

INTERCULTURE

INTERculture intends to contribute to the discovery and emergence of viable alternative approaches to the fundamental problems of contemporary Man, in both theory and practice. Its approach is meant to be integral, which means:

- ◆ Intercultural: undertaken in light of the diverse cultural traditions of contemporary Man, and not solely in the terms of modern culture;
- ◆ Inter and trans-disciplinary: calling on many 'scientific' disciplines, but also on other traditions of knowledge and wisdom (ethno-sciences) as well as on vernacular and popular knowledge;
- ◆ Dia-logical: based on the non-duality between *mythos* and *logos*, *theoria* and *praxis*, science and wisdom, wisdom and love. "Wisdom emerges when the love of knowledge and the knowledge of love coalesce" (Raimon PANIKKAR).

INTERCULTURAL INSTITUTE OF MONTREAL

The Intercultural Institute of Montreal (formerly Monchanin Cross-Cultural Centre) is an institute for intercultural education, training, and research, dedicated to the promotion of cultural pluralism and to a new social harmony. Its fundamental research focuses on social critique and exploration of viable alternative approaches to the contemporary crisis. Its activities, which draw inspiration and sustenance from this research, aim at a cultural and social mutation—radical change—through gradual education and training. Its research and action have, from the very start, been undertaken in light of diverse contemporary cultures. It attempts to meet the challenges of our times by promoting cultural identities, their inter-action in creative tension and thus their eventual emancipation from the final and most subtle colonialism: hegemony by the mind. The Institute's cross-cultural research and action is carried out through its programs in the three following modules: research and action, teaching and training in interculturalism, interculturalism resources and services.

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BEYOND
THE RELIGION AND CULTURE OF HUMAN RIGHTS
THE NATION STATE AND THE RULE OF LAW

A chronicle/testimony
of IIM's research-action
(1970–2004)
with supporting documentation

by Robert Vachon

ISSUE III
(1995–2004)

INTERCULTURAL INSTITUTE OF MONTREAL

**BEYOND THE RELIGION
AND CULTURE OF HUMAN RIGHTS
THE NATION-STATE, AND THE RULE OF LAW**

**A Chronicle/Testimony of
Intercultural Institute of Montreal's Research-Action
1970-2004 with supporting documentation**

by ROBERT VACHON

**ISSUE III: 1995-2004
(continued)**

**1995-1999
(continued)**

A. ACTIVITIES AND PUBLICATIONS

1995. This year onward, a long term research program is established, called ROOTS, on the Institute's Web site (www.iim.qc.ca), i.e. an international bibliographic data bank wherein we collect and organise information on and promote the validity and legitimacy of traditional indigenous knowledge and practices throughout the world. (For information on our present theme, refer to the particular rubrics: "political and legal cultures.") The ROOTS program has been in operation since 1995.

1996. An interim 5 year report is presented at IIM on our project "Guswenta or the intercultural imperative," whose summary was given in *Interculture* No. 144 pp. 44-64. Because of its importance, we here republish part of the original text that was published in *Interculture* (Issue 129).

TEXT 13

**7. A PRIMARY POLITICAL IMPERATIVE
(AND CULTURAL DISARMAMENT): EMANCIPATING
OURSELVES FROM THE POLITICAL CULTURE OF
MODERNITY AS UNIVERSAL FRAME OF REFERENCE.**

"The main problem with the nation states... is their refusal to abdicate their status as the ultimate unit of political analysis... It is a problem in the politics of Knowledge. It is the inability of those exposed to the mass culture of global politics to think in terms of categories even partly independent of the idea of nation-state..."

"The U.N. represents only an edited version of the present global nation-state system. It has acquired many of the trappings of a modern state. Its building blocks are nation-states and its unit of analysis is the nation-state."

There is a growing consensus nowadays that the issue of our relations with Native peoples is not primarily an administrative issue, but a political one. Some are even ready to speak about Native peoples as Nations and hence about Nation-to-Nation negotiations.

However, both the notion of "the political," and the political frame of reference in which the issues are set, are always that of the quite exclusionary and reductionistic political culture of modernity, namely the Nation-State ideology and system. This is true even at the international level. Moreover, (and this is even more serious), the non-Natives claim that this framework is transcultural and even a-cultural, i.e. universal. It is allegedly based on universal political values, superior to any one particular political culture, so that every human being should "evolve" and eventually have access to it. Any other basis of dialogue is taboo.

We believe that it is a primary political imperative to lift this taboo. Our position should not be taken as a condemnation of the excellent work being done within that framework at the International level towards having the rights of Indigenous peoples recognised by the U.N. But we are saying that it remains a deeply monocultural, colonialistic, unreal and unjust framework, and that it is the main obstacle that prevents all from dealing with the real fundamental issues that are at stake on both sides. Hence there is a need to move beyond that political culture and its presuppositions, beyond the Westphalian model of the international political order, beyond the very presuppositions and framework of international law as the latter has been unilaterally defined historically, by Nation-States and Western/Modern jurists.

We are calling for a recognition of the Mohawk Nation (and Haudenosaunee Confederacy) as the Nation that it always has been and still is on an equal footing with any Nation-State, but without its having to become a Nation-State in order to be recognised as an equal. We are calling also for a dialogue of political/legal cultures which are radically different and which need not be reduced to a common denominator or "formal" unity.

We shall develop this issue at much greater length in Parts II and III.

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A. The whole framework of the political culture of modernity and its presuppositions, constitutes a monocultural and colonialistic bunker which is the main obstacle to any authentic meeting between our respective Nations.

There are no transcultural, a-cultural, universal, political values. As was said previously, we are always in a particular and concrete political culture, even when the latter presents itself as being beyond culture. Modern political culture is one political culture among others. It is not necessarily better, nor superior, nor more "evolved" than other political cultures, e.g. Native. Obviously each political culture can be superior in one aspect and inferior in another. But a political culture need not be modern, nor Nation-State based, to be political in the full sense of the word; there exists, on this continent Stateless Nations, non-State political cultures, which do not even seek to become States. That doesn't make of them purely ethnic, cultural, ethnocultural realities in an a-political sense.

The modern Statist political system is so accustomed to confusing the political with the Nation-State, that it reduces the political nation to a Nation-State, and all political culture to modern political culture, power politics, the ideology and myths of territoriality, representative/elective and majority-rule democracy. It reduces a Nation to a Nation-State, a people to citizens and taxpayers, a society to a Statist society. It creates a dualism between the political and the cultural, the political and the spiritual, the political and the natural, and ends up with a de-cultured, de-sacralised, de-personalised, de-naturalised and finally de-politicised politics. It becomes incapable of envisaging the hypothesis that there could be a political culture radically other than its own and yet just as valid as its own. It thus blocks all intercultural dialogue between radically different political cultures.

It accepts dialogue only with the interlocutor who leaves his political culture at the door, who accepts only one framework, i.e. that of the modern political and territorial culture. It is incapable of understanding and accepting that the interlocutor situate himself politically somewhere other than in an "ethnic-Nation" on the one hand, or in the United-Statesian, Canadian or Quebecois Nation-State on the other. It accepts no dialogue outside the confines of the Nation-States' territoriality and "residential school." It is not aware that this stand is the very cause of the impasse. It sees no solution except making the Native "non-subjects" into subjects (good or bad), through legislative and military violence. All this is done in the name of "universal" human rights, defined by the exclusive club of Nation-States at the U.N.

B. Beyond the Westphalian model of the international political order

The Westphalian model covers a long period, from 1648 to 1945. Many affirm that it is still the model that is in operation today. This model describes the community of Nations as a community of sovereign States. These States (numbering 191 at the U.N.) solve their differences privately and often through force, hold diplomatic relations, but manifest a minimum of co-operation, seeking their natural interests above all and accept

the principle of efficiency, namely that "might (*macht*) makes right" in the international realm. Appropriation becomes legitimatisation.

One result of this framework is that the States have rarely been subject to international moral norms, because they represent separate political orders, without a common authority among them. The world hence consists of separate political powers, each seeking their own interests, ultimately relying on a power to coerce. It is based on the notion of sovereignty.

It is important to be aware of the idea of individualism latent in the modern notion of State. The present sovereign State corresponds to the autonomous individual to which the person has been reduced; the State is a collective individual.

In spite of its innovative aspects, the adoption of the U.N. Charter after the 2nd World War, constitutes, in many respects, a simple extension of the Inter-State system.

One of the problems of this Westphalian framework, is that it does not recognise some 5,000 Nations and more throughout the world. Thus the modern Nation-State does not recognise a political culture other than that of the Nation-State, and consequently ignores and negates all Native political cultures, except those that are a modality of the modern political culture of the Nation-State. It thus reduces these Native Nations and peoples to being a-political ethno-cultural communities, minorities, or at best "ethnic" or cultural (i.e. a-political!) Nations, which must be subject to a Nation-State, to its political culture and to the Westphalian model of political culture. Thus it reserves the words Nation and People exclusively for the Nation-State. When it does speak of Native communities as "Nations," it understands the latter as ethno/cultural groups. Of course they can be granted self-government status, but they remain "domestic Nations" subject to the Nation-State and to the international law of the 191 Nation-States. As for the word "people," CORTEZ underlines that "in positive law, a 'people' has no international legal status: it doesn't exist; only States and international organisations are subjects of public international law." Hence, according to international law, not only does the *Haudenosaunee* people not exist for example, but neither do the Canadian or the U.S. people; only the Canadian State and the State of the U.S.A. exist. And so with France, Italy, etc.

C. Moving Beyond the U.N.'s International Law Framework

It is common to draw on the criteria of international law (i.e. U.N.'s inter-State law) to solve international issues between Native and North American Nations. International law, which was conceived in Europe during the Renaissance, as well as the *jus gentium* which preceded it, was elaborated by Westerners on the exclusive basis of Western culture and the modern culture of the Nation-State, both falsely claiming to be transcultural and universal.

This man-made U.N. international law, however excellent and useful it may be otherwise — has no more meaning for the traditional Arab, Asian, African and Native Indian peoples, than the *jus gentium* of past Western history, supposing that the former were and are even conscious of its exis-

tence and nature. Europeans thought at the time that their *jus gentium* was universal, whereas it was merely the European interpretation of social order and natural law. There were other interpretations, just as valid but unknown, that Europeans did not bother to learn about, nor to respect on an equal footing with their own. Today the same thing is happening. Since its very conception, what we now call international law, is nothing, but the inter-State law of an exclusive club of sovereign Nation-States, for whom international obligation exists only in the measure in which these sovereign states give it their consent and recognition. The sovereign States are seen as the only players in international relations (BADIE *op. cit.* p. 101). The only negotiation between Nations that this law accepts is that between State and State (BADIE, 110). International law is a creation of a few Western (and Westernised) sovereign States devised in order to establish the universalistic claim of their system and practise of State sovereignty.

It is a very inadequate framework upon which to establish relations between Native and North-American Nations. Some even speak of the immoral (un-ethical), contradictory, ambiguous and fictitious character of the foundations of public and modern international law, namely inter-State law. Whatever may be the case, it is deeply monocultural, colonialistic and unrealistic.

Oren LYONS, an internationally reputed and knowledgeable spokesman for the Six Nations Confederacy, eloquently explained it during the Canadian Royal Commission. Inquiry on Aboriginal Peoples. We summarise his words here.

"How did the Native Nations of North America come to be such small groups on small pieces of land, tucked away here and there in large dimensions of nation states? What was the process that separated our people from these large tracts of land?... We have to begin to isolate the root of the problem...

"First of all, sovereignty is a European term, and it refers directly to kings. It refers to monarchy. It has nothing to do with democracy whatsoever. A sovereign is the King. And the King owns everything... The fundamental question — very simple — is: where do you get the authority? From where does it emanate?... During a certain period — that of the Christendom of the Roman Catholic Church — it was issuing from the Pope in Rome (and his papal bulls), who had received plenary power from Christ, to bring all pagans and their lands to the Church... But when the Christians divided into Protestants and Catholics, they sat down and formed what they called the Law of Nations (*jus gentium*) which said: when you came to any lands where there were no Christians living, then the lands were declared vacant, and they belonged to the first Christian Nation that discovered them. It is with this fiction of law that they stole our land. Now, don't think that this law is not still in operation today... In 1823, in the Supreme Court of the U.S., Judge John MARSHALL, in the case JOHNSON vs. MACINTOSH, used the *jus gentium* as a foundation for his decision, thus installing that principle into the law of the U.S.

"In 1955, in another major Supreme Court case called TIHATON (PH) vs. U.S. it was used again. More recently, the British Columbia Supreme Court, did the same in the Gitskan Indian case.

"After 500 years nothing has changed... So, I am asking the Canadian government at this point to emancipate itself from this underlying fundamental law which has taken away the land and identity of our people. That is the basis of conflict. Neither our national leaders, neither our people believe in that law, which we know not to be true.

"The fundamental law which governs all life on Earth, say the Native peoples, is the *Law of Reality*; it is the spiritual law of regeneration. If you do not abide by that law, you will not survive. If Nations don't make their laws accordingly, they will fail eventually because no human being is capable of changing that particular law. When you speak of economics, development, money, everything must be balanced with Reality, with quality of life, with peace, with community. Our people understood that.

"It is not therefore simply a political, but a moral and spiritual question. What right can a people coming from another continent really have, to come here and to say, based on pure political fiction, 'all this belongs to me?' That is the fundamental question. And we are asking the Canadian government and people to answer with honesty. Otherwise, there will not be peace."

In other words, positive international law (man-made) must be in consonance with natural law; the Reality of Life. The Great Law of Peace is the law of Reality. No *Haudenosaunee* claims to know it in full. Authority comes, in the last analysis, not from human beings alone, Divinity alone, or Nature alone, but from the whole integral creative Reality, from the Great Harmony among everything that exists. She alone is sovereign.

An international, Nation-to-Nation, equal to equal, framework does not require that we abandon our radical differences as Nations, but it seems to us incompatible with the notion of sovereignty, even when the latter is shared between many Nations. We shall return to this further.

D. Beyond the framework of Treaties

The Mohawk Nation holds that its original character as a people and nation is not primarily man-made, and does not come from any treaty concluded with European or North American Nations. Nor does it come primarily from some legal definition or declaration from some Nation-State or United Nations, nor from any man-made international law whatsoever, but from "the instructions of the Creator," namely, Reality as a whole.

How is it then, that the Mohawk Nation constantly appeals to the framework of the *Guswenta* which was concluded, very early, between the Mohawks/*Haudenosaunee* on the one hand, and the Dutch, French, British Crowns and the U.S. on the other?

First, it has always interpreted these alliances as a recognition of the "instructions" of Reality, namely the indestructible differences and links which both distinguish and bind forever the constituents of the circle of life. It considers that this Nation to Nation relation, of equal footing in full respectiveness has been explicitly acknowledged by each member, as being valid "as long as the sun shall shine, and the rivers shall run." The *Guswenta* remains for the Mohawk/*Haudenosaunee* a living and ever valid symbol of the reality which constitutes us, and of the commitment that each Nation made to the other to remain faithful to it.

Secondly, the Mohawk Nation considers it high treason that the Crowns and the U.S. have unilaterally broken the alliance, one after the other, and that the North American states and their citizens today do not acknowledge this continuing historical betrayal. These acts of treason are considered all the more grave since the Mohawk/Haudenosaunee had opened very wide the doors of their country to the newly-arrived, sharing (and still sharing) all of the land with them — as with brothers and sisters, on an equal footing, in full respect of their differences. At the time, it was not forced to do so. It has never tried to subject the newcomers. It is Oren LYONS who remarks that

"the line which symbolises the colonists (then a minority) in the *Guswenta* was not made smaller than the one which symbolised the Confederacy (then a majority). But the Confederacy treated the colonists on an equal footing, from the very start, and both interlocutors promised to continue doing so for generations to come. The Confederacy could easily, then, have established its power on the newcomers. It didn't, because its diplomatic relations are based, not on power, but on the Great Peace."

Finally, the *Guswenta* is nothing other than the Reality of the Great Peace, which continues to impose itself on us because that is the natural constitution of things. It is not primarily a human decision, Mohawk or other. It is the imperative of Reality itself. Both the Mohawks and the American Nations cannot refuse it, without alienating themselves. Hence the sacred and mystical nature of treaties for the Mohawk/Haudenosaunee and for Nature peoples generally.

One could certainly argue that the European ancestors did not see things that way. For example:

- 1) Authority, for them, came from God alone, and from the Christian God and his representative on earth, the Pope, or his secular representative, the King.
- 2) It was customary for the king, in those days, to establish treaties with other kingdoms and then break them as he wished.
- 3) Modern historians view these treaties, not only in terms of rights, but as part of the British political strategy to manage their relations with the French and with other tribes... European colonial powers were trying, through these treaties, to gain subjects and lands for their respective Crowns, and to make them enter into the new colonial order.
- 4) The European Kingdoms and Nations of that time perceived Natives as subjects of their European Kings, or like children and primitives whose civilised and Christian custodians they were, with the responsibility of being the trustees of their property.

One can even argue that European Nations have never seriously recognised the Mohawk/Haudenosaunee Nation, as equals, with due respect for their differences, except as a tactical and diplomatic strategy to Christianise them, to make them subjects of the King, and to take possession of their lands without military war. One can then understand that far from considering themselves traitors and unfaithful to their commitments, the colonists could see themselves as generous benefactors and artisans of Peace, who were bringing The Natives heavenly Paradise, civilisation.

One can understand how today's State governments truly believe that they are bringing them civilisation, development, education, progress, when they insist that Native peoples embrace the political, economic and legal culture of representative elective democracy, based on majority rule, self-government and economic development. Could it be that we have passed from the theocentric culture of the Sovereign God, Master of the World, to the anthropocentric culture of Sovereign Man, master of the world and of his destiny, thus reducing Reality to both?

