to reflect upon an appropriate approach [*démarche*] and method in order to compare what cannot be compared directly (because of the lack of a common universal frame of comparison; Le Roy, 1994: 680). We will thus now enrich Alliot's non-ethnocentric approach to Law by the method that Panikkar worked out in his interreligious and intercultural studies and which is based on the dialogical dialogue and diatopical hermeneutics. His insights were gained by dealing with the fundamental issue of how we could open ourselves up and dialogue with fundamentally different ways of 'living the world', of how it could be possible to engage in genuine dialogue between different faiths. His teachings, stemming from dialogical research on secularism, Christianism, Hinduism and Buddhism, will permit us to clarify the epistemological assumptions of our approach and will reveal the challenge to move to a fundamentally pluralistic approach to what we call 'Law'.

It may be interesting to note that, although implicitly following the same approaches for numerous years, it is only since the early 1980s that the

dialogical and diatopical methodology developed by Raimon Panikkar, and best illustrated in the domain of legal anthropology by Robert Vachon, has been explicitly related to the research carried out at the LAJP (Le Roy, 1990).[10] This development has turned out to be extremely stimulating and enriching: for example, to enlighten recent findings of the LAJP, especially Le Roy's theory of multilegalism [*multijuridisme*] which sees Law as the complementary and processual interplay of general and impersonal rules, models of conduct and behaviour and *habitus* (the term is borrowed from Bourdieu), and is thus eminently pluralist. Panikkar's methodology constitutes an invitation to enrich the endeavour towards a non-ethnocentric science of Law by an even more radical intercultural and dialogical approach. This will lead us to propose a distinction between an intercultural, non-ethnocentric, science of Law (or legal theory) as advocated by Alliot (which is an opening of western legal science to interculturality) and an intercultural approach to 'Law'.

DIATOPICAL HERMENEUTICS AND THE DIALOGICAL DIALOGUE

In a famous and very influential article 'Is the notion of Human Rights a Western Concept?' Panikkar (1984a: 28) emphasizes that '[n]o culture, tradition, ideology or religion can today speak for the whole of humankind, let alone solve its problems' and that therefore the need for intercultural dialogue is becoming more and more pressing. But he then notes that 'the very conditions for dialogue are not given, because there are unspoken conditions which most partners cannot meet'. It is on some of these unspoken – and even unthought-of – conditions that some light will now be shed.

For Alliot, the fundamental methodological requirement for a non-ethnocentric science of Law is not to relate the observed institutions of another society to the institutions of one's own society, but to the visible and especially invisible universe of that other society. This intuition can be related to Panikkar's diatopical hermeneutics whose core question is how to understand from the *topo*s of one culture the constructs of another (Panikkar, 1984a: 29). The diatopical approach invites us to make a journey through the different cultural discourses [*dia-logoi*] through replacing them in the different cultural sites from where they emerge [*dia-topoi*]. Panikkar explains his diatopical hermeneutics in relation to the question of the universality of the concept of human rights, as follows:

> Meanings are not transferable here. [. . .] We must dig down to where a homogeneous soil or similar problematic appears: we must search out the homeomorphic equivalent [. . .] Homeomorphism is not the same as analogy; it represents a peculiar functional equivalence discovered through a topological transformation. It is a kind of existential functional analogy. (Panikkar, 1984a: 28)

This explicitation of diatopical hermeneutics enlightens Alliot's approach to Law. But it also points to some epistemological problems that need to be

overcome and seem to call for an epistemological break and a new method. Indeed, the acknowledgement of different possible sites [*topoi*] from which different discourses and practices can emerge, entails, from an epistemological point of view, that we have to recognize a dimension in 'Man' (and Reality) that cannot be exhausted by the lights of Reason, the *logos* alone. Panikkar (1979: 30) calls this dimension *myth*, 'the invisible horizon on which we project our notions of the real' and he notes that 'human reality is complex because it is one: You cannot completely cut the *logos* from myth. You can distinguish but not separate them, since the one nourishes the other, and all human culture is a texture of myth and *logos* [. . .] they are like two constitutive threads that intertwine to fabricate Reality'.

We thus find ourselves in a situation where we have to recognize that reality cannot be reduced to one single centre of intelligibility – next to *logos* there is also *mythos* (Vachon, 1997: 9). Thus we seem invited, in Panikkar's terms, to move from the pure domain of dialectics to a method also taking into account our respective myths. In order to take up this challenge to engage in 'diatopical hermeneutics', which can allow the mutual unveiling of our respective myths and the sharing in a new emerging myth, Panikkar proposes the method of the 'dialogical dialogue'. Panikkar outlines this new method in his article 'The Dialogical Dialogue' (1984b). Let us briefly quote Panikkar's definition of the dialogical dialogue before commenting on it and linking it with legal theory:

> The dialectical dialogue is a dialogue about objects which, interestingly enough, the English language calls 'subject-matters'. The dialogical dialogue, on the other hand, is a dialogue among subjects aiming at being a dialogue about subjects. [. . .] The dialogical dialogue is not so much about opinions [. . .] as about those who have such opinions and eventually not about you, but about me to you. To dialogue about opinions, doctrines, views, the dialectical dialogue is indispensable. In the dialogical dialogue the partner is not an object or a subject merely putting forth some objective thoughts to be discussed, but a you, a real you and not an it. I must deal with you, and not merely with your thought. And of course, vice-versa, You yourself are a source of understanding. [. . .] the dialogical dialogue changes the partners themselves in unexpected ways and may open new vistas not logically implied in the premises. The dialogue is not a 'duologue', but a going through the logos, *dian ton logon* [. . .], beyond the logos-structure of reality. It pierces the logos and uncovers the respective myths of the partners. (Panikkar, 1984b: 209, 218)

The main point of Panikkar's argument is that in order to get a more complete view on Reality we should be, or become, aware of the fact that it is not just an 'object' but that it is also made up by the interrelations of its 'subjects'. Thus, taking 'subjects' seriously, *qua* subjects, as sources of knowledge and not only as objects of knowledge, is paramount – concerning our legal problematic this would imply for example to take 'indigenous laws' seriously, not only as an object of study, but also as a source of knowledge about ourselves, as they represent specific ways of entering in contact and of creating 'Reality'. It seems important to be aware of the fact that modern science and

modern law are embedded in a dialectical view of reality which postulates that Reality follows the laws of Reason and can be completely known through them. This approach is legitimate and important in restricted fields of enquiry but can turn out to be counterproductive if we generalize it as *the* way to understand Reality. Dialogical dialogue is thus seen above all as complementary to a dialectical approach and as limiting its 'totalitarian pretentiousness'. In the field of comparative law, for example, the dialectical approach can be helpful as long as the compared traditions share a common cultural matrix. It becomes counterproductive when completely different traditions are compared and even potentially oppressive if one of the traditions is considered as being the 'standard' to which the other is compared (the trap of the 'encompassing of the contrary'). The dialogical dialogue is thus essentially a process of mutual unveiling. It can be said to be at the core of anthropological endeavour. The legal anthropologist does not approach 'Law' from a system's point of view. He or she tries to understand the diverse actors' perspectives by referring the observed practices to their underlying logics and world views in order to shed some light on what we called previously the 'mystery of Law'. Furthermore his or her objective will be to try to find ways to articulate harmoniously our different experiences in order to promote a peaceful and just social reproduction. It goes without saying that such an endeavour opens us up to ourselves and leads to a transformation of ourselves through the others by revealing to us our myths and by thus embedding us in new ones.

The recognition of the dimension of the *mythos*, next to the dimension of the *logos*, obliges us to recognize the fundamentally plural character of Reality which can ultimately never be reduced to one unique centre of intelligibility. Thus the perspective of a possible universal legal theory disappears. But further the idea itself of knowledge which could be reducible to Reason and thus to logical operation faints. If we want to engage in intercultural approaches to Law (and I would even say if we want to engage in any kind of 'inter-approaches', such as interdisciplinarity) we have to accept an idea of 'participation' in Knowledge, which entails that we allow ourselves to be changed by knowledge. We are really facing here a fundamental epistemological break which we have already announced in our introduction when we quoted Cotterrell (1996: 48), reflecting on the transformation of the terms in which knowledge is sought and conveyed through confrontation between disciplines (interdisciplinary research). But as it appears to us now, the challenge we are facing reaches far beyond what we could have expected: we thought that we would just have to take into account different perspectives and now we are finding out that by doing so we are undergoing a change in our method of research itself and even have to question our outlook on reality. As Panikkar notes:

> [. . .] to deal with a perspective means to deal with very fundamental springs in the knowing subject. A new epistemology is required here. Just as any knowledge of an object requires a certain connaturality and identification with the

> object to be known, any knowledge of the subject necessitates also a similar identification. This is what has led me to formulate the principle of 'Understanding as Convincement'. We cannot understand a person's ultimate convictions unless we somehow share them. (Panikkar, 1984b: 214–15)

Maybe it is the legal anthropologists who are best prepared for this epistemological break as they have always aimed to fulfil the 'diatopical and dialogical requirement' as appears through their emphasis on fieldwork. Immersion in different cultural contexts is meant to facilitate an understanding from within of different societies thus allowing them to progressivly unveil their respective myths – and this in a process where knowledge of the other is intrinsically linked to self-knowledge. Let us end here the presentation of Panikkar's dialogical dialogue and let us now reflect upon the pluralism that underlies his whole approach and which challenges us in our endeavour towards an intercultural legal theory but also provides some useful teachings for it.

INTERCULTURAL LEGAL THEORY AND PLURALISM: TEACHINGS AND CHALLENGES

By acknowledging *mythos* as an important and irreducible element for intercultural approaches to Law we have in a certain sense left a world familiar to us, the 'universe', and have settled in a new one, the 'pluriverse', to use a metaphor of Gustavo Esteva and Madhu Suri Prakash (1998: 36) reflecting on globalization. Indeed if we want to approach Law in an intercultural way, we need to engage in a dialogue with the other cultures where the acknowledgement of their respective legal visions, horizons or universes, their underlying myths, is primordial (Vachon, 1990: 167). We have thus, for example, in a recent article (Eberhard 1999b), advocated to start reflecting upon human rights in terms of 'pluriversality' rather than in terms of universality. In taking into account our diverse myths we are no longer on the level of dialectics, of reason, where a reduction to unity is possible. As Vachon notes:

> Of course one can look at legal cultures as mere objects of knowledge, as historical facts, which can be quantified, objectified, analysed, conceptualized and understood [. . .] But they are much more than that: they are realities which are existential, personal (not only subjective), sacred, mythic. Something infinite for those who live on them. They are not only of the order of logos but of the order of mythos, which means of the order of ultimate differences. And ultimate differences are not dialectical (which does not mean that they are non-dialectical or anti-dialectical). (Vachon, 1990: 169)

It may be appropriate to note that when we talk of 'universe' or 'pluriverse' we point to symbols that are of the domain of the *mythos*, and not to concepts that are of the domain of the *logos*. The notion of pluralism also is a mythical reality. Panikkar writes:

> Pluralism does not allow for a universal system. A pluralistic system would be a contradiction in terms. [. . .] Pluralism makes us aware of our contingency and the non-transperency of reality. [. . .] Yet pluralism does not shun intelligibility. The pluralist attitude tries to reach intelligibility as much as possible, but it does not need the ideal of a total comprehensibility of the real. [. . .] Pluralism does not deny the function of the logos and its inalienable rights. [. . .] But pluralism belongs also to the order of mythos, not, of course, as an object of thinking but as a horizon that makes things possible. (Panikkar, 1995: 96–7)

In this perspective, Vachon (1990) shows very well, through a diatopical and dialogical approach, that if we take Panikkar's insights seriously we cannot reduce a pluralistic or intercultural approach to Law to an 'intercultural legal theory'. For him the study of 'legal pluralism' goes beyond mere 'multiperspectivism' where comparison should allow us to get the perspectives of different cultures on a common question, which in our case would be Law. Indeed, for all cultures constructing their universes that give meaning to their lives, the challenge of an intercultural dialogue cannot be reduced to understand how the others put the question of Law, because the question itself is not the same. Why talk in terms of legal pluralism, rather than, for example, in terms of 'dharmic pluralism' from an Indian point of view, asks Vachon (1990: 171). It is for this reason that it seems necessary to introduce a distinction between an intercultural approach to Law and an intercultural legal theory.

The intercultural, dialogical approach to Law cannot be reduced to a theory it may produce. Indeed it is located on the level of *mythos*, of our *praxis*, and not on the level of *logos*, of rational constructions. It is therefore essentially an attitude of openness towards the other and a 'method' pointing to the importance of not reducing our dialogue partners to mere objects and our encounter to a mere meeting of theories. It is a method urging us never to forget that all partners are subjects and that our encounter could never be exhausted through the mere *logos*. Sharing in the *mythos*, which is not objectifiable,[11] is the invitation a dialogical approach to Law presents to us. It thus goes much further than any theory of Law could go as the intercultural encounter must not be framed in terms of 'Law'. An intercultural dialogical meeting is above all an encounter where we share in a new myth. Through this encounter the mutual enlightening of our respective myths, of, for example, *Dharma* (India), *Li* (China) and Law (the west), becomes possible and it enriches and changes each of them[12] – this process also demands the invention of a new language as we cannot be content to put everything back into the legal frame as if this was the ultimate referent (see Vachon's remark above on dharmic pluralism).

Robert Vachon (1995a, 1995b, 1995c, also available in English) has in our sense wonderfully illustrated the 'intercultural approach to Law' in a study on the intercultural foundations for peace between the Mohawk Nation and North American Nation-States. By recognizing the importance of *mythos*, and thus emancipating the dialogue from the realm of dialectics alone, he opens up a shared pluralist horizon between the partners of the dialogue. Through the dialogical methodology he proposes, he sheds completely new light on what

is usually seen as merely an issue of 'the recognition of indigenous peoples' rights'. Indeed he completely emancipates the whole endeavour towards peace between the Mohawk Nation and the North American Nation-States from its modern frame where state and Law are taken for granted. He shows that the stakes of a dialogue between the Mohawk Nation and the North American Nation-States reach far beyond the question of minority rights. What is at stake is an encounter of cosmo-visions that ultimately should change and enrich both and should allow for the emergence of a new shared pluralist and intercultural myth. We will not be able to dwell further here on Vachon's 'intercultural approach to Law' and so invite the interested reader to read his texts directly as they are also available in English. Let us just note that it gives us some hints towards the elaboration of a (western) intercultural legal theory. First, the dialogical approach warns us never to absolutize any theory and not to submit to the totalitarianism of Reason (which believes that all of Reality could be exhausted by its lights and that thus there could be one all-inclusive theory reducing it to unity). Second, it gives us clues to open our world view and legal theories to an enrichment by different cultural perspectives.

An intercultural legal theory is necessarily anchored in the western tradition, and in as much as it wants itself to be intercultural it is fundamental that it recognizes the specificity of its *topos* and deepens its understanding in order to permit its cross-fertilization through discourses originating from other cultural *topoi*. The aim of an intercultural theory of Law is to translate other cultures' experiences in concepts that can be understood and handled in our own tradition, thus enriching our perception of the legal phenomenon. Le Roy's endeavour seems to go in that direction and his theory of 'multilegalism' [*multijuridisme*] constitutes a valuable contribution to it as we will show. Indeed it allows, on the one hand, an intercultural 'legal' encounter (i.e. Human Rights in the intercultural dialogue) to move from a logic of subtraction and exclusion to a logic of addition. On the other hand, it highlights the complexity of the legal phenomenon in western contexts by making us aware of different 'legal' logics coexisting in our societies and making up the 'legal' through their interplay.

Having now distinguished intercultural approach to Law and intercultural legal theory, let us conclude this part by reflecting upon pluralism as it emerges from the dialogical approach; it will help us to grasp the originality of Le Roy's theoretical model of 'multilegalism' to which we will then turn. Vachon notes:

> The pluralism of reality and truth thus reveals to us that differences between us as well as differences between the elements of nature are not simply conceptual, categorial or logical differences, but that they are much more profound and radical than that, and that finally they cannot be reduced to even the highest consciousness someone could have of them [. . .]. (Vachon, 1997: 7)

If we want to understand the legal phenomenon in all its complexity, we must be aware that it is composed of different factors. These different factors are not only conceptually different but are different 'as such' and can

therefore not be reduced to one single factor. At the same time all these factors are interdependent and it is only if we understand them in their complementary interplay that we can get closer to an understanding of the legal phenomenon as a whole. We see that if intercultural approach and theory are two different things, they nevertheless are closely interrelated and the teachings of the former are paramount to the latter.

'MULTILEGALISM' AND THE LEGAL TRIPOD: A STEP TOWARDS AN INTERCULTURAL LEGAL THEORY

We will start by presenting Le Roy's theory of 'multilegalism' [*multijuridisme*] before giving some applications that highlight its relevance and will also give us some insights on its origination.

THE THEORY OF 'MULTILEGALISM' OR MULTIJURIDISME

The developments that are discussed have to be understood in the perspective of a dynamic legal anthropology that focuses on processes in order to approach the complexity of the legal phenomenon and which is in continuity with approaches such as those developed by Sally Falk Moore (1983). Indeed Le Roy's theory of 'multilegalism' [*multijuridisme*] can be easiest exemplified by his picture of the 'legal tripod' [*tripode juridique*]. As we can give only a short overview of it here, we will not insist so much on the dynamic aspect but on the existence of different 'feet' (or footings) of Law and on their articulation. The dynamic inscription of this theory (Le Roy, 1999) will help us not to 'freeze' or 'structuralize' it.[13] It may also be appropriate to note that in the French context this approach is a reaction against the tendency to reduce Law to state law, and to equate the legal phenomenon to a set of general and impersonal rules (Le Roy, 1999: 189 ff.).

In his article 'L'hypothèse du multijuridisme dans un contexte de sortie de modernité' (1998b), where he introduces the theory of multilegalism, Le Roy notes the difficulty, in thinking about 'legal pluralism', of breaking out of unitary representations in which the 'legal order' stays the more or less explicit referent (pp. 31–4). Thinking 'legal pluralism' in a unitary way is also an application of the principle of the encompassing of the contrary that we have explained above in relation to our ethnocentric constructions of the 'Other'. The 'legal order' continues to constitute the 'encompassing frame' and the experiences other than official Law ('traditional law', 'living law', 'alternative practices of law'), although taken into account, are considered as inferior. Thus Le Roy takes up the challenge to start thinking 'legal pluralism' in a pluralistic way:

> The difficulty we have to resolve if we are convinced that social life relies upon a plurality of regulations is not to deny unity and then to reintroduce it

> implicitly, but to think diversity through escaping the representations linked to the ideas of equality and uniformity. [. . .] Without doubt it is only through an anthropology of the detour [*anthropologie du détour*], to use Norbert Rouland's terms, that we will be able to emancipate ourselves from the fascination of uniformity and that we will succeed to think Law's pluralism, in the African way for instance, as the expression of multiple specialized and interdependent regulations and valorizing the complementarity of differences. [. . .] It therefore seems indispensable, *in order to think legal pluralism in a plural way, to break out of the credo of unitarism in order to find unity only there where it imposes itself* as sum of identified elements (principle of addition) and not as a set of which one part of the constitutive elements are recused or reduced (principle of subtraction). (Le Roy, 1998b: 34, 37)

Our emphasis above on 'pluralism' as it emerged through the dialogical approach now becomes clear: (dialogical) pluralism is not situated on the level of *logos*, of rationality. It is not mere plurality that could be reduced to some kind of unity. As Vachon (1995b: 6–7) remarks, in the case of plurality (in the domain of the *logos*), differences are dealt with as logical concepts, along the lines of the principle of non-contradiction. Differences are seen above all as mental categories which present to us the challenge to be unified, to be made intellectually coherent. In the case of pluralism (in a dialogical approach, on the level of *mythos*) on the contrary:

> One starts from the *principle of identity*: identity of something in relation to itself, the accent is here on the *intrinsic unicity* and the *irreducible aspect* of everything, the presupposition being that difference is independent from the perception (thought) that one can have of it [. . .] Differences are perceived as being in the nature itself of truth and reality. (Vachon, 1995b: 6–7)

Le Roy's multilegalism, which is building on Alliot's theory of legal archetypes discussed above, has to be understood in this perspective of elements which cannot be reduced one to the other and where none is superior to the others but who in their complementary relation make up the 'legal'. We are invited to abandon a monolithic view of Law and recognize its tripod character. Le Roy writes:

> My comparative approach [*démarche*], especially on the anthropological foundations of human rights [. . .] allow me to consider that, in general, the socialisation of human beings in the perspective of the reproduction of humanity can fundamentally operate through *laws and codes* which unite and order prescriptive, general and impersonal rules, through *customs* which express and condense models of conduct and behaviour, and finally through *habitus* which are, according to Pierre Bourdieu, systems of lasting dispositions who are more or less ritualized. According to our anthropological hypotheses, these three referents are present in every society but in different combinations and set ups. Only the Western tradition has organized these responses in hierarchized legal 'orders', organized around the three sources of law, precedents (or *jurisprudence* in the French sense) and doctrine. (Le Roy, 1997a: 129 – see also Le Roy, 1998a)

It is important to note that in their interplay these three foundations of Law (its three 'feet'), general rules, models of conduct and behaviour and habitus contribute to the reproduction of humanity in all societies, but they are not valorized in the same way. Le Roy (1997a: 131) gives the following table in order to illustrate how different societies value these different foundations of Law and thus play in different ways the 'legal game' (Table 1).

Further, we can note that, staying in a western context, the legal tripod, while dealing with the legal phenomenon, draws our attention to social orders usually occluded and which can be linked to the three feet of Law: the imposed order (general and impersonal rules); the negotiated order (models of conduct and behaviour); the accepted order (habitus) to which we can add the contested order, which rather than an order as such is the contestation of order, but also plays an important role (see for example Le Roy, 1995b).

SOME APPLICATIONS OF THE MULTILEGAL AND INTERCULTURAL APPROACH

Let us now move to the three areas sketched out at the beginning of this article in order to reflect upon the contribution of the 'multilegal' and intercultural perspective on legal issues in the local, national and global spheres through examples of research carried out at the LAJP.

Let us start from the local with a research/cultural intermediation experience in the domain of youth justice in France (Kuyu, 1997; Le Roy, 1988). The project started in 1987 with LAJP research on the use of cultural difference as an argument in the French jurisdictions of minors commissioned by the French ministry of Justice. A report was submitted in 1989 (LAJP, 1989) and on its basis the children's' tribunal of Paris [*Tribunal pour Enfants de Paris*] addressed the LAJP in 1995 to launch a project, that continues today, of what we call 'cultural intermediation'.[14] Specially trained intermediators, knowing the foreign communities and the French judiciary, play the role of cultural bridges between the judge and the youths and families.

This project has contributed significantly to the crystallization of the theory of multilegalism and exemplifies the stakes of an intercultural, dialogical approach to Law in the domain of the judiciary confronted by

TABLE 1

The foundations of Law in different societies

Tradition	*First Foundation*	*Second Foundation*	*Third Foundation*
Western	Rule	Custom	Habitus
Animist	Custom	Habitus	Rule
Confucian	Habitus	Custom	Rule
Muslim	Rule	Habitus	Custom

interculturality. The fundamental problem to deal with was the argument of cultural difference often invoked in French jurisdictions in order to reach 'adapted' decisions. Generally speaking it must be noted that what judicial actors perceived as cultural differences was often due to their own prejudice rather than genuine knowledge of the other's culture. Their attitude could be characterized as vacillating between two extremes, both similarly dangerous: an 'ignoring ethnocentric' and an idealizing 'rousseauist' one. Some actors only spoke of cultural difference in order to explain acts condemned by the French community but never in the case of acts judged as positive, while others naively idealized the culture of origin of the foreign populations.

How would it be possible to break out of this trap and give some space to the objective reality of cultural difference? It seemed important to introduce a few distinctions and to point to a major challenge facing not only the French judiciary but French society as a whole. Often the talk about 'cultural difference' obscured other realities or difficulties. First it seemed useful to make a distinction between 'codified law' [*Droit-loi* or *droit du code*] and model law [*droit-modèle*]. Indeed in the French context the judge of minors can only very superficially use codified norms to justify his or her intervention. What he or she puts into practice is rather a 'family custom', of which he or she actualizes the values and behaviours. Thus the judge relies upon French models of conduct and behaviour. This is done implicitly and so without the awareness that the youth or the family with different cultural backgrounds may share different models of conduct and behaviour problems.

A second heuristic distinction is that between an imposed and a negotiated order. If in France judicial intervention rests on an imposed order, the practices of the youth judges concerned with the socialization of the minors, and confronted by diverse cultural experiences, lead them to negotiate models of conduct and behaviour with the involved parties. This negotiated order the judge has to handle is not at all recognized by the official view of law. Combined with the fact that the proceedings take place in the more 'informal' judge's office and not in court, justice of minors is often seen as a 'minor justice'. Recognizing the originality of this negotiated social order and the fact that in the justice of minors the judge, rather than being the 'spokesman of the law', plays the role of a model of socialization for the youth, makes things appear in a very different light.

The awareness of a social order of negotiation and of the existence of models of conduct and behaviour as one of the feet of Law point to a fundamental challenge for French society confronted by interculturality. It seems that in order to address the more and more pluricultural French landscape it will be necessary to open up intercultural dialogue and negotiation. The challenge goes beyond merely dealing with practices divergent from the French standard, somehow accommodating them in the existing legal frame. It addresses very fundamentally the French 'taboo of alterity' which forbids thinking about the 'Other' if he or she is not a future 'I' or does not resemble the French enough (for most of the developments above see especially LAJP, 1989: 3–10).

