

# ***Jurisprudence and Anthropology of Law in Dia-logue***

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**beyond the *logoi* of Elucidation and Aspiration**

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## 1. Introduction: Four Monologues (...or Parallels)

Anthropology of Law (AL) might be, and often is, thought of as a causal-explanatory social science: its apparent *genus-species* connection with Anthropology could lead to the false (since linear, deductive) inference that also AL is exclusively focused on “things as they are”<sup>1</sup>. On the other hand, at least since Kelsen Law has been ascribed to the category of normative sciences<sup>2</sup>.

Such reading is, however, reductionist. The science of Law, i.e. the science *about* Law, is indeed deontic by its object (Law as a set of norms), but nevertheless can include a purely descriptive approach<sup>3</sup>. The latter has been regarded as the aim of Legal Theory (LTh), whereas Philosophy of Law (PhL) deals with the meta-deontic question of “how Law should be”<sup>4</sup>. Seemingly, research in AL comprises descriptive as well as prescriptive *logics*.

At first sight, though, “*sein*” and “*sollen*” seem to run parallel (and thus independent) ways in both AL and Jurisprudence – and they, too, as disciplines about the Law, appear not to have relevant similarities as to their method. In this paper I shall argue that both these assumptions are reductionist, too.

### 1.1. My research-*logoi*

The master’s thesis I shall submit in brief will be devoted to the connections between the descriptive and the normative discourse within the realm of Jurisprudence. I understand that such research goes beyond a classificatory enterprise and can provide a better intelligibility of the disciplines at stake (besides a justification of their separate existence). In this section, I shall succinctly refer to some *topoi* of both *logoi*, which are necessary for the subsequent development of the argumentation.

#### 1.1.1. Logos of Elucidation (Legal Theory)

A “change of paradigm” from a “pyramid” to a “network” has been recently popularised amongst legal theorists, at least in the francophone world. Under this or similar heading, their works revisit most fields of analysis of classical LTh, thus “reading” through a new paradigmatic “prism” phenomena such as the structure of the legal system, legal reasoning or the functions of law<sup>5</sup>. It is this explanatory “reading”, which can be said (with no major conceptual violence) to be aimed at a “*deutendes Verstehen*”, which I will call “Elucidation”.

It is interesting to notice the role played by the notion of “paradigm” in this descriptive endeavour<sup>6</sup>. Th. Kuhn himself was aware of his ambiguous characterisation of the functions of a paradigm, especially (though not only) due to his inclusion of an axiological dimension (“shared values”) within the broad concept of paradigm (Kuhn 1970:184-185). The aim of a paradigm, however, remains that of an heuristic tool<sup>7</sup>. Roughly speaking, a paradigm reveals how things “are”,

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<sup>1</sup> Sociologists, echoed by most of their colleagues of social/human sciences (including Anthropology), would generally agree that their task is to “*deutend verstehen*” and “*ursächlich erklären*”, to take Weber’s famous definition of Sociology (Weber 1922:19).

<sup>2</sup> “*Was speziell den Gegensatz von Sein und Sollen betrifft, so habe ich hier nur soviel zu bemerken, dass ich an die übliche auf ihm beruhende Unterscheidung zwischen explikativen, d.h. auf die Welt des Seins und deren kausale Erklärung durch Naturgesetze gerichteten, und normativen, d.h. der Welt des Sollens und den Normen zugekehrten Disziplinen, zwischen Kausal- und Normwissenschaften anknüpfe*” (from Kelsen’s “*Hauptprobleme der Staatsrechtslehre*”, quoted in Acherman 1955:6; emphasis added). For a reference to both, cf. Eberhard 2002a:104.

<sup>3</sup> As Hart argued in his Postscript when discussing, contra Dworkin, the nature of Legal Theory criticism: “description may still be description, even when what is described is an evaluation” (Hart 1961:244).

<sup>4</sup> I am taking the term “Jurisprudence” to encompass both LTh (analytical part) and PhL (normative part), following Van Hoëcke 2001:1.

<sup>5</sup> I shall take as “paradigm” of this approach the vast work of F. Ost and M. van de Kerchove (cf. Ost and Van de Kerchove 1987, 1992, 1994), especially their last book (Ost and Van de Kerchove 2002). However, several other works are equally representative of this new trend (cf. Zagrebelski 1992, Delmas-Marty 1994).

<sup>6</sup> Please note that I am using the etiquette “descriptive” in a broad sense when connecting it to the notion of paradigm (description as opposed to prescription). In a more strict sense, it is Kuhn himself who opposed descriptivism to constructivism (the latter being the framework in which his idea of “paradigm” makes sense; cf. Kuhn 1970). I am considering a sense of “description” that encompasses both the descriptivism *strictu sensu* and the constructivism.

<sup>7</sup> The values Kuhn refers to are clearly of procedural nature, and thus not substantive (e.g. simplicity, self-consistency or plausibility of a theory); still, authors have frequently compared a certain conception of “paradigm” with an ethical choice

enquires how things “were” and helps predict how they “will be” if a certain line of behaviour is followed. And it is this line of behaviour which necessarily is impregnated by value considerations, that are thus external to the paradigm itself.

### 1.1.2. Logos of Aspiration (Political Philosophy)

Such value considerations amount, in the field of Law, to discussing the “best” way to organise our living together – this being the natural aim of Law. To a certain extent, doing so requires making appeal to a realm of “fundamental” or “ultimate” values. In this sense, Philosophy of Law needs to borrow some knowledge from Moral Philosophy and Ethics. However, Law being a social reality and society being more tangible than PLATON’S “ideas”, the prescriptive discourse about Law needs to combine the “desirable” with the “possible”; in other words, it projects on the “possible” (delimited though the magnifying glass of LTh) the light of the “ideal”<sup>8</sup>. The result can always be traced back to a particular doctrine of Political Philosophy (PPh)<sup>9</sup>.

Nowadays the long-standing (and central) debate between “liberalists” and “communitarians” is considered by many as surmounted or, at least, surmountable. Similarly (and connected with that), positive and negative liberty are said to demand convergence in an all-encompassing (or all-rejecting!) construction. Interestingly enough, proposals of “synthesis” come not only from political philosophers (KYMICKA and HABERMAS are prominent representatives), but rather from legal theorists, from theorists of the “network”<sup>10</sup>. In line with their descriptive conclusions, they postulate a “dialectics without synthesis” of the rival political conceptions. What OST and van de KERCHOVE present as the “modern form of communitarianism” is based on J.-M. FERRY’S “reconstructive ethics” (*éthique réconstructive*), the latter implying a perpetual oscillation between autonomy and heteronomy, between immanence and transcendence, between public debate and universal truth<sup>11</sup>.

The controverted point, and starting point of my research, is the transferability to the normative domain (the one dealing with values) of a model designed for the descriptive domain (the one “reading” reality). In other words, is the proposed dialectics a true surmount of the totalitarian/comprehensive logics that disputed the hegemony in PPh?

## 1.2. AL’s research-logoi

“An art, a way of doing, a certain regard on society and Law” rather than a discipline (EBERHARD 2001c:7) – AL questions conceptualisations, suspects from boundaries, combines form and contents. In coherence with that (coherence here being an instrumental, non-absolute value), it regards sceptically its own categorisation as a discipline and, *a fortiori*, often explicitly denies any endorsement of “purely” descriptive or normative approaches. Eberhard, for instance, holds that his domain focuses in “what *could* be” rather than on “what *should* be” or “what *is*” (EBERHARD 1999:2).

I understand, however, that nothing *a priori* impedes to differentiate between “be” and “ought to be” discourses, equivalent to the ones remarked for Jurisprudence. As stated above – and here it is applicable both to “Law” and to “Anthropology” –, disciplines *about* society must face, when it comes to ideals, the constraints of the “possible” (in short: “could” = “can” + “should”). This is how some authors explicitly envisage it<sup>12</sup>.

### 1.2.1. Logos of Elucidation (Alterity and Complexity)

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(OST and van de KERCHOVE 1993:8, 1999). A metaphor, by contrast to a paradigm, may well be used also to illustrate an aspiration (WOODMAN 2002).

<sup>8</sup> A good example is provided by the theory of subjective rights: the ethical postulate of equal dignity of everybody demands, besides formal equality, a substantive degree of well-being that, from a purely moral standpoint, has no *a priori* limits. Limits, *necessary* limits, appear once the “permanent state of conflict” (FREIXES 1986) of rights is taken into consideration, such state being a consequence of the “fact” of life in common of people with contradictory aspirations.

<sup>9</sup> This concerns the justificatory aspect of subject-matters comprised in the (arguable) category of PhL – even though it might often be preferable not to refer to the ultimate foundation in PPh in order to allow a certain thematic focus (e.g., in the case of the “enforcement of morals”).

<sup>10</sup> Cf. OST and VAN DE KERCHOVE 1987 (ch. X), 1994 (ch. 4.2.5) and especially 2002 (ch. IX).

<sup>11</sup> Cf. FERRY 1996; on “dialectics without synthesis” see MERLEAU-PONTY 1955.

<sup>12</sup> De Sousa Santos acknowledges that (his) “utopia” is opposed to “what exists” (de SOUSA SANTOS 1995:479).

Explaining reality can be uphold as a possible ultimate aim of AL<sup>13</sup>. *Anthropological* reality (real *anthropology*) is approached by “studying Man”. Knowing reality thus implies understanding Man. In order to do so, we have been advised since Rousseau to “look farther away”<sup>14</sup> – but farther than what? “Farther” happens to be a relative notion, as are distance and difference.

A first answer of AL is in line with ROUSSEAU’S original text: the “challenge of **Alterity**” demands a regard beyond our immediate surrounding (“*près de soi*”), i.e. into alien cultures. Discovering the “Other” implies recognising the intrinsic, irreducible and ontological pluralism of reality and, *a fortiori*, of our world’s cultures, thus substituting their capture in the totalitarian net of reason by their (mutual) illumination with the light of myth<sup>15</sup>.

“Myths” nourish the “mental univers” of communities; “cosmovisions” are at the roots of any legal phenomenon, to the extent that “thinking God” gets close to “thinking Law”<sup>16</sup>. Starting from the non-commensurability of such experiences, ALLIOT presents his model of three **Archetypes** (and two Logics)<sup>17</sup>: a rather structuralist (static) approach which the author himself acknowledges as “simple”<sup>18</sup>. Indeed this model can become more “complex”: for irreducibility to a common scheme does not prevent common elements from existing. However, identification of the “building blocs” is a prerequisite for constructing the edifice; it is in this sense that LE ROY warns that **Complexity** can only be understood in a second moment (LE ROY 1999:385) – the first stop being necessarily the assumption of Alterity.

This leads us to complement the answer of AL to ROUSSEAU by a second approach. “Farther” than oneself, there are indeed also the other members of the own community (“*près de soi*”). This is only a corollary of the thesis of reality’s ontological pluralism. Our own vision of Law is as manifold as the “exotic” ones, both *amongst* and *inside* themselves. **Multilegalism** not only articulates such intrinsic (the “three feet”) and extrinsic (their relative weight) diversity, but teaches a lesson about resemblance (thus identifying common foundations of “juridicité”<sup>19</sup>). In an ultimate step, that can be traced back to MALINOWSKI over Sally Falk MOORE, complexity is exacerbated by injecting dynamics to the (already complex) *multilegalist* scenario. The “**game of laws**” (*jeu des lois*; LE ROY 1999) is to the Archetypes what Complexity is to Alterity; i.e., in a way, what dynamism is to stagnation... and reality is to painting.

### 1.2.2. Logos of Aspiration (Peace)

Indeed, “things could be better” (MOORE 2001:17), even for Anthropologists of Law. Though sometimes reluctant to join the discourse on “societal projects”<sup>20</sup>, they patently strive towards the foundation of a better future (LE ROY 1992:*in fine*) that culminates in “organising the living together”

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<sup>13</sup> As an independent aim of AL, cf. EBERHARD 2001b:8. Le Roy admitted – during a meeting on his 1999 book – that his main focus is on cognoscitive aspects and not on proposals of transformation (EBERHARD 2000a); also for ALLIOT AL can be aimed at “*éclairer*” (ALLIOT 1983:253).

<sup>14</sup> Since LÉVY-STRAUSS (LEVY-STRAUSS 1983), ROUSSEAU is considered as the founding father of Anthropology (his famous statement: “*Quand on veut étudier les hommes, il faut regarder près de soi; mais pour étudier l’homme, il faut apprendre à porter sa vue au loin; il faut d’abord observer les différences pour découvrir les propriétés*”, from “*Essai sur l’origine des langues*”, ch. VIII).

<sup>15</sup> With the prism of reason – be it universalist or relativist; exclusivist, inclusivist or parallelist –, “diversity is seen as only a second moment in our living together”, thus enriching us only “once our social cohesion is already secured by a uniform framework providing unity” (EBERHARD 2002a:103, 106). Reality thus being “ontologically pluralist” (EBERHARD 2000a:143) and not reducible to one centre of intelligibility (EBERHARD 2001e:184), the “principle of the encompassing of the contrary” (cf. DUMONT 1991:140-141; cf. also EBERHARD 2001e:175; LE ROY 2000:7) only leads to its denaturalisation.

<sup>16</sup> See EBERHARD 2001e:179 and, more generally, ALLIOT 1983:254-255. And Law – as ROULAND famously hold – can only be thought of (ROULAND 1989:77).

<sup>17</sup> Development in ALLIOT 1983 (archetypes of submission, identification and differentiation; functional and institutional logics); see EBERHARD 1999:4 *et seq.* for an addition of two further archetypes (rationalisation and articulation) and of two logics (rationalist and pragmatic).

<sup>18</sup> ALLIOT 1983:266; however, he admits that both logics (cause and consequence) can coexist; cf. also EBERHARD 1999:7-8.

<sup>19</sup> LE ROY 1999:198. More on “tripodic law” at EBERHARD 2001e:188-189.

<sup>20</sup> EBERHARD 1999:10 *et seq.* (*contra*, LE ROY 1998a).

(EBERHARD 2001b:48) under the watchword of “Peace”. Peace is fundamental (EBERHARD 2000b:pr.).

In the context of AL, Peace is more than a “*philosophia*” (Panikkar): it is a “mission” (EBERHARD 2001c:4). Peace is both goal and signpost; it offers the guidelines for a “structuration of our global condition” (EBERHARD 2002a:101) “within complementarity of differences” (EBERHARD and NDONGO 2001:13).

## 2. *Logoi of Elucidation in duo-logue*

A “dialogue” is first of all a “duo-logue” (PANIKKAR). An articulation of both *logoi* that aim at an understanding of reality may discursively bring us closer to the disciplines’ (respective?) truth. LTh and AL converge both as to the *object* (the “other” and the “self”) and the *method* of their Elucidation-task (respectively, sections 2.1 and 2.2). Moreover, them too, the object and the method, must be thought of as inseparably intertwined (section 2.3).

### 2.1. Object (WHAT)...

#### 2.1.1. *The Other*

A *legal theorist* hopes to formulate universally valid conceptual structures that allow to **think** the Law, whilst an *anthropologist* sees himself as the “natural spokesman for a **rethinking** of law in pluralist and complex terms”<sup>21</sup>. Melting the two would suppose to construct an “Intercultural Theory of Law” – and, indeed, this is the typically French approach to AL<sup>22</sup>. What is aimed at is a “non-ethnocentric science of law” (EBERHARD 2001b:50) that “alters the way law is conceived”<sup>23</sup>.

For this reason, it can be held that AL is facing a major challenge in moving into the core of LTh which has been monocultural up to now (EBERHARD 2001b:50) – more than this: it must move the “core” of LTh to its “margins” (de SOUSA SANTOS). The network theory becomes too narrow to place Alterity and Complexity; it therefore needs to be enriched (not replaced)<sup>24</sup>.

Such “enrichment” takes the form of a sedimentation of different “layers” represented by the different approaches of (legal) science to the (living) Law. Under the common denominator of the search for “*juridicité*” (“what is definitory of law?”), LTh, Sociology of Law (SL), Comparative Law (CL) and AL have gradually come closer both to the essence of the legal phenomenon, and to each other.

Classically, answers to the question of “*juridicité*” were given from an **external** point of view. It was thus a certain *form* of an act, such as commands or written rules (“hard” positivism), or alternatively certain *contents* (natural law), that was regarded as characteristic of Law. Such approach was explicitly acknowledged in the last century as being insufficient. This is basically the merit of HART’S distinction between an “external” and an “internal” point of view, the latter being the one of the actors (officials and individuals) and a necessary prerequisite for the existence of Law<sup>25</sup>. This way, the challenge of “Alterity” is introduced in LTh.

Roughly speaking, LTh, SL, CL and finally AL have successively developed the idea of the “**internal** point of view”. An evolution, tending towards growing deepness, can clearly be appreciated. Thus, in the realm of **LTh** authors do usually content themselves with pointing out the relevance of “paying attention” to the actors – the difficulty consisting (a) in finding a manner of doing so without sharing the community’s “viewpoint” (the question of the “hermeneutic point of view”<sup>26</sup>) and, generally,

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<sup>21</sup> Michel LEIRIS, quoted in EBERHARD 2001b:48.

<sup>22</sup> Cf. EBERHARD 2001b:50; EBERHARD 2002c; also the “game of laws” (LE ROY 1999) illustrates *laws* underlying the laws.

<sup>23</sup> Thus allowing “things to be better understood” (MOORE 2001:17).

<sup>24</sup> Cf. WOODMAN 2002:*in fine*. It is the challenge of pluralism to plurality (VACHON 1997:33-34).

<sup>25</sup> Hart equiparates existence of a whole legal system to its efficacy (HART 1961:103), the latter requiring a majoritary endorsement of an “internal point of view” (*ibid.*:87).

<sup>26</sup> Though sketched by HART himself (*ibid.*), it has been developed by MACCORMICK (MACCORMICK 1981) and retaken as epistemological premise by OST and van de KERCHOVE (“external moderated point of view”, cf. OST 1988:364). See also the complex combination of points of view and actors presented in WINTGENS 1999).



(b) in justifying a departure from univocal and homogeneous criteria to identify Law<sup>27</sup>. In short, it is the recognition that “living Law” is not equivalent to “law in the books” and often enough remains an “infra-law” (ARNAUD 1991).

It has been mainly the accomplishment of **SL**, combined with **CL**, to distinguish between “practices” and “attitudes” of the actors<sup>28</sup>. To observe “what they do” is a necessary but not sufficient heuristic device<sup>29</sup>. Such as the “practices” constituting HART’S “rule of recognition” need to be accompanied by “social pressure” (HART 1961:87), so too the meaning of human behaviour can only be deciphered by accessing the “*subjektiv gemeinte Sinn*”<sup>30</sup> (“what they think they do”). It is within the realm of “attitudes” that must be placed the maccormickian distinction between the “cognitive” and the “volitive” aspect of the “internal point of view” (MACCORMICK 1981:33) – the first appealing to the function or meaning the practice has in the eyes of its performers<sup>31</sup>, the second referring to the motivations/expectations the actors attach to their performance. Whilst the first remains in the *intellectual* sphere, the second gives entry to *value* judgements.

Precisely such value judgements are crucial to the contribution of **AL** to this debate. The cognitive aspect can be misleading in the search for “*juridicité*”, for “*l’adhésion aux représentations du droit ne suffit pas à le définir: le droit n’est pas forcément ce que l’on croit*” (ROULAND 1988:134). Rather, “*le groupe conçoit comme juridique ce qu’il estime essentiel à sa cohérence et à sa reproduction*”<sup>32</sup>. Law is what regulates those aspects the community members *consider vital* for the “reproduction of life in society”<sup>33</sup>. How, then, to acquire knowledge about the “domain” of Law? Though this is a methodological question (*vide infra* 2.2), it has implications for the object of search. Does it suffice to ask the actors what they consider to be vital, instead of asking what they consider to be Law?

Probably not. Knowledge of what they “consider vital” is a perception of a perception. As such, it methodologically demands to reach and pierce the “topos” of the community at stake<sup>34</sup>: to know the Other’s Law it does not suffice to buy his code nor even to ask him. There must be a realm of understanding without words. Differently put, “Alterity” is “complex”. Understanding it in its Complexity demands *initiation* rather than science<sup>35</sup>: “*il faut aussi <<en être>> pour en parler*” (LE ROY 1999:387). This is due to the nature of the “mystery that ties together the individuals” (*ibid.*:392): it belongs to the realm of *myth* and it thus beyond the conscience of the participants<sup>36</sup>. A myth can only be apprehended when already embedded in a new myth<sup>37</sup>. Consequently, the answer to “why they

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<sup>27</sup> Also anthropological literature contains such generic references to the *people’s* participation in the creation of Law: e.g., de SOUSA SANTOS’ notion of “heterotopia”, Huyghebaert’s “attitude légitimiste active” (in EBERHARD 2001b:2), or EBERHARD’S passing from “States” to “states” of Law (EBERHARD 2001b:4) and his search for alternatives “to” and not just “in” Law (*ibid.*:6; cf. also ROTTLEUTHNER 1987:139), so as to ground Law on the “*universitas*” (EBERHARD 2000b:7).

<sup>28</sup> BELL (BELL 2001, ch.1) endorses the characterisation of Law as “institutional fact” and of the actors as “reflective practitioners” (WEINBERGER and MACCORMICK 1986, ch.3); cf. also SEARLE 1995:26.

<sup>29</sup> Though sometimes anthropologists give the contrary impression (cf. LE ROY, quoted in EBERHARD 2001c:6; VANDERLINDEN 1996).

<sup>30</sup> This is the starting point of WEBER’S “*verstehende Soziologie*” (WEBER 1922:19 *passim*).

<sup>31</sup> This is in line with the “functionalism” proclaimed in CL (ZWEIGERT and KÖTZ 1998:34 *et seq.*) and reappears in AL (“à quoi ça sert?”, LE ROY 1999:34).

<sup>32</sup> *Ibid.*:138 (and 141, 149), where also A. WEILL and F. TERRÉ are quoted: “*...une règle n’est pas juridique parce qu’elle est sanctionnée d’une certaine manière par le groupe; elle est sanctionnée de cette manière par le group parce qu’elle est juridique*”.

<sup>33</sup> Cf. LE ROY 1999:195-196, 200, 203; or to control the battles of which living consists of (ALLIOT 1983:254; also “*dans les domaines qu’une société considère comme vitaux*”) so as to constate “social armistices” (HAURIOU, quoted in EBERHARD 2001b:12).

<sup>34</sup> According to ALLIOT, the domains society considers as vital are those “*que sa vision du monde [topos] et d’elle-même désigne comme tels*” (ALLIOT 1983:254).

<sup>35</sup> “*...la complexité nous oblige à regarder, au-delà de la science, ces savoirs <<profonds>>*” (LE ROY 1999:386-387).

<sup>36</sup> As VACHON writes, “*Toute culture juridique a une dimension mythique. (...) elle n’est pas seulement ce dont j’ai conscience et ce que je pense d’elle objectivement ou de façon vérifiable, mais c’est aussi et surtout ce qui rend possible que j’en prenne conscience (le mythe)*” (VACHON 1990:169).

<sup>37</sup> PANIKKAR (in EBERHARD 2001e:184). Cf. EBERHARD 2002c for the analogy between myth and light (we can add: a source of light can only be seen when illuminated by a new one, not by itself).

consider that as vital” is both dynamic and pluralist. It is dynamic, because the permanent search is the goal<sup>38</sup>; it is pluralist, since – an ulterior implication of Complexity – every person is a culture in itself<sup>39</sup>.

### 2.1.2. The Self

If the above is true, the object of Elucidation must oscillate between two poles: the knowledge of the “Other” and the knowledge of the “Self”. Whilst focusing on the first one, we have already insinuated their interdependence.

Constructing a *theory* of Law implies *per se* regarding the own legal system as one possible model within a broader category. Precisely the loss of the own culture as absolute reference point requires (and permits!) its deeper analysis, thus not solely functioning as “translator” of alien experiences (EBERHARD 2001e:174). The mentioned discovery of reality’s ontological heterogeneity implies questioning oneself: it leads to shedding light on realities left unseen before<sup>40</sup>.

By contrast to “Alterity”, “Complexity” is applicable to the Other *and* to the Self. Inadvertence of the pluralism of the own Law is one of the “sins” Alliot blames dogmatic legal science for<sup>41</sup> – the assumption of one’s own diversity (LE ROY 2000:14) characterising “transmodernity” (*ibid.*:5-6)<sup>42</sup>.

## 2.2. ...Method (HOW)...

To open up LTh to the pluri-topism of reality, a certain *method* is required: it has been advanced and implemented by AL and consists of a “dialogical Dialogue” (PANIKKAR 1984). According to PANIKKAR, a dia-logue “about subject-matters” is dialectical, whilst only a dia-logue “about subjects” is dialogical, i.e. is properly a dialogue. It is the latter that focuses on “what [the Other] is and not just on what he says about himself” (ALLIOT 1983:170) – precisely the alluded mythical dimension to which it is impossible to reach unilaterally and from outside (*vide supra* 2.1.1).

Engaging in dialogue with the Other is, above all, a *method*: the method that pluralism carries with itself<sup>43</sup>. There is an object to discover (and depass), and this object are the different *topoi* (pluralism, Alterity)<sup>44</sup>. The way of reaching there is to depass the *logoi* of the discourses (dia-logos) by making use of dia-topical hermeneutics<sup>45</sup>. The notion of Complexity somehow describes the object and, at a more general level, denotes the multiperspectivism of the process: a process which combines questions and answers, search and goal, but, above all, theory and **praxis**.

What habermasian discursive ethics reproached to rawlsian procedural ethics (the lack of “actual” debate and confrontation; HABERMAS 1992, ch. II) is related to the “challenge of pragmatism” that AL faces at a methodological level (to meet the “challenge of pluralism”). EBERHARD proposes a “Dianthropological Praxis of Human Rights”<sup>46</sup> thus meeting the following *desideratum* of PANIKKAR: “The philosophical talk about myth and logos (...) requires not only theoretical knowledge. (...) The responsible philosophical approach (...) has to take into account the *Sitz im Leben* of the discussion”<sup>47</sup>.

## 2.3. ...and their ontological interdependence

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<sup>38</sup> On the dynamic character of the domain of Law, cf. ROULAND 1988:149.

<sup>39</sup> And even individual “cultures” are not homogeneous (cf. VACHON 1997:33; WALDRON 1992).

<sup>40</sup> EBERHARD 2001e:175. It is hold that an ethnologist, when returning to his country, is never again the same, thus seeing things he had never seen before (ROULAND 1999:164); the same happens to Mr. George BANKS after having internalised the teachings of Mary POPPINS (prod. Walt DISNEY, dir. R. STEVENSON, 1964).

<sup>41</sup> The other being the disregard of the Other (ALLIOT 1983:252-253; also 267 for the Complexity within Western archetypes).

<sup>42</sup> LE ROY prefers to oppose “neo-alterity” to classical alterity (LE ROY 1999:384-385).

<sup>43</sup> PANIKKAR (quoted in VACHON 1997:11, where he adds: “*la méthode du pluralisme (...) est celle du dialogue dialogique*”). Also for the dialogue as a *method*, cf. LE ROY 1994:680.

<sup>44</sup> For a connection between diatopism and Alterity (and characterisation of dialogism as the latter’s *depassement*), cf. LE ROY 2000:10.

<sup>45</sup> “*Dia-topos: qui transperce les topoi pour aller rejoindre les mythos*” and is thus a superation of morphological (factual) and diachronical (temporal) interpretation (VACHON 1990:166-168). In general, cf. EBERHARD 2002c:142-145.

<sup>46</sup> EBERHARD 2001a:9 and, more explicitly, EBERHARD 2002c.

<sup>47</sup> PANIKKAR 1991:3; cf. the bouddhist “experimental” conception of meditation and, *a fortiori*, of knowledge (Kalou RINPOCHÉ and Chögyam TRUNGPA, quoted in EBERHARD 2000b:4-5).

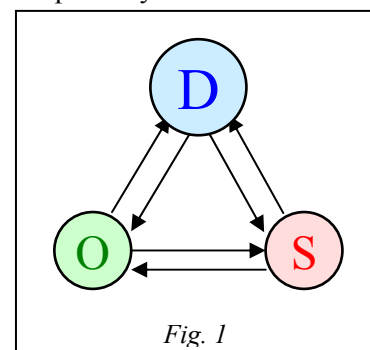


Complexity involves interplay, besides multiplicity (EBERHARD 2001e:187-188). Our exposition up to now has identified three “nodes”: the one of the “Other” (O), the one of the “Self” (S) and – between them – the device of the “Dialogue” (D). The following remarks shall reveal the ontological interdependence of all three (see *fig. 1*).

a) **O → S**: Knowing the Other is a prerequisite for understanding oneself. According to VACHON, one needs to co-implicate the human race in the knowledge of oneself (VACHON 1997:10); ALLIOT speaks out an imperative: “*Connais toi toi-même. Mais la voie de la connaissance passe aussi par autrui*” (ALLIOT 1983:*in fine*)<sup>48</sup>.

b) **S → O**: Only opening up oneself it is possible to reach the Other: this is the idea underlying PANIKKAR’S “understanding as convincement” (PANIKKAR 1984:215) and implied by ROUSSEAU’S directive. For understanding is “standing under” (EBERHARD 2000b:11); it is an identification inseparable from love<sup>49</sup>. Such “mythical communion” (VACHON 1990:170) not only involves the “*entero ser*” (its different parts: intellect and affectivity), but demands the “*ser*” to be “*entero*” (all parts integrated)<sup>50</sup>.

c) **O → D**: The other’s *topos* must be pierced, at least partially, to be able to start a *dia-logue*. There seems to be a general agreement on the sequence “diatopos”-“dialogos” within AL<sup>51</sup>. We shall refer to a more particular case: the reflection on the “law” that must be “created” from outside to be “given” to a certain community.



This requires a preliminary clarification on the meaning of “law”. Up to now, we have focused on the “living Law”, the one tangled with Alterity and which ever more complex theories try to apprehend. Such “Law” (with capital “L”), stemming from the “*processus de juridisation*” (LAJP) and from phenomena of “internormativity” (CARBONNIER), has a “vocation to become *law*” (ARNAUD and FARIÑAS). The “law” (without capital “l”) functions within the anthropological discourse not just as the dead “*droit des manuels*” (ALLIOT 1983) but also actively as a *remedy* when it comes to “societal projects” for communities in crisis.

It is this prospective/ideal law that authors have in mind when stressing the disturbing effects of the *autistic* imposition, in decolonialised communities or post-war States, of a “**Western legal system**” that does not fit the “legal phenomenon”<sup>52</sup>. This can be translated into a clash of archetypes<sup>53</sup> or into the need for a co-ordination between the social and the politic<sup>54</sup>. In either case, it becomes clear that the prospective law ought to be constituted through a “dialogue” with the “people at the base”<sup>55</sup>, so as to avoid that transplantation of legal models turns into a denial of justice<sup>56</sup>. There is even an ethical

<sup>48</sup> Only a complete view of reality allows for a discovery/transformation of the Self through a discovery/transformation of the Other (EBERHARD 2000b:8), for “the more we are the Other, the more we are ourselves” (PANIKKAR 1993:2).

<sup>49</sup> TRUNGPA (quoted in EBERHARD 2000b:10); also VACHON 1997:10 and PANIKKAR 1993:2 (“love is at the roots of knowledge (...) to know is to *end up by being* [llegar a ser] the loved thing”).

<sup>50</sup> Cf. PANIKKAR 1994. For the need to combine intellect and affectivity, see also ROULAND 1988:164.

<sup>51</sup> For all, cf. VACHON 1990:166 *et seq.*

<sup>52</sup> Especially the manifold work on Africa by E. LE ROY; cf. also EBERHARD and NDONGO 2001 and, regarding international law, EBERHARD and LIWERANT 1999.

<sup>53</sup> Studies show the disastrous effects of the oppression, in postcolonial Africa, of the “differentiation-cosmology” by the “submission-cosmology” – or, what is the same, the attempt by the “*imposition-archetype*” to “*impose*” itself (thus acting rationally... and encompassing the Other).

<sup>54</sup> Considering the tripod-nature of Law, such rupture of the social with the political (EBERHARD 1999:9; LE ROY 1992:16) can further be found in the “West”; cf. EBERHARD 2000b:9 (ex-Yugoslavie) and LE ROY 2000:12-13 (multicultural character of our society; quoting M. de MAXIMY and Th. BARANGER).

<sup>55</sup> Cf. EBERHARD 2002c; also OTTO 1996 (“subalternity” in the context of prospective international law), and LE ROY’S “third pillar” for the constitution of an “État de droit” (law’s conformity with the values shared by the majority, so that it can “make authority”; referred to, respectively, in EBERHARD 2001b:8-9 and EBERHARD 1999:2).

<sup>56</sup> As illustrated in EBERHARD and NDONGO 2001:16, or in LE ROY 1997. In a way, law appears as a *paradigm* of reality (not just certain metaphors as a paradigm of law) if one considers the symbolic/denomination role of law (OST and van de KERCHOVE 1999; WINTGENS 1999). Hence, when the picture stops responding to reality, law turns into a “*paranoïa inconsciente qui nous pousse à nous maintenir et à maintenir notre création face aux situations de la vie qui se présentent à*

dimension in the demand of considering the Other's myth and entering into a dialogue<sup>57</sup>: because "no people can truly live from a borrowed myth" (PANIKKAR 1991).

Mulla Nasrudin's "easy" search for the "key" to **human rights** (EBERHARD 2001c) must also be understood as an attempt at imposing a legal institution without dialogue. This particular form of law (human rights) is logically posterior to the general law mentioned above (EBERHARD 2001c:6), its nature being more axiological though remaining an *instrument* at the service of the external values constituting "dign life" (*vide infra* 3.1).

d) **D** → **O**: This is equally true: only through dialogue the *topoi* can be approached... and broken (*vide supra* 2.1.1). It can be seen as a device to "read" the legal phenomenon (of the Other)<sup>58</sup>, but also – going further – as an abandonment of a *theorisation* of Law and its substitution by an intercultural *approach* to Law (as practised by the IIM). What EBERHARD calls the horizontal cultural disarmament of VACHON (EBERHARD 2000b:11) implies a return from Complexity back to Alterity: Law (Alterity) cannot be apprehended by a theory (which *per definitionem* is not complex) and, strictly speaking, the intercultural encounter must not even be framed in terms of "Law"<sup>59</sup>.

e) **S** → **D**: One must recognise his own myth in order to be able to fruitfully enter into dialogue. For only "interior peace" (EBERHARD 2000b:2) permits the opening up to oneself, which is a foundation of any dialogical "démarche" (EBERHARD 2001a:10).

f) **D** → **S**: And, finally, "it is only through ongoing dialogue with oneself and others that our own position really crystallises" (EBERHARD 2001d:57). "*Llegar a ser*" is for PANIKKAR equivalent to "*ser*" (PANIKKAR 1993), dialogue leading to the Self's realisation<sup>60</sup>.

### 3. *Logoi of Aspiration in duo-logue*

"Peace" (P), for AL, is a new "node" besides the Other and the Self (see **fig. 2**). It is equivalent to the aim of PPh with respect to LTh. And, indeed, both *logoi* of Aspiration – in their most popular versions – have in common the methodology of the dialogue (D).

#### 3.1. *Objective (WHERE) and Way (HOW)...*

PPh and AL regard as an ideal the "guaranty of a dign life to all human beings" (EBERHARD 2002c:142). The determination of the substantive morality that must give contents to such "dign life" has led within PPh to an almost "autopoietic" vicious circle, that can only be solved with recourse to AL's premises.

Liberalism (L) and Communitarianism (C) – or universalism and relativism, heteronomy and autonomy – have long appeared as incommensurable. Problems of argumentation, as well as considerations of efficacy, have given rise in recent years to a search for the solution in the realm of "dialectics"<sup>61</sup>. Authors like **RAWLS** and (later) **KYMLICKA** have attempted complicated constructions to arrive at a "synthesis" of both "poles", but have only achieved a pre-eminence of one (the liberal) over

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nous" (EBERHARD 2000b:6); cf. the "*hypotheses ad hoc*" by which the kuhnian paradigm (KUHN 1970) is converted into a "*cage trop stricte*" that deforms reality (VOGLIOTTI 2001:187).

<sup>57</sup> Cf. EBERHARD 2002b:3 ("*éthos*"); EBERHARD 2001e:173 ("justice").

<sup>58</sup> EBERHARD considers the multilegalist reading of Law as fundamentally dialogical (EBERHARD 2000b:7).

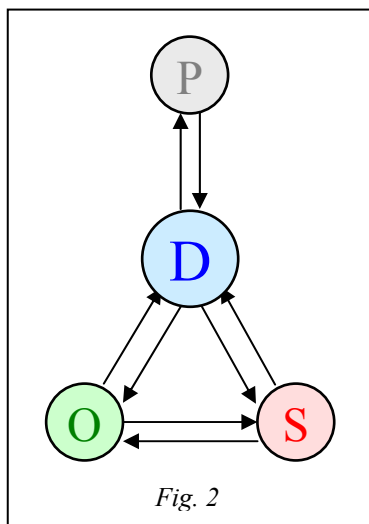
<sup>59</sup> EBERHARD 2001e:186. A theory is anchored in a certain topos and its function is to translate (*ibid.*:187); therefore it cannot account for the "radical relationality" of the "members" of a reality which is "ontonomous", since the "intellect" is not capable of encompassing the whole "being" (VACHON 1997:7).

<sup>60</sup> VACHON 1990:168; cf. also VACHON and NICOLAU 1995:8-9. In connection with the international law on genocides, LIWERANT and EBERHARD point out that "*le travail de qualification effectué par les juristes des T.P.I. continue à faire obstacle à une interrogation sur l'essence des génocides*", since autist law "*superpos[e] une mise en forme à une réalité ainsi redéfinie, éludant toutes autres possibilités d'interrogation*". Prospective law grounded on dialogue would thus avoid that the "unthought" is prolonged through the non confrontation with the "unthinkable" (EBERHARD and LIWERANT 1999:7). This furthermore shows that "juridicité" can even have its roots in the realm of "why they do not consider something as vital" (*vide supra* 2.1.1 in fine).

<sup>61</sup> By problem of *argumentation* we refer to the incommensurability of the ultimate reasons that L and C give against each other: e.g. their reliance upon non-verifiable "truths" about human nature ("embedded self" v. artificiality of culture); considerations of *efficacy* moved for example the late RAWLS to reformulate of his whole theory (RAWLS 1993).

the other<sup>62</sup>. **HABERMAS**, by contrast, though trying as well without success to integrate positive and negative freedom, introduced the dimension of *pragmatism* and of a co-operative debate<sup>63</sup>.

Accusing the preceding theories of “totalitarian”, **OST** and **van de KERCHOVE** present, in their new book, **FERRY’S** “*éthique réconstructive*” (FERRY 1996) as a viable “dialectics without synthesis”



of the two classical positions. The result is, indeed, not foundationalist; still, the question that arises with regards to this theory concerns its plausibility. Now that we have gained conscience that only a mutual opening-up and unveiling of myths allows for dialogue (beyond-logics), and that dialectics have proven narrow even within LTh, is it not likely that no pluralist whole can be construed out of two foundationalist building-blocks?

As long as the respective *logoi* of C and L are not partly renounced, the result will be either a hierarchy or an inconsistency. It is the merit of AL to warn of the monological character of both universalism and relativism<sup>64</sup>, the modern notion of “society” resulting from a dialectic between both<sup>65</sup>. Peace is not relativist but “*lâcher-prise*” (EBERHARD 2000b:3); it is not universalist but plural. True *pluralism* (the second challenge) implies that it is not necessary (nor desirable) to reach an absolute decision in favour of *one* human system (VACHON 1997:4, 16). Ontonomy is the surmounting (by integration) of the “dialectics without

synthesis” between heteronomy and autonomy<sup>66</sup>. By contrast to modern foundationalist “solutions”, pluralism does not solve the “dilemma”, but avoids that reality is reduced to “lemmas” (VACHON 1997:13).

### 3.2. ...and their ontological interdependence

The preceding remarks point at a deep contagion between the characteristics of the methodology (D) and the goal (P) under the common denominator of pluralism.

a) **D** → **P**: As famously stated by PANIKKAR, “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”<sup>67</sup>. EBERHARD repeatedly stresses the need of recognition for dialogue, connected with the need of dialogue for a pacification of societies<sup>68</sup>.

<sup>62</sup> There is general consensus that RAWLS’ “political” L is as “metaphysical” as before – or, what is the same, that the “right” is not prior to the “goods”, but indeed “better” than them (for all, RICOEUR 1988). On KYMLICKA’S failure to conceal L and C in KYMLICKA 1995, cf. his own conclusions in ch. 8 (on non-liberal minorities).

<sup>63</sup> Aggregative democracy, based on an atomist conception of society (VACHON and NICOLAU 1995:14; VACHON 1997:24), was opposed by HABERMAS through his defence of deliberative democracy, the latter constituting a regulative ideal (“ideal speech situation”) that conceives dialogue as co-operative and non-strategic (HABERMAS 1992, ch. IV); cf. also EBERHARD 2002a:105; and, for PANIKKAR, “*vanidad, vanitas, vacio, vacuus*”, PANIKKAR 1994).

<sup>64</sup> “*Les deux extrémismes universaliste et relativiste constituent deux univers opposés mais inséparables. L’un est la stricte inversion de l’autre. Ou encore, ils forment une unité cachée (...) toute pensée inscrite dans l’un ou l’autre de ces deux pôles ne peut donner que des réponses partielles à des questions essentielles*” (G. BERTHOUD, quoted in EBERHARD 2001a:6-7; cf. also EBERHARD 2002a:106-107).

<sup>65</sup> The features Vachon attributes to the modern notion of “society” can most of them be read in terms of the dichotomy universalism/relativism, or L/C (VACHON 1997:19-22).

<sup>66</sup> In this sense, F. OST’S conclusions in his book on political theory (OST 1999) stand in contrast with VACHON’S plea in favour of a “non-duality” (“*la non-dualité ne dit pas que l’être est non-deux (...). La non-dualité dit que l’être est non-duel*”, VACHON 1997:9 note 7; also *ibid.*:25, where he defines a pluralist notion as one “*irréductible soit à l’unité, soit à la pluralité, soit à une combinaison contradictoire des deux où l’on se trouverait dans une relation d’opposition et de contradiction constante*”).

<sup>67</sup> PANIKKAR 1984:28, emphasis added. In a similar sense, VACHON 1997:36-37.