What is the most grave, is that the North American States and their citizens — not to mention the United Nations — not only do not recognise these alliances and treaties, but claim to have the authority to go against Reality itself, the nature of things. The U.N. also claims to represent the peoples of the world by substituting its positive international law, not only for the different legal systems of the Native and other peoples of the world, but also for the natural and cosmic rhythm of Reality, Being and Life itself. The issue therefore is one of getting back to Reality symbolised by the *Guswenta* and to take it seriously this time, if it has not been done in the past.

E. Taking the Mohawk/Haudenosaunee political culture seriously

It seems to us that no authentic peace can come about between the Mohawk Nation and the North American Nations (States), as long as the latter will not have recognised the former for what it has deeply been and still is, namely a *distinct Nation — with its own radically different but equally valid political culture — external to traditional Western political culture and especially to the political culture of the modern Nation-State system, of either the North-American States, or the exclusive club of the present United Nations.*

This will require, on the part of the North American peoples and their Nation-States, a deep cultural disarmament, namely envisaging the hypothesis:

- 1) that there exists, outside of the State system and political culture, a radically different political culture — with different notions of "law and order," Nation, Peoplehood, etc.
- 2) that this political culture can be as valid as the Western and Modern political culture upon which the States base their international relations. Hence, important international relations need not be inter-State, nor based on the political culture of a Nation-State system, even the current U.N. one.
- 3) that these relations need not be based primarily on a formal (much less sovereign) principle, to which they must be subordinated.
- 4) that these relations should take their authority (and mandate) first and foremost from the whole Reality not only from Man and his treaties alone, nor from God alone (however he may be viewed) nor from Nature alone.

This will obviously require a radically new vision of Reality on the part of everyone, a vision which comes from pluralistic Reality itself, and not only from some man-made decision or treaty, past or present.

The Mohawk Nation, an external Nation

We believe that we have amply demonstrated in previous chapters how the Mohawk Nation — as the Iroquois Confederacy of which it is still a constituent member — has never considered itself and does not consider itself as a "dependent domestic nation," subject to any government, Kingdom, or State whatever, but as the external Nation (external to Western political culture and to the political culture of the modern State) that it has always been.

It is not therefore trying to "secede" from any North-American State, as is so often erroneously accused to be trying to do. How can one separate from that which one has never been a part of?

The Mohawk Nation has never considered itself a State (in the sense of modern political culture, namely a collectivity of autonomous individuals, endowed with a centralised government, enjoying territorial jurisdiction and sovereignty, and identifying the good life with development). It is not trying to become one. It is not trying to become the subject of a State or part of a Nation-State system, not even that of the present United Nations, but to renew and establish alliances of brotherhood with other Nations and peoples. It therefore does not seek a partnership within Canadian Confederation, (i.e. within the Canadian State), the U.S. or Quebec.

It has never considered itself a *territorial nation*, with its own exclusive jurisdiction next to, or even within one or more North American States. Nor is it seeking to become one. Likewise, it has never considered itself as a "sovereign" Nation either outside or within one or many Nation States. It does not seek sovereignty under any form. For example, it does not seek the "associated-sovereignty" proposed by the CFQ or by the Forum Paritaire Québécois-Autochtone, consisting in being recognised as a municipality or even "as a government between a provincial government and the House of Commons." It has never defined itself and does not seek to define itself as a "territory," i.e. with exclusive ownership of a portion (part) of land that it could alienate, cede or sell at will.

Does that mean that it considers itself and wants to be considered as a purely "ethnic" or even "cultural" nation (meaning a-political)? Not at all. Not only is it as "political" a Nation as the Modern State, even if its political culture is not a Nation-State culture (it is not based on a culture of government, representation, majority as is the modern State), but it has a unique relationship to a concrete land. This relationship is certainly radically different from the territorial relationship characteristic of modern public culture, but it is also different also from the personal and communitarian ownership found in the Western tradition. However it is as important as both of these, so we can speak of functional equivalence.

In short, the Mohawk Nation has always been and remains a Nation on the basis of its own immemorial reality and political experience, i.e. according to its own political culture which is radically different from traditional Western and modern public culture.

One last remark! One must be cautious in using the expression "external Nation". The expression is neither Mohawk nor *Haudenosaunee*. It could easily be interpreted erroneously as if the Mohawk Nation wants to live either isolated behind ghetto walls, without relationship with North American Nations and their peoples, or in a purely defensive and competitive relationship towards strangers, seen only as a threat or an enemy who must be vanquished.

Unfortunately, Westerners often translate *Guswenta* as the "two-row treaty," interpreting it falsely as parallel rails that will never meet. One forgets that for the Mohawks, many paths does not necessarily exclude one mind and one mind does not exclude many paths. For the Mohawks this alliance symbolises not separation but respectiveness, and an alliance of linked arms, a chain of friendship, even of fraternal kinship within the one circle of life. One could say that it was the first seed of an international society in North America, in its respect towards cultural, personal and communitarian differences, in a spirit of non-duality.

1997. Kalpana DAS, Director of the IIM, organises a series of public seminars on "Pluralism and Society: alternative discourses to the dominant culture." The texts of these seminars are on the way to being published eventually. We limit ourselves here to a *summary* of one of the texts, entitled: "The emerging myth of the Pluralism and Interculturalism of Reality" by R. VACHON, in which he offers an in-depth meditation and a radically alternative discourse on Pluralism and Society, based on PANIKKAR's writings, and in the long practise of research action at IIM for the last 3 decades.

It comprises three interrelated conferences that he has prepared and that he presents in schematic, summarised and condensed form:

The first is entitled: "From plurality to pluralism, or from a dialectical to a dialogical approach," where he tries to describe the fundamental difference between plurality and pluralism and how we are beginning to awaken to the pluralism of reality and of truth.

"The meaning of the word pluralism is changing. It is emerging as a notion which transcends the conceptual order, that of ideology and of definitions, as an existential, transhistorical notion of the order of *mythos*, i.e. as a myth of reality and of truth. This could be one of the important thematic discoveries of our times. We still have trouble detecting and accepting it, for this shakes one of our dearest millennial beliefs, namely that reality (being) is reducible to thought (thinking)."

The author develops the following themes: *pluralism is not plurality*, pluralism presents itself as irreducible to unity, i.e. to an intelligible multiplicity; pluralism sits between unity and multiplicity, between monism and dualism, without dialectically oscillating between the two: pluralism is neither opposed to plurality nor to unity under any form whatsoever and it is not a direct critique of the latter, the passage from plurality to pluralism constitutes a mutation, namely from a dialectical to a dialogical approach, without substituting the latter to the former. And the author presents a synthesis and conclusion of that section.

The second part, entitled "Pluralism and Society," seeks to show how this emerging myth of the Pluralism of Reality shatters the conceptual frameworks we constantly refer to nowadays, such as: Society, Citizenship, Democracy, Quebec, Canada, pluralistic and society, public culture, by underlining their non-absolute necessity as conceptual frame of deliberation.

The author describes the deceitful, reductionist and alienating character of the modern notion of society, invites us to go beyond notions of society, citizenship, civil society, democracy and sovereignty, and finally asks the question: is it still possible, after all that, to talk about a pluralistic, etc., society? If so, under what conditions?

The third part, entitled "cultural pluralism or interculturalism, an imperative of Reality," tries to let the emergent myth of the cultural pluralism and interculturalism of Reality speak, distinguishing sharply the latter not only from cultural relativism but from all intercultural ideologies: for example Canadian multiculturalism, the interculturalism of the Quebec government, but also the various intercultural and transcultural themes, models or systems, including pluriculturalism and cultural perspectivism. He tries to describe how this imperative comes from the very nature of reality and how it is unavoidable.

Interculture hopes to publish that text in extenso, later, as well as the other texts of these public seminars on "Pluralism and Society: alternative discourses."

1998. We publish in French "Les droits humains, un concept universel," in *Nouveau dialogue*, No. 122, Nov. Dec. 1998, pp. 30 ss. (2 pages). Here is its English translation.

TEXT 14

HUMAN RIGHTS, A UNIVERSAL CONCEPT?

Towards an intercultural approach to the notions of human dignity and of the basis of social order

by ROBERT VACHON

Are human rights a universal concept? Must they constitute the first and only basis—throughout the world—for human dignity and for social order? Would life be chaotic, meaningless and would it dissolve in total anarchy, without the recognition of human rights?

Modern Westerners generally believe so. That is why they promote this universality to the point of applying it to all individuals and collectivities—children, women, minorities—and of journeying to all the countries of the world—China, Africa, India, Arab countries, the Americas, Aboriginal peoples, etc., in order to substitute this notion (as well as that of democracy...) that they consider as cultural universals or as transcending all cultures. Their argument is that there exists a universal human nature throughout the world.

Human rights: a universal concept?

My answer is no. The notion of human rights is not a universal concept. It is but one window on the world. There are others that are as valid, such as *Li* in China, *Dharma* in India and in Buddhist countries, *Shari'a* in Islamic countries, *Kayanerekowa* among the Iroquois, etc. There are no cultural universals, any more than there is a universal language and one Man.

Undoubtedly, there exists a universal human nature, but the interpretation of this universal human nature, i.e. Man's self understanding, equally pertains to that human nature. Hence to choose one particular interpretation, either Human Rights, or *Li*, or *Dharma*, etc., can have some validity, but is devoid of universality and cannot be applied to the whole human nature.

Peoples and cultures hold radically different interpretations of this human nature, interpretations that are irreducible to each other. No one of them holds the only interpretation. Moreover, this universal human nature cannot be reduced to the consciousness that Man can have of it, whether it be Human Rights, *Dharma*, *Li*, *Shari'a* or Democracy, etc.

A warning

My purpose here is to warn against the totalitarianism, fundamentalism, imperialism of the culture of human rights (and of democracy), which can be as tyrannical as any other culture (I am not saying that cultures are necessarily so). Some even speak about the culture of human rights and of democracy as being the most recent Trojan Horse of the cultural imperialism of the West.¹

My purpose here is not to glorify other cultures throughout the world—they also have their weaknesses and limits—nor to deny the validity and importance of the notion of human rights. Nor is my purpose here to criticise the internal deficiencies of the latter, whether it be in its defini-

1. See Vinay LAL "The Imperialism of Human Rights" in *Focus on Law Studies*, 8, n. 1 (Fall 1992); G. ESTEVA and M.S. PRAKASH, "Human Rights: The Trojan Horse of Recolonisation" in *Grassroots Post-Modernism* (Zed Books 1998) pp. 110–152.

Other references (available at IIM):

Albert H. Y. CHEN "The rise of Rights. Some comparative civilisational reflections" in *Journal of Chinese Philosophy*, 25 (1988) pp. 5–30.

Raimon PANIKKAR "Human Rights, a universal concept?" in *Interculture* (Oct. 2002, Issue n. 143, pp. 42–60). Also R. VACHON "Human Rights and Dharma" in *Interculture*, Issue 144, pp. 18–26.

John SCHKECKER, "Filial Piety as a basis for human rights in Confucius and Mencius" in *Journal of Chinese Philosophy*, 24, 1997, pp. 401–12.

Robert VACHON, "L'étude du pluralisme juridique : une approche diatopique et dialogale" in *Journal of Legal Pluralism*, No. 29, 1990, pp. 163–173.

Robert VACHON, "Human Rights and Cultural Pluralism," 1983, a non published text and a video cassette of talks given to the Canadian International Development Agency (CIDA), available at IIM.

tion or in its being applied or not throughout the world, a topic which is quite valid and important.

Neither is it my purpose here to analyse how the concept of "rights" is perceived and interpreted and lived (or not) according to different modalities among the various peoples and cultural areas, nor to underline its variations in the different Nations-States throughout the world.

A radical relativisation

I am therefore not speaking of a *contextual* relativisation as found in the approaches of comparative law, nor of cultural perspectivism. It is not a matter of allowing each culture in the world to insert different meanings within this (so-called universal) value of human rights.

I am rather trying to do a *radical* relativisation of the (cultural) notion of human rights, of its absolutism and fundamentalism, without on the one hand falling either into cultural relativism, i.e. the theory of the equality or (conceptual) equivalence of cultures, nor into the absolutisation of other cultures/traditions/systems/customs (fundamentalism) and without on the other hand, absolving cultural tyrannies of all kinds.

Two-thirds of the world population do not organise their lives (nor have to organise them) according to the Western/modern system or tradition of human rights, but according to windows, principles and foundations that are wholly other, as valid, and which constitute functional equivalents (homeomorphic) of human rights.

A call to a dialogue of reciprocity

Who do we think we are to believe that we, Westerners, are the only legitimate arbiters of human values, that our criteria of transgression are the only valid ones, and to think that the only remedy to transgression must be one of applying human rights?

Have we ever considered how enervating and stupefying it can be for a Chinese, a Hindu, a Muslim, a Mohawk to hear the constant Western harping on the fact that he doesn't respect human rights, when the whole basis of his own social order is not human rights, but *Li*, or *Dharma*, or *Shari'a*, etc.?

How would we feel if the Chinese, Hindus, Muslims and Mohawks were to come to us in the West and accuse us constantly of not following the *Li*, the *Dharma*, the *Shari'a* or the *Kayanerekowa*?

I am therefore appealing for a dialogue of reciprocity between the different cultures of human dignity and social order, but *without the imperium of any one of them*. The call doesn't come from some conceptualisation or human decision, but from the Pluralism of Truth and Reality.

1999. We publish: "La Confédération iroquoise, une alliance interculturelle pour la Paix," in *Caravane*, No. 3, May 1999, p. 19, and which has also been published in Catalan; we also publish in *Interculture* (No. 136, in French and English editions) two articles by R. PANIKKAR: "The Strength, Weakness and Limits of Democracy," and "The Metapolitical."

2000-2004

B. ACTIVITIES AND PUBLICATIONS

2000. We publish in a special issue of *Interculture* (No. 138) entitled "Beyond Democracy. Towards a meeting the political cultures of mankind" with articles and reports on the animistic politics of Japan (John CLAMMER) on "The Illegitimacy of nationalism" (by Ashis NANDY), on the contemporary traditional indigenous political culture of the Native peoples of this land, (T. ALFRED) and of Africa (FOTSING, etc.) and finally of Haiti beyond the Nation-State: "le pays andeyo" (HOGARTH).

That same year, we have been invited by the *Bulletin de liaison du Laboratoire d'anthropologie juridique* de la Sorbonne, Paris, to reflect on the theme "Human Rights and Cultures of Peace." The following is the English translation of the French text that was published in their *Bulletin* No. 25, Sept. 2000, pp. 9-20:

TEXT 15

BEYOND THE UNIVERSALISATION AND INTERCULTURALISATION OF HUMAN RIGHTS, LAW AND NEGOTIATED ORDER

by ROBERT VACHON

INTRODUCTION

Without presuming in the least that what I have to say is universally valid and without dismissing human rights, law, order (even negotiated order) and the "play of laws," I wish to offer a few thoughts on the proposed theme: "Human Rights and the Cultures of Peace." This text, which expands upon what I have already written on the subject, does so in the light of two recent major works by R. PANIKKAR² and presents a number of questions raised in my mind by the LAJP's (Laboratoire d'Anthropologie Juridique) publications.³

2. R. PANIKKAR, *Cultural Disarmament: The Way to Peace* (Westminster John Knox Press, Louisville, Kentucky, 1995, 142 pp.); "A Self-critical Dialogue" in Prabhu ed. *The Intercultural Challenge of R. Panikkar* (Orbis, 1996, pp. 227-291), which follows upon "The Myth of Pluralism" (1979), "Is the notion of human rights a Western concept?" (1982), "The Dialogical Dialogue" (1984), *The Invisible Harmony* (1987), "La diversidad como presupuesto para la armonía entre los pueblos" (Diversity as a presupposition for harmony among peoples) (1993), "The Pluralism of Truth" (1990) and "Invisible harmony" in *Interculture* (1990), n. 108, pp. 48-84. For a complete list, please see the bibliography at the end of the first two above-cited works.

3. This is an English translation of my French text that appeared in the *Bulletin de liaison du Laboratoire d'anthropologie juridique* de l'Université de Paris in response to

I will present my views from the perspective of 1) cultural disarmament; 2) the emerging, thematically new myth of the pluralism and interculturalism of truth and reality; and 3) the challenge of "*philosophia pacis*."

Legal anthropology cannot be merely legal in nature. It must also be philosophical and metaphysical. This to me seems to be part of

"placing greater emphasis on social values than on legal norms and seeing these values as being based on the primacy given to peace: respect for others, mastery over oneself and dialogue." [translation] LE ROY, *Le Jeu des lois* (The Play of Laws), p. 339.

**I. CALL FOR CULTURAL DISARMAMENT
WITH REGARD TO THE CULTURE OF PEACE
CONSTITUTED BY LAW, HUMAN RIGHTS,
"NEGOTIATED ORDER" AND THEIR UNIVERSALISATION**

One of the most troubling (it makes one insecure) and, at the same time, liberating discoveries of our time is that there are no universal criteria that allow one to judge everything under the sun.

Not only is God not a cultural universal; Man and the Cosmos are not, either. And even less so are the concepts of development, democracy, human rights, the law, order (even when negotiated) and *Universitas*.

While peace is a universal symbol, there are as many cultures of peace as there are myths and concepts of peace.

Human rights, the law itself and order (even when negotiated) constitute only one culture of peace among many and one that is not necessarily any more valid than any other.

