

The Concept of Community in the Social Sciences and its Juridical Relevance

By: Isabelle Schulte-Tenckhoff, PhD

AUTHOR'S TRANSLATION

September 2001

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Ce document est également disponible en français sous le titre : Le concept de communauté dans les sciences sociales et sa pertinence juridique.

EXECUTIVE SUMMARY

Community cannot be regarded as a mere given. This is especially true with respect to standard-setting in response to the strategic invocation of community ties in support of collective rights claims. To gain a critical perspective, this report establishes a distinction between the study of *communities*, in the plural, in the sense of populations, local groups or minorities, and *community*, in the singular, understood as a typological construct or ideal type.

Section I describes the contribution of four classic authors, Tönnies, Durkheim, Weber and Redfield. It focuses on Tönnies's famous opposition between *Gemeinschaft* (community) and *Gesellschaft* (society or association), which constitutes the basic reference for the study of community as an ideal type. Such a typological construct does not describe any living social group, but may be helpful in formulating hypotheses to explain or interpret social facts. Tönnies views community as an integrated whole in which individual and group interests coincide, bringing forth a relatively homogeneous, cohesive and traditional social order. Conversely, society is made up of competing individual interests and dominated by impersonal contractual relations. The community/society dichotomy has been used to conceptualise two irreducible forms of social relationships. It also implies a progression of cultural forms through time, inevitably leading to the disappearance of community under the assault of societal modernisation. Although a product of its era, Tönnies's approach lends itself to a more modern (and critical) reading: it is no coincidence that community has re-emerged as a preferential vehicle to reflect on social relationships at a time of globalisation, mass migration, and transnational culture flows.

The concept of community is not value-free; it conveys a certain ideal of social organisation. This ideal also underpins the anthropology of communities dealt with in Section II. In its classic form, this approach is governed by the principles of functionalism. It focuses on small-scale local groups and the interrelations between their social institutions and cultural patterns. However, in concentrating on intra-group dynamics, it fails to account for the wider social, economic and political structures. This involves the risk of essentialising and reifying culture. More recent work inspired by the so-called constructionist approach thus advocates a transition from viewing communities as homogeneous and clearly spatialised social groups to considering them as symbolic and heterogeneous entities constructed by individuals in the pursuit of common interests. In this context, the invocation of community gains a strategic dimension since it often appears as a reaction to conditions of inequality or minority situations which persist within the liberal and pluralist polity.

In its present form, the anthropology of communities seeks to account simultaneously for the transformations undergone by “exotic” cultures traditionally studied by anthropologists and the effects of globalisation in the western world. This has led most recently to a focus on so-called transnational and de-territorialised collectives of individuals whose social ties are tenuous at best. In this instance, community results from the subjective perception of some singularity rather than the objective nature of differences claimed in relation to other groups; under certain circumstances, then, community is imagined.

In the Canadian context, communities are the product of various factors of differentiation, including ethnicity, religion, the local situation, the memory of a historical event – and often any combination of these. Some communities have a high level of organisation, others are of a more informal nature. Some are more enduring than others. But beyond such differences, there are a number of similarities. A group can be called a community when its

members show a sense of solidarity and belonging and pursue common goals, and when it exhibits a certain level of participation and organisation. Communities potentially experience internal conflict, especially with respect to issues of identity and representation. And only rarely are community boundaries defined with precision; on the contrary, they vary according to the location of the interlocutor. The way in which outsiders look at a given community has a bearing on its self-perception. Finally, while official communal discourse generally suggests that communities are homogeneous, they are in reality heterogeneous and complex.

It remains to be seen whether the concept of community has intrinsic analytical or normative value for the purpose of law. This question is addressed in the conclusion which seeks to offer a prospect for future research informed by the principles of legal pluralism. Nowadays, with the invocation of culture operating as a naturalised marