Legal Republicanism and Legal Pluralism: Two Takes on Identity and Diversity*

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Introduction

Immigration is seen to pose difficult challenges for modern liberal democracies. This is especially the case for States that historically have not conceived themselves as immigrant societies. For immigration often creates apparently new social phenomena that are perceived as threats to the "national identity" of receiving countries – individuals who are both discrete actors with unfamiliar personal identities and, at the same time, members of complex, yet bounded, socially diverse groups called immigrant communities. A central question is how States should deal with these unfamiliar identities and diverse groups, particularly since they are often held to represent the "other" against which the dominant State-constructed identity is formed. Nonetheless, despite the undeniable importance of the diversity challenge attendant upon immigration, immigration represents only one (even if a highly visible) facet of the larger puzzle of pluralism that vexes contemporary States.

This essay addresses the themes of personal identity, social diversity and immigration and considers alternative theoretical approaches – legal republicanism and legal pluralism – to framing appropriate responses to the policy issues they raise. It critiques legal republicanism, the theory that today grounds the characteristic response of western States to personal identity and social diversity. This theoretical perspective holds that a State has plenary power to

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forge the identity of legal subjects. The core concept of legal republicanism – abstract legal subjectivity – is that human experience must be decontextualized and diverse personal identities extirpated in order to create a single national legal identity for each State. I believe this to be is both a liberating concept in theory that lies at the origin of modern notions of human rights and human dignity, and a radically oppressive notion in practice when projected into the quotidian realm of everyday law.

My brief against republican legal theory proceeds as follows. In a first, semi-historical part, I begin with the claim that national State-centered legal projects (whether they take the form of legislatively mandated codifications or a judicially imposed "common law") are a mixed blessing. Initially, by detaching law from everyday life, they provided a justification for treating human beings as equal agents whose life choices were not preordained by the accidents of birth or belonging. Yet, there was a price. Human beings were legally disanchored from their traditional sites and modes of symbolic social interaction and reconceived through a concept of legal subjectivity that rarely spoke to their lived experiences or to their aspirations.

I argue next that the modern State has increasingly projected an abstract, egalitarian conception of legal subjectivity – listing categories of protected identity claims in order to counter the most patent cases of invidious discrimination in interpersonal relationships. But not all personal identities are afforded the same protected status. In giving only partial recognition to the components of individuality, these equality norms oblige legal subjects to establish and express themselves only by invoking one or more of a given State's discrete, constitutionally-protected identities. Failure to do so results in one's self-definition being categorized as "deviant".

I continue by elaborating an alternative, pluralist understanding of legal subjectivity. Such an understanding explicitly acknowledges the capacity of individuals who act together within diverse groups to generate identity-forming legal rules, institutions and processes of social interaction. Legal pluralism brings to light those suppressed and subordinated regimes of law that have always characterized human societies – even in the face of an invasive State-managed legal order.

The pluralist approach rejects the idea that there is a wall between abstract "national identity" and the concrete personal identities that the State fails to acknowledge as legal identities. In so doing, it imagines a multiform substantive content to legal subjectivity. The idea of "national identity" needs no longer to be exclusionary, or contingent upon ignoring, denying or suppressing diverse personal identities. The challenges posed by social diversity are mitigated because the notion of the "other" is reconceived as necessary to the creation and iteration of a "national identity". Previously "deviant" identities

and their attendant legal regimes no longer command automatic marginalization, subordination and stigma by the normal and the dominant. Nonetheless, people asserting such "deviant" identities do retain a capacity, should they wish to assert it, to position themselves as abnormal and alienated, even if at the same time, they no longer carry the burden of stigmatization.

The second part of the paper considers various contemporary controversies that put both republican and pluralist legal theory to the test: the wearing of religious symbols in public schools; the socio-culturally differentiated non-deployment of state institutions of dispute resolution and the flourishing of religious courts for determining matters of status and filiation; and proposals to recognize same-sex marriage. Among the key issues to be considered are these:

(1) Does the republican approach of stripping people of their particular identities and group affiliations actually lead to greater equality or does it merely hide assimilationist aspirations of those claiming a dominant identity?

(2) To what extent is the pluralist ambition to celebrate the otherwise occluded power of legal subjects to free themselves from their ascribed "national identity" and fashion their own identities attainable?

Republican Legal Identity and the Legal Pluralist Alternative

Let me commence with the origins of legal republicanism. Since the revolutionary period in Europe legal republicans have typically understood the State as the political reflection of a single "people". Initially, the reflected image was claimed to be that of a political community committed to a particular form of citizenship and secular authority through a founding constitutional document. Of course, the new States under construction were in no way homogenous entities. They each comprised many regional socio-economic collectivities, a plethora of local communities, and myriad individual and group relationships based on interest or affect. The idea of a "national citizenship" was meant to overcome this diversity in the terrain of public law. Indeed, promoting a "national citizenship" was generally considered to be the optimal legal strategy for overcoming social diversity.

But emerging nation States also sought to create a "national identity" by imposing a single, integrated regime of legal rights and obligations in those domains that comprise what jurists call private law. These national private law projects (often in the form of codifications) envisaged a unitary set of concepts and categories for conceiving those life events previously regulated through the diverse laws of the manor, the village, the community, or the region. After this endeavour of national law-making, the different understand-

ings that families, communities, and other socio-economic groups might have brought to ideas like personal status, marriage, successions, ownership, and civil obligation were made legally invisible.

More than this, even when self-constructed or deviant agency was tolerated by this conspectus of law through notions like freedom of contract or private property, the persons who could express that agency, the conditions under which they could do so, and the forms through which it was possible, remained constrained by dominant assumptions about a "national legal identity". No event, no interaction and no status could have a characterization not already framed by the national law.

To see law as a project of the State acting as exclusive law-giver for "a people" is to deny that that citizens have the power to express a relationship and its intendments in the language of law. Legal subjectivity is conceived as fundamentally passive: people are legal "*sujets de droit*"; they are subjected to law. This has both a positive and a negative consequence. To say that human beings should conceive of themselves as equal rights-bearing legal subjects is to endow them with the moral capacity to choose their aspirations free of traditional, totalizing ideologies. Yet the very idea of subjecting citizens to a particular conception of legal agency is to constrain their options. For example, no national regime of law rests on the premise that human beings may in fact decline to be legal subjects, or may even claim for themselves a non-official legal identity. In other words, in the republican model, even though legal subjects can be active (law-resisting), they cannot be law-creating: they cannot generate their own legal subjectivity that stands apart from that mandated by the State.

Contemporary Legal Republicanism

At the end of the 18th century, the legal republican project of building a national State comprised of citizens stripped of their individuating characteristics was plausible. While the revolutionaries on both sides of the Atlantic espoused the rhetoric of universalism, the expression "We, the people" in the preamble to the American constitution of 1789, for example, is estimated to have embraced less than four percent of the human population of the Thirteen Colonies. Under such conditions of exclusivity socio-cultural homogeneity is sustainable myth. More than this, the French argument for "Citizen Robespierre" was as much prescriptive as descriptive, with the *guillotine* sanctioning the recalcitrant and the reluctant. As a result, radically discordant conceptions of individual agency and personal identity rarely surfaced in political and legal debate.

Furthermore, patterns of social life were relatively stable and everyday intercourse followed well-trenched channels. Consequently, official law was not

driven to reflect changing perceptions of what constitutes a community or to accommodate an emerging consciousness of class difference. Finally, the role played by the State in everyday domains of human intercourse was minimal. Because most events of daily life occurred without specific regard for state regulatory law, the disjuncture between the idea of a single national legal identity and the reality of multiple citizen identities went broadly unnoticed by public officials.

We should not, of course, be misled into thinking that the republican rhetoric of the 18th and 19th centuries reflected that period's socio-demography; as noted so-called national populations were highly diverse. Nor should we think that this rhetoric fully expressed the political project being pursued. After all, were the aim of the revolutionary project simply to proclaim a universal conception of human dignity through an abstract citizenship of equals that would transcend social diversity, then there would have been no reason to organize the emancipatory endeavour by reference to discrete States. National territorial boundaries would simply have disappeared, as imagined in the idea of cosmopolitan citizenship.

Together, the description and the prescription hint at the paradox of "national identities" for republican theory. Citizenship in each State was actually founded upon a number of privileged psycho-social identities said to be deep, structural, and necessary for modeling citizen loyalty to a given political organization. These privileged national identities, to which republican legal theory usually attributes a right of political self-determination, are usually advanced in support of Romantic the claim that "nations must become states". Three such deep identities – religion, language and ethnicity – appear to have been dominant during the revolutionary epoch. Each of these deep identities informed the organization of national legal regimes – whether of public law (the delivery of services such as education, infrastructure and social welfare) or of private law (the construction of everyday life through civil codes governing persons, property and obligations).

What can be said about the socio-demography of the liberal State today? To begin, national populations are infinitely more various, both in scope and scale. Heterogeneity characterizes both the visible and invisible features of personal identity. The electoral franchise embracing "We, the people" has been considerably broadened. Regional and local identities are reclaiming space long suppressed by the State-building project. Immigration, internal migration, exogenous marriage and self-liberation have opened new vistas of being. More significantly, in many western States, people are now much readier to understand themselves through an array of particular identity characteristics rather than as a reflection of a single national identity.

How, then, have contemporary western States sought to overcome the exclusionary conception of national identity that tacitly underpinned republican legal ideology? Two responses, both intended to save the appearances of legal republicanism, are common. First, most previously privileged identities have been relativized; and second, many subordinated identities have been recognized as deserving of legal recognition.

Consider the first response in relation to religion, language and ethnicity. No longer do dominant religions play a role as *formally* constitutive of national identity. A diversity of religions has been imagined as reflecting particular identities that deserve equal protection. Admittedly, this loss of formality in some secular states is more symbolic than real – as U.S. Bible-belt politics, and the French and German responses to Islam attest. One might argue that tolerance for broadly similar identities has increased, but not for identities that represent the "other" against which the "national identity" is created and maintained. This reflects the reality that the response of States has typically been to displace an official religion in the name of the secular State, rather than to pluralize the inventory of official religions.

In theory, ethnic nationalism also no longer commands its same high status. It has been transformed by liberal ideology into a sanitized concept of "civic nationalism" based on somewhat looser concepts of culture and language. Of course, both culture and language (and especially language) are today simply the surrogates for the same "blood and belonging" ethnic instincts that lay at the root of the 18th and 19th century nation State. Nonetheless, largely through anti-discrimination norms, liberal democracies like to pretend that they have moved from the explicit promotion of the one to the positive embrace and protection of the many.

What of the second contemporary response? Today States also aim to build a more robust and inclusive conception of national identity by expanding the range of legally cognizable personal identities to which equal protection is promised. Human rights codes typically list age, sex, religion, ethnicity, citizenship, colour of skin, martial status, and so on as protected identities. But not all personal identity claims are legally acknowledged in this manner. Many physical characteristics – height and weight, for example – are not deemed to be constitutive of identity. Nor are most psychic or emotional identities. This legal neglect persists notwithstanding that much daily interaction depends on deploying strategies to exploit or hide these unofficial identities.

There are further problems. Modern law tends to presume that a person is (or must be) predominantly constituted by one of these protected identities, and that each person immutably orders their identity traits. To see personal identity as irretrievably tied to a fixed, externally-determined identity ascribed to a group, and to simply affirm that people are just the sum of their multiple

pre-constituted group identities denies the interactive, iterative character of all identities. Once States take on the role of recognizing and legitimating certain particular identities, they find themselves obliged to announce criteria for determining what constitutes the essence of each of these identities. Yet the complexity of personal identity defies legal taxonomies based on essences. What is the linguistic identity of a true bilingual? What is the ethnic identity of a person of mixed ethnicity? What is the gender identity of a cross-dresser? What is the religious identity of a baptized atheist?

These reflections remind us that most identities are in fact categorizations and that categories are choices. Those categorical identities that we are wont to see as essentialized are simply those that have become naturalized and appear to be grounded in facts. That is, to assert essential identities grounded in facts (as reflecting natural categories) is simply to fall victim to an amnesia as to their genesis in the act of categorization and classification.

Despite these problems with essentialized categories, the legal republican idea of a "national legal identity" that aims to be abstract and decontextualized, but that explicitly accommodates equal protection guarantees for "privileged personal identities" remains attractive to many who are broadly sympathetic to diversity claims. Here is why. Republican legal theory appears to simplify the task of recognizing and accommodating social diversity because it denies that particular identities can actually generate competing legal regimes. The multiple, overlapping normative communities (whether territorial, affective, affiliative, economic, or virtual) in which people live their everyday lives as, for example, children, parents, siblings, spouses, neighbours, friends, co-religionists, workers, and in which they discover, negotiate, order and reorder their particular identities are conceived of not as sites of law but simply as brute, and essentially mute, facts.

In other words, however broadly and abstractly the concept of national legal identity is cast, and however long the list of its protected personal identities, republican legal theory frames contemporary legal identity as subjectivity, not agency. All State law need and should do, in such a perspective, is construct the conditions under which social life may be pursued privately.

Legal Pluralism Redux

There is, however, an alternative way of theorizing law's response to diversity claims. Legal pluralism presents a variegated conception of identity formation that acknowledges and values the constitutive agency of individual subjects *vis-à-vis* both the state and each other. Like legal republicanism, legal pluralism is at once descriptive *empirically* and prescriptive *theoretically*.

Descriptively, legal pluralism endeavors to bring into relief the legal norms and practices that obtain in and across multiple sites of social interaction. Of course, pluralists recognize that this multiplicity already exists quite apart from any official recognition or theoretical explanation of it. Nonetheless, by positing law in every site, at every moment, and through every mode of human interaction, the legal pluralist approach multiplies the range of identities that can be, and are, affirmed by law.

Legal pluralism acknowledges that human beings participating in different psychosocial milieux create and negotiate both their own legal regimes – their own normative standards to shape and symbolize social behaviour and their own institutions and practices to apply and reinforce those standards. Moreover, even the simplest of legal regimes are constituted by a plurality of law-generating sites, moments, and modes. These regimes are in constant interaction, mutually influencing the emergence of each other's rules, practices, and institutions through trajectories of normativity that are at once varied and unpredictable. In a legal pluralistic approach, normative regimes – including those regimes of the State – are not stable, unambiguous, and self-contained within clear jurisdictional and territorial boundaries.

The legal pluralist approach further posits that there is no necessary or permanent hierarchy among these legal regimes and no necessary or permanent hierarchy among the particular identities privileged by these regimes in any particular individual's life. Each person is forever deciding and redeciding which regimes provide the optimal symbol structure for evaluating assertions about law and for making claims about identity in any given situation. Each person is forever deciding the relative weight of rules, processes, and values amongst the multiple legal regimes that attract, invite, or demand loyalty and commitment. Legal pluralism understands legal artifacts, social milieux, and particular identities as mutually constituting and constituted.

It follows that, from a legal pluralist perspective, identity is taken to be an assertion that people make about themselves, not a category of being attributed by the State. There is neither a closed inventory of identity claims, nor a fixed ranking of their importance for any given person. The State's pretense to unify or rank these multiple identities in a single national identity is at best contingent, just as is its pretense to specify which identities are generative of law is illusory. No inventory in a human rights code, for example, can ever fully capture the meaning of particular identities for people who claim them.

Legal pluralists consider that people continuously attempt to achieve an iterative integration of their particular identities as they, not the State conceive them. This integration is pursued though a continuous narrative of meaning through which each identity is held open to evaluation – by itself and by all other particular identities. On this account, law is not pre-existing but is a

process of creating and maintaining legal self-understandings and identities. The trajectory of legal identity is not unidirectional and top-down, but is multi-directional and recursive.

In acknowledging these plural sites of law, it is important to remember that the modern State is also one of them. In each of their particular identities as legal subjects, people constitute the regimes of State law that claim to confer upon them these same subjective legal identities. Put another way, the sometimes central role played by the law- and identity-giving State in theory, is always contingent in practice on the active collaboration of individual law- and State-makers, and on the recognition afforded to the State by the other law- and identity-giving regimes that attract the commitment of particular legal subjects. Legal pluralism attempts to recognize and legitimize the agency of individual legal subjects, even when that agency is sometimes placed in the service of actively reflecting and reproducing the normative and institutional hegemony of the State.

Still, here is an important caveat. The legal pluralist approach does not fundamentally affect the way legal issues presented by conditions of social diversity are cast. Simply pluralizing regimes of normativity does not change the diversity challenge to "national" identities. Whatever the legal order, whatever the nation, the problem of diversity exists. So, for example, Queer nation confronts gender-identity claims that place its conception of citizenship to the test; the Church of England confronts "heretical" claims that contest how doctrinal orthodoxy defines the "faithful"; an Aboriginal nation confronts "psychic identity" claims that stand in opposition to "blood quantum" as the test of membership and belonging.

The contested identities and contested regimes of law that these identities generate illustrate why, theoretically, legal pluralism may be said to be *prescriptive*. The prescriptive claim is not a specific injunction to act (a norm), but a general hypothesis about normativity to be considered. The hypothesis is directed at legal theorists, lawyers, law students, administrators, judges, politicians – indeed anyone involved in the interaction between State law and multiple regimes of everyday law.

Of course, the import of the claim varies considerably according to the audience. For citizens the pluralist prescriptive hypothesis is emancipatory: do not consider that your role as legal subject is exclusively determined by the State; claim your legal agency by asserting competing legal subjectivities that you consider better capture who you are. For scholars and students, the pluralist prescriptive hypothesis is a challenge: continue to develop and claim new theoretical prisms and perspectives that contest the singularity and authority of existing regimes of power and hierarchy. For officials, the pluralist prescriptive hypothesis is precatory: do not assume that the regime from which

you derive authority has a monopoly on regulating social interaction; be open to alternative assertions of normativity for the light they shed on identity and diversity. Because law is always nothing more and nothing less than a hypothesis about social life, the more law one sees, the more law one acknowledges, the more robust one's apprehension of social interaction will be.

Legal republican theorists presume that the recognition of more law, of multiple sites of law, will devalue both putatively "real" law and will hollow-out the concept itself – if *everything* is law, then *nothing* is law. Legal pluralists reject this characterization of their project. Legal pluralists do not seek to label everything as law. The goal is neither taxonomic nor definitional. Rather it is to study why certain human endeavours are characterized as legal and others are not. And it is to study who does the characterization? in what circumstances? and to what end?

Accommodating Identity Claims

Framing the inquiry this way raises two normative issues. First, which of law's institutional resources (for example, formalized constitutional and quasi-constitutional arrangements attributing abstract legal rights, or informal institutional practices that include or enfranchise the marginalized through narrative iteration, *etc.*) are best suited to inviting, apprehending, and responding to identity claims? Second, what processes of social ordering (for instance, the strict adjudication of rights before official courts, or the conciliation of interests with a mediator, *etc.*) best conduce to recognizing and accommodating multiple diversity claims?

By recognizing the law-generating capacity of people pursuing identity claims in collective interaction, and by focusing on narrative iteration and mediation rather than on rights and adjudication as the privileged modes of framing and acknowledging social diversity, the legal pluralist approach offers a sharp alternative to republican legal theory for addressing and responding to issues of identity formation. Whether the pluralist hypothesis actually offers a better conception of the legal project can be tested by exploring the range of policy options that may be open to States seeking to reconcile the claims of identity with the notion of liberal constitutionalism.

I acknowledge, of course, that over the past two centuries, western States have dealt variously with the challenges of social diversity. Recognition and accommodation have rarely been the first response. Rather, the primary reactions have been to deny, to ignore, to suppress or to eliminate diversity of all types in the name of building the "national" State. The tools and techniques have been several. I need mention only a few here in order to situate the range of possible legal strategies aimed at recognition and accommodation.

Sometimes, the "national" objective was to maintain a territorial integrity and to achieve a "national identity" by forcing the mass migration of peoples: ethnic cleansing, religious persecution, and language suppression through deportations, random terror, and concentration camps were common practices. Sometimes, the "national" objective was promoted through territorial expulsion aimed at migrating geography: often in post-colonial situations, States that had been constructed on the basis of the colonizer's administrative convenience were reconstructed as smaller, more homogeneous States. Sometimes, the elimination of diversity in the name of a "national" project was achieved by physically destroying peoples, not geography: genocide is the most usual contemporary version. And sometimes, the "national" goal was accomplished by suppressing the diversity of identities: sterilization, forced assimilation, forced marriages, and forced adoptions are known practices.

None of these policy options are addressed here. Given that the objective of this essay is to explore modern States, and ultimately other legal regimes, only legal responses that take for granted the continuing presence of multiple identity claims grounded in socio-cultural-demographic diversity are considered. The key question is this. Can we conceive institutions and processes to accommodate a diversity of personal identities constructed through affiliative groups?

When viewed as a matter of structure and pedigree (that is, as a matter of institutional design and instrument choice) there are at least five broad procedural frameworks for imagining governance and regulation that States may deploy to acknowledge and accommodate particular identities: call them political, legal-judicial, administrative, constitutional, and external. Every legal regime that is not meant to deny diversity – whether the State, or a regime in competition with the State – attorns in greater or lesser measure to one or more of these frameworks.

To talk of *political* procedures and institutions is to speak primarily to issues like entitlement to vote, guaranteed constituencies and requirements of supermajorities in certain cases. These responses are meant to ensure that lawmaking processes are formally constrained *ex ante* by an actual or virtual political veto held by designated identity claimants. The objective is institutionalized *voice* in constitutive processes.

Standard *legal-judicial* devices seek to limit the capacity of legislative or executive governance by in-built limitations on action through Bills of Rights, anti-discrimination and equality norms, and guaranteed entitlements. Typically these types of constraint imagine an *ex post facto* judicial enforcement process – a process of review that is, nonetheless, *endogenous*.

Administrative arrangements are meant to delegate the management of institutions – schools, hospitals, universities, social service agencies, local munici-

palities, marketing boards, professional corporations, and other executive agencies – to groups claiming particular identities and to free everyday governance practices from the control of those asserting a different (typically dominant) identity. Here the goal is again an *ex ante voice* in the operational elements of public governance.

Constitutional structures and norms such as the creation of a federal system, a bicameral Parliament with one chamber representing constituent units, and the allocation of governance powers between central and state legislatures in counter-intuitive ways comprise another set of identity-promoting responses. The organic framework comprises *ex ante* structures that while endogenous to the constitution, operate through exogenous means.

Finally, identity recognition can be promoted by *external*, supra-systemic practices and procedures such as adhering to international treaties and conventions, membership in UN agencies and appeals to world public opinion. In invoking these mechanisms one is combining both *ex post* and exogenous procedural and structuring mechanisms.

These five frameworks of recognition have a common ambition. They seek to create institutional space within the State for citizens to formulate and pursue identity claims. While neither republican nor pluralist approaches imposes *a priori* limits on the number or kinds of identity characteristics that may be recognized, republican theory considers that only some of these can become part of a "national" identity. That is, in republican theory, the State is mandated to react differentially to diverse identity claims: some it ignores, some it actively represses, some it protects, and some it compels under the guise of promoting a single national identity. Among the noted strategies for accommodating diversity, republicans would privilege those that aim at rights identification: above all the *legal-judicial*, and as a backup the *external*.

By contrast, pluralists claim that however these national identities are promoted, they implicitly marginalize all other particular identities, and they explicitly exclude or disparage all alternative expressions of the identity characteristics being promoted. For this reason, the aim in creating institutional space for the assertion of particular identities is to harness the law-creating energy of social diversity in a manner that constrains the capacity of the State to reconstitute particular identities as national identities. That is, in pluralist theory, the State is meant to treat all identity claims as equally constitutive of a manifold and variegated national identity. Among the five general strategies for accommodating diversity, pluralists would privilege those that aim at structural inclusion: above all the *administrative* and the *political*, and as a backup the *constitutional*.

Contemporary Challenges of Personal Identity and Social Diversity

There is no shortage of contemporary conundrums that illustrate the contrasting approaches of republican and pluralist theories to social diversity and identity claims. In this section I briefly focus on three, particularly evocative examples: the wearing of religious symbols in public schools; the differential use of state institutions of dispute settlement by different sectors of the population and the flourishing of religious courts for determining matters of status and filiation; and the recognition of same-sex marriages. These examples give a specific illustration of how these two theoretical approaches would order the five types of institutional response to identity claims just discussed. They also suggest the rationale for the lexical response that each would typically adopt.

Obviously, the particular illustrations I use, and the factual circumstances I recount, are drawn from my own experience in Montreal. Nonetheless, I believe that the issues raised are endemic to modern States, and the identity and diversity challenges they pose have no geographic boundaries.

Religious Attire in Public Schools

Over the past few years, the wearing of religious symbols in public schools has provoked significant passion in western liberal democracies. This is largely because some school administrators and some parents with strong "nativist" preoccupations have insisted that both Muslim girls wearing a *hijab* (a head scarf that covers their hair and ears) and Sikh boys carrying a *kirpan* (a ceremonial dagger worn in their turbans or strapped to their legs) not be admitted to class.

Various reasons for the exclusion habitually are offered. First, these symbols are said to be the mark of a religion, not acceptable in a secular institution such as State-funded public schools. Second, the *hijab* is said to connote the submission and inferiority of women, unacceptable in a society committed to the equality of the sexes. Third, it is claimed that the *hijab* makes the identification of students difficult, and therefore facilitates cheating. Fourth, the kirpan is said to be a dangerous weapon. Finally, it is argued that the *kirpan* projects an image of a warrior class and private vengeance, values at odds with root principles accepted by non-military States committed to the Rule of Law.

It is unnecessary here to do more than briefly allude to the spurious nature of all these rationales. One might begin with the claim about religious symbols. Do not some Roman Catholic students wear a crucifix or carry a rosary, and some Jewish students a *yarmulke*, or shave their heads a wear a wig? In fact, many so-called secular schools even today suspend classes on Christian Holy

Days such as Easter. What is also puzzling in the obsession for secular schools is the failure to distinguish between public spaces and private actions.

What then of the argument about the symbolic subjugation of women associated with the *hijab*? Viewing the *hijab* as a symbol of subjugation denies Muslim women their agency as they are viewed as passive participants in a male-dominated community. Many Muslim women choose to wear the *hijab* as an affirmation of their identity. Moreover, the claim about subordination, even were it true, ignores that other religions exclude women from full participation in social life – from the priesthood, for example, or segregate women and men in the Temple.

As for the argument from identification, can one conclude that a face is the only external means of identification available? And since the face can be revealed in private to another woman, at any time of evaluation verification of facial identity could be easily arranged.

One may continue with the concern about the *kirpan* as a weapon. How is a dulled *kirpan* worn in a sheath under one's clothing more dangerous than a fork or a knife easily available in the school cafeteria? And would a student intent on stabbing another deploy a dulled *kirpan* rather than a switch-blade?

Finally, to say that the *kirpan* projects an image of a warrior class and private vengeance, is to misconstrue its religious meaning and the fact that it symbolizes self-reliance rather than the *lex talonis*.

No great insight is required to see that the instrumental claims for these exclusionary practices are unsustainable. Prohibiting the *hajib* and the *kirpan* are acts of cultural affirmation meant to locate the normal at any given moment – the normal reflecting a reality that under the pretenses of abstract national identity often favours the socially dominant language, ethnicity and religion (in this instance, the Christian background of the school administrators).

For present purposes, a more interesting inquiry is how questions of particular identity may be framed as legal issues. The analytic puzzle is how to distinguish "facts" from "law"? Of course, the lesson of legal pluralism is that what is law and what is fact both depend on how one preconceives the organizing normative order. Both depend, that is, on the characteristics given by the chosen (lexically prior) normative order to myriad patterns of human interaction. Before exploring this point it is helpful to undertake some historical and cultural excavation.

The immediately precipitating event for the controversies about the *hijab* and *kirpan* was the massive restructuring of public education in Quebec following, first, the enactment of legislation requiring, *inter alia*, immigrant children to attend French-Language schools, and second, the replacement of religious

school boards by linguistic school boards in the 1990s. Till the 1990s, there were four categories of State-supported "public" schools in Quebec: Roman-Catholic French-language, Roman-Catholic English-language, dissentient or protestant French-language, and dissentient or protestant English-language. The so-called protestant schools had become more secular in the 1920s, when they began to admit Jewish students. Moreover, the combined effect of greater social diversity from increased non-European immigration beginning in the 1960s, the exclusion of the children of non-Catholic immigrants from Catholic schools, and the requirement that immigrants study in French obliged the protestant school commission to confront diversity in the early 1970s, and to do so by creating its own French-language schools.

The restructuring of the 1990s resulted in the new French-language schools becoming populated by a much more diverse group of students than had been found in the French-language schools of the former Catholic school commission. For the first time, administrators and school directors of French-language schools previously dominated by *francophones de souche*, who defined themselves by reference to their strong ancestral ties to Quebec and the Roman Catholic faith, had to cope with a large number of immigrant children, most of whom were not Roman Catholic, many of whom were not from Europe, and at least some of whom were studying in the French language against their will.

These administrators were thus faced with a dual challenge. The first was the simple fact of having to cope quickly and massively with a new diversity among the student population – ethnic, linguistic, and religious. The second challenge was the fact of having to cope with a new student population whose education had been heretofore forged in the crucible of a minority-dominated educational system. That is, most parents of students formerly attending dissentient schools did not share the "statist, civic nationalist " ideology that predominated in the former Catholic school system, and many (especially those who were refugees from countries where "statist" ideology was dominant) considered such a perspective to reflect an exclusionary "cultural" nationalism.

In view of this socio-demographic history, it is not surprising that, of the four former categories of schools, only in the Roman Catholic French-language schools did the controversy over wearing the *hijab* and carrying the *kirpan* erupt. Those schools in the new French-language board whose population, professors, and administration were transferred from the former dissentient school board suffered no such paroxysms. And so the question: all things considered, how would legal republicanism and legal pluralism differ in the manner of their conception of the identity claims at issue?

One may begin by noting that in the case of both the *hijab* and the *kirpan*, members of the socio-demographic minority wished to participate in the life of public institutions. They did not seek to construct their own private institutions that would mandate a badge of "national" inclusion – Muslim schools, Sikh schools. This is, in other words, a quite different situation from that arising when socio-demographic minorities actually make a claim for separate identity-forming institutions such as schools, hospitals, social service agencies, and so on. Yet, consistent with republican legal theory, the public institutions within which they sought to participate compelled their exclusion on the grounds that schools were meant to offer a secular education for civic virtue.

In addition, the republican response focuses on "rights" as a way of expressing identity claims. Rather than considering whether current constitutive processes for school boards are likely to produce a fair reflection of social diversity, and rather than considering whether the internal administrative organization and governance of schools (their own internal normativity) can better reflect this diversity, the republican response presumes that the issue at stake is the "constitutional right" to wear the *hijab* or to carry the *kirpan* – a right the contours of which can and must be litigated before the courts. While the legal republican approach would not explicitly deny alternative identities, it does require schools to promote and reinforce the national identities of the State and concomitantly deny a public presence to all other particular identities.

The legal pluralist sees this matter rather differently. Legal pluralists understand public institutions as meeting grounds for all citizens claiming all identities; they are privileged sites for corroding the hard edge of essentialized identities, be they the national identity of the State or of any other group. Rather than being construed as a place to promote a single national identity against which only rights claims may prevail, the school is cast as a *lieu de rassemblement* within which different identity claims may be articulated, mediated, and conciliated. The school itself, as a public institution, is secular. But students are welcomed in the diverse identities, rather than being cast into symbolically constructed ethnic or religious educational ghettos. On a legal pluralist analysis, one has to conclude that by failing to recognize how their own ethnocultural national identity at once defines and excludes other identities, the school administrators are inviting (even compelling) these diverse "nationalities" – Muslim, Sikh – to become "States."

It follows that, because a pluralist sees legal regimes as constituted in the narrative iteration of identities, the most effective institutional responses are not those that imagine minority identity claims being argued over and as against national identity claims. A pluralist perspective instead challenges school administrators to acknowledge how the national identity claims they

make are simply surrogates for the particular identity claims of presumed majorities. On this account, the legal recognition of the facts of social diversity is grounded in enfranchisement – in everyday administrative arrangements and practices within public institutions that do not lexically rank particular identities. Through these arrangements, the State both disclaims its own essentialized, single national public identity and removes inducements to particular identity claims to reconstitute themselves as essentialized identities in competition with those previously privileged by the State.

Differential Use of State Institutions of Dispute Resolution

Sometimes, however, people who claim particular identities do not do so with the ambition of participating or seeking enfranchisement in public institutions, even when these public institutions are explicitly meant to be *lieux de rassemblement*. Rather than seeking to contribute directly to the forging of national identities within these public institutions, they are content to proclaim their own parallel legal regimes and institutional sites within which they pursue and validate these particular identities.

Consider in this regard the longstanding practices of Protestants, Roman Catholics, Jews, Muslims, Hindus, Sikhs, and others who wish to marry religiously, notwithstanding the option of a secular marriage. Consider also their practice of seeking an annulment of a marriage before ecclesiastical authorities, or obtaining a *get*, or the recognition of the Imam for one's divorce, even after a secular divorce has been obtained. In both sets of cases, the public identity of the State institution is not denied; it is merely counterposed and relativized in relation to another institution that speaks more powerfully to the particular personal identity being asserted.

For the moment, however, I should like to focus on a slightly different issue. In ordinary, everyday situations of social conflict, how successful are State institutions in framing the way the substance and the form of the conflict are conceived? That is, to what extent do the norms and processes of State law actually speak to the needs and expectations of those claiming non-dominant identities?

The data collected in an empirical study of plaintiffs in the Montreal Small Claims Court in the early 1990s provides an empirical base for answering these questions. The area served by the court maps one of Canada's most socio-demographically diverse census districts and therefore provides a fertile ground for investigating socio-cultural diversity. The aim of the study was to determine if the particular institutional design of that court facilitated greater access (measured as greater participation) by people who self-ascribed subordinated personal identities. What are these design features? The court is organized to promote access by removing barriers – cost, complexity, and delay

(and lawyers) – from the process. Moreover, its judges are given power to participate actively in the adjudication, even to the point of becoming mediators. Finally, most judges have received social-diversity "sensitivity training."

The study examined all court plaintiffs for an entire year, sorting them by reference to socio-demographic criteria collected in prior data sets: age, sex, language, education, income, ethnicity, citizenship, race, religion, and so forth. The results obtained were then compared with census figures on the same questions for the court's catchment and statistics about participation rates in other State institutions of civil disputing. The study found that well-educated, white, male citizens who were either English-speaking Quebecers or *francophones de souche* and aged between 35 and 55 with a good income were grossly over-represented among the court's plaintiff population. No non-random distributions of the relevant types of conflict or non-random distributions of personality traits – say, fighters versus lumpers – skewed the socio-demography of the plaintiff cohort. In other words, a State institution that was specially conceived to be responsive to populations most likely to make non-mainstream identity claims had no statistically-significant impact on the use of public institutions by these populations.

How to interpret this outcome? If everyday conflict (a brute fact) cognizable by State legal institutions is randomly distributed, one would predict that all citizens should be equally disposed to use the disputing facilities provided by the state. That is, all things being equal, the extent to which citizens litigate should not correlate to any particular identity characteristics other than (hypothetically) a particular identity framed around an inclination to litigate. According to republican legal theory, the statistically-significant relative absence of plaintiffs from disfavoured population sectors cannot be ascribed to individual identity choice; it can only be seen as a symptom of a system pathology.

Not all those who ascribe to republican legal theory would have the same policy prescription for addressing this differentiated use of the court. Even though all would characterize it as a problem of access to justice, the preferred response to the pathology will depend on background political ideology. Socialists could be predicted to argue for more legal aid, more systemic remedies, more institutional support, and so on. Liberals would argue for procedural adjustments to the litigation system to make it less intimidating to those most likely to assert subordinated particular identities. Libertarians might see the remedy in replacing State institutions either with State-delegated private courts or even free--standing consensual arbitrations. Communitarians likely would seek to develop soft official solutions like state-managed conciliation processes.

All of these responses postulate relationships between people created and regulated by abstract, impersonal, official, rights-attributing rules. This means, firstly, that the characterization to be given to potential plaintiffs – as consumer, tenant, employee – flows from the jurisdictional criteria proper to these institutions. Other characterizations – as a spouse, father, resident of a neighbourhood, friend, tenant, francophone – are excluded. It also means that motivations are censored by remedies. The law and the court exist to provide monetary remedies for harm suffered; vindication, attribution of blame, the desire for acknowledgement and apology are not cognizable claims. Both alternative identity characterization and alternative conceptions of self and other are brute facts that republican legal theory effectively mutes.

Once again, the legal pluralist sees matters through a different lens. The preponderance of white, male, francophone professionals among the plaintiff population of the Montreal Small Claims Court may not be pathological at all. Perhaps certain plaintiffs have opted out of the court not for reasons of "personality" or "socio-demographic exclusion" but because they have their own preferred means and resources for recognizing and resolving conflict. In this light, the pathology might rather be that republican legal theory sees this absence as a problem. The refusal to acknowledge how particular non-national identities frame responses to State institutions results in an incapacity to recognize the alternative legal regimes generated and privileged by identities.

The legal pluralist asks whether there might be processes of social ordering and practices for recognizing particular identities that stand in counterpoint to traditional conceptions of rights adjudication. Perhaps informal, ambiguous, and contradictory rules, iterated in and across multiple normative sites, reveal citizens to be engaged in building their own legal regimes. The idea of debating and mediating conflict in non-state institutions may be more the proof of a healthy reaction to the limited possibilities of the official State legal regime than a pathology to overcome. Of course, this does not mean that we should close Small Claims Courts. We should continue to improve the design of official civil disputing institutions to render them accessible to a broad public, but we should also not count non- or differential-use as a failure.

If law is a hypothesis for acknowledging and building identities and relationships, the focus should be on the interaction between various legal regimes. Institutions and processes constituted through particular identities would be seen not as subordinated, unofficial counterpoints to State law, but as coexisting and occasionally competing legal regimes. Decisions would have to be re-imagined as the mediated and always contingent outcome between contesting parties who deploy diverse institutions in order to assert the contours of their particular identities.

This suggests a further point about alternative institutional forms for dispute resolution. It has recently been proposed by the Muslim League of Canada to create a system of Islamic courts. The proposal has raised much suspicion among those committed to republican legal theory. The counter-claims are two-fold.

First, unlike consensual arbitration, mediation and other forms of alternative dispute resolution, the ambition of these courts is to make determinations on questions of status – marriage, divorce, filiation, successions. This is thought heretical. But recall that until the reforms of the mid-19th century *Judicature Acts*, religious tribunals exercised exactly this jurisdiction in many common law countries. Moreover, since that time has there not continued to exist in Canada a body of ecclesiastical courts established by the Roman Catholic Church? Have not rabbinical courts also long existed? In other words, to claim neutrality for the system at hand is to ignore the reality of a State court system grounded in Judeo-Christian identity. The legal pluralist accepts that parallel decisions by parallel authorities each responsive to recognizable identity claims have always informed civil disputing. And, as the very fact that today we see these courts as reflecting a Judeo-Christian identity (when a century ago one would have characterized Jews as an excluded other) reveals how plastic the concept of "official neutrality" really is.

The second concern is that these courts are also being proposed to exercise a jurisdiction between Muslims in matters of contract, property and civil liability – a jurisdiction that will, it is claimed, undermine the authority of secular courts to reinforce liberal democratic values. Again, the objection is curious. For there have always existed specialized commercial courts organized to decide claims within particular industries. Courts and arbitrators in the needle trades have long settled disputes among Jewish coreligionists in that field of endeavour. All practices of alternative dispute resolution pose a challenge because they decentre courts as the single and official oracles of the law. Republican theory can imagine only State courts as legal, and only the rules of a *Civil Code* or, more generally, of a legislature, as law. To give these alternative processes institutional form that is parasitic on religious particularity is, in such a perspective, to transform them from the realm of fact to the realm of law, and to destroy the idea of the Rule of Law.

Here also the pluralist understanding offers a counterpoint. On what basis can it be said that Islamic civil courts are different from, say, a labour arbitration, or a commercial mediation? Should the criticism be that these Islamic courts claim a general jurisdiction on the basis of religion rather than a conjunctural economic circumstance, the pluralist would respond that deciding to see one's religion and not one's contractual status as the dominant personal identity is merely evidence of the empirical defects of republican legal theory. There is, in other words, no presumptive superiority to the characterization of personal

identities established by State law simply because they are expressed by State law.

Who Owns the Concept of Marriage?

I should now like to offer a third example of contrasting perspectives of legal pluralist and republican legal theory to issues of social diversity. For more than a decade Montrealers, like people in many western States, have been debating whether the definition of marriage should be amended so as to include same-sex unions. The political and social responses have been several, highlighting the fact that even abstractly cast legal rules nonetheless privilege one conception of identity over numerous other conceptions. What is important to consider in assessing responses to the identity claims of same-sex couples, is the way in which possible responses can be framed, and the reaction of same-sex couples to these responses.

There are about half-a-dozen commonly mooted positions offered in response to the claim for recognition of same-sex unions. Some would seek to maintain the *status quo* with no accommodation even of a "registered partnership" alternative for same-sex couples. Others see the creation of a "registered partnership" alternative in parallel to marriage is the only available status for same-sex couples. Still others believe that the creation of a "registered partnership" alternative for everyone, including heterosexual couples, same-sex couples and other adults in non-conjugal but high-affect relationships of dependence and interdependence, with marriage preserved as an additional option for heterosexual conjugal relationships would be optimal. A fourth position is to redefine marriage so as to include same-sex couples. And finally, some argue for the creation of a "registered partnership" regime open to all and the withdrawal of the State from the business of recognizing or legitimating marriages.

As in previous examples, legal republican and legal pluralist responses have a number of similarities, but being grounded in different logic of personal identities, they tend to point towards different policy outcomes. For example, both would probably consider that some variant of the last two solutions – maintaining an abstract conception of recognized high-affect personal relationships, yet making space for those advancing identity claims to carve out their own space and there own institutions of recognition – is both plausible and desirable. But the rationale would be different. Republicans would ground the outcome in the norm of abstract subjectivity. Any option that rests on an abstract identity norm (marriage, civil-union, whatever) is defensible. But since marriage has a historical content, the better option would be to create a new abstract concept like the civil union. Pluralists would ground the outcome in the objective of respecting the agency of those claiming particular sexual-

orientation identities. Pluralists would not, that is, assume that within the same-sex community there is an essential identity that can be legally captured by a single regulatory regime tailor-made for the purpose.

The character of the pluralist position can best be seen by looking at the various ways in which people who claim a particular identity within the gay-lesbian-bisexual-transgendered communities conceive the appropriate policy response. The different identity-positions that have been argued to date can be grouped into four main archetypes. Some persons in same-sex relationships feel that their relationship is legally or morally incomplete unless it is certified by the State as a marriage. A response to the claim to be included in the form of public recognition is required.

By contrast, some do not feel the need to formalize their relationship for reasons of moral or legal completeness, but support same-sex marriage because the current configuration of government policies provides certain desired benefits to married couples. Of course, this instrumental position could be accommodated either by opening up marriage to same-sex couples, or by a registered partnership regime for same-sex couples attributing the same social and legal benefits, or by the State withdrawing from the marriage business, and creating a universally-accessible regime of registered partnerships.

Some feel that the life-style and ethic of same-sex relationships are such as to contest normality and that permitting same-sex marriage will destroy the distinctiveness of same-sex relationships and turn them into a mere reflection of heterosexual marriage with its attendant pathologies. Indeed, there are many who consider marriage to be an inherently heterosexual institution incapable of reforming itself. They fear that many same sex-couples will be unable to resist the normalizing pattern. Those who fear the inability of Muslims to resist the call to Islamic courts express a similar viewpoint.

Finally, some feel that while the third perspective has merit, the most radical opposition to any normality is the abnegation of a possibility. They seek to maintain State recognition of marriage, to make same sex marriage a possibility, to make registered unions a possibility, and let both heterosexual and same-sex couples choose what forms of recognition or mis-recognition they desire. This recalls the legal pluralist understanding of the differential use of the small claims court.

Of course, it is not just same-sex couples who have an opinion about the meaning of marriage. Many heterosexual couples, especially if they are members of religious denominations, have strong views about the "true definition" of marriage. To them, the content of marriage is given by religion, and the State legal order must continue to reflect the national religious consensus. Such a view parallels that of partisans of the republican conception of the

secular school, except that in this case these heterosexual couples wish marriage to remain rooted in a particular religious identity.

Those holding to republican legal theory would opt for the withdrawal of the State or the claim for a general civil union to maintain the pretence of abstract legal subjectivity. By contrast, given both the strongest claim for recognition and abnegation, and the benefit of maintaining competition between religious and secular for ownership of the concept of marriage, the legal pluralist would see either the creation of a regime of civil unions, or the State withdrawing from the business of marriage as less-empowering alternatives. The preferred alternative would be to allow two (perhaps even more than two) people involving in a high-affect relationship of dependence and interdependence to themselves decide how to express their particular identities by either choosing, or declining to choose, to get married. To sum up, the problem for those who reject the possibility of same-sex marriage for what may be cited as "progressive" reasons (for example, marriage is inherently heterosexual) is two-fold. First, they essentialize a concept that has no essence; and second, they trespass upon the claims of others who would seek a similar recognition of relationships of interdependence that have no conjugal component.