Acknowledging this fact in practice—not substituting this culture of peace to that of others and not necessarily establishing it as the universal reference point—seems to me to be of primary importance. Otherwise, we fall into the colonialism and totalitarianism of law, human rights and the "negotiated order." We must therefore ask ourselves serious and delicate questions concerning the idea of interculturalising and universalising human rights, law and negotiated order.

*a) The questions:*⁴

- The law,

"a problem that is common to all civilisations and thus universal, namely, ensuring legal security which gives people confidence in the future through giving a form that ensures the self-perpetuation of society."⁵

Étienne LE ROY's book *Le Jeu des lois* L.G.D.J. 1999, and to other publications in the *Bulletin de liaison* of the LAJP.

4. With regard to the topic "are human rights a universal and universalisable concept and symbol," see *Interculture*, issues 82-83 (1984).

5. See E. LE ROY, *Le Jeu des lois*, L.G.D.J. 1999 (passim). I am aware that the author, for his part, is referring to "giving form" to ensure the self-perpetuation of society as a

- Order, organisation and negotiated order: universal archetypes?
- Is universalism a universal problem?
- Interculturalisation of law?

Undoubtedly, viewed from the windows of law, order, universalism! The point of reference is universal if we contemplate it from the position where the culture that affirms it is based. But it is not universal if we look upon it from outside. From inside, the framework is seen as constituting the whole, but those looking in from the outside have their own framework, their own window.

One can see the *totum* only within the framework determined by one's own window and through the letter. The *totum* does not exist independently of the part through which it is seen. One can neither take the *pars pro toto* nor believe that one sees the *totum in parte*. No one has direct access to the universal gamut of human experience. Every culture articulates its experience of reality and of the *humanum* through concepts and symbols which belong to its own particular tradition and which, as such, are neither universal nor, in all likelihood, universalisable.

In short, to say that law, order, etc., is a problem common to all civilisations and therefore a universal one is true from the point of view of the window of the person asking this question. But it is not true from the point of view of the window of those asking radically different questions.

Not only are the answers that other civilisations give to our questions not necessarily the same, the questions themselves (and the presuppositions) are not, either.

We are in the process of discovering that great portions of humanity (Asians, Africans, Indigenous peoples, etc.) have entirely different questions and presuppositions—that they have radically and even irreducibly different concepts and cultures of peace which are based on often untranslatable words and myths and which appear to us, in turn, to be non-universal and very particular.

Thus, it is not by looking through the same window (law, order, etc.) that I am going to know how the whole appears as seen through the other window. I will have to begin to make the effort to look at the whole as it is seen through the other windows. In this way, these windows will reveal to me my own myths and the particular nature of what I believe to be their universality.

b) A few examples

- Law

It is not a problem common to all civilisations except through the partial window of law.

The "referential principal" of most other civilisations is not the law (even in the sense of what gives form). Not only do these civilisations

dynamic totality, for he says "we have lost our sense of *universitas*" [translation] (p. 273). Please see "*universitas*" further on in our text.

never mention, but they do not even talk of "referential principle" or archetype. Their "symbolic site" or matrix is the *Dharma/Svadharmā*, duty, the Circle of Life, etc. These are sites and matrices that these civilisations do not even present as being universal or necessarily universal or universalisable, but rather as Reality. And the persons and communities of these civilisations consider themselves to be, quite simply, members of Reality, not its masters. I think it could be important for us to learn more about the symbolic sites/matrices of these other civilisations and how they perceive our referential points/archetypes of law, order and negotiated order with respect to the *Dharma/Svadharmā*, the Sacred Circle of Life, the Great Harmony, "all our relations," etc.

Regarding the question of "ensuring the legal security that gives people confidence in the future"(!): let us remember that the culture of certitude inaugurated in the West by DESCARTES leads logically to the civilisation of security and of its fabrication—the predominant ideology of modern society. Yet, this culture and ideology is far from being shared by all the great civilisations. Living in a climate of insecurity and uncertainty is intolerable in a rational-minded world. But it is even agreeable within the context of love, liberating for a Hindu *sannyasin* (civilisation's ideal, according to GANDHI, being not the accumulation of, but rather doing away with riches, thus the emphasis on *aparigraha*:—non-possession—in all Hindu training). One is taught to value not so much security as *equanimity* in the face of whatever happens.

Certain cultures of peace demonstrate precisely how to face the complete absence of certainty and security and how to live in a state of vulnerability, how to take a stand and thereby risk one's life, how to "extinguish the desire for security." It is interesting to note that St. Augustine himself, who defined peace as "*tranquillitas ordinis*," viewed peace as a "*bonum incertum*."

The future is certainly of primary importance in a culture of peace founded on the evolutionist cosmology of the evolution of the entire universe (a state of being that goes well beyond scientific evolutionism), which supposes that the history of humanity follows a linear evolutionary course, from the inferior to the superior, from the Babylonians, Egyptians, Chinese and Indians to the Greeks, the Romans, and the people of the Middle Ages to modern humans who have arrived at the summit: modern *homo technologicus*. However, such a future and even the very notion of future is far from being all-important to civilisations centred on the present, on the cosmic rhythm of the seasons and on all of being (which includes, of course, the generations to come).

- Order and putting things in order

The concept itself of order and of "giving form" is a predominantly Western archetype and myth linked to the concepts of unity, intelligibility, logic, coherence, synthesis and "*reductio ad unum*" and is based on the principle of non-contradiction. It is a concept that stems from *thought*, be it divine or human. The emphasis here is on *logos*. Cultures are thus perceived as logical entities. In this respect, a certain anthropomorphism and anthropocentrism are exhibited, not to mention logocentrism.

It can be useful, from a Western perspective, to utilise the concept of order to categorise the various archetypes of the traditions of Africans, Asians and Native people, as does Michel ALLIOT. However, this may prove profoundly inadequate in terms of attempting to reach the heart of these cultures, which are not only more cosmocentric in the encompassing sense but also less logocentric. They are less inclined to subject reality to thought and to giving form, i.e. to putting into order, and to looking up to "an orchestra leader," a principal organiser. Instead, they are much more inclined to "listen" to Reality and to be in harmony with it. Theirs is the notion of the Circle in which the centre is both everywhere and nowhere. These cultures are less preoccupied with order, coherence or even differentiation and synthesis, hybridisation and mixing than they are with harmony, cohesion, relationality, the maintaining of creative polarity, symbiosis or, as a Wolof friend expressed to me in French, "*symbiodiversité*." I find something analogous in the non-interventionism, characteristic of the tradition of Native people, with respect to other persons and cultures, as well as to animals and plants. Harmony is seen to exist not *despite* differences but *within and because of* these differences. The differences that cannot be reduced to unity constitute a presupposition, a condition necessary for harmony. They are not to be eliminated but, rather, maintained. Or, as HERACLITUS himself said, nature aspires to the opposite.

As the Hindu Sudhir KAKAR wrote,

"Hinduism has traditionally not sought a synthesis of opposites. Instead, it is content with leaving each person or thing as is... in chemical terms, one could say that the conflictual elements are resolved through a suspension rather than through a solution. The satisfaction of the Hindu myth lies in fully appreciating the two extremes instead of seeking a synthesis."⁶

It is important, however, not to be mistaken here: what is important in these symbolic sites lies less in their differences than in the *non-duality*, i.e. the *relation*, the *relationship* or the *radical relatedness* between all things, what Buddhists call *Pratitya-Samutpada* and PANIKKAR translates as "*radical relativity*." What is important is "*being together*." This does not necessarily require an ideal state of unity and intelligibility or even of differentiation, synthesis, hybridisation and even mutual fecundation or enrichment of their *dharma* through the incorporation of other cultures of peace. There are no separate entities. Everything is constitutively connected. What we are talking about is the karmic solidarity of the totality (which is neither one nor two nor plural). "*Esse est co-esse*." Yin and yang are not seen as constituting a duality. It is the relationship between the two that predominates. As Satish KUMAR said,

"You are, therefore I am. My existence is a network of relationships. I exist within reciprocity, mutuality, the community. I am because the Earth, air, fire and water are. I am because my parents, teachers, friends are."⁷

6. S. KAKAR, *Shamans, Mystics and Doctors* (Oxford University Press 1982) pp. 10–11.

7. Satish KUMAR: "You are, therefore I am," *Resurgence*, n. 199, March–April 2000, p. 7.

In South Africa, this is referred to as *Umbutu*: "I am because we are." What matters is not autonomy but rather *ontonomy*.

The universe is a *uni-vers* (a together towards), not a unity. It is a *con-course* (*con-cursus*), a constitutive relationship, a circle of life. The poles are maintained. They do not cease being poles. The polarity is not binary, dualist, for each pole presupposes another pole. Otherwise, the poles would cease being poles; they would merge or separate completely. Harmony implies a constitutive polarity that cannot be overcome in dialectic fashion because it would then be destroyed. Concord is neither unity nor duality nor plurality. It is the dynamism of multiplicity towards the one without ceasing to be different and without becoming one, and without reaching a higher synthesis. Harmony is the result of polarity. There is a polarity which is inherent to reality and which is an ultimate characteristic of reality.

- Negotiated order

For these cultures of peace, the Great Harmony of the Circle is not simply a human affair, a question of thinking it out and of building/conjugating models of thinking between groups and cultures. Their broad cosmocentrism does not allow them to put Man and his thinking at the centre of the Circle. Man is not the dominant figure of the Circle of Peace. Harmony is experienced together with Man's ancestral spirits and the sacred grove, as well as with the entire kinship of the spirits of the cosmos. Man, his thinking and his models are not at the centre. It is the Circle in its entirety that speaks and dictates: speaking and listening must be integral and go beyond what is visible, beyond thinking and models. Peace is not a simple matter of the intellect and human will. Maintaining the universe together—the *lokasamgraha* of the Gita is precisely the function of the primordial *Dharma*, of which humans are active factors among other factors, namely, the cosmos and the divine.

- *Universitas*: one totality⁸

"The thrust toward universalisation has undoubtedly been a feature of Western civilisation since the Greeks. If something is not universal, it looms as not really valid. What is true and good (for us) is (also) true and good for everybody... "Everything that exists, exists only because it is one." This thirst for universality is part of the Western myth.

"The thrust that consists of seeking a universal theory—even if this theory is expressed with all the respect and openness possible—betrays, in my opinion, the same *forma mentis*,—the will to understand, which is a form of the will to power, and thus the felt need to have everything under control (intellectual in this case).

"I have not said that this feature is erroneous and completely negative but, rather, that this thrust is not universal and therefore it is not a proper method (to deal with human problems) because on the one hand, it does not constitute a truly universal *theory* (rationality is of many kinds) and on the other hand—and more importantly—because no theory is universal (rationality does not exhaustively define the human being)...

8. See R. PANIKKAR, *Interculture*, n. 108 (1990) pp. 47 ss., from which this portion of the text is taken.

"What is important is becoming aware that Western culture apparently has no other way to reach peace of mind and heart—called more academically, intelligibility—than by reducing everything to one single pattern with the claim to universal validity... We must also become aware that this Western light we use in seeking peace, is not the only light available to us, as if humanity were the measure of everything. The problem lies in *anthropocentrism* and, above all, the *metron*—the measure: this desire to know everything because we presume that everything is knowable. But thinking does not need to exhaust Being.

"The effort towards a universal theory is welcome as an effort to "establish a certain order" among the many worldviews... but reality is richer. The striving for a universal theory is a noble and fruitful enterprise. Many sources of misunderstanding are overcome when we search for a common language. Yet, the quest for a universal theory entails a great danger—that of imposing upon others one's own language or the framework within which dialogue must take place. First, it aspires to a *lingua universalis*, which is the equivalent of reductionism, to say the least. Second, it presupposes that human traditions are, if not reducible, at least translatable into *logos* (and probably into a form of *logos*) and thus accords supremacy to the *logos* over the spirit. But why should all be put into words? Why is not accepting without understanding, also an equally human attitude?"

Am I myself looking here for a universal myth, albeit a different one? I do not believe so. In fact, the myth emerges by itself and cannot be fabricated: it is polysemic and irreducible to one interpretation; it does not admit any particular theory. It is this emerging, thematically new myth which I seek to present briefly in the second part of this text and which will perhaps help us to go beyond the interculturalisation of law, without necessarily dismissing it or not.

II. THE EMERGING,—THEMATICALLY NEW—MYTH OF THE PLURALISM AND INTERCULTURALISM OF REALITY

Having already explicated this question at greater length elsewhere (VACHON, 1997), I will limit myself here to a few reminders and additional clarifying observations.

What I am talking about is not a new model of law, of social order, nor even a new pluralistic vision of Reality which we need to discover and experience, nor a new accompanying methodology to achieve it. The pluralism and interculturalism in question surpass the conceptual order, that of ideology and definition, such that where a synthesis is possible between two visions, one cannot speak of pluralism and interculturality. The myth of pluralism does not offer an alternative to the existing systems. It is not a matter of a metaphysical view of the universe, although pluralism may comprise one or several views. It is a *praxis* that is irreducible to any theory whatsoever—even to a universal, intercultural or pluralistic one.

It is a *fundamental human attitude* which is not an anti-model, anti-paradigmatic or anti-methodology; it does not say that one must not have a position, a conceptual framework, a model, as if my "model" consisted of not having a model. But I do question the absolute need for models in order to think and, above all, to live humanly. Man possesses not only rational consciousness (*logos*) but also mythic consciousness (*mythos*) which is different from rational consciousness. But *mythos* is not irrational.

Pluralism thus also has its method: dialogical "dialogism," which does not exclude dialectic "dialogism," namely, a methodology. However, its method is not reducible to a methodology. It is an approach of mutual listening and mutual respect. What it does, is to prevent, for intrinsic reasons, any method or group of methods from declaring itself to be self-sufficient for the purpose of dealing with a given question. It is a method that goes beyond the mental realm without, however, abandoning intellect.

The Pluralism of Truth and Reality⁹

"A myth seems to be emerging—the myth of pluralism. We are still having trouble discerning and accepting this myth because it disturbs one of our most precious millennial beliefs, namely 1) that everything can be thought out, and 2) that reality is reducible to thought, that it must be obedient to thought.

"The pluralism of which I speak is not mere plurality. Furthermore, it presents itself as irreducible to unity, i.e. to an intelligible multiplicity. It appears when we reach a state of awakening, of consciousness that leads us to the positive acceptance of diversity in its irreducibility—acceptance that does not force differences into unity (a synthesis) nor alienates them through reductionist manipulations. Here, power has no place. Nor does the rule of the majority have the final word. And the *praxis* is not reducible to a theory and to a model. Pluralism does not have the final word. And the *praxis* is not reducible to a theory and to a model. Pluralism does not have to be understood in order to exist. It cannot be understood in a coherent way, whereas we can understand plurality. This is not to say that pluralism abandons rationality. Rather, it abandons rationalism. Pluralism seeks to attain the highest level of intelligibility and unity possible, but without requiring an ideal of total intelligibility or understanding of reality.

"By pluralism I therefore mean *this fundamental human attitude* that is critically conscious both of a) the factual irreducibility (thus, of the incompatibility) of the different human systems that seek to render reality intelligible, and b) the radical non-necessity of reducing reality to a single centre of intelligibility, thereby rendering unnecessary an absolute decision in favour of a particular human system with universal validity—or even a Supreme Being.

"In saying that a *fundamental* attitude is involved, I am suggesting that pluralism does not belong to any given construct. Saying that a *human* attitude is involved means that this attitude is *existentially* human, i.e. a human *praxis* (a *praxis* irreducible to a theory), and that we are conscious of it. This consciousness is *critical* and *double*.

"In this regard, *critical* means reflective and conscious of its need for a foundation. The critical foundation of pluralism consists of applying to itself that which it criticises in all the various systems: that any foundation is simply a place where we stop because we think it has no need for an ulterior foundation. This can only be a belief that can serve as a practical postulate based on what I call *cosmic confidence*, that is to say, the experience, the myth, the belief or even the postulate that *Reality is the ultimate ground we have on which to make sense of anything whatsoever*.

9. The following is an excerpt from R. PANIKKAR, "A Self-critique," in PRABHU, *op. cit.*, pp. 227–291, and primarily pp. 252–262, 272–282.

ever, to find that life has a certain value, that there is a certain degree of consistency in the world, a certain amount of truth in our thoughts, a certain amount of sense in our words. The very idea that the world could be chaos or an illusion makes sense only when there is (background) consciousness that the universe is a *Kosmos* that we presuppose with a view to denying it. The word confidence does not signify dreaming of a paradise. It is not confidence that reality is harmony based on some subjective *a priori* design, based on a preconceived form of harmony, as if we already knew what the universe should be. The invisible harmony of reality is the source of our ideas concerning truth and beauty and their opposites. Cosmic harmony is our last and ultimate criterion by which to say what is harmony and what is the absence of harmony. Cosmic confidence is not confidence in the cosmos, but rather the confidence of the cosmos itself, of which we form a part given the simple fact that we exist. Cosmic confidence is not how we interpret the world. It is this consciousness that makes possible all interpretations. What the principle of non-contradiction does in the field of logic, cosmic confidence does with regard to the ultimate harmony of reality. It is impossible to refute cosmic harmony without first presupposing it. The Vedic notion of *rita*, or cosmic harmony, could be considered a homeomorphic equivalent of what I am talking about.

"Cosmic confidence is not the epistemological certainty of DESCARTES: confidence in our ideas. Cosmic confidence is *yes, amen, aum*, the affirmation of what is, acceptance of reality. It is the consciousness that we are in and of the universe. The word confidence suggests faith, hope, love. We have confidence in Reality as it is and not because we understand it or can understand it, although thus transcending reason is within the power of intelligence. It is not a matter of an option or an alternative: saying yes is the only way possible to live freely and joyfully, to be who we are. The Hindus would say that it is our *karma*.

"I spoke of *double consciousness*, by which I mean that this consciousness is both conscious of its own *perspective* (law, order, the *dharma*, the circle of life) and of its *relativity*.

"*Perspectivism* does not present any major difficulty: someone, looking through the window of his particular system of beliefs, sees the irreducibility of his belief system and that of the Other. The two respective systems—each from its own point of view—cannot both be real. We stick with one and judge the other to be, ultimately, false, although we are aware that our different metaphysical options are attributable to a diverse perspective on these questions themselves. We would then explore to determine what makes one perspective more plausible than another and could either go on to a discussion of it or acknowledge the *relative validity of this other perspective*. This concerns my next point.

"The second state of consciousness (*relativity*) is more complex. Let us imagine three irreducible views of reality: A, B and C. Pluralism manifests itself when we critically realise that our position and our system cannot claim to be absolute to the point where it judges the others to be *absolutely* false and bad.

"The pluralist attitude has its origin in human *praxis* and comprises two intuitions: 1) that our knowledge is not absolute, and 2) that the knowledge represented by systems A and C involves other subjects that understand and understand themselves, such that, from our viewpoint, we cannot claim to represent the totality of the situation although, for our part, we could end up opposing these systems.

Another name for pluralism: the interculturalism of Reality¹⁰

"Interculturalism of Reality is not so much the crucible in which the cultures melt owing to the high temperature of a truth considered as one, as it is a special mosaic wherein the most dispersed and isolated divergences are in harmony with one another, exposed to the ambient temperature of a reality that does not claim or seek to unify.

"The path of the interculturalism of reality affirms the irreducibility, the incommensurability, the incompatibility of cultures, but not their incommunicability, their separability and the absence of mutual conditioning, i.e. of radical relatedness.

"The intercultural dialogue it elicits requires a common language but not a universal language or idiom. There can be no supracultural language. We are always within a culture, even when we are speaking of interculturalism.

"To think that cultures are incommunicable because they are incommensurable, irreducible to each other, constitutes a rationalist presupposition wherein it is believed that only a common *ratio mensurabilis* can serve as the instrument of human communication. However, hearing one another does not signify understanding one another; intelligibility is not the same thing as being conscious. It is possible to be conscious of something unintelligible.

"The ground of understanding between the cultures of peace, it seems to me, is neither a neutral and universal field (whatever its nature) nor one or more common reasons nor a "no man's land" nor a utopia, but rather a non-intelligible basis or ground, i.e. the myth, which makes possible and supports our diverse incommensurable and irreducible expressions, beliefs and cosmovisions. It is a ground that is the property of neither the one nor the other not even of both or more. It is the myth. It is this that can serve as a springboard for our intercultural alternatives, create options and at the same time free us from having to choose.

"It is a matter of realising that the most fundamental elements of Reality lie outside the jurisdiction of thought and will. This realisation, for many cultures, is the beginning of maturity. It is a question of this consciousness that tends to give rise to *cosmic confidence*, i.e. confidence in the *integrality of Reality*."

10. There are numerous terms to designate the pluralism of Truth and Reality. Examples are: *advaita*: neither unity nor duality nor multiplicity, a-duality between being and thought, between being and non-being; *trinity*: a-duality between *mythos*, *logos*, *pneuma*, between the human, the cosmic and the divine (the cosmotheandric experience), between the known, the unknown, the unknowable, between I-you-we, between matter, non-being and being, between the Father (Source), the Son (*Logos*) and the Spirit (*pneuma*), between perceptible, intellectual, mystical, etc., consciousness, *pratitya samudpada*: the radical relationality of all things; *invisible harmony*; *new innocence*; *Samanvaya* (being together); *the Seamless Robe*; *the Spider's Web that is Life*; *the Sacred Circle of Life* (wherein the centre is nowhere and everywhere); *the Ignorance of ignorance*; *the person* (network and knot of I-you-we-that); *Brahman*, *Anatman* (*Sunyata*); *Pleroma*; *the primordial Dharma*; *Symbiodiversity*; *Wholeness*, *Integrality of Reality*; *Totality*; *Concordia discors* and "*concordant discord*"; *sympathy*; *pathos* common to all the constituents of reality, *ontonomy*, "all our relatives," etc.

Being free with respect to our ways of thinking, understanding and aspiring to interculturality, interculturality of Reality does not presuppose that cultures must necessarily a) be complementary or not with regard to one another, b) complete one another or not, c) interfertilise or not, d) learn from one another or not, e) Hybridise mix or not, f) follow or not the path of mutual interfertilisation.

The intercultural approach specific to the interculturality of Reality, namely, dialogical dialogue (VACHON, 1995, c: 2–20) has more to do with natural osmosis and symbiosis than with free dialectic interaction and the play of democracy and laws. This osmosis/symbiosis does not have to adhere to a preconceived plan, rules of play, to an integrating centre as does a system. A system constructs itself, whereas symbiosis is given. But it is not irrational, anti-rules of play, anti-play of laws, anti-construction. It is a matter of participating in the Rhythm of Reality in its totality. It is a question of *praxis* postulating consonance with the integrality of Reality, a *praxis* of "being whole." It is the primordial aspiration of being given to us. This aspiration emerges when we discover *ontonomy* and live the *holistic* experience ("wholeness"), when we discover the constitutive relatedness of everything. It is reverential admiration with regard to Reality in its totality: the *Mysterion* of Life.

The praxis of "legal" pluralism at IIM

It would have been important to complete this text with description and story of this *praxis* at IIM, at the external and internal levels, since the institute's legal founding in 1968. However, that is not possible here: a number of incomplete elements can be found in (VACHON, 1998, passim and pp. 27–28).

I will simply mention that not only have we attempted to incorporate in our operations elements of "the custom and habitus" of various cultures. We have also regularly defended the right of non-Western civilisations to live in accordance with their own cultural matrices and symbolic sites of peace (languages included), without these civilisations necessarily having to start from or go by way of the symbolic site and idiom of Law, the State of Law (either the United Nations or any Nation-State) or the theories of intercultural Law, legal "plurality" and so-called intercultural and universal system-models (synthesis, hybridisation, multiculturalism, etc.).

We have done this especially with respect to this country's Native peoples and their own symbolic sites—*Kayanereikwa* (the Great Harmony) and the Circle of Life. We have defended their right to base their life not first and foremost on the Law ("man-made-laws," to use their term) but rather on something else, which they often call "the instructions inscribed in the Nature of things" (VACHON, 1991, 1993 a and b, 1995).

Indigenisation? Yes! "A vogue of playing the Indian?" We think not. It could be expressed as respect for these peoples' "dynamic continuity," allowing them the latitude to "*recipere ad modum recipientis*." It is not a matter of necessarily hybridising or of negotiating a common culture according to the fashion of Western universalism and anthropocentrism.

We have encouraged and continue to encourage this "indigenisation" everywhere in the world where people hold fast to their primordial roots

and seek to affirm and regenerate them. And, contrary to a certain Western evolutionist universalism, we have insisted that continuity, in order to be dynamic, does not necessarily have to go the way of the Western culture (even so-called universal culture) of peace or the way of what is called merging into unity in the name of the model of complementarity of differences.

In summary, interculturalising the law can also mean ceasing to make the particular culture of peace (consisting of the Law, the law-based State, Order and *Universitas*) the required point of convergence of pluralism and interculturality. This leads us, therefore, beyond multilegalism and "legal" (thus the quotation marks!) pluralism, beyond the interculturalisation of law as an enrichment of the symbolic notion of law. It leads us to accept our humble place also in the primordial *Dharma*, the Great Harmony and the Circle of Life, etc., that Reality is for certain other cultures, the Reality that constantly invites us to not speak always and uniquely in terms of Laws, Order, interculturalisation and universalisation of the law, etc. Reality is neither static nor dynamic, neither objective nor subjective. We could perhaps say that it is creative and free and welcomes us all to a "new innocence" that no one person, religion, culture or philosophy possesses—even one which would be intercultural in nature. Interculturality continues to be this "no man's land" we can all enjoy provided that we do not seek to possess it.¹¹

III. THE CHALLENGE POSITED BY "PHILOSOPHIA PACIS"¹²

Peace constitutes one of the rare positive symbols that have meaning for the whole of humanity. It is the most universal unifying symbol that exists. It seems that all persons, irrespective of ideology, religion or personal disposition, accept it as a positive universal symbol. Peace is not possible without disarmament with regard to our cultures of peace, whatever they may be.

I wish to speak now of *philosophia pacis*, something more than a peaceful philosophy. It is a philosophy that presupposes that the *ultimate structure of reality is harmonious*.

We have no criteria concerning what should be other than what is. Only that which *is* makes it possible to measure, contemplate, judge *that which is*. That which *must be*, therefore, is subordinate to that which *is: being, reality*. Thought cannot be authentic unless our being is present within it, unless our being is whole. *Philosophia pacis* can be understood in the sense of an *objective* genitive: a philosophy about this thing that is peace. But it can also be understood in the sense of a *subjective* genitive: a philosophy that is peace itself, a philosophy that reflects the harmony of Reality and, at the same time, contributes to this harmony, a philosophy that is both a cause and an effect of peace—an *effect* of peace because it arises from a calmed, pacified spirit, a *cause* of peace because it enhances

or re-establishes the harmony of the universe. Perhaps one of the reasons for our modern precarious situation is that we struggle to attain a philosophy concerning this object that is peace, hence a philosophy that is not a philosophy that presupposes that the ultimate structure of reality is harmonious. This is why we are inclined to impose our own concept and culture of peace.

Peace is, above all, *received*. It is not given and it is not gained. It is a gift, a grace, a present. That which is received must be so with all one's being, not as a right or a duty, not as something that is due or even something that is known. It is a grace, a surprise, a continuous creation—a constant surging up, gratuitous, springing forth from nothing without recourse to the forceps of history and the rails of the laws of nature. Peace is not of the domain of my will or that of Man. It is not the result of our will. It does not come from us, either as a gift from a powerful person or from others in the form of charity given condescendingly. And it cannot be imposed, negotiated. It is received. It is a gift. But it cannot come to us as something given by a donor or even by an all-powerful being. It cannot be a favour coming from another, even if this other is called the Other. The Divine is neither myself (pantheism or monism) nor the other (monotheism or dualism). Peace is cosmotheandric harmony wherein nothing commands, neither the Cosmos nor Man nor the Divine.

Peace is participation in the harmony of the rhythm of reality and a harmonious contribution to this rhythm. We are also responsible for harmony and co-operate synergetically both actively and passively in this harmony. Man is its co-creator but not its master. It is participation in the harmony of the Sacred Circle of Life, the centre of which is everywhere and nowhere.

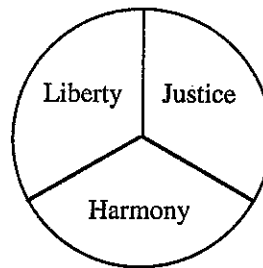
There is a great temptation to believe that we can manufacture peace in the same way we manufacture anything else. How can peace be received in a world in which everything seems to be prefabricated? Is peace a prefabricated gift? The most troubling answer is that we must be bold enough to transcend the mere asking of the question.

Peace as reality is neither static nor dynamic. Maintaining the harmony of Reality is not a matter of maintaining the status quo but, rather, of emancipating ourselves from the status quo by participating in the rhythm of Reality, whose nature is to come into being.

We can fight for our rights and for justice, but not for peace. Fighting for peace is a contradiction in terms. Peace is a discovery, not a conquest. It is not a reproduction; it is an always new creation. It is gift and responsibility. It is not the product of a dialectic process. Peace is not a mere concept; it is the pre-eminent myth of our time.

11. See R. PANIKKAR, "Religion, Philosophy, Culture" in *Interculture*, 135, 1998, pp. 101–124.

12. This section is taken from R. PANIKKAR, *Cultural Disarmament. The Way to Peace* (Westminster John Knox Press, Louisville, Kentucky, 1995) ch. 2–3–7.

The three essential ingredients of peace: Harmony, Freedom, Justice*Harmony*

Harmony (balance) is the ultimate value within the cultures of Asian, African and Native peoples. But it is perhaps the value of the least importance in modern Western culture, even though it has been cultivated in the West since the time of the Ancient Greeks. It is a space where there is a place for everything—even Evil and Hell (according to DANTE and Catherine of GENOA)—without unitary reductionisms.

Peace is harmony, yet Hell does not destroy it. Harmony is thus not a bucolic idyll, a honeymoon. Harmony includes more than order and universality. It includes the totality. It belongs to the ultimate structure of that which is called the universe. What ought to be cannot ultimately depend on more than what it (the universe) is. The ultimate criterion is the whole Reality: peace has no criteria—it is the criterium. Peace can thus never be the result of Man's conceptions or projections, in whatever form. It is a relationship that is never closed up within a monist circuit nor exhausted in a dualist struggle. It is a flux—receive and give—with no return ever to the same route.

Freedom

There is no peace without freedom—of Man, of the earth, of animals, etc. Freedom does not simply mean freedom of choice. A wide range of possible choices can limit freedom and possibilities. Man's freedom comes before and is deeper than his ability to choose. Freedom consists of doing, thinking and acting in accordance with what is. Freedom implies self-determination, although it can encompass far different ideas of *autos*, the *self*, v.g. the individual, the person, *Atman*, *anatman*, etc.

Freedom means acknowledging the dignity of a person and this is incompatible with the reduction of the person to a simple means for higher ends. Freedom is the acknowledgement of the person's *ontonomy* such that the fullness of a being is related to the perspective of the totality: the ultimate structure that is the harmony of reality.

Harmony of freedom is not subject to legislation established once and for all and it does not presuppose a pre-determined, ready-made universe. Peace cannot be based on an unchangeable order within a fixed, pre-set structure.

The ultimate subject of freedom is reality in its totality, not the individual. Before being a right of the individual, freedom is a characteristic of

reality. A culture of peace must therefore be a culture of freedom. Being need not be obedient to thought.

Justice: just order

Without just order there can be no peace. But justice does not strictly denote the Roman concept of *justitia* (coherence); it includes, among other notions, the concept of *dharma*, i.e. the element of *cohesion*, of *samgraha* of the entire world, of the maintaining together of totality.

Justice also denotes the attribution to each person of that which is his due, that which belongs to that person. Justice is a relationship with other persons and is constitutive of the human being and of all of reality. Peace is not a simple internal matter; it requires external peace. No one can isolate himself from others and from the world. We are all interdependent.

Justice and peace must not be confused with legality, however, as the LAJP states so well. And I would add that justice does not consist solely in social justice, but rather in the authentic and complete relationship that Man has with Reality. It is a key element of the harmonious realisation of all the constitutive relations of Man. It is made up of the entirety of Man's relations with Reality.

2001. We publish in *Interculture* (No. 141) "At the threshold of the African Soul. The Fulani Minianka way" where an African villager, Yaya DIALLO, speaks on the "political/legal" culture of his village.

2002. We publish the first *Interculture* issue (No. 143) on the theme "Beyond the religion and culture of Human Rights, the Nation-State and the Rule of Law," a chronicle/testimony of IIM's research action (1970–2002). It covers the period 1970 to 1984.

We also organise at IIM a round-table "Beyond citizenship" where, among other topics, the indigenous political cultures of India and Africa were explicated. We hope to publish these texts in some future issue of *Interculture*.

We learn that the three issues of our Journal "Guswenta or the Intercultural Imperative," (Nos. 127–128–129) have been translated in Spanish in Mexico, and that they are an inspiration for a major project of reflection among Indigenous peoples on the issue of Native Governance in so-called "Latin" America.

We also learn that some of our articles on Mohawk political culture have been translated and have appeared in Catalan language.

We must add here that during recent years, an intense collaboration has been established with the Laboratoire d'anthropologie juridique de Paris, in particular with Christoph EBERHARD whose doctoral thesis on Human Rights and Cultural Pluralism (recently published in French) and articles have drawn much from some of the IIM writings on the topic.

2003. We publish the second issue of *Interculture* (144) on the theme "Beyond the religion and culture of Human Rights, the Nation-State and the Rule of Law." It covers the period 1986–1995).

This year is marked by an intensification of our collaboration with Gustavo ESTEVA from Oaxaca, Mexico, with regard to our theme. Common projects of all kinds are discussed with him in Montreal. In December 2003, we were invited to participate actively in Mexico City in a colloquium/symposium called *America Profunda*, organised by the Centro de Estudios y Diálogos Interculturales (CEDI) and the Proyecto y Tecnologías Campesinas (PRATEC).

One must mention also the intensification at IIM during the past few years of the emphasis given to what could be called the "intercultural commons," i.e. to intercultural communitarian relations in the community groups and associations as distinct from their participation in citizenship, in the public common culture of the Nation-State, in so-called civic involvement. *Interculture* will be reporting increasingly in the future, on this fundamental alternative dimension of IIM's research-action.

2004. We are happy to publish here a text which was sent to us by a student at the London School of Economics and Political Science:

TEXT 16

DISARMING CULTURES: BEYOND THE LIBERAL LEGAL FRAMEWORK, TOWARDS AN INTERCULTURAL DIALOGUE WITH ABORIGINAL PEOPLES¹³

by Jordi Agusti PANAREDA¹⁴

"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..." Raimon PANIKKAR¹⁵

Introduction

Dealing with existence of different and often differing cultures within contemporary societies constitutes one of the most fundamental challenges facing political and legal theory today. Under a multiculturalist label, the rights of minority cultures constitute an area of intense academic debate.¹⁶

13. I would like to thank Lysa FISHBAYN and Robert VACHON for their kind help and most insightful comments on earlier drafts of the paper. I am also indebted to the Fundació Caixa Catalunya, whose generous scholarship provided me with the financial means to undertake this work.

14. Jordi Agusti PANAREDA is a qualified lawyer in Spain and a researcher in mediation and conflict management. Lately he has been studying and undertaking research on mediation and dispute resolution at the London School of Economics and Political Science and at Stanford University. He is currently pursuing a J.S.D. doctoral degree at Stanford Law School.

15. R. PANIKKAR, "Is the Notion of Human Rights a Western Concept?" (1984) XVII *Interculture* 82, p. 28.

16. Although partial, an outline of the debate is provided by W. KYMLICKA, "The New Debate on Minority Rights," in F. Requejo (ed.), *Democracy and National Pluralism* (London, 2001)

Most of the so-called theories of multiculturalism, however, are formulated against the backdrop of specific cultural setting, namely the liberal legal framework. In this essay I build an intercultural criticism to those approaches to cultural diversity that take any single cultural background as a necessary frame of reference. Putting forward an alternative, I argue for an intercultural dialogue as a method to discover accept and create a new cross-cultural horizon where coexisting cultures can under-stand.

In order to do so, I first examine Will KYMLICKA's theory of minority rights, epitomising the monocultural liberal approach to cultural diversity. Secondly, drawing on the work of Raimon PANIKKAR and on anthropological insights, I put forward a critique of KYMLICKA's monocultural approach. Thirdly, basing myself on PANIKKAR's work on intra-religious dialogue, I apply this author's "dialogical dialogue" into our dealing with minority cultures as an approach specifically designed to overcome the dangers of falling into ethnocentric frameworks. I conclude arguing for the necessity of a culturally disarmed and open dialogue without a priori criteria to deal fruitfully with existing differences. With the purpose of focusing on a particular area, I centre my analysis on the case of Aboriginal cultures.

Multicultural Liberalism. KYMLICKA's Theory of Minority Rights

Differing Approaches to Cultural Diversity. KYMLICKA on National Minorities.

The handling of cultural diversity can be approached in diverse ways. This paper analyses a particular model, "multicultural liberalism," often defined by its "dual commitment to cultural rights for minority groups and certain core liberal principles."¹⁷ Within this approach, I critically appraise the work of KYMLICKA, one of its most exemplary representatives, whose theory of minority rights constitutes a paradigmatic and very influential attempt to respond and integrate the communitarian criticisms that question liberalism's treatment of cultural diversity.¹⁸ KYMLICKA, in order to construct a liberal theory of minority rights distinguishes between "national minorities," i.e. minority nations that were integrated into the state through voluntary federation or through conquest and colonisation, such as stateless and Aboriginal nations and "ethnic minorities," i.e. immigrants that have been uprooted from their original cultures.¹⁹ In accordance with this paper's focal point, I will direct my attention towards KYMLICKA's treatment of the former.²⁰

17. D. I. O'NEILL, "Multicultural liberals and the Rushdie Affair," (1998) 61 *Review of Politics* 2, p. 219.

18. For a communitarian critique see, for example, A. MACINTYRE, *After Virtue* (London, 1981) or M. SANDEL, *Liberalism and the Limits of Justice* (Cambridge, 1982).

19. W. KYMLICKA, *Multicultural Citizenship* (Oxford, 1995) pp. 95-96, 170.

20. I do not analyse here the appropriateness of the distinction. For a critical view on the merits of such a dichotomy see L. FISHBAYN, *Reconciling Multiculturalism and*

The Value of Cultural Membership. A Liberal Accommodation of Minority Cultures

Moving beyond the liberal orthodox view, KYMLICKA develops an account of the need to accommodate cultural difference within liberalism.²¹ In order to do so, on the one hand, he argues that cultural membership is instrumental to individual autonomy, i.e. that constitutes a necessary condition for the exercise of choice and human agency. Basing himself on the concept of societal culture as "a culture that provides its members with meaningful ways of life across the full range of human activities" and considering that liberal freedom "involves making choices amongst various options" he claims that cultural membership "not only provides these options, but also makes them meaningful to us."²² According to KYMLICKA, culture is a context of choice that provides individuals meaningful options and allows them to develop and critically assess their life plans.²³ In this scheme, cultural membership is seen, using RAWLS' terms,²⁴ as a primary good of fundamental importance for the pursuit of individual autonomy.

On the other hand, KYMLICKA contends that, in comparison with the dominant majority, which controls most public and social institutions, cultural minorities might be disadvantaged in their access to cultural membership. He argues that they might need protection from the political and economical decisions coming from majority cultures.²⁵ Consequently, he contends that, on egalitarian grounds, the state should promote and secure the access of national minorities to their societal cultures.²⁶ Furthermore, he points to the fact that minority cultures were already ongoing societal cultures at the time of their incorporation, this adding an extra reason for protecting their "right" to culture.²⁷ In other words, KYMLICKA, abandoning the misleading ideal of an "ethnoculturally neutral" state explores how the nation-building efforts of the majority might create injustices for minorities and how minority rights might protect minority groups from this threat.²⁸

The Rights of National Minorities and their Limits.

According to KYMLICKA, due to their disadvantaged situation, national minorities face three options in relation to the good of cultural membership: accept integration, endure permanent marginalisation or seek rights and powers of self-government needed to maintain their own soci-

etal culture.²⁹ It is towards providing a framework for this latter option that KYMLICKA develops his liberal theory of minority rights, which attributes national minorities a series of "group-differentiated rights," i.e. special group-specific measures designed to accommodate minority cultures.³⁰ These are, mainly, "self government rights," i.e. permanent rights to political autonomy and/or territorial jurisdiction, and "special representation rights," i.e. a series of measures designed to overcome the problem of under-representation faced by national minorities.³¹ According to KYMLICKA, the former would constitute the most distinct demand of national minorities, taking the form either of creating an independent state or of a voluntary federation within a larger state.³² However, its implementation, KYMLICKA acknowledges, might be problematic for Aboriginal peoples due to, for example, in the Canadian context, their dispersion and reduced numbers.³³ He thus mentions as a means to realise their self-government, the establishment of a new form of "treaty federalism" and points at the possibility of a voluntary territorial amalgamation of Aboriginal peoples to facilitate their access to autonomy. Alternatively, he alludes to the system of reserved lands as another means of self-government, endowing Aboriginal bands with constitutionally protected rights to enjoy control over their land, health, education, family law, policing, criminal justice and resource development.

Nevertheless, KYMLICKA places some limits to the way national minorities can exercise these group-differentiated rights.³⁴ He states that "liberal principles set limits on *how* national groups go about nation-building" which "will preclude any attempts at ethnic cleansing, or stripping people of their citizenship, or the violation of human rights."³⁵ Having said that, he argues that these limits "still leave significant room for legitimate forms of minority nationalism" since, being "subject to the same liberal limitations" national minorities would have "the same tools of nation-building available to them as the majority nation."³⁶

Gender Equality, Doctoral Thesis, Harvard University (Cambridge, 2001), pp. 241-270.

21. W. KYMLICKA, *Politics in the Vernacular* (Oxford, 2001), p. 50.

22. KYMLICKA, *Multicultural Citizenship*, n. 5 above, pp. 76,83.

23. W. KYMLICKA, *Liberalism, Community and Culture* (Oxford, 1989), p. 166.

24. J. RAWLS, *A Theory of Justice* (Cambridge, 1999).

25. KYMLICKA, *Liberalism, Community and Culture*, n. 9 above, p. 183.

26. *Ibid.*, pp. 183-205.

27. KYMLICKA, *Multicultural Citizenship*, n. 5 above, p. 79.

28. KYMLICKA, "The New Debate on Minority Rights," n. 2 above.

29. KYMLICKA, *Politics in the Vernacular*, n. 7 above, pp. 27-2.

30. KYMLICKA, *Multicultural Citizenship*, n. 5 above, p. 27.

31. *Ibid.* pp. 27-33.

32. W. KYMLICKA, *Finding our Way* (Toronto, 1998), p. 6.

33. *Ibid.*, p. 144-146.

34. For an exposition and criticism of the limits KYMLICKA sets to the exercise of these cultural rights by national minorities see FISHBAYN, n. 6 above, pp. 246-263.

35. KYMLICKA, *Politics in the Vernacular*, n. 7 above, pp. 28-29.

36. *Ibid.*, p. 30.

*An Intercultural Critique*³⁷

Having sketched its main tenets, I will now attempt to assess interculturally KYMLICKA's theory of minority rights. My arguments will be based both on PANIKKAR's intercultural stance, primarily developed in the area of inter-religious dialogue, and on several other works on interculturality, mainly coming from the anthropological field.

PANIKKAR's Interculturality. Beyond Monoculturalism and Multiculturalism.

PANIKKAR views culture as "the horizon within which we situate our beliefs, perceptions, judgements actions,"³⁸ i.e. the "encompassing myth of a collectivity at a certain moment in time and space" that "renders plausible, credible, the world in which we live, where we are."³⁹ Such a conception, attuned with postmodern conceptions of culture, does not regard cultures as closed, discrete and bounded entities.⁴⁰ PANIKKAR himself,

having thoroughly experienced and profoundly knowing the Secular, Christian, Buddhist and Hindu traditions, constitutes a bridge between cultures, bearing witness to the possibility of participating in and fruitfully dialoguing with various cultural frameworks.⁴¹ However, contrary to a cosmopolitan stance,⁴² this understanding, instead of dismissing the relevance of cultural differences, leads him to take them very seriously.

PANIKKAR describes interculturality by distinguishing it both from monoculturalism and multiculturalism. Interculturality means seeking

"a middle way between the colonial mentality which believes that we can express the totality of the human experience through the notions of a single culture, and the opposite extreme which thinks that there is no communication possible between diverse cultures, and which should then condemn themselves to a cultural apartheid in order to preserve their identity."⁴³

Monoculturalism, a belief in the "unquestioned validity and superiority of a single culture,"⁴⁴ is often "as subtle as it is well-intentioned" and it consists "in admitting a vast range of cultural diversity, but against the backdrop of a common denominator."⁴⁵ It is not incompatible therefore with tolerance of all those ways of life which accept the encompassing myth of modern culture but, according to PANIKKAR, it is ultimately just another form of colonialism⁴⁶ since this "tolerance" only occurs within and when accepting the rules of the game—the cultural framework—set by the majority group. It matches perfectly with the classical anthropological notion of ethnocentrism often defined as combining "the belief that one's own culture is superior to other cultures with the practice of judging other cultures by the standards of one's own."⁴⁷ Multiculturalism, is, in the Panikkarian view, "an atomised and separated pluriculturalism, i.e. a separate and respectful existence between diverse cultures," a coexistence without mutual connection which is impossible in today's world.⁴⁸ Interculturality, on the contrary, means "neither one (single) culture, nor a disconnected plurality," acknowledging that some "systems of thinking and cultures exist which are mutually incompatible and even contradictory," and that nevertheless we do not have "the capacity to pass absolute

37. Rainer FORST ("Foundations of a Theory of Multicultural Justice," (1997) 4 *Constellations* 1), John TOMASI ("Kymlicka, Liberalism, and Respect for Cultural Minorities," (1995) *Ethics* 105) and Bihku PARECK ("Dilemmas of a Multicultural Theory of Citizenship," (1997) 4 *Constellations* 1) have already questioned KYMLICKA's ethnocentric liberalist stance. However their arguments are also trapped in monocultural paradigms. FORST, for example, although criticising KYMLICKA for using a culturally bound conception of autonomy (freedom of choice), shares most of KYMLICKA's framework and puts forward as an alternative a Kantian conception of "moral autonomy," which is equally tied to a specific cultural tradition. PAREKH, although going further and defending the necessity of dialogue, also remains ethnocentric when envisages a dialogical praxis still too bound to a series of institutional preconditions and concepts with a strong liberal flavour and inscribed in monocultural political units such as western democracy, the rule of law and a "reconstituted" modern state within a society that cherishes liberal rights and values. B. PAREKH, *Rethinking Multiculturalism* (Houndmills, 2000), pp. 179-195, 336-344.
38. Cited in J. PRABHU, "Raimon Panikkar on Colonialism and Interculturality," (1994) 2 *Harvard University Center for the Study of World Religions News* 1, p. 3.
39. R. PANIKKAR, "Religion, Philosophy and Culture," (1998) 135 *Interculture* p. 107. Although seeing them as intrinsically related in culture, PANIKKAR distinguishes between *logos*, as reason or rationality in a restricted sense, and *mythos* as "the invisible horizon on which we project our notions of the real." R. PANIKKAR, *Myth, Faith and Hermeneutics* (New York, 1979), p. 30.
40. Contrary to what some commentators imply (A. B. S. PREIS, "Human Rights as Cultural Practice: An Anthropological Critique," (1996) 18 *Human Rights Quarterly* 2), PANIKKAR's notion of culture is compatible with contemporary anthropological findings, not constituting an essentialist, static, homogeneous or bounded concept of culture (J. CLIFFORD, *The Predicament of Culture* (London, 1988)). PANIKKAR often stresses that "no culture can remain static without destroying itself," culture being "the result of mutual fecundation" and "nothing but an abstraction if it is not concretely embedded in human beings that cultivate and live it, and thus modify and transform it without following logical laws" (PANIKKAR, "Religion, Philosophy and Culture," n. 24 above, p. 113). His views are compatible with contemporary notions of "cultural complexity" and current understandings of culture as "a network of perspectives, or as an ongoing debate" (U. HANNERZ, *Cultural Complexity* (Chichester,

1992), p. 266). Moreover, they make room for different ideas of culture and equivalent notions from other traditions, which would not be compatible with a merely rationalistic approach, too often implied by anthropological-scientific definitions of culture (e.g. W. H. GOODENOUGH, "Culture," in M. Ember and D. Levinson (ed.), *Encyclopedia of Cultural Anthropology* (London, 1996), p. 296).

41. R. PANIKKAR, *Invisible Harmony* (Minneapolis, 1995), p. vii.
42. WALDRON, "Minority Cultures and the Cosmopolitan Alternative," (1992) 25 *University of Michigan Journal of Law Reform* 3.
43. *Ibid.*, p. 103.
44. Cited in PRABHU, n. 39 above, p. 3.
45. PANIKKAR, "Religion, Philosophy and Culture," n. 24 above, p. 110.
46. Cited in PRABHU, n. 39 above, p. 3.
47. D. LEVINSON, "Ethnocentrism," in M. Ember and D. Levinson (ed.), *Encyclopedia of Cultural Anthropology* (London, 1996), p. 404.
48. PANIKKAR, "Religion, Philosophy and Culture," n. 24 above, p. 112.

judgement," which "does not mean abstaining from critique, nor from the obligation to oppose certain forms of culture."⁴⁹ However, it implies in contrast a "perspectival relativisation by an openness to and a willingness to learn from other cultures" in a relation where "there is no neutral *tertium quid*, no a priori common ground that can mediate between different cultural horizons" which "has itself to be created in and through the cultural dialogue."⁵⁰

KYMLICKA's (Mono)multiculturalism.

In spite of its multiculturalist label, we can spot several expressions of monocultural colonialism in KYMLICKA's theory. First, the justification, the ultimate argument, from which KYMLICKA sets to accommodate cultural differences, i.e. the realisation of the liberal value of individual autonomy, is the most obvious of KYMLICKA's ethnocentrism. KYMLICKA, in building up his theory does not posit a value in culture or in cultural respect but sees cultural membership as merely instrumental to the realisation of a liberal monocultural ideal,⁵¹ which will often be understood differently, have scarce meaning or even be highly conflictual in the context of another culture.⁵² It is no justification to say here that KYMLICKA is making an effort to enlarge the scope of liberal theory by introducing the element of cultural membership and praise him for that. It is precisely in taking one's culture as the ultimate frame of reference for establishing multicultural relations that lays the essence of monoculturalism.

Secondly, in a subtler manner, being deeply rooted in the liberal paradigm, the tools, concepts, presuppositions and framework used by KYMLICKA to construct a theory of minority rights are also monocultural and ethnocentric. Without pretending to be exhaustive I will just mention some examples. In relation to the tools or building blocks of his theory, KYMLICKA's notion of "group differentiated rights" is far from cross-cultural and thus will often be inadequate to channel the aspirations of minority cultures.⁵³ According to Mary Ellen TURPEL, the "rights" analysis is just a projection of an exclusionary cultural or political self-image.⁵⁴ As Bruce MORITO argues, since many Aboriginal cultural frameworks do not have concepts corresponding to the liberal notion of rights, translating

their claims into the language of rights might just pervert them.⁵⁵ Similarly, the idea of sovereignty underlying KYMLICKA's self-government rights becomes problematic in the context of many non-liberal cultures. As argued by Menno BOLDT and J. Anthony LONG, the notions of authority, hierarchy and ruling entity underlying the idea of sovereignty clash with the values of most North American Aboriginals. Many Aboriginal cultures do not accept the idea of a separate agency, of any men or women, governing others or of any exclusive human power or right over the earth.⁵⁶ The exercise of sovereignty goes against their cosmology and beliefs and is incompatible with their way of living, being therefore a Trojan horse for further cultural assimilation. In short, several key elements of KYMLICKA's theory can be perceived as completely monocultural, not making much sense outside their liberal-western context. Moreover, not only are they unable to provide minorities access to cultural membership but contribute to their colonisation by the liberal worldview.

A further monoculturalist instance is provided by the use of the category of "law" as a tool to understand and construct intercultural relations. Implicit in KYMLICKA's analysis we spot a central role of law in regulating the status of minority cultures. Although he does not develop a specifically legal theory of minority rights and reference to the law is often not explicit, KYMLICKA, as exemplified when defending the constitutional protection of minority rights⁵⁷ or the representation of national minorities on the Supreme Court,⁵⁸ takes the liberal legal system as the natural instrument to implement his political theory. However, as legal anthropologists have often pointed out, law is not a universal phenomenon.⁵⁹ Not only its notion does not exist in many cultures—such as the Inuit or Amerindian—but its conceptual, cosmological and anthropological presuppositions are not compatible with many cultural frameworks.⁶⁰ Taking an example from Aboriginal minorities, it is quite revealing that for the Haudenosaunee⁶¹ the equivalent term for law is *kayanerenhkowa* (The

49. *Ibid.*, p. 114, 120.

50. Cited in PRABHU, n. 39 above, p. 4.

51. See KYMLICKA, *Politics in the Vernacular*, n. 7 above, p. 62.

52. See for instance, especially in relation to the Hindu context, PANIKKAR, *Invisible Harmony*, n. 27 above, p. 109-133.

53. PANIKKAR is not the only scholar that has questioned the universal suitability of the concept of "rights" (PANIKKAR, "Is the Notion of Human Rights a Western Concept?", n. 1 above). A very influential and early critique was provided by A. POLLIS and P. SCHWAB, *Human Rights: Cultural and Ideological Perspectives* (New York, 1979). A more recent and dialogical approach can be found in EBERHARD, *Droits de l'Homme et dialogue interculturel*, (Paris, 2002).

54. M. E. TURPEL, "Aboriginal People and the Canadian Charter: Interpretative Monopolies, Cultural Differences," (1989-1990) 6 *Canadian Human Rights Yearbook* 3, pp. 3-45.

55. B. MORITO, "Aboriginal Rights: A Conciliatory Concept," (1996) 13 *Journal of Applied Philosophy*, p. 124.

56. M. BOLDT and J. A. LONG, "Tribal Traditions and European-Western Political Ideologies," in M. Boldt, J. A. Long and L. Little Bear (ed.), *The Quest for Justice* (Toronto, 1985), pp. 334-342.

57. KYMLICKA, *Liberalism, Community and Culture*, n. 9 above, p. 190.

58. KYMLICKA, *Multicultural Citizenship*, n. 5 above, p. 33.

59. C. EBERHARD, "Towards and Intercultural Legal Theory," (2001) 10 *Social and Legal Studies* 2, p. 181.

60. R. VACHON, "L'Étude du pluralisme juridique," (1990) 29 *Journal of Legal Pluralism*.

61. The Mohawk Nation is situated at the border between the now territories of United States and Canada. Bearing in mind that KYMLICKA's theory is geared towards the "New World" (M. FESTENSTEIN, "New Worlds of Old," (1998) *Acta Politica* 33) I refer to the Mohawks in this essay to exemplify its arguments and to question KYMLICKA's excusatory claim that non-liberal minorities are really hard to find in the west (KYMLICKA, *Politics in the Vernacular*, n. 7 above, pp. 60-61).

Great Splendour).⁶² For some of these cosmocentric cultures it is inconceivable to think about, let alone work with, our anthropocentrically defined laws. Moreover, even current "legal pluralism" trends towards encompassing more diverse legal cultures, which have received wide acceptance from different theoretical standpoints,⁶³ are ethnocentrically flawed. In this vein, legal anthropologist Simon ROBERTS argues that "it is inevitably problematic to attempt to fix a conception of law going beyond the robust self-definitions of state law" and that "where the project is to recover formerly 'suppressed discourses,' we should begin that process in their own terms, not by telling them what they 'are'" which means "resisting the temptation to co-opt them into that enlarged domain that an explicitly legal pluralism implies."⁶⁴ Categories of "law" or "legal" cannot be a suitable framework from which to either understand or deal with cultural diversity. Legal recognition as envisaged by KYMLICKA, ethnocentrically concerned with integrating minority cultures into the dominant legal framework, might entail no recognition but, all the contrary, monocultural colonialism. Thus, one might spot similarities between KYMLICKA's approach and the policies of nineteenth and early twentieth century colonialist states, when translating and fossilising indigenous "customs" into legal language and written laws. This operation, was incessantly criticised by legal anthropologists.⁶⁵ KYMLICKA's monocultural theory, translating Aboriginal claims into the language of liberalism, plays here a similar role.

Thirdly, both the limits KYMLICKA sets on his theory and the way he prescribes to deal with non-liberal cultures also prove to be totally ethnocentric. However, in this terrain, KYMLICKA, more aware of possible criticisms, becomes quite contradictory. Thus when dealing with PAREKH's critical appraisal he states that "liberals cannot simply presuppose that they are entitled to impose liberal norms on non-liberal groups," but that they should identify their own views and sees this identification as the main aim of his theory of minority rights.⁶⁶ Nevertheless, in the same book, he claims that minorities' nation building efforts have to be limited by liberal principles.⁶⁷ Besides, more openly ethnocentric, when dis-

cussing how to deal with non-liberal minorities, he suggests not dissolving but liberalising—i.e. acculturating—them.⁶⁸

KYMLICKA is totally trapped in a monocultural liberal framework. As a matter of fact, he goes as far as claiming that "the heart of multiculturalism in the West is about how to interpret liberal democratic principles."⁶⁹ He ignores that, in full accordance with PANIKKAR's interculturality, a basic tenet from anthropology and from human relations in general, is that we cannot encompass the other within our frame of reference,⁷⁰ at least, as Asad TALAL shows, we cannot do it without inflicting a high degree of violence.⁷¹ Thus, on the one hand, as a result from his monocultural trap, KYMLICKA's framework might be totally misleading when interpreting the needs of minority cultures. For example, as we pointed out above, KYMLICKA considers that the problem faced by Aboriginal peoples in Canada resides in their impossibility to articulate their rights of self-government due to territorial dispersion. However, more probably, the whole problem lies in the incompatibility between liberal notions of sovereignty or territoriality and Aboriginal cultural understandings. The pernicious consequences of KYMLICKA's theory, however, go even further. KYMLICKA's monocultural proposal, either directly or indirectly, by imposing an alien framework, can easily turn into a Trojan horse for the expansion of liberal cultural colonialism.⁷²

The Intercultural Dialogical Alternative

Dialogue seems to be today the magic word in current works on multiculturalism, encouraged even further by contemporary postmodern con-

62. WALLACE, *The White Roots of Peace* (New York, 1946), pp. 6-7.

63. See, for instance, d. S. SANTOS, "Law: A Map of Misreading: Toward a post-modern Concept of Law," (1987) 14 *Journal of Law and Society* or G. TEUBNER, "The Two Faces of Legal Pluralism," (1992) 13 *Cardozo Law Review*.

64. S. ROBERTS, "Against Legal Pluralism," (1998) 42 *Journal of Legal Pluralism*, p. 105.

65. M. ALLIOT, "La Coutume dans les droits originellement africains," (1985) 6 *Bulletin de liaison*.

66. KYMLICKA, *Politics in the Vernacular*, n. 7 above, pp. 62-63.

67. However, not wanting to sound unfair, he contends that through this external imposition of liberal constraints, non-liberal nations will not be disadvantaged and will have the same tools of nation building as the majority. Sadly, KYMLICKA seems to ignore that these liberal tools and constraints might totally hinder minorities' nation building efforts. *Ibid.*, pp. 28-29.

68. KYMLICKA, *Multicultural Citizenship*, n. 5 above, p. 94.

69. KYMLICKA, *Politics in the Vernacular*, n. 7 above, p. 61.

70. The notion of "encompassing the contrary" is taken from L. DUMONT, *Essais sur l'individualisme* (Saint Amant, 1983/1991).

71. TALAL's bold analysis of the violence with which western culture imposes itself can be found in A. TALAL, "Conscripts of Western Civilization," in C. W. Gailey (ed.), *Dialectical Anthropology* (Gainsville, 1992).

72. Robert MURRAY ("Liberalism, Culture, Aboriginal Rights: In Defence of Kymlicka," (1999) 29 *Canadian Journal of Philosophy* 1) has attempted to rescue KYMLICKA from criticisms of ethnocentrism arguing that certain central tenets in KYMLICKA's theory, such a belief in cultural autonomy, have counterparts in Aboriginal worldviews. However his argument can be easily disputed. First, very often KYMLICKA's tenets are based in monocultural assumptions that are not only alien but also incompatible with Aboriginal cultural views. Secondly, the understanding of certain values might vary in different cultural frameworks. As we have seen, an Aboriginal understanding of cultural autonomy might be not compatible with the notion of sovereignty attached to the liberal conception of self-government. Thirdly, even if there are coincidences in terms between the general motivations of KYMLICKA's theory and the claims of Aboriginal peoples, it is not possible to conclude from that a complete compatibility between a liberal theory of minority rights and the claims of Aboriginal peoples. Moreover, the arguments mentioned in this essay point at the contrary conclusion. Fourthly, KYMLICKA, in contrast with non-liberal Aboriginal minorities, is only instrumentally concerned with cultural autonomy, only supporting it as long as it promotes individual liberty.

ceptions of culture.⁷³ Some theoretical trends, such as autopoietic systems theory,⁷⁴ seem sceptical about the possibility of "true" dialogue. Many others, such as HABERMAS' theory of communicative action,⁷⁵ strongly affirm both the possibility and necessity of dialogue in spite of existing cultural differences.⁷⁶ Nevertheless, dialogical proposals are often caught in the ethnocentric trap of a monocultural framework.⁷⁷ PANIKKAR here attempts to provide a real alternative, a method that, fully aware of the dangers of monoculturalism, attempts to establish a fruitful dialogue between different cultural frameworks. In this last section I will examine Raimon PANIKKAR's work on the dialogical dialogue and apply its insights to our dealings with cultural diversity and, more specifically, Aboriginal cultures.

The Dialogical Dialogue

In cross-cultural relations, the necessary pre-understandings that give rise to what HEIDEGGER termed as the hermeneutic circle,⁷⁸ i.e. the circularity we need in order to engage in any activity of interpretation and understanding, might not be there. This specially if we want to follow the rule of hermeneutics: that the interpreted thing could recognise itself in the interpretation.⁷⁹ In order to overcome this problem PANIKKAR advocates for what he terms as diatopical (*dia-topos*, across places) hermeneutics, which aim at reaching understanding between different cultures or traditions that do not share the same underlying myth.⁸⁰ These hermeneutics focus on the praxis of a dialogue through which interpretative schemes can emerge.⁸¹

Thus, to achieve intercultural understanding PANIKKAR suggests, as a "thematically new"⁸² method, the dialogical dialogue: a dialogue that

"piercing the *logos*" allows the emergence of a new common myth in which we might commune and which will allow under-standing, i.e. standing under the same horizon of intelligibility.⁸³ It is a method to deal with personal, cross-cultural and pluralistic problems, i.e. situations not totally reducible to the *logos*—the realm of concepts—but closely related to the *mythos*—the terrain of existential realities.⁸⁴ Hence PANIKKAR distinguishes between the dialectical dialogue—a dialogue about objects and concepts which is based on pure reason and views subjects as rational beings whose knowledge is governed by the principle of non-contradiction—and, as a limit and complement to it, the dialogical dialogue—a dialogue among knowing subjects where the other is viewed as a source of self-understanding which I take as seriously as myself.⁸⁵ Dialogical dialogue constitutes a total human encounter based on trust and confidence, in both ourselves and the other, and in what distinguishes and bonds us together, requiring a will to dialogue and being incompatible with any attempt at domination.⁸⁶ The basic premise of this dialogical dialogue is therefore openness to the other and to the self, which does not entail an uncritical approach or an abandonment of existing allegiances to one's own tradition, but that demands a rejection of premature judgements arising from prejudice and ignorance.⁸⁷ The dialogue aims at the creation of a common, although maybe provisional, horizon of intelligibility. This new ground for understanding cannot come from a single superior standpoint or cultural framework, as KYMLICKA suggests, but has to emerge through the dialogical praxis itself. Dialogical dialogue, therefore, requires us to develop a profound and "symbolic" awareness,⁸⁸ i.e. becoming aware of the mythical dimension of reality underlying culture and not reducing the former to any of its many sides. Reaching this profound stratum of human experience that lies beneath our understandings is necessary in order to bridge cultural gaps that cannot be narrowed by the use of rationality alone. Dialogical dialogue involves an inter-personal dialogue which focuses on the testimonies of those involved in both cultures, bringing forth not so much a critique of the other but a witness of their own experience, thus allowing the mutual uncovering of underlying myths. It is a cross-cultural encounter where participants are invited to cross over to the other tradition and then cross back again to their own, thus mutually integrating their testimonies within a larger horizon, the new common myth.⁸⁹ This happens when, although our ideas are different or even incompatible, still seem both plausible to us.

73. See FISHBAYN, n. 6 above, pp. 316-347.

74. N. LUHMANN, *Social Systems* (Stanford, 1995).

75. J. HABERMAS, *The Theory of Communicative Action* (London, 1984).

76. See here, for example, the debate between HABERMAS and GADAMER, summarised in L. SIMPSON, *Technology, Time and the Conversations of Modernity* (New York, 1994).

77. We have seen it in PAREKH already, n. 23 above. It can also be spotted in HABERMAS' theory of communicative action. For an anthropological appraisal of HABERMAS' ideal speech situation see S. FALK MOORE, "Imperfect Communications," in P. Caplan (ed.), *Understanding Disputes* (Oxford, 1995).

78. M. HEIDEGGER, *Being and Time* (Oxford, 1962).

79. R. PANIKKAR, *The Intra-Religious Dialogue* (New York, 1999).

80. R. PANIKKAR, "Cross-Cultural Studies: the Need for a New Science of Interpretation," (1975) 8 *Monchanin*.

81. R. PANIKKAR, "What is Comparative Philosophy Comparing," in G. J. Larson and E. Deutsch (ed.), *Interpreting Across Religious Boundaries* (Princeton, 1988), p. 132-134.

82. PANIKKAR uses the expression thematically "meaning a conscious reflection on the topic, because the method has been spontaneously employed as many times as the dialogue among people has been more than 'academic.'" R. PANIKKAR, "The Dialogical Dialogue," in F. Whaling (ed.), *The World's Religious Traditions* (Edinburgh, 1980), p. 104.

83. PANIKKAR, *Myth, Faith and Hermeneutics*, n. 25 above, p. 9.

84. PANIKKAR, "The Dialogical Dialogue," n. 68 above, 206-207.

85. *Ibid.*, p. 208-209, 219.

86. *Ibid.* p. 210.

87. G. HALL, "Intercultural and Interreligious Hermeneutics" *International Symposium on the Intercultural Philosophy of Raimon Panikkar* (Barcelona, 2002).

88. PANIKKAR, *Myth, Faith and Hermeneutics*, n. 25 above, p. 6.

89. *Ibid.*, p. 244.

Hence, it is not a dialogue among experts or academics but relies on intercultural mediators.⁹⁰ These should not be identified with the neutral third party of contemporary conflict resolution theory but with any persons that, being involved and "believing" in both dialoguing traditions, are willing to participate openly in a dialogical encounter. They are intercultural interpreters that engage in the art of mutually unveiling the deep and underlying dimensions of both cultures.⁹¹ Dialogical dialogue assumes, therefore, that one is capable of entering into and experiencing the symbolic world of the other and integrating it into one's own tradition.⁹² Hence, it consists in, first, a critical understanding of dialoguing traditions by its participants, secondly, an internal intra-cultural dialogue where they search a common language capable of expressing the "truths" of both cultures, and thirdly, an external intercultural dialogue where they lay their interpretations before the other, which will test them against her own framework, the process continuing until achieving mutual understanding.⁹³

Dialoguing with Aboriginal cultures

PANIKKAR's dialogical dialogue, entailing a deep respect—not passivity or acriticism—between cultures, can be fruitfully applied to the field of intercultural relations with Aboriginal cultures. Intercultural dialogical dialogue has to be built freely and mutually framed by the two dialoguing cultures. Establishing its form and conditions, constructing together a new mythical common horizon of understanding, is the primordial aim of the dialogical experience.

Dialogical dialogue requires, on the one hand, a radical openness to the other culture and to one's own that is incompatible with the imposition of any monocultural framework, which can never be self-sufficient. No single political culture can determine nor frame the relations between Aboriginal and majority cultures.

Thus, dialogical dialogue with Aboriginal cultures cannot view the nation-state as a universal framework or a necessary political unit. Neither, as many good intentioned scholars propose, do we necessarily have to draw on International Law or the United Nations framework, anymore than on inter-state and western structure.⁹⁴ The nation-state remains still today a deeply monocultural frame of reference, incompatible with the understandings of many cultures.⁹⁵ The same applies to the exclusive club of 189 nation-states that still dare call themselves the United Nations, in front

90. *Ibid.*, p. 443.

91. R. VACHON, "Guswenta or the Intercultural Imperative," (1995) XXVIII *Interculture* 2, pp. 29-32.

92. HALL, n. 73 above. Thus, it fits well with postmodern accounts of culture.

93. See D. KRIEGER, "Methodological Foundations of Inter-religious Dialogue," in J. Prabhu (ed.), *The Intercultural Challenge of Raimon Panikkar* (Maryknoll, 1996).

94. A. NANDY, "Shamans, Savages and the Wilderness," (1989) *Alternatives* XIV.

95. B. BADIE, *L'État importé* (Paris, 1992).

of some 5000 national groups⁹⁶ which are unrecognised by the Westphalian political model that still seems to operate today in the international order.⁹⁷ Many Aboriginal cultures might not wish to become modern states but this does not make them a-political.⁹⁸ Although we cannot view dialogue as a mere dialectical encounter of two defined and bound parties, but as a much complex interaction, dialogue with Aboriginal cultures should at least be approached as an open encounter between equally valid political cultures.

