IS THE NOTION OF INTERCULTURAL DIALOGUE A WESTERN CONCEPT?

Submitted By:

Henk Griffioen

University of Leiden

henk.griffioen@law.leidenuniv.nl

IS THE NOTION OF INTERCULTURAL DIALOGUE A WESTERN CONCEPT?[1]

I. Intercultural approaches caught between paradoxes

The savage – if I may use this disrespectful term – has taken on many different guises in the perception of the western world. These changes of appearance have generally been more a consequence of changes in the observer than in the object observed, because the preoccupation was not so much with understanding the savage, as with giving him[2] a place in the own worldview, the account of the general cultural scheme of things. So the development of the perceived savage serves more as an illustration of this western cultural scheme of things than of non-western developments. Of course, today's understanding of non-western history and culture is completely different, as it seeks to understand it in its originality, and not merely as a means to understanding western culture better. One has grown to accept differences that are not reducible to a universal history, rationality or human nature. However, this accomplishment is far from complete: according to many legal anthropologists, it is still necessary to incite a paradigmatic change in the way of thinking about and constructing the Other. In the field of law, many instances of modernist, encompassing and unitary thinking still leave their traces. And what is at stake is not a mere intellectual matter. As a general fact, the necessity of intercultural dialogue and recognition is paramount in this age of globalisation to avoid intellectual imperialism, as more specifically the legal situation in many ex-colonies bears witness to: the transposition of western legal thinking to foreign contexts has had, and still has, disastrous consequences.

The practical exigency of a thorough reconsidering of the Other may be obvious, quite the contrary is true of the nature of this reconsideration. There is but little consensus among anthropologists about the right approach. The path ahead is infested with weeds: there are many paradoxes to untangle. For one: how to attain the universality that scientific thinking demands without raising the partial universality of one's own perspective (history/worldview) to this pedestal? And isn't scientific thinking itself a

---

[1] This is obviously a reference to R. Panikkar's article *Is the Notion of Human Rights a Western Concept?*, Diogenes 1982, 75-102, but after having come across so many variations on the Dworkinian theme *Taking X Seriously*, I felt justified in my own plagiarism.
[2] Exoticism was primarily concerned with images of males. I will therefore consistently refer to 'him'.

prime exponent of western culture? How to think intercultural regardless of our own partiality and the hermeneutic nature of all understanding? The encompassing paradox that anthropologists are faced with today seems to me the fact that as the Other is more and more domesticated (due to globalisation), the more the Other appears as an enigma. Whereas in the different historical perceptions the savage was both very distant in spatio-cultural terms (extremely foreign), and nonetheless very accessible conceptually (as an inferior – thus related – form of consciousness), the inverse seems the case today. Thus the basic challenge seems to be the accommodation of complexity, this relatively new and often discomforting appearance in the domain of anthropology. Complexity means that the univocality of difference, or the encompassing of contraries, is given up, in the face of (rationally) irreducible cultural differences between societal "logiques fondatrices" (Alliot). That this implies a radical break with modern thought becomes clear if one considers that western philosophy, for instance of the German Idealist signature, essentially consists in the overcoming of differences.[3] However, I will argue that this break with western thought is itself conditioned by modernity, more precisely by the *aporia* thereof, rendering the notion of intercultural dialogue the truly paradoxical character of a western concept seeking to negate its origin. Once again, the vision of the other will turn out to be conditioned by the vision of oneself. In the next section I will sketch a brief history of the perception of the Other, which will serve as the context for situating the dialogical-diatopical approach to (legal) anthropology that seeks to pay tribute to the discovery of complexity by means of the intercultural dialogue.

II. The perception of the Other

One can roughly distinguish four types of perception of the Other in western history. The first, Greek, type can be described by the metaphor 'the barbarian at the gates'. 'Culture', in the Greek world, was a notion reserved for 'civilized people'. It ended, so to speak, at the perimeter of the *polis*. Thus the Other was determined by a *privatio*: a lack of culture. This placed him outside the scope of intellectual consideration, designating him at most a military relevance - for the barbarian was something to protect oneself against. The *polis*

---

[3] In Hegel's philosophy the dialectical movement of Reason, which coincides with the unfolding of universal history, is generated by this 'Aufhebung' of the 'Negation'. Cf. G.W.F. Hegel, *Phänomenologie des Geistes*, Hamburg: Meiner, 1988.

was the materialisation of culture, the *locus* of society. In this way, the Greek anthropology was unitary in an exclusive sense.