<sup>68</sup> E.g. EBERHARD 1999:3, EBERHARD 2002a:102 or EBERHARD 2000b:9 (more developed: “*en vue de contribuer à la cicatrisation des violences et à la reconstruction du lien social dans des sociétés traumatisées par les guerres et les menaces d’éclatement ou plus généralement pour repenser les fondements pour un ‘vivre ensemble’ plus harmonieux (...), nous pouvons considérer que ce sont l’écoute, l’ouverture à soi même, aux autres et au monde, et ainsi une attitude dialogale qui sont aux fondements de la Paix*”). Cf. also LE ROY 1996 on the pacification of the rwandais society.

b) **P** → **D**: Conversely, Peace can be seen as a precondition for dialogue. For only if human rights are understood as a tradition of Peace it becomes possible to dialogue with the other traditions of Peace in the world (EBERHARD 2000b:9)<sup>69</sup>.

c) **D** = **P** (?): Dialogue and Peace being so connected, it can become hard to recognise them a separate identity. Indeed, PANIKKAR confesses that “I do not dare saying a new order nor an alternative (...) I don’t have anything to propose you, except perhaps to (...) build a space where creativity can unfold, a space where even partial, relative, small and imperfect solutions are possible”, for “peace is equivalent to desire of dialogue”<sup>70</sup>. Peace is dynamic (EBERHARD 2000b:2) and even ethereal: it hardly has consistence<sup>71</sup>. But it is contingency that raises awareness of transcendence<sup>72</sup>: “speculating” means being a “speculum” (mirror) the real (PANIKKAR 1993).

#### 4. *Elucidation and Aspiration in dia-logue (... or the Parallels converging in the Circle of Peace)*

The study of the tasks of Elucidation (their object and their method) and of Aspiration (their object and their method) reveals not only overlappings between Jurisprudence and AL but also important intertwinements of the *logoi* of Elucidation and Aspiration in the case of both disciplines – a connection that goes beyond the mere sharing of one and the same method and extends itself to the very aims of both Elucidation and Aspiration. Here, too, a *dia-logue* is capable of transforming/redefining the concerned parties and of shedding new light on the reality they share.

##### 4.1. Implications for AL...

**Fig. 3** represents the conclusions of this paper, especially in the field of AL. I shall proceed to a succinct interpretation (a) of the symbol, (b) of its nodes and (c) of its forms or conceptions of space.

a) The Symbol: It is internationally known as the symbol of Peace, originally representing “Nuclear Disarmament”<sup>73</sup>. There is general consensus that it incorporates the naval code semaphore letters **N**(uclear) and **D**(isarmament). Alternatively, we propose to think of the symbol as made out of a “**W**” (upside down), a “**C**” and a “**D**”, so as to stand for “World-wide Cultural Disarmament”.

b) The Nodes: Considering all that has been said above, only two aspects deserve further comment. On the one hand, **Peace** is significantly not placed in the centre, but in a margin: this is another implication of the notion “heterotopy” (*vide supra*). On the other hand, **LTh** appears between (O) and (S) and is a relational property, rather than a real “node”: LTh speaks out the nature of the abstract legal phenomenon (which ties together the Other and the Self) by means of a confrontation/comparison of the experiences in (O) and (S).

c) The Forms or Conceptions of Space: Its **form as such**, the fact that it does have a form, shall not be understood as an

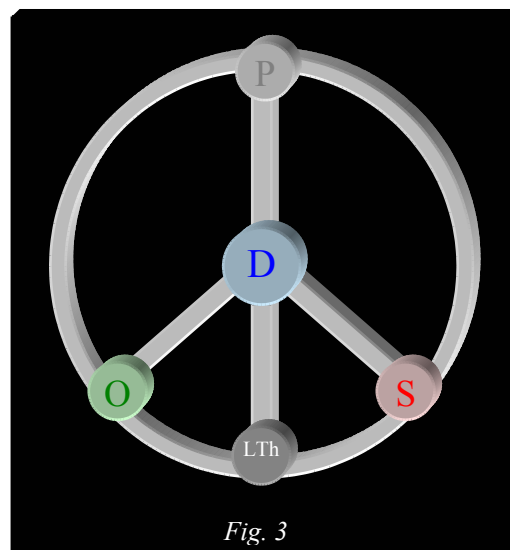


Fig. 3

<sup>69</sup> Moreover, human rights demand recognition of the Other and dialogical ethics (EBERHARD 2001a).

<sup>70</sup> Quoted, respectively, in EBERHARD 1999:*in fine*, and EBERHARD 2000b:*in fine*. As EBERHARD puts it, we must “not dream of a better world, but open us up to the world and sufferance such as they are” (*ibid.*:4).

<sup>71</sup> According to VACHON, Peace does not exist in fact nor do people have to presuppose any conception thereof in the dialogue (quoted in EBERHARD 2000b:11).

<sup>72</sup> “...la experiencia de la contingencia, cuya palabra misma – cum tangere – ya es sugerente; tocar la tangente. Es en el reconocimiento de los propios límites donde uno se torna consciente, donde se propicia la apertura, donde se percibe que hay algo ‘más’, ‘más allá’ (...), que trasciende a toda limitación” (PANIKKAR 1994).

<sup>73</sup> It was designed in 1958 by Gerald HOLTOM and made its first public appearance during the first major antinuclear march in England. Although specifically designed for the anti-nuclear movement it has quite deliberately never been copyrighted (information available under <http://www.cnduk.org>). A symbol of freedom, it is free for all, and hence our adaptation.

endorsement of “plasticity” as mode of intelligibility (thus renouncing to “opaque epistemology”). Quite to the contrary, the chosen shape can be viewed as a combination of different modes of intelligibility: non-contradiction/linearity (straight lines, edges) and identity/non-duality (circle).

The symbol moreover combines the different representations of space, that are also dear to anthropologists<sup>74</sup>: the topocentric (zero-dimensional), the odologic (one-dimensional) and the geometric (two-dimensional). I will refer to each separately.

*c.1. Topocentric (the centre)*: The fact that all space is organised in relation to the central point (D) reveals the pivotal role of dialogue and, due to the latter’s intrinsically receptive nature, the circle also avoids becoming “autopoietic” (LUHMANN’S systemic metaphor of law). Furthermore, (D) is placed between the top and the bottom, i.e. at “the point where objectivity (P) and subjectivity (O and S) meet”. According to PANIKKAR, it thus represents the world<sup>75</sup>.

*c.2. Odologic (the lines)*: To start with, there is the **straight vertical line (LTh-P)**, the longest in the picture; a sort of vertebral column. Though it can be seen as a paradox that Peace is based upon law (PAPAUX and WYLER 1997), the “game of laws” has been described as a combination of “law” (form) and “peace” (space). Hence the meaning of this form in Western ideography, where it stands for “unity, oneness, the self, authority” as well as for “contact between the lower and the higher”<sup>76</sup>. Finally, it can be seen as the connection between two sides of the same coin, namely “cultural pluralism” (emphasising difference: O v. S) and “interculturalism” (stressing identification: P) (VACHON 1997:29 *et seq.*). Secondly, there is a **two-step-connection between the Self and Peace (S-P)**. (S) can only reach (P) through (D): “*si vis pacem, para teipsum*”<sup>77</sup>. Conversely, justice (P) – if dialogical – leads to the liberation of the person (VACHON 1997:24). Thirdly, **(O) and (S) are interconnected by a circle segment that crosses LTh**. It is not a straight line, a circle segment curved downward meaning in Western ideography “assimilation, receptivity”<sup>78</sup>: this shows the induction/deduction task of LTh, from acquired knowledge (S) to new observations (O) and back (LE ROY 1999:386). Finally, the **line between (D) and (P)** is a sort of common place (for both O and S): it reminds of the value of *respect* and of its hybrid nature between a procedural value (more in D) and a substantive moral (more in P) (LE ROY 1992:23; VACHON 1997:27-28).