Let us now move a step upwards on the ladder towards the global and address the problem of legal policies and of the *Etat de Droit* or rule of law. The European model of law has spread all over the world. With the former French colonies, French legal cooperation is still continuing. The International Monetary Fund and the World Bank keep on imposing structural adjustment plans on numerous countries, which carry with them a certain view of social organization and law, and more fundamentally a certain cosmovision. In the Francophone African context it has become clear by now that the transfer of the French state model to the former colonies has not kept its promises. It seems more and more urgent to rethink the role of the state and to articulate it with African logics in order to permit the realization of the *Etat de Droit* ['Rule of Law'].

Let us give here two examples of the research at the LAJP, a more general one on the problem of Justice in Africa, the second on the fundamental issue of 'land law' [*sécurisation foncière*] and the management of renewable natural resources. A lot of work has been carried out at the LAJP on the transfer of the French state model to the former African colonies and on its inadequacy (e.g. Alliot, 1980a, 1980c, 1983b; Le Roy, 1986, 1997a, 1997b). More recent work has directly addressed the working of French legal cooperation (Le Roy and Kuyu, 1997) and proposed a 'refoundation' of legal policy in Francophone Africa (Le Roy, 1997b). This work has shed a different light on the reflections on Law in the western contemporary context where the modern concept of Law is being challenged more and more and where we seem invited to look for new paradigms for what some call a 'postmodern' period (Arnaud, 1990; de Sousa Santos, 1995).

In their assessment of French legal cooperation, Le Roy and Kuyu note the gulf between the offers and the demands of Justice in African states which poses a serious problem because of its intensity and its permanent character. They write:

> Everybody knows, African judge or French cooperant, that the situation is unacceptable and constitutes a denial of Justice (*un déni de Droit*), because nobody is anymore supposed to know, nor to apply the law. It is always recognized, in private, that a strong change (*rupture*) should intervene but one dare not break with the developmentalist ideology, as one continues to believe in the superiority of the judicial model and (implicitly) of the civilization that gave rise to it. (Le Roy and Kuyu, 1997: 16)

The authors note that, because of the French universalizing and uniformizing intellectual and political tradition, the diversity of the situations and of the modes of conflict resolution are almost completely ignored by the French legal cooperation. The challenge for the future will be to favour 'an articulation, a cultural cross-fertilization [*métissage*] or a complementarity between two requirements that are necessarily in a dialectical relationship: the inevitable globalization that opens up Africa to international economy and world, and the taking account of cultural specificities which is essential in order to allow innovations to get rooted in the endegeneous civilizational

soil (Le Roy and Kuyu, 1997: 21). A pluralist and intercultural approach, as explained in this article, is paramount for such an enterprise. We have recently tried to sketch out the challenges of the legal policies in Africa in the age of globalization by situating them in between archetypes, logics, practices and 'projects of society' (*projets de société*; Eberhard, 1999c).

The insights we have broadly developed above have been taken much further in very innovative research on African land law which has constituted a major axis of research at the LAJP for numerous years. The challenge has been the establishment of legal security in the domain of land property in African contexts. Through blending indigenous legal approaches with the imported French institutions, the researchers of the LAJP have recently moved from a static to a more dynamic approach (Le Roy, 1999; Le Roy et al. 1996). The problem is no more addressed in terms of legal security [*sécurité foncière*] but in terms of legal securization [*sécurisation foncière*] of the actors in the domain of land law.

The whole approach rests on an articulation of the imported categories of the French civil code with endegenous inputs. The frame of public/private and *bien* [appropriated thing]/*chose* [non-appropriated thing] has been opened up. A whole series of categories based on endegeneous practices have been introduced between private and public that does justice to the different kinds of groups that can have a right to land. The graduation is organized around the principles of progressive internality/externality, private being the most internal and public the most external category (one person/private, one group, two groups, *x* groups, all groups/public). In the same way, more differentiated categories have been introduced between *bien* (an absolute 'property' right; *droit de propriété*) and *chose* on which no right exists, as for example a right to access, a right to access and extraction, a right of access, extraction and management, etc. The graduation is here organized on the spectrum of a more and more absolute mastery [*maîtrise*] of the land, ranging from no mastery at all, *chose*, to complete mastery, *bien* (Le Roy et al., 1996: 67–76).

As the Anglophone reader has noticed, the whole approach is based on a cross-cultural fertilization between French legal institutions and African inputs. Le Roy (1999: 304–5) notes that the approach may have been quite different if he had started from a common law basis. And we should be very cautious in translating French concepts (ex: *bien*, *chose*, *public*, *privé*) into English as they certainly refer to realities that do not exist in the same meaning in the common law systems. If I have tried to give some insight into this work it is because I think that this approach may be inspiring to non-Francophone colleagues. It also raises our awareness of the fact that 'abstract interculturality' does not exist: intercultural dialogue can only take place in concrete contexts, around specific stakes. Furthermore, it can give us some idea of the problems arising in the contexts of Francophone African states where to the already exogenous French state-centred model are added Anglophone, more market-oriented, approaches through the structural adjustment plans of the World Bank and the IMF (cf. Eberhard, 1999c).

After bringing the global actors of the IMF and the World Bank into the picture, let us now make a last leap into the global sphere and address the issue of human rights and intercultural dialogue in the context of globalization. Research on human rights and intercultural dialogue at the LAJP is closely tied up with the move towards an intercultural legal theory and more deeply towards an intercultural approach to Law as presented in this article. As the endeavour is rather theoretical and aimed at opening up new paths in order to rethink human rights in a more pluralist and pragmatic way, let us here give the example of international law confronted by genocides and crimes against humanity in order to illustrate the insufficiencies and even perverse effects of our current approach.