Similarly, monocultural conceptions, such as individual autonomy, cannot be the axis of an intercultural encounter. Following the arguments mentioned above, liberal western notions of sovereignty, territoriality, rights or even law, cannot be taken as universals or necessary tools to structure cross-cultural relations. For instance, drawing again on the Mohawks, notions such as "democracy," "government," "law," "nation-state," "rights," "sovereignty," "citizenship" or "justice system" have no equivalent in the Haudenosaunee language and do not fit into this Aboriginal cultural framework.⁹⁹ Even using western terms, for them, "the fundamental law which governs all life on earth ... is the *Law of Reality*," a "spiritual law of regeneration" in the sense that "if you do not abide by that law you will not survive."¹⁰⁰ A solution through what they see as mere positive state law, disconnected from the imperatives of Reality, can make little sense to them.

Moreover, Aboriginal nations should not be necessarily viewed as, using KYMLICKA's terms, "nations within,"¹⁰¹ but as external nations, outside the nation-state framework. The Mohawks, for instance, do not view themselves as a domestic internal nation nor as a state or a territorial and sovereign nation with exclusive ownership over a portion of land.¹⁰² Thus, according to VACHON,¹⁰³ the Canadian and U.S. governments should stop speaking about native self-government as something that does not exist or that must be established within the nation-state or United Nations systems. They should recognise the Mohawk's political ways, not based on the notion of rights or territoriality, and instead of creating a state forum with strong monocultural connotations, such as the Canadian Royal Commission on the Aboriginal Peoples, they should search for a truly in-

96. T. R. GURR, *Minorities at Risk* (Washington, 1993).

97. D. HELD, "Democracy, Past, Present and Possible Futures," (1993) 18 *Alternative* 5.

98. VACHON, "Guswenta or the Intercultural Imperative," n. 77 above, p. 34.

99. R. VACHON, "Framing the Issues," (1993), unpublished, p. 4.

100. Oren LYONS, Canadian Royal Commission on Aboriginal Peoples (Ontario, 1993), pp. 80-97.

101. W. KYMLICKA, "American Multiculturalism and the 'Nations Within,'" in D. Ivison, P. Patton and W. Sanders (ed.), *Political Theory and the Rights of Indigenous Peoples* (Cambridge, 2000).

102. VACHON, "Guswenta or the Intercultural Imperative," n. 77 above, pp. 41-42.

103. *Ibid.*, pp. 38-40; VACHON, "Framing the Issues," published in *Interculture* 144, pp. 47-58.

tercultural frame for dialogue, maybe through what VACHON envisages as a Circle of Elder and Younger Nations.¹⁰⁴

On the other hand, as a counterpart, the dialogical dialogue espouses an allegiance to one's own cultural tradition, conceptions and beliefs. Dialogical dialogue entails, in fact, an intra-personal dialogue by which one consciously and critically appropriates one's own tradition, becoming aware of its limits.¹⁰⁵ These two dimensions of openness and self-assertion are combined in a "return" dialogue, which aims at mutual fecundation. Hence, intercultural dialogue does not exclude the possibility of changing the other but it channels it through a dialogical practice. One of the primary concerns of multiculturalism scholars is the fear that respect to other cultures might entail passivity in front of non-liberal practices that we see as unjust or discriminatory.¹⁰⁶ Dialogical dialogue offers here a better alternative than the "*laissez faire*," which, within different limits, is propounded by certain theories of liberal rights and which has been strongly criticised.¹⁰⁷ A dialogical approach is incompatible with both solipsistic passivity and monocultural imposition. It is based on the assumption that fruitful change in cultures cannot come from a violent imposition but can only emerge internally or from a respectful intercultural dialogue. Violence comes through monologue, non-violence requires dialogue.

In this vein, dialogical dialogue might be enriched, for instance, by GANDHI's non-violent technique of conflict resolution or *satyagraha*. PANIKKAR's dialogue might be precipitately criticised for being overtly optimistic, for assuming willingness to dialogue or for not addressing the issue of how to deal with impasses and other difficulties inherent in the dialogical enterprise. The Gandhian approach might provide some clues on how to deal with these difficulties. *Satyagraha*, in a dialogical manner, entails the assertion of one's views while rejecting imposition or violence.¹⁰⁸ Through different techniques and approaches, going if necessary as far as non-co-operation or disobedience campaigns, it is specifically aimed at creating and maintaining the conditions for a fruitful dialogue, without any coercion or imposition of one's views or, in our case, cultural frameworks. GANDHI through his life and work and the wider Gandhian tradition offer a wide array of resources that we could use in the dialogical enterprise.¹⁰⁹

Furthermore, a dialogue with Aboriginal cultures might be profoundly enriching if taken seriously. Without wanting to fall into naïve idealisa-

tions, I will point a brief example. In the wake of modernity's environmental crises, a new ecological consciousness emerges in the west. In this context, it has been claimed that the only alternative for modern technological civilisation comes through an "ecosophical" awareness, consisting in not merely seeing the earth as a limited set of resources where we live and that we have to respect, but in rediscovering ourselves as a constitutive part of the earth itself.¹¹⁰ Contemporary scientific findings, such as LOVELOCK's Gaia theory,¹¹¹ support such an approach. This is an insight that has been experienced by many Aboriginal cultures from immemorial times. Modern occidental culture, through a dialogical dialogue, might be able to learn something from them.¹¹²

Furthermore, dialogical dialogue cannot be defined in detail. Its what, how and when must be newly and interculturally framed by its participants, according to their context. However, it is not a new form of interaction, so we might gain something from past experience, as the following example indicates. Up to this very day the Mohawks refer to an old treaty they signed with the European crowns: the Guswenta or Two Row Wampum Belt, broken unilaterally by the latter.¹¹³ According to several authors Guswenta epitomises an intercultural dialogical agreement, concluded in equal footing between two nations, which did not require for its existence any common superior framework, the two rows symbolising the possible coexistence of various ways of living, each with its own political forms, peacefully going along, co-operating and interacting with each other.¹¹⁴ It might hint us on how to reframe future intercultural relations.

Calling for Cultural Disarmament and Openness. An Inconclusive Conclusion

Current legal and political theory is increasingly concerned with the handling of cultural diversity in contemporary societies. However, many multiculturalist proposals, such as KYMLICKA's theory of minority rights, are trapped in monocultural frameworks and entail, in spite of any good intentions, a subtle form of cultural colonialism. PANIKKAR, through his intercultural and dialogical approach, provides an alternative specifically thought to deal with cultural diversity without falling into ethnocentrism. Avoiding the violence of monoculturalism, dialogical dialogue advocates openness to the other without abandoning the allegiance to one's own culture. Intercultural dialogue is incompatible with taking any monocultural framework as an ultimate frame of reference. It asks, in short, for a

104. It is worth pointing out here that, although, due to our focus on KYMLICKA's theory, we are referring in this paper to how the liberal majority should modify its approach, the need to embrace intercultural openness also applies to Aboriginal cultures.

105. HALL, n. 73 above.

106. E.g. KYMLICKA, *Multicultural Citizenship*, n. 5 above, pp. 152-172.

107. In this vein, criticising KYMLICKA for the limits he posits on the rights of national minorities, see FISHBAYN, n. 6 above, pp. 246-263.

108. For a very interesting analysis of Gandhi's *satyagraha* see T. WEBER, *Conflict Resolution and Gandhian Ethics* (New Delhi, 1991).

109. For a classical and secular exposition and analysis of these techniques see J. V. BONDURANT, *Conquest of violence* (Berkeley, 1965).

110. J. PIGEM, *La Odissea de Occidente* (Barcelona, 1993). R. PANIKKAR, *Ecosofia: la Nuova Saggezza* (Assisi, 1993).

111. E. LOVELOCK, *Gaia* (Oxford, 1987).

112. In this vein, VACHON points at the possibility of enriching the western tradition of personal/communal ownership and custodianship with the native peoples' strong sense of belongingness to the earth. VACHON, "Framing the Issues," n. 85 above, p. 6.

113. E.g. Indian Time, January 19th, 2001.

114. VACHON, "Guswenta or the Intercultural Imperative," n. 77 above, pp. 38-40; J. TULLY, *Strange Multiplicity* (New York, 1995), pp. 127-128.

cultural disarmament, advocating the necessity of a truly intercultural approach.¹¹⁵ Moreover, aiming at the emergence of a new common horizon of understanding, it provides a method from which to construct a more peaceful and enriching management of cultural diversity, in spite, or precisely because of existing incommensurable differences.

The insights of this dialogue should be explored further. Dialogical dialogue, for instance, might prove fruitful in developing a less monocultural practice of international private law. Diatopical hermeneutics might help us understand and interpret better the institutions of other cultures.¹¹⁶ Furthermore, going beyond this paper's concern on culture, dialogical insights can be applied more broadly to our dealing with fundamental underlying differences, whatever names we might give to them (religion, ideology, systems...). Its message is to approach difference seriously, non-violently and without falling into solipsism, i.e. to trust dialogue in a radical sense and because we trust the other, not an *alius* (a stranger) but an *alter* (a complementary).

This paper remains, as it should, incomplete.¹¹⁷ Furthermore, I have not attempted to provide a set of precepts or rules for a structured dialogue with Aboriginal cultures. The reason is simple. Intercultural dialogue's main promise is to attain understanding and to mutually define the conditions for an enriching intercultural living. One of its basic demands is openness. If we constrain it under any kind of structure it will lose all its potential. Furthermore, any attempt to fix a determinate structure risks falling into monocultural colonialism. The partial silence of this essay is therefore on purpose. The whole point of cross-cultural dialogue is the establishment and framing of intercultural communication by the dialoguing actors. If it wants to serve its aim, to be culturally disarmed, it has to be left unstructured so that its participants can always define it anew. There are certain premises and attitudes we have to bear in mind to engage in a cross-cultural dialogue but there is not, and there cannot be, any *a priori* epistemological criteria, any magic formula, for a world of cultural diversity. Reality is too complex and dynamic. Dialogue will only be worth engaging, will just be able to bridge our gaps, if left open, spontaneous, free...

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115. R. PANIKKAR, *Paz y Desarme Cultural* (Santander, 1993), p. 61. Also R. PANIKKAR, *Pace e Interculturalità* (Milano, 2002), pp. 123-139.

116. For instance, the Muslim *kafala*. For a comparative study on the extraterritorial recognition of the *kafala* see A. RODRIGO, "Un Estudio Comparado de la Eficacia Extraterritorial de la Adopción y de la Kafala," (2000) *Revista General de Derecho* 667.

117. See PRABHU (ed.) *The Intercultural Challenge of R. Panikkar*. PANIKKAR self-critical response to his critics, pp. 243-262.

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C. ADDENDUM : THE WORLD OF BLACK AFRICA (1972-2004)

In 1972, we started seeking, discovering and making known the traditional spiritual values and socio-political culture of Black Africa. First with the help of Jacques N'JOYÀ, from Cameroon, a member of our permanent team at IIM (*Monchanin Journal*, Issue 36, pp. 6-14). In 1973, we organised a symposium on the Spirituality and the socio-political structures of Black Africa (Issue 37, pp. 12-15). In 1974, our issue 43 (p. 21) spoke of the African socialism of Ujaama in Tanzania.

It has always been at the heart of our concern to learn from the great African civilisation. So, we have always had Black Africans on our permanent staff to teach us: N'JOYÀ (Cameroon), NZ'IOSENGA (Hutu), Yaya DIALLO (Peulh Minianka), Lomomba EMONGO (Atetela from the Congo) and also Emmanuel N'DIONE (Wolof), member of our International Network for Cultural Alternatives to Development (INCAD).

We have also benefited from the research-publications of the Laboratoire d'anthropologie juridique of Paris, France, thanks to the work of Étienne LE ROY and Michel ALLIOT, especially with regard to the stud-

ies they have published on African relations towards land. Our Documentation Centre has copies of their work.

In 1985, we published a dossier by Yaya DIALLO entitled *Profil culturel africain*, which we have translated and reproduced in 2001 in *Interculture* 141 under the title "On the threshold of the African soul—A villager speaks," which came after some remarks that we published in *Interculture* (Issue 138) in 2000, on the traditional political African culture, underscoring how it is the Ancestors and not the law or constitution which is the legitimate foundation of power in Africa; "the nation refers to the community regrouped around the ancestors' place of repose." We describe also how the natural village (with its chief surrounded by a council of elders-of-extended-families, guardians of customs) forms a political entity: that of the Village identity which is the political unit and the national identity of the group where ancestors dwell, a national identity in coexistence with a national State law identity. That issue also includes some notes on the new pertinence of traditional authorities in the future of Africa, and also on the political culture of Haiti which is beyond the Nation-State of Haiti, namely the "Peyi Andeyo."

The following, published for the first time, is a written text of the oral presentation by Lomomba EMONGO, Ph. D., a Congolese Osambala researcher at the Intercultural Institute of Montreal, which he delivered within the framework of a series of five seminars (organised by IIM at IIM, entitled: "A Challenge to Citizenship: an intercultural reflection." The text was presented in the concluding round table entitled: "Are there, elsewhere, notions other than those of citizenship?" (on December 21th, 2001).

TEXT 17

THE OSAMBALA EXPERIENCE AS CHALLENGE TO THE MODERN STATE¹¹⁸

by Lomomba EMONGO

Introduction

Congolese citizen! Now there's a concept which within the framework of the modern State of the Congo Democratic Republic, seems so obvious, and applicable to me. Yet, that is what I shall now call into question as one who is primarily an Osambala. But how shall I proceed? What does the Osambala experience teach me? What lessons should be drawn from it? These are the three issues that I shall consider in this paper.

But first, who are these Asambala,¹¹⁹ of which I am. From the point of view of the Modern State called the Democratic Republic of the Congo, the Asambala are under the administrative jurisdiction of the Basambala

118. Translated from the original French by R. VACHON.

119. I shall use Osambala as an adjective or a noun in the singular, Asambala in the plural.

collectivity, in the territory called Katako-Kombe, District of Sankuru, Province of the Oriental Kasai. From the historical and migratory point of view, the Asambala belong to the great Mongo ethnic group spread across Central Africa. I am interested here in the Asambala as a sub-group of the Atetela of Sankuru,

An introductory question: the approach

The following remarks come from my concern—already a long-standing one and which has been dealt with by many: in the face of the failed project to Westernise the world in the African context (GARAUDY, 1977 ; ZIEGLER, 198 ; LATOUCHE, 1998) this concern is to understand differently and for itself that Africa from which I hail. In my case, this means giving priority to understanding the society I come from, the Osambala society, among the Atetela at the heart of the present Democratic Republic of the Congo. My first challenge will be to risk trying to conjugate my University heritage and my ancestral heritage.

What kind of knowledge will it be? My approach will be one of inter-tradition, a neologism that I have forged during my doctoral research in philosophy: traditions can neither mutually ignore each other, nor merely and simply absorb each other; they are both presence to each other or to other traditions, all the while being both integral and involved parts of a common horizon of questioning in the process of being elaborated (see EMONGO, 1995, 1997, 1998, 2001). Concretely, it means for me to take up both my "hermeneutical situation" regarding my ancestral heritage, and my "intercultural situation" regarding my University heritage.¹²⁰

That is the type of approach which is progressively being elaborated through contact with what is being questioned, an approach that I intend to apply to the question which directs the following reflections: "are there elsewhere notions other than that of citizenship?" The question itself suggests that citizenship is not a universal notion, and even less so is its framework: the Nation-State. So I shall not try to seek its steppingstone or its linguistic correlates among the Asambala, but to rediscover the Osambala experience as it has come to me.¹²¹ Whatever be the case, I cannot ignore that the citizenship that has come with the baggage of colonisa-

120. If the notion of "hermeneutic situation" has been explicited by Hans-Georg GADAMER (1965), that of the "intercultural situation" still needs to be. I mean by that the situation of the African intellectual (in the current sense of the word: schooled and academic) caught between his local tradition and his Western University education. This means for me that the University tradition does not constitute the exclusive pole of knowledge, any more than the local tradition can be reduced to an object of knowledge. The "intercultural situation" suggests that this double negation articulates itself positively in a hermeneutic knot to be constructed, implying the different cultures that have formed me and that I must assume.

121. My modesty here is not a formality. I must take into account as much as possible, first of all the fact that it is I who has chosen in this case, and who am cutting up in space and time the Osambala reality under study; secondly, the state in which this Osambala reality presents itself to my questioning and the state of my memory regarding that reality.

tion constitutes incontestably a reality in which every Osambala is caught, myself included. This calls for vigilance on my part, in not mixing up the lifestyles, in not confusing the contents due namely to the fact of my "intercultural situation." Nor can I believe that the ancestral heritage that has come to me constitutes the last word on the Osambala experience that I am researching. So this in turn requires me to be vigilant regarding the temptation to present myself here as the depository of the Osambala specificity to be restituted in its purity (see EMONGO 1997). With regard to my directing question, I intend to approach the Osambala experience as a national pole according to a meaning which will become clearer further, and primarily, as a grassroots site of political life.

In the following pages, I take as a witness my father's natal village, the village of NGOMBA; I shall take into account my vernacular language in order to remain as close as possible to the Osambala experience of the issues under consideration.

Two descriptive levels: the clan, the village

1. THE NATURAL AND HISTORICAL COMMUNITIES: THE CLANS

These natural communities are what can be called the clans, whose dynamic needs to be explicated. Here are five elements that I have retained.

The founding ancestor

Clan refers to the founding ancestor. As a general rule, the collective memory still remembers his actions and doings. Nevertheless, he will always be presented to the younger generations as enveloped within an aura of mystery, almost of veneration. The stories, therefore, are a mixture of reality and legend. They will always situate him in a far away region, will celebrate the place whence he would have come, as well as the place where he would have established himself, generally on the other side of an important river whose crossing takes on the rank of symbol. The founding ancestor is mostly named, furtively evoked in the actions he would have accomplished and which are almost always presented as exceptional, notably his exemplary fecundity. More than a man (in the male sense) and a parent, it is a symbol of initiational identity, that we shall call the ancestor figure.