*c.3. Geometric (the space)*: The **form as a whole** represents a mixture of anthropology, cosmos and divinity (*cosmothéandrique*): its parts are not reducible to one another (hence the two-dimensional shape) though they have one point in common (D), the one that leads to Peace (on the “basis/ground” of law). Secondly, the **lines inside the circle** had originally a very specific purpose. Its creator wrote: “I was in despair. Deep despair. I drew myself: the representative of an individual in despair, with hands palm outstretched outwards and downwards in the manner of GOYA’S peasant before the firing squad”. The sign thus reminds of the “ideal of human fraternity” (EBERHARD 2002a:100), of solidarity with the world’s suffering, and, besides, it represents the need for an integral engagement of the self in the dialogical experience (“discipline” in the bodily sense<sup>79</sup>). Furthermore, the nodes **(S)-(D)-(O) form a pyramid...** that is based upon LTh! Such as the network can place the pyramid in its inside, so too the dialogue complements/enriches both the pyramid and the network (the nodes), without substituting

<sup>74</sup> Cf. LE ROY 2002:8 *et seq.*; also LE ROY 1998.

<sup>75</sup> “*Ce n’est pas qu’il y ait un monde objectif que chacun subjectivise à sa manière. C’est plutôt que le monde n’est ni subjectif, ni objectif, mais le point où se rencontrent l’objectivité et la subjectivité*” (quoted in VACHON 1997:35). VACHON also recognises that “*une société pluraliste ne saurait donc subsister comme telle, que si elle reconnaît un centre qui transcende l’entendement que peut en avoir quel que membre que ce soit ou la totalité de ses membres à un moment donné*” (*ibid.*:27). Curiously, he characterises such centre both as a superior instance (hence, objectivity) and as the product of the collective recognition (hence, subjectivity) (*ibid.*:27-28). Later in the article, interculturality (hence, dialogue) is presented as oscillating between “be” and “ought to be” (*ibid.*:37).

<sup>76</sup> Information at <http://www.symbols.com/encyclopedia/10/101.html>.

<sup>77</sup> PANIKKAR, quoted in EBERHARD 2000b: *in fine*. It further denotes the complementation of the cultural disarmament (Alterity and Complexity) by the existential disarmament (EBERHARD 2001a:8). The circle segment (*vide infra*) that directly connects (S) and (P) is however bowed towards the centre (regarding D): (D) cannot be avoided.

<sup>78</sup> Information at <http://www.symbols.com/encyclopedia/02/021.html>.

<sup>79</sup> Cf. VACHON 1995:10. The dynamism and graduality inherent to the discipline are corroborated by the original meaning of the sign: it appears in the earliest known rune alphabet and is associated with *moose*, precisely a type of tree (see <http://www.symbols.com/encyclopedia/04/434.html>).



them<sup>80</sup>. In the forth place, there is the much-telling “**double V**” formed by three lines that stem from the centre and unfold building two equidistant angles. Such lines do not run parallel – otherwise, they would stand for identity<sup>81</sup>. Neither do the two exterior ones (S-D and D-O), which build a “V”, a rune that is associated with “opening up”<sup>82</sup>: it symbolises the space “between-two” (or more) that is created by viewing the Other as irreducible to the Self. There is not identity, but pluralism: that is what reality consists of. And indeed, in Logic the “V” sign signifies “whole universe, all that in one way or another exists” and also denotes the logical concept “either”<sup>83</sup>. (S) and (O) are (or do have) just *homeomorphical equivalents*: whilst their functional equivalence appears from their equidistant situation as “feet” of the picture<sup>84</sup>, it remains true that functional similarities cannot be found by analogy (directly from point to point) but only by means of dialogue (first up and then down again)<sup>85</sup>. And it is not even *possible* that they ever fold together: complete identification with the Other is utopic (EBERHARD 2001c:7; ROULAND 1988:pr.) and would even be damaging (*ibid.*:165). Finally, the **circle** as such, incarnating the “Grand Circle of Life” (EBERHARD 2002b:*in fine*): a symbol for the endless, the eternal<sup>86</sup>. Also, it evokes “community” or “centre of communication” (*ibid.*): a circle opens up a creative space for dialogue (“all possibilities”; *ibid.*) and emphasises complementarity as opposed to univocity, “*cosmic trust*” as opposed to planification: “Don’t search truth. Your very search would destroy what you are looking for” (Huang PO)<sup>87</sup>. On the other hand, it is empty, emptiness being the natural habitat of the human spirit: “only vacuity makes things transparent and leaves space to liberty”<sup>88</sup>. It cleans the cosmic sky (usually represented by a circle) from clouds so that, with every contingent twinkle of a star, it can be hoped that life unfolds somewhere, far in time and in space, but close enough to reflect the cosmic shine into our, and the Other’s, eye (“twinkle in the eye”)<sup>89</sup>.

#### 4.2. ... and for Jurisprudence

Is it sensible to continue the talk about PPh as a separate discipline, if it only searches its own tail amongst a network of huge pyramids? If defining Law already implies being in a mythical communion, the “instrument” of LTh would be the “goal” of PPh. However, the goal of LTh’s enterprise is to unveil the living “Law”, whilst it is accepted that “law” often can and must be changed. Is there eventually still a task for PPh in making “Law” and “law” overlap? To design “law” in dialogue with “Law”? But if “Law” is the *desideratum* and “law” the *fact*, is it not LTh that appears schizophrenic in its determination to be descriptive?

Maybe... or maybe not. But this is (and should be) another story.

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<sup>80</sup> Nor “synthesising” them. By contrast, the pyramid is philosophically associated with hegelian synthesis (created out of the thesis and the antithesis) and even with dialectics (see <http://www.symbols.com/encyclopedia/28/281.html>).

<sup>81</sup> Cf. <http://www.symbols.com/encyclopedia/10/108.html>.

<sup>82</sup> When turned 90 degrees to the right (see <http://www.symbols.com/encyclopedia/04/042.html>).

<sup>83</sup> Cf. <http://www.symbols.com/encyclopedia/04/047.html>.

<sup>84</sup> And, as such, complementary within the difference (how would we walk with just one leg? and how would we walk if both legs were the right one?).

<sup>85</sup> PANIKKAR defines homeomorphism as “a peculiar functional equivalence discovered through a topological transformation. It is a kind of functional analogy” (PANIKKAR 1984:28).

<sup>86</sup> Or “that which is without beginning or end”, all within Western ideography (see <http://www.symbols.com/encyclopedia/26/261.html>).

<sup>87</sup> Quoted by PANIKKAR, who warns of the “epistemology of the hunter” (PANIKKAR 1994).

<sup>88</sup> PANIKKAR 1993, where he adds: “we can only truthfully know if our spirit is pure, is empty.” In astrology, the circle precisely represents the “human spirit”, the “inner individual” and is the opposite of matter (cf. <http://www.symbols.com/encyclopedia/26/261.html>).

<sup>89</sup> Indeed, as an Egyptian hieroglyph, the circle was an ideogram for the “pupil of the eye” (*ibid.*).



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