An intermediary type of perception of the Other, situated between the Greek and the modern, is provided by the Christian anthropology. This insists that all humans are equal before God. This implicated a spatial opening up of culture, which also coincided with a changed conception of its nature. Where the ontological separations between humans dissolved, a new separation of will emerged: between those who chose for and against their religious duties. For instance in Augustine[4], one can come across this transformation of Greek thinking: a development from 'culture' as purely a matter of knowledge[5], to 'culture' involving the human subject in its fullness (intellect, will, affects)[6]. In short, the new anthropology was unitary in an inclusive sense.

It is indubitably imprecise to isolate one single modernist perception of the Other, but this can be done for the sake of clarity. One can come across numerous references to this modern perception in the literature of the diatopical-dialogical school, referring to it as a paradigm of thinking that has to be abolished. In Vachon's words:

> …la nature et la méthodologie de l'ethnologie et de l'anthropologie juridique actuelle restent profondément prisonnières des mythes de la culture juridique occidentale d'une part et moderne d'autre part. Parmi ces mythes on pourrait signaler le civilisme, l'évolutionisme, l'homocentrisme, l'autonomisme, l'étatisme, le souverainisme, etc. [and especially] le *monisme unitariste*, et le *totalitarisme du logos*.[7]

Modernity is thus identified with rationalism and the encompassing of the whole human race within one scheme of development. There is no acknowledgement of different logics: difference is interpreted as inferiority vis-à-vis the universal, rationalist model of knowledge and society. Anthropology has long been tied up with such a unitary conception of development, according to which traditional societies merely offer illustrations of previous phases of the unfolding of universal (western) history. But according to writers such as Vachon, anthropological science is far from liberated from this 'paradigm'. The legal field yields enough evidence of this way of thinking, for instance

---

[4] Cf. *De Civitate Dei*, e.g. XIV-7, XIX-25, XIX-27.
[5] For instance in Plato's dialogues, the identification of knowledge and behaviour/ethics is quite clear.
[6] This distinction is also made by Plato, for instance in the *Politeia*, but in contradistinction to Augustine's conception, these are put in a strict hierarchical relation, where the will and the affects have to heed to the commands of the intellect. In Augustine's view, these human faculties are equally infected by sin, demonstrating a dark and a bright side.
[7] R. Vachon, *L'étude du pluralisme juridique – une approche diatopique et dialogale*, Journal of Legal Pluralism and Unofficial Law, 1990, p. 164.

the (neo-)colonial treatment of *droit coutumier* in traditional societies[8]. To these writers, the recognition of legal pluralism will serve to enrich not only anthropological research, but also 'domestic' legal thinking. Compared to the Christian anthropology (as I have described it) this modern view implies a step back in the understanding of the fullness of the human subject, restricted as it is to the domain of *logos*.

It would be a Herculean task to bring together the contemporary perceptions of the Other under one single typification. Perhaps one can only go about this negatively, for one point of convergence in anthropology seems to be the rejection of unitary logics and developmental schemes. There is a general wish to overcome this way of thinking, in order to face the challenge of 'radical *altérité*'. However, this *altérité* can never be so absolute so as to preclude comprehensibility.[9] The challenges facing the diatopical-dialogical approach can be described in the context of this paradox. The first challenge (the temporal paradox) is to think the Other without inserting him into a universal history. This is a paradox because it is a natural reflex of scientific thinking to scrutinise rationalistically, and as one meaning of *ratio* is 'means to an end', it is hard not to include a teleology, an idea of development, allowing implicit value-judgements to enter the research. The second challenge (the factual paradox) is to think the Other without succumbing to a general *aporia* regarding the possibility of saying anything sensible at all about the human condition in general. The paradox being that the anthropologist is torn between on the one hand an intuition of human similarity[10] and on the other hand perplexifying diversity of incommensurable cultural *topoi*. The third challenge (the conceptual paradox) is to think the Other without superimposing one's own concepts and categories. An especially tricky task is to avoid what Dumont has called the "englobement du contraire"[11], which resembles the Hegelian dialectic of the synthesis of contradictions. In such a logic of inclusiveness, that which is distinguished from the archetype is also put in an inferior hierarchical order. Trying to avoid such a mode of thought entails a paradox precisely because *altérité* must not be maintained to the detriment of intelligibility. This