In a report for the International Center for Human Rights and Democratic Development of Montreal, on impunity in the field of crimes against humanity in Africa and especially concerning the genocide in Rwanda, Etienne Le Roy (1996: 3) raised the fundamental question of whether the 'impunity of crimes against humanity is not only due to political considerations (internal as well as international ones) or to insufficiencies in existing rules but also to the conception of law that is invoked [. . .]'. His report further raises the question of what kind of law should be used and what should be the respective roles of international law and national law[15] in the reconciliation of societies traumatized by such explosions of violence. Looking at the problem only through the glass of punishing those responsible for the genocide, and further mainly from an international point of view, does not do justice to the aspirations of the people and dismisses the importance of the processes of mourning and catharsis necessary to foster peace in society and the invention of a new shared future.

In the Rwandese context it seems paramount to take into account traditional visions of Law to move towards reconciliation. Le Roy (1996: 20–2) thus proposed to take into account six principles for action: (1) to centre the way towards reconciliation on the oralization of the reality of the genocide; (2) to value the social-legal relationships founded on values of sharing at the core of the group that saw the conflict arise; (3) to try to put back into practice the traditional principle of complementarity of differences in order to allow a rethinking of a complementarity between Hutus and Tutsis; (4) to open up space again for pluralism by recognizing the pluralism of the human being (through his or her inscription in diverse networks) and by reintroducing the pluralism of power; (5) to give law back to the concerned groups so that their members can crystallize models of conduct and behaviour that make sense to them; and (6) in preference to imported solutions, to find solutions that emerge from internal confrontations and negotiations.

Sara Liwerant and myself have continued to work on the issue of international law confronted by crimes against humanity and genocides. In a recent text (Eberhard and Liwerant, 1999) we have shown that, through its performative character, international law confronted by genocides or crimes against humanity gives the impression that the 'problem has been addressed and has been dealt with'. In fact international law only articulates the reality

of these horrors in a legal language. As law is often seen as a 'Truth discourse', and as *the* solution to conflict resolution, the international legal response often forbids addressing the fundamental underlying problems, and reflecting upon ways to rebuild a future after such traumatic experiences. Our reflection has emancipated us from the African, intercultural, context and has made us aware that we also have a lot to learn from African conceptions of Law (negotiation, complementarity of differences, pluralism) when we are confronted by the crimes against humanity and genocides in former Yugoslavia. There, also, a more 'multilegal' approach would seem important.

More generally speaking these reflections lead us to the question of the *lien social*, the 'social tie', that keeps a society together. The modern world view with its response of the legal order is but one possibility, and the urge to enrich it through other cosmo-visions is felt more and more acutely. The challenge we are facing is that of the constitution of an intercultural legal theory and further of intercultural approaches to Law. Indeed our ability to live together, peace, goes beyond the question of Law and of the mere *logos*. We need to open up new horizons for our thought where human rights could be seen, for example, as one tradition of peace that can enrich and can be enriched by other cultures of peace (Eberhard, 2000a) that may be less anthropocentric than the western tradition and more cosmocentric or theocentric. As Panikkar wrote in his influential article 'Is the Notion of Human Rights a Western Concept?':

> No culture, tradition, ideology or religion can today speak for the whole of humankind, let alone solve its problems. Dialogue and intercourse leading to a mutual fecundation are necessary. (. . .) It is a fact that the present-day formulation of Human Rights is the fruit of a very partial dialogue among the cultures of the world. [. . .] If many traditional cultures are centred on God, and some other cultures basically cosmocentric, the culture which has come up with the notion of Human Rights is decisively anthropocentric. Perhaps we may now be prepared for a cosmotheandric vision of reality in which the Divine, the Human and the Cosmic are integrated into a Whole, more or less harmonious according to the performance of our truly human rights. (Panikkar, 1984a: 28,43)

In conclusion, we hope that our discussion has succeeded in conveying to our Anglophone colleagues the way questions related to an intercultural legal theory and an intercultural approach to Law are put in a French/Québecois context, especially in the perspective of the LAJP, enriched through Raimon Panikkar's work and that of Robert Vachon and the Intercultural Institute of Montréal. We also hope that the examples we have chosen to present have managed to illustrate the applications and the stakes of our intercultural approach. If the reader's attention has been held until here, if his or her curiosity has been aroused, and if he or she has not been discouraged by the French 'theorizing' preceding our examples, we feel very confident that, little by little, genuine dialogue between Anglophone and Francophone sociolegal approaches may emerge. The aim of this article is to be an invitation to

dialogue and to the building together of an intercultural legal theory deeply embedded in a dialogical and intercultural approach: perhaps it will have contributed to the emergence of a new, open horizon where pluralistic, intercultural and dialogical approaches will be able to unfold and grow (see Vachon, 1997).

NOTES

I would like to thank Prof. R. B. M. Cotterrell for his useful comments on a first version of this article in order to make it more accessible to an Anglophone common law readership.