According to my paternal grand-mother, the ancestor and founder of my clan is named SHONDA. In fact, she used to refer to us as *Aseka SHONDA*, i.e. the descendants of SHONDA.

Consanguinity

The clan is therefore woven through consanguinity. But it is a consanguinity that is decompartmentalised in both time and space. Before speaking about decompartmentalisation in space, let us say that the blood link that goes back to the ancestral founder is really mystical, so that genetic consanguinity is rooted in the Invisible. The descendants are linked to the ancestral founder, in a phylogenetic community. A domestic wor-

ship to him takes place on an earth altar elevated as a mound and called *Kinda*. Long past (not to say initial) procreator and protector of his descendants, the end of the umbilical cord of every new-born child is dedicated to him in the strictest intimacy, in order to maintain that mystical link, that protection from the Invisible.¹²² His name is given to many children of each generation, with the purpose of making his presence felt in the order of the visible, among his own.

When she transmitted my genealogy on the paternal side, my grandmother did not go as far as the ancestor SHONDA. She first named a certain Nye SHAKO ya NGIENDA, i.e. SHAKO daughter of NGIENDA. Which tends to confirm the mysterious character of the ancestral founder, situated in the great afar, set at most at the beginning of the genital cord.

The social organisation

The social organisation of the clan follows the generationally structured primogeniture. This organisation appears at first sight as pyramidal, descending from the ancestral founder right down to the youngest of the last-born. Among others, let us enumerate the generation of the grand-parents, that of the parents, the more recent one of the age-groups. However, primogeniture is not an automatic application: if the elders have in principle, social precedence, they have to deserve it; it is not rare that one of a younger age is elevated to a greater spiritual dignity than his genetic elders.

Among the children of DIKOKO (*otema wa DIKOKO*, my father), I have been admitted to the circle of elders, from the time I was married, with precedence in certain matters with regard to my elder brothers and sisters.

Historical trajectory

Clans develop in space and time, trying to maintain their blood and cultural cohesion throughout encounters. Among the Asambala as elsewhere, each clan has its own history. This history starts from the mythical place of the ancestral founder, where he would have settled down. And history goes on with the spatial dispersion of families, even of whole clans. The weaving of commercial, matrimonial and identity alliances goes on; some clan members stabilise and fuse into the indigenous fold while others continue to displace themselves. One will try to maintain the consanguine and cultural unity; but finally, the essentially consanguine clanic identity slowly becomes a social and historical identity with its locus in the village, the space where clans of different origins cohabit, the place of strategic alliances or where affinities find a common identity or where interests converge. A place, also of supraclanic organisation, but on the basis of clans, with them, by them and for them.

122. In Osambala symbolism, the belly of the woman is often compared to the earth that gives life to different species, but also to the Invisible, that "home" we come from and return to. The umbilical cord is seen as a bridge between yonder and here: as long as the newly-born still has a part of it, he is considered as still linked to the Invisible, it is still the "visitor" from yonder. The day that the umbilical chord falls, the child completes his birth, is presented to the rest of society and receives a name which settles him in a clan, as being henceforth from here.

The Osambala clans of the village of NGOMBA all say that they come from the valley of the Lomami River, more to the south. The Kombe clans which are almost all linked to the chieftainships of the Osambala villages assert without boasting that they come from the right side of the same river i.e. from further away. The distance, or better the refusal or incapacity to situate the ancestral founder in space has here a symbolic value.¹²³

"Civic" participation

The Osambala's "civic" participation in his clan is one of unconditional sharing. Sharing here must not be seen merely as the value of sharing what one has with others; it means moreover that each member of the clan carries the whole clan, both in terms of its honour and dignity as in terms of the spiritual level of the phylogenetic bond with the ancestral founder. The "civic" participation in the clan is not optional. It is sacred, of a spiritual order that interrelated with the social order.

As a small child, I was taught very early on that every adult of the clan is a father or a mother (just as whoever has your father's age is always father). So this goes further than mere clanic solidarity or the sharing of goods, joys and sorrows; it goes much beyond mere social etiquette and manners within a society.

2. THE POLITICO-ORGANIC COMMUNITIES: THE VILLAGES

I am speaking of the village entity that can be explicited by three elements.

Cohesion and social organisation

The social organisation of a village consists in the cohesion between natural communities, groups with identity affinities, groups where interests or age and/or initiation converge. The cohesion between these groups rests on the search for equilibrium and expresses itself through a solidarity that goes beyond the consanguine framework, implying reciprocity with other clans or groups that share the same environment, the same village: the same lands to be cultivated, the same springs of drinking water, the same rivers with fish. The clans or groups of clans constitute the social backbone of an Osambala village; as for the Head which is placed above it all, he does not reign nor govern properly speaking; rather he symbolises that cohesion, this search for equilibrium and must scrupulously be watched so that a sharing in solidarity and reciprocity takes place. A Head

123. The "far-away" in the mythical and historical past of the peoples, constitutes without doubt a whole theme in itself, which requires a deeper study. I have noted that among many of the peoples of Black Africa, most clans, ethnic groups, nations that claim the same ancestral and mythical origin give themselves a geographical origin which is always situated in the far away, generally in the East. In the Democratic Republic of the Congo, the Muluba ethnic group claims to come from Nsang'a Lubangu, a mythical place situated in the East, but without any more topographical precision.

is above all the living symbol of the knot between the Visible and the Invisible in a site chosen as a place where a village will be erected. His authority is above all spiritual and it imposes on him, so to speak, the duty to be a perfect human being. In short, the Head is considered as a living organ, the "Head" of a living body, namely the village endowed with members without which he is nothing.

The Asambala in fact associate the name of each village with the name of its Head. For example, my father's native village will be called *laka NGOMBA*, i.e. those at Chief NGOMBA; speaking about its inhabitants, one will say *aseka NGOMBA*, i.e. those from the village of Chief NGOMBA—thereby understanding that this "those" implies all those native to that place and their descendants, no matter where they were or will be born.

Political equilibrium and organisation

The village is equally the political space characterised by the requirement of non exclusion and by the search for inter-clanic equilibrium. Each clan, each trade association (guild), each group with identity affinities, with converging interests of any other nature, is considered as a living organ of the social body that the village constitutes. This can be seen at various levels: in the organic representation with equal prestige of each clan at the village council, in the sharing of roles with regard to the daily run of collective affairs, in the division of trades according to each clan's competence. Thus it is the social organisation of the village which is at the basis of its political and administrative organisation. The basic social and political unit is the clan (natural organ), but equally different trans-clanic groups which are as many social organs with a more or less long life.

In the village of NGOMBA, the indigenous (*ase Yonge*) formerly vanquished military by the migrant generation of my grand parents, held a seat at the village council. The function of certain clans ended up becoming the name by which they are designated. Kalama for the clan responsible for community intendance, Mudimbi wa ngomo for the clan of musicians of the chief's court, Asaka for the clan of weavers, Fundji for the clan of blacksmiths and for those who hunt with a gun, etc. As an example of groups organised outside of the clans, I will mention the *Epoto wa Lodi*, a group of women indigenous to the village of NGOMBA who identify with the brook Lodi, which is the last water current crossed before the implantation of the village; let us mention also the *Esaho wa Lodi*, a group of more elderly women identifying themselves as coming from elsewhere and having crossed the Lodi brook.

"Civic" participation

The "civic" participation of an Osambala in his village is one of solidarity and exchange, but also one of contribution to the common good. In the Osambala villages, the acquisition of a valuable good or in great quantity implies contributing to the community, by returning a symbolic part of it to the Head of the village who is bound to redistribute it, either in kind or symbolically, for example by sharing it with the clan elders. Solidarity and exchange, on their part, express themselves especially through projects of public interest, through the aid given to a family in distress, etc. The Osambala participates directly in shoring up the political

city that the village is; everyone has the right to speak and has access to decision making. Even at the village council where elders sit, these are spokesmen of the members of their respective clan; they have no power to modify the line that the clan has decided upon.

Three concluding reflections

Now is the time to return to our directing question: are there elsewhere notions other than those of citizenship? I would like to ask myself the same question according to other terms and in three sub-questions: what meaning can be given to what precedes? Is there a place for the Modern State called the Democratic Republic of the Congo in the Osambala experience of the clan and village? What challenges are sent to us from that angle? Those are the three questions that articulate the three concluding reflections that follow.

1. UNDERSTANDING THE OSAMBALA EXPERIENCE

The Osambala experience described at the grass-root level draws its meaning upstream in the historical trajectory of the Asambala themselves and of the whole country; that experience equally takes its meaning in the singularity of its political life space, of which the Asambala are no longer the masters beyond the village.

The advent of the Asambala

The Osambala experience goes back to the personal trajectory of Ngongo LETETA, a trajectory that one can characterise in three periods.

The slave driver in the pay of TIPPO-TIP

The stories mixed with legends affirm that Ngongo LETETA (as he shall be surnamed later) met the Arabs for the first time at Chief MUTSHEMBE's. The latter entrusted him to them as hostage, as a sign of allegiance, so desirous was he to preserve his own son and heir. Through LETETA's charisma of leading men and his ability in handling guns, it wasn't long before he became the trusted man that the Chief could put in charge of a column. Of course, he excelled in raids, at the service of his master, Mohammed EL MARJEBI alias TIPPO-TIP or MUTSHIPULE. After having suffered humiliating experiences, and even having become suspect because of his personal wealth that went sometimes beyond that of some Arab slave-drivers, he rebelled and took up arms against his masters.

The ally with vague independentist desires

The Commandants DHANIS and MICHAUX coming from the West were rushing upon the enemy, namely the Arab slave-driver, and this at the behest of King LÉOPOLD II at the Berlin Conference (DHANIS, 1895; MICHAUX, 1907; Dr. HINDE, 1897). The convergence of momentary interests allowed the column to join rapidly with Ngongo LETETA's seasoned troops—which had previously sworn allegiance to the Independent Congo State (*État Indépendant du Congo*: EIC) (DELCOMMUNE, 1922). If for the officers of the column the meaning of the campaign was a war of territorial conquest, for Ngongo LETETA however, it was a war of liberation of

the territory which he had formerly subjected in favour of the Arab slave-drivers.

The aspiring founder of a free State

After the capture of Nyangwe and Kasongo, two Arab strongholds, Ngongo LETETA is immediately put under surveillance by the White officers who believe our country is their home. His insubordination to this wardship resulted in his being summarily judged and executed. As good strategists, his killers named one of his lieutenants, LOHAKA to succeed him, to the detriment of his legitimate heir, LOPONGO. This usurpation is accompanied with a few conditions: mobilise the seasoned army of the late Ngongo LETETA, and subjugate the territory of the present District of Sankuru (and beyond). The Asambala are now born as a distinct social group, qualified from the start as an army of auxiliaries for the EIC.

The Osambala places of power

After the wars that made the legend of the Asambala (OLELA, 1981),¹²⁴ the Osambala experience continued under other forms, closer to those that I have known in my youth. Here are two of its analytical elements.

The territory

As a social group, distinct from other Atetela, the Asambala have settled in a new territory, conquered at the end of a gun. The present Osambala villages were set up in strategic points of the vast territory. On the one hand, they are doubly linked: by a network of roads which allow a more important circulation than before their arrival, and also by traditional instruments of communication taking over from one village to another (*lokombe, lokole, dimama*); on the other hand, the more important of these villages have a mandate to maintain the colonial yoke of the EIC on the subject population, essentially motivated by economic exploitation, consisting in working and harvesting rubber and cultivating cotton.

Each village regroups a certain number of clans more or less close to the former lieutenant of Ngongo LETETA, who became lieutenant of LOHAKA, his successor. The village (place of habitat) of Ngongo, called *Shinga ya Ngongo* or the City of Ngongo, is considered as the Capital of all Asambala. The very first site of Lohaka (the usurper) still enjoys today a certain veneration among the Asambala; it is a sacred place, a founding place of the geographical situation of the Asambala, the place where the *Kinda* (altar) of the ancestral founder: Ngongo LETETA was raised and from which he keeps vigil over his people.

124. The subjected people will surname them *Aseka Ngongo* i.e. the people of Ngongo or else again *Ase etonga* i.e. the fire-gun holders. This kind of gun, then still unknown in the conquered zone was definitely the basis for the success of the *Aseka Ngongo* who fabricated them themselves as well as the canon powder.

Power

The Osambala power, we think, is limited to the organisation and exercise of power at the village level. Beyond the village, the Osambala power enters both the spiritual—as is the case of every traditional power—and the symbolic sphere. First, all of them, whether heads or inhabitants of the Osambala villages, recognise only one supreme authority as their head, that of *Ngongo* which has become a title since Lohaka (the usurper) has given it to himself in a somewhat Machiavellian way. The *Ngongo* therefore, is the one who incarnates the supreme Osambala authority. This authority, linked to a traditional power is a fundamentally spiritual power: a *Ngongo*, as any village Head, is a Pontiff, a spiritual entity of interpenetration of the Visible and the Invisible. The symbol of political power is the Leopard: its hide belongs by right to the Chief who has exclusive reserve to donning its skin and a collar made up of the fangs of the feline. Then, the *Ngongo's* power over all Asambala belongs truly to the colonial authority of the EIC which has, in some way, installed it. From that point of view, his authority is purely symbolic, one of mere formality; it becomes effective only, once again, thanks to the colonial will of the EIC, which in a way as strategic as Machiavellian, has made of the *Ngongo*-in-function, the Chief of the Basambala Sector (equivalent to Head of the collectivity). One should talk more of a surveillance mechanism requiring a total allegiance to the colonial hierarchical authority, than of acknowledgement of the traditional Osambala power. For, the authority of the Sector Chief applies only at the administrative and rather economic level: maintaining in operation the road infrastructure, facilitating the work of the colonial State agents on the ground, making sure that the colonial State's constraints, laws and rules are applied, especially with regard to the production of rubber and cotton, of public health and tax collection.

2. OSAMBALA AND/OR CONGOLESE?

Is there a place for the modern State, called the Democratic Republic of the Congo, in the Osambala experience of the clan and village? To this question, we now know that Osambala political live-space articulates itself at the level of the village, that the village has the clan as basic social and cultural unit, that political life space is in spiritual connection with *Ngongo LETETA* as figure of the ancestral founder. We also know that this political life space is subject from the start to the colonial authority of the Independent Congo State (EIC).

I notice that the Asambala did not constitute a State properly speaking. Nevertheless they have developed a national consciousness among the other Atetela. This consciousness is founded in a community of the ancestral founder, originating in the Lomami River basin, historically made up of military conquest, of a spirituality marked by the domestic altar of the founding ancestor of the clan which speaks *losambala*, etc. I also notice that the citizens of the Congolese Democratic Republic, the Asambala, have become citizens through imposition: first through the colonial violence at the root of this modern State, then through the independence of the Country. But beyond the cultural affinities and the sharing of a common history between different socio-cultural groups, there is a fundamental link lacking between their world and the modern world. The modern

State is a stranger to them, a "thing" of those who have created it or who have inherited power. In spite of its benefits (roads, dispensaries, etc.) the modern State is feared, it imposes itself and represses the traditional political life space.

To ignore the traditional political life space or the modern State on African soil would be to fall into the politics of the ostrich. To reject the one or the other or to inverse the hegemony of the one over the other would be going round in a circle. Trying to absorb the traditional political life space into the modern State (in the name of progress for example) has given, to this day, only a caricature of modernity and a superimposition of legitimacies. Hence the ever contemporary question: is there a place for the modern State called the Democratic Republic of Congo, in this case in the Osambala experience of the clan and village and vice versa? Osambala and Congolese? Osambala or Congolese?

3. THE OSAMBALA EXPERIENCE, A CHALLENGE TO THE NATION-STATE

As a political and organic community, the village is a kind of community State, arising from natural communities and from the diverse groups that compose it, reflecting the latter's structure, organised and run by and for them.¹²⁵ This gathering up together way of expressing the Osambala experience does not constitute a rearguard combat. It helps us to bring up fundamental questions to the fore, and to underline the challenges that are lying in wait for us. But too often, questions hardly being asked, the traditional political life space has been summarily summoned to modernise, to adapt, to evolve. Civilisation, democracy, Christianity, development, globalisation are some of the master-words, all from outside, according to which Africa has been told over and over again. Of course, other authors (MICHALON, 1984 ; ELA, 1998 ; SCHWARZ, 1983, etc.) have insisted on the imperative to modify the outlook on Africa, to let Africa speak its own "*topoi*" and a language of its own which is not modern mainstream language, and to recognise its dignity as a partner of dialogue with modernity on a basis of equal prestige.

The Osambala experience underlines this challenge to the modern State which is, in this case, the Democratic Republic of Congo, and at the same time it invites us elsewhere. Precisely, the voice of intellectuals with academic allegiance has been dominating with regard to what should be or should not be done; but what do those other intellectuals think, that are from traditional allegiance, that know neither how to read or write for the most part and do not necessarily speak the language inherited from the coloniser? There is an undertaking at the threshold of which the intellec-

125. Whence, undoubtedly, the quasi impossibility of despotism for a village Chief, no matter what privileges he may enjoy. Of course, drifting off and abuse can take place, but the regimes of absolute power among the Asambala are basically the fact of the collusion or corruption of traditional power in contact with modern political power. But this does apply to the great precolonial political formations, where the central power was sufficiently away from the village; but this would be another topic.

tual from academic allegiance that I am, must keep silent for fear of encroaching upon that other speech/language so often despised, even repressed, including by Africans themselves.

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