---

[8] E.g. E. Le Roy, *Le jeu des lois – une anthropologie "dynamique" du droit*, Paris: LGDJ, 1999, p. 190-193,

[9] N. Rouland, *Anthropologie juridique*, Paris: PUF, 1988, p. 131.

[10] We are, in the end, all human. But how do we know that? And what is the philosophical status of such a claim to common humanity in the face of such different societal philosophies? To be truly diatopical, one must be satisfied with the rather weak claim that 'common humanity' is a common intuition. Cf. Le Roy 1999, p. 358: "la complexité ne se comprend qu'a posteriori".

[11] In *Essais sur l'individualisme*, quoted by Ch. Eberhard, *Common Humanity and Human Community*, Part II, Ch. II (published on internet: dhdi.org).

paradox is well identified by Castoriadis, where he describes the ethnologist's predicament as being caught between the concepts and language of his ethnological audience and the experience of his (e.g.) Bororo life-world.[12]

These are the challenges that the diatopical-dialogical approach, which I will describe in the next section, seeks to come to terms with. These challenges are conditioned by, namely in contradistinction to, the historical perceptions of the Other which I have set out above. That leads me assert that there are further paradoxes that a diatopical-dialogical approach cannot erase. First, how can this approach itself not be the result of the *aporia* of other approaches, and thus conditioned by western perceptions of problems? Furthermore, how can a new methodology, as a scientific methodology, be truly intercultural, as this way of thinking is foreign to so many societies, and its development so ingrained in western history? Indeed, is the notion of intercultural dialogue a western concept?

III. The diatopical-dialogical approach: universality without enlightenment?

A. 'Diatopical hermeneutics'

According to Rouland, there are three ways of defining law: formal, substantial and phenomenological.[13] The first two are not appropriate for anthropological research, because they remain attached to western conceptions of man and of law. The third type exists in a strong and a moderate version. According to the strong version, it is impossible to define law in a universally valid way. Rouland does not favour this approach, as it renders universal knowledge of the legal phenomenon equally impossible. He adheres to a moderate phenomenological definition of law, following Michel Alliot. According to this definition, it is not the law we should be seeking to identify, but a process of juridisation which is universally identifiable but also "essentiellement variable et [dans] son contenu et sa nature dépendant des logiques fondatrices propres à chaque société". The diatopical-dialogical approach is characterised by the same concern for universality without mono-logy, universality without enlightenment, and departs from the same definition. 'Dia-topical' entails the recognition of multiple cultural sites, which cannot be reduced to each other. It is a recognition of radical *altérité*, the radicalness of which is made up by the

---

[12] Quoted by Eberhard (*supra* note 11), Part II, Ch. IV.

acceptance of complexity. Complexity is different from complicatedness, as it denotes an incommensurability of terms, or the existence of a multiplicity of logics.[14] Vachon explains what the acknowledgement of the diatopical situation means in the field of law. It is the acknowledgement of the existence of fundamentally different legal cultures. The differences concern the substance of the legal phenomenon (*law* in the west and *dharma* in India), and the modes of intelligibility of the law. The principle of non-contradiction for instance, that is so obvious to our dualistic minds, does not fit at all in a holistic worldview, where everything is seen primarily as identical to itself instead of distinguished from something else.[15] The evidence for this diatopical situation is abundant in contemporary legal anthropology. Some examples are: research into other modes of dispute resolution, other conceptions of punishment, different conceptions of the place of law in society. One could say that diatopical hermeneutics have always been the fundamental task of anthropology.[16] It is not so much the acknowledgement of the diatopical situation that distinguishes this new approach, but more the kind of universality one attempts to extricate from it. This universality, in the views of Panikkar, Le Roy, Rouland, Vachon and Eberhard is but the existence of functional analogies between cultures. These writers shield themselves from the attraction of a new encompassing synthesis, a new enlightenment. Their attitude stems from a valorisation of difference, not only as an aesthetical preference, but also as a philosophical stance that is to be preferred over others. An unexpected additional universality thus pops up, namely the universality of the post-modern credo. Vachon sounds almost like a missionary when he proclaims:

> Le dialogue dialogal repose sur le *postulat* que personne n'a accès à l'horizon universel de l'experience humaine et […] c'est seulement en ne postulent pas d'un seul côté les règles du dialogue que l'Homme peut procéder à une intelligence plus profonde et plus universelle de lui-même et ainsi en arriver à sa *propre realisation*.[17] (italics mine)

That the proposed methodology has a normative content becomes even clearer when he describes the goal if his new discipline:

---

[13] Rouland 1988, p. 142.
[14] Cf. F. Ost & M. Van de Kerchove, *Constructing the complexity of the law: towards a dialectic theory*, published on internet, dhdi.org.
[15] Vachon 1990, p. 164, 165.
[16] Eberhard, *supra* note 11, Part II, Ch. IV.
[17] Vachon 1990, p. 168.

…cet horizon commun qui nous dépasse tous, nous imprègne, nous distingue et nous relie et que nous nommons: pluralisme juridique.[18]

It is neither my intention nor my conviction to challenge the exigency for the intercultural dialogue of the attitude that Vachon is describing here. I only want to point out that we are dealing with a new enlightenment here, and, for that matter, not even an uncontroversial one.[19] It appears to be the case that an element of *Bildung* can not be avoided in setting the terms of the intercultural dialogue. This *Bildung* consists in the (normative) prescription of openness to difference, ethics of respect, post-metaphysical thinking, and in a sense also post-religious thinking.[20] There are many societies that do not value these things highly. In this sense, the notion of intercultural dialogue is a western concept.[21]

B. 'Dialogical dialogue'

But I have already entered deep into the domain of the dialogical dialogue, without introducing the concept. The intercultural dialogue must be performed in a dialogical, and not in a dialectical way. According to Panikkar:

> 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 […] …the dialogical dialogue changes the partners themselves in unexpected ways. [It] is not a 'duo-logue', but a going through the logos […], beyond the logos-structure of reality. It pierces the logos and uncovers the respective myths of the partners.[22]

The dialogical dialogue is a complement to diatopical hermeneutics, because it does not suffice to view the different *topoi* as parallels. Parallelism is rejected as an implicitly relativist stance. For that reason the dialogical dialogue seeks a common horizon. This

---

[18] *Idem*, p. 171.
[19] Not uncontroversial because worldviews tend to be encompassing, and for that reason do not fare well with such a post-modern credo, which is, no matter how one turns it, a (post-rationalistic, post-metaphysical) encompassing of contraries. Panikkar shares a postulate similar to Vachon (quoted in Vachon, 1990, p. 171), and the same holds for Eberhard (*Towards an Intercultural Legal Theory: The Dialogical Challenge*, Social & Legal Studies 2001, p.182-184) an probably Le Roy.
[20] Of course, the post-modern credo is not antagonistic to metaphysics or religion, but it takes a stance of enlightened condescension towards these phenomena, incorporating them in its own vision of man.
[21] Eberhard (*supra* note 11, Part I): "The point is not to deconstruct the western approach by refuting its universality. The point is rather to enrich this approach […]"
[22] Quoted in Eberhard 2001, p. 183.

horizon is supposed to be brought about by the dialogical dialogue itself, and is defined as "a new emerging myth"[23] and a "utopia" consisting of "the exploration by imagination of new modes of human possibility"[24]. The visionary (enlightened) nature of this horizon-setting needs no further demonstration.