1. Quoted from the English summary.
2. see http://home.tiscalinet.be/legaltheory/
3. see http://sos-net.eu.org/red&s/.
4. The Intercultural Institute of Montréal has published its Journal *Interculture* in two editions (with the same content), French and English, since 1984. The Anglophone reader can thus consult directly in English some articles quoted here from the French edition. The last issue (no. 135) is a special issue retracing the Institute's work over the 35 years of its existence. The Institute also has an Internet site: http://www.iim.qc.ca.
5. All quotations from the original French texts have been translated by the author.
6. For a discussion of Alliot's definition of Law see Vanderlinden (2000).
7. It is paramount not to freeze or to essentialize the developments that follow in order not to fall into the 'cultural' trap that reduces the Other to his or her 'culture' and emprisons him or her in the image we may have of it, and that can easily lead to racist contructions of the Other. If Alliot's theory reflects a structural approach to Law which can be seen as 'neoculturalist' (Rouland, 1988: 399 ff.), the researchers of the Laboratoire d'Anthropologie Juridique de Paris only see it as one – although fundamental – moment in their research on law, where the emphasis is put on taking into account the paradigm of alterity. This first moment must then be complemented by a second dynamic moment where law is approached in all its complexity as an ongoing process. Etienne Le Roy's *Le jeu des lois* (1999, especially 23 ff., 381 ff.) perfectly illustrates the move from a structural to a dynamic anthropology of Law which started crystallizing at the LAJP at the end of the 1980s (for the paradigm of game in legal theory see also van de Kerchove and Ost 1992). Another illustration is Eberhard (2000b), where the author proposes to rethink an intercultural praxis of human rights through a double cultural disarmament. The first consists in an desabsolutization of our legal culture, of its opening up to alterity, to the different ways to think law, and thus to pluralism. The second consists in the desabsolutization of the paradigm of culture as such. It is an opening up to the complexity and the dynamic character of legal situations where cultural 'determinations' are only one element among others that make up the 'legal game'. More generally speaking it can be useful for the reader to refer to Michel Alliot's own presentation of the discovery and crystallization of his theory (2000) and to Etienne Le Roy's (2000) assessment of Michel Alliot's contribution to the research at the LAJP.
8. Concerning models, Régnier (1971: 18–19) writes: 'The model constitutes a representation of a phenomenon which is both simplified and global. Indeed one does not make a model in order to represent all the properties of a

phenomenon, all the relations that beings have among themselves, all the aspects of the concrete fact. On the contrary, one envisages the phenomenon from a certain point of view [. . .] One makes an abstraction of certain aspects of the concrete, which simplifies. Further the selected aspects are not arbitrary; they are chosen from a certain point of view, but all that are relevant to this point of view must be chosen, which renders global the representation provided by the model'.

9. For an enriched version of this theory extending the Egyptian/African archetype to all animist societies of the world and introducing the Indian archetype explicited by Raimon Panikkar and which is on the crossroads of the three archetypes dealt with here see Le Roy (1995a: 15–20). For further discussion and enrichment see Eberhard (1999c; 2000b: 148–200). For a more detailed description of Alliot's theory in English see Eberhard (1997).
10. Le Roy's 'Anthropologie et Juristique', although only published in 1990, was written in 1983. For an overview of the increasing fecundation of the Laboratory's approaches by those developed by Panikkar and Vachon, especially in the field of Human Rights' research, see Eberhard (1998, 1999a). For a discussion of Panikkar's thought see Prabhu (1996).
11. Objectified it would not pertain to the domain of mythos anymore. As Panikkar (1982: 14) notes: 'Myth is escaping us. Myth, we believe in it or we don't. Furthermore when we get aware that we do believe in the myth, we cease to believe in it, because myth is that in which we believe so strongly that we do not think that we believe in it. [. . .] Speaking of the myth we are already changing it'.
12. Let us note that even in this presentation we stay in a western perspective because we start out from what we consider as homeomorphic equivalents of our law but homeomorphism is not symmetric. For example, if we look for a homeomorphic equivalent of Human Rights in Indian culture we may find *dharma*. But if we start from *dharma* and try to find a western equivalent we may find religion. Further, if in our culture the implicit presupposition is that Law is Man-centred its homeomorphic equivalents may be God or cosmos-centred (see Panikkar, 1984a: 42).
13. To get a quick overview of the dynamic approach to Law as developed at the LAJP, see for example Le Roy (1995b) or our presentation in English in Eberhard (1997). In the context of research on human rights we have also explicited the connection of the emergence of the theory of multilegalism with the discovery and the deepening of the African communitarian archetype (Eberhard, 1999b). Otherwise, we strongly recommend to have a look at Le Roy's (1999) *Le jeu des lois. Une anthropologie 'dynamique' du droit* [The game of laws – a 'dynamic' anthropology of law] which summarizes the latest evolutions of the LAJP's research and illustrates its dynamic legal anthropology.
14. We speak of 'cultural intermediation' and not of cultural mediation because mediation implies that the mediator plays an active role in the negotiation. This is not the case of the cultural intermediator who works for the judiciary and whose only role is to facilitate the mutual understanding of the judge and the youth and family.
15. Let us note, as we have seen in our short presentation on Justice in African contexts, that in the context of Rwanda its national law cannot be seen as an equivalent to the French national law in France context as it is an exogeneous law that has not managed to get rooted in the Rwandese society.
16. The *Bulletin de Liaison du Laboratoire d'Anthropologie Juridique de Paris* can be consulted on http://www.dhdi.org (from no. 22 onwards).

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