Conclusion

These three examples provide a ground for reconsidering the meaning of the idea of a national legal identity. Initially, in republican legal theory the idea evoked the notion of an abstract legal subjectivity meant to allocate space for unconstrained human aspiration and to protect (and at the same time protract) the various sites within which and forms through which human interaction could be pursued. Together, the ideas of an individualistic, rights-based national public law citizenship and a national private law legal identity were believed to provide the necessary conceptual forms, processes, and institutions for particular identities to be formed, to take root and to flourish.

But not all identities manage to secure equal recognition, and legislatures used the idea of abstract legal subjectivity to banish both personal identity and affect from the law of everyday human relationships. Contemporary immigration is one aspect of social diversity that brings to light what the revolutionary fervour long obscured. The nation is a political metaphor, an imagined community; it is not an essence. And once adopted, this metaphor at once makes possible certain strategies for re-imagining privileged relationships while excluding others from view and consideration. Hence, legal republicanism disparages political multiculturalism as a view conception of legal subjectivity that, by recognizing diverse personal identities, breeds unmanageable social disaggregation.

The hypothesis of legal pluralism narrates a quite different story of multiple particular identities generating myriad legal subjectivities and their attendant multiple agencies. On the pluralist account, state-generated private law rules do not function instrumentally as exogenous variables acting upon passive legal subjects. Rather, legal pluralism recognizes and brings into bold relief the constitutive agency of legal subjects as they actively construct and reproduce both State and non-State legal regimes. Legal pluralism rejects the division of theoretical labour in legal republicanism that allocates the explanation people's behaviour *vis-à-vis* the State to the realm of law and the explanation of their conduct in "other" and "alternative" legal regimes to the social.

To acknowledge that multiple personal identities find expression in multiple legal subjectivities is to accept that both public law and private law are generated in multiple sites through multiple modes of expression. More significantly, to recognize that these multiple subjectivities generate multiple regimes and to characterize these multiple regimes as "legal" regimes is to hold them accountable to the demands of we make of all legal orders: authority must be legitimated; procedural fairness must be respected; the minimal formal conditions for the possibility of a regime of rules meant to guide human conduct must be present; and substantive justice grounded in the equality of people must be pursued. These demands, that is, must be fulfilled in respect of every subjectively-generated legal regime – whether of the State, of a religious or ethnic community, or of any other identity-conferring / identity-constituted group.

The power of the legal project that emerged in tandem with the nation State lay in its challenge to claimed authority, whether by divine right or by immemorial custom and tradition. In the competition for normative allegiance, the secular came to trump the religious, and the national both the local and the cosmopolitan. Much is made of the liberation this produced, even though at the same time the notion of abstract legal subjectivity denied the plural expressions of human agency and the possibilities of social diversity that this very liberation was meant to foster.

This paper has argued that republican legal theory gives an inadequate account of how people instantiate their particular identities in the realm of everyday law. It offers legal pluralism as a theoretical alternative that brings into relief the agency of people to create, narrate, iterate, mediate, and negotiate plural identities both *vis-à-vis* the law of the State and in the diverse non-State legal regimes they build in interaction with others. Taking legal pluralism seriously enables us to open up a new understanding of legal interaction: one that involves voice *within* a regime a law (the agency attendant upon being a recognized legal subject), but a voice *about* regimes of law (the agency of people to create law).

Summary bibliography and references

The central questions addressed in this paper have been: (1) the relationship between identity, social diversity and immigration; (2) the design of institutions to accommodate linguistic, cultural and social diversity; and (3) the bearing of theories of legal pluralism on how personal identities are mediated through law. Much of my own work over the past decade has focused on these themes. The sources cited below make reference to that work, and to other authors who have adopted similar positions in addressing these same themes.

Identity, Diversity, Immigration

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Le standard et la diversité

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1. Ce texte trouve son origine dans une réflexion sur le raisonnable et le droit, commencée il y a plus de vingt-cinq ans alors que je me nourrissais de l'enseignement oral de mon maître, le professeur Schwarz-Liebermann von Wahlendorf[1]. Les colloques de l'ISAIDAT me donnèrent l'occasion de l'intensifier et la formaliser[2]. C'est en hommage à un autre grand maître, le professeur Rodolfo Sacco, président des instances sous l'égide desquelles se déroula le colloque de Turin sur *La diversité humaine et le droit*, que je dédie le présent texte, sollicité par mes amis italiens qui m'ont demandé de revenir sur ce thème immense et inépuisable[3]. Les deux grands maîtres sus-nommés, qui tous deux ont marqué la science juridique en l'ouvrant à la dimension comparative, m'ont entre autres choses appris, le premier à allier la réflexion juridique et philosophique et le second à intégrer dans mes analyses les dimensions linguistique et anthropologique. Ces quelques pages sont un cadeau d'anniversaire au maître et ami turinois qui entamait vaillamment sa neuvième décennie alors que nous tenions ce colloque.

1 Outre les deux maître-livres que sont *Fondements et principes d'un ordre juridique naissant*, Paris/La Haye, Mouton, 1971 ; *Réflexions sur la nature des choses et la logique du droit*, Paris/La Haye, Mouton, 1973, voir les volumes XXI, XXIII, XXIV et XXVII de la *Bibliothèque de philosophie du droit*, Paris, L.G.D.J., 1976 à 1982.

2 « Le raisonnable et le droit : standards, prototypes et interprétation uniforme », *Ars Interpretandi, Jahrbuch für Juristische Hermeneutik/Journal of Legal Hermeneutics*, Vol. 7, 2002, p. 221-238, texte qui reprend « Le prototype, clé de l'interprétation uniforme : la standardisation des notions floues en droit du commerce international », contribution au 2e colloque de l'ISAIDAT (Institut subalpin pour l'analyse du droit des activités transnationales) sur *L'interprétation des textes juridiques rédigés en plus d'une langue*, sous la dir. de R. Sacco, L'Harmattan-Italia, 2002, p. 183-202.

3 Mauro Bussani et Michele Graziadei, « La diversité humaine et le droit, un projet de recherche international », *Rev. int. dr. comp.*, 2002, 147. Conformément à l'objectif formulé par les initiateurs de ce projet interdisciplinaire, je m'efforcerai d'éviter les développements juridiques détaillés pour rester sur le plan d'une réflexion générale accessible aux spécialistes d'autres disciplines que le droit. Cela n'empêche aucunement à mon propos de s'insérer aussi dans la thématique d'un autre réseau de recherche : *Uniform Terminology for European Private Law*, dont les membres sont les universités de Turin (coordinatrice), Barcelone, Lyon 3, Münster, Nimègue, Oxford et Varsovie. Ce réseau fait partie du programme IHP (*Improving Human Potential*) financé par la Commission européenne (Contrat n° HPRN-CT-2002-0022).