The philosophical anthropology underlying this approach flows from the nature of the diatopical situation. The acknowledgement of different cultural *topoi* means that the Other is viewed as potentially different in the most substantial way, as the understanding of the Other is not restricted to external observation, but takes a person's beliefs and worldview into account as well. The diatopical situation consists in the existence of different universes of human experience. In accepting this fact, the rationalistic-deterministic anthropology of modernity is left behind. That is why the dialogical dialogue aims at understanding the person "non pas seulement comme objet d'intelligibilité, mais comme quelqu'un"[25]. This includes the mythical aspect of the Other's (social) personality. There is room for a different kind of communication besides only the exchange of information or opinion: *witness* as a mode of communication that involves affective and existential attachment.[26] This mythical/existential dimension is ignored by dialectic discourse because it postulates a universality of *logos*. As Fitzpatrick has put it, the myth of modernity is its categorical negation of mythology.[27] The development in philosophical anthropology that the diatopical-dialogical approach is ingrained in seems very healthy, for the modernist perception has done much harm, not only in an intercultural context, but also in the western world. In the words of Wilhelm Dilthey, one of the forerunners of this new anthropology, the speculative-metaphysical approach on the one hand, and the reductive (natural) scientist approach on the other have "mutilated the human spirit"[28]. According to him, a person has to be understood from the inside, as a living person with reason (*Vorstellung),* will and feeling.[29] He advocated this understanding as the new foundation of the human sciences.

---

[23] *Idem.*
[24] B. De Sousa Santos, quoted by Eberhard (*supra* note 11), Part I.
[25] Vachon 1990, p. 170.
[26] Eberhard, *supra* note 11, Part II, Ch. III.
[27] P. Fitzpatrick, *The Mythology of Modern Law*, London: Routledge, 1992, Preface.
[28] *Gesammelte Schriften* V: 3. Quoted by G. Visser, *De druk van de beleving; Filosofie en kunst in een domein van overgang en ondergang*, Nijmegen, SUN, 1998, p. 56.
[29] Visser 1998, p. 58. In a way, modernity had lost what Augustine already (or still) saw. Cf. *supra* note 4.

The philosophical anthropology underlying the diatopical-dialogical approach may be healthy; but its epistemology does not fare so well. This is partly the consequence of the paradoxical relation of science (being a western *praxis*[30]) as a means to the end of an intercultural dialogue, the terms of which one seeks to define without a hint of ethnocentrism. I already stated that 'universality without enlightenment' is not attainable, due to the preconceptions of the approach. Another way of arriving at this conclusion is to look at 'dialogue' in a Habermasian way. 'Dialogue' is not a neutral concept; many preconditions have to be met in order to have a conversation properly called a dialogue. One of these is the equality of the participants. It is clear that the diatopical-dialogical approach embraces this. But there are also "rules for practical discourse"[31] that demand objectification, justification and non-contradiction. Now a writer like Panikkar would not agree with these demands, disqualifying them as western concepts - elements of dialectical discourse. But what is left of the dialogue, when purified from this? I am sad to conclude: little. The visions of the dialogical dialogue that are evoked – though seldomly explicated – have a somewhat hollow ring to them. How to ban utter nonsense from "a dialogue about subjects"[32]? How to scrutinise a "dialogue that seeks truth by trusting the other"[33]? How to make sense by means of an "épistémologie de l'opacité"[34]? Le Roy himself gives unintentional evidence of the limitation of this 'paradigm': "le mystère de ce qui lie ensemble les individus dans cette *universitas* qu'on appelle société reste entier"[35]! This is all very philanthropic, but is it also scientific?

Part of the problem is also the confusion of paradigms and attitudes. Since Kuhn's *The Structure of Scientific Revolutions* there has been an onslaught of solemn (and sometimes slightly bombastic) proclamations of 'new paradigms', where substantially speaking the expression 'new attitude' would occasionally be more appropriate, seen that some of these

---

[30] It sounds arrogant to call science a western *praxis*, as if scientific thinking is confined to the west. This is of course not the case. But as societies are never completely closed off, so too are societal phenomena such as the scientific worldview a matter if more or less influence of a certain culture. And broadly speaking, the history of the western world is more determining for the scientific worldview than non-western history. The same holds true, paradoxically enough, for the phenomenon of globalisation that factually precludes cultural isolationism and nostalgism in traditional societies, without itself stemming from that origin.

[31] Cf. R. Alexy, *Theorie der juristische Argumentation*, Frankfurt am Main: Suhrkamp, 1978. Also: J. Hage, *Legitimatietheorieën*, in: in: P.B. Cliteur, B.C. Labuschagne & C.E. Smith (ed.), Rechtsfilosofische stromingen van de twintigste eeuw, Deventer: Gouda Quint, 1997, p. 263.

[32] *Supra* note 22.

[33] Also Panikkar, in Eberhard, *supra* note 11, Part II, Ch. III.

[34] Le Roy 1999, p. 388.

[35] *Idem*, p. 392.

propositions were about as dramatically revolutionary as the reinvention of the wheel. My assessment of the diatopical-dialogical approach is that it shares in this ambiguity between paradigms and attitudes. Seen as a new attitude towards scientific research, this approach is extremely valuable as there are plenty of ethnocentrist misconceptions to overcome. And legal pluralism can help us understand western societies better as well. As a new attitude this approach is part of the *catharsis* that the anthropologist has always striven to attain. But approaching it as a new attitude is so to speak to read over the paradigmatic rhetoric, especially related to the dialogical dialogue. I fail to recognise a viable new - let alone non-western - paradigm in this approach, for the reasons identified above: as a philosophical anthropology it is not new, and as a scientific methodology it is weak. It has neither provided a "radical alternative"[36] to the encompassing of contraries, nor universality without enlightenment. One should beware of an inflation of paradigmatic lingo. It is after all a sign of crisis, and for that reason not stimulating for scientific co-operation.

IV. Anthropology and worldview: the possibility of a non-post-modern dialogue

Altérité is not an invention of cultural anthropology. It is a basic philosophical problem, also within a single society. The cultural anthropological problem that Eberhard describes, that different and mutually exclusive universalisms have to be reconciled in order to enter into a dialogue[37], is also e.g. a political philosophical problem. Take for instance the questions regarding minority rights, or the state-church relationship. According to Eberhard, the diatopical-dialogical approach respects these universalisms. But as we have seen, the dialogical dialogue is not a neutral concept. It may be something complete societies are not interested in. Furthermore, the terms of the dialogue are put in post-modern idiom, which entails that societies must take an enlightened stance towards their own founding myths. Thus the different universalisms are in fact not respected in an absolute manner, nor would this be desirable (just like in political philosophy).

But there are other ways of envisaging a dialogue between worldviews (of whatever nature). I can think of a more modest way, which leaves differences as

---

[36] *Supra* note 24.
[37] Eberhard, *supra* note 11, Part I.

differences, and seeks an "overlapping consensus"[38] for merely instrumental purposes. This is the inverse of the dialogical dialogue. The two elements – 'differences as differences' and 'merely instrumental purposes' – are related. By maintaining 'differences as differences' is meant that it is neither necessary, nor desirable, nor realistic to construct a new myth or ultimate goal, for instance in the form of a post-modern credo. Every worldview can construct its own reasons to enter the dialogue, and its own historically defined meanings attached to it. Thus we will be rid of the paradoxical task of being 'objective' in defining the terms of the dialogue. In that light it is fine to accept that 'our' notion of the intercultural dialogue, or 'our' notion of legal anthropological science, are western concepts. The intercultural dialogue should be a *potluck*-party: everybody can bring in his own notion of dialogue. That brings me to the 'merely instrumental purposes'; it is necessary to stress this in order to avoid the perfectionist connotations[39] that the striving for a "new myth" entails. This world does not need universal standards of excellence, a universal teleology[40]. We do not need to devise an anthropology that can serve as a new, enlightened, worldview. Let us keep our notion of 'common humanity' as naive, equivocal and mysterious as it is, and strive to live together peacefully.

---

[38] The term comes from Rawls' *Political Liberalism*, but not used in the same sense.
[39] Where Vachon speaks about the "propre realisation" of humanity, he is using, to my mind, highly inappropriate words, but surely with the best of intentions (*supra* note 17).
[40] Cf. J. Rawls, *A Theory of Justice*, Oxford U.P., 1999, p. 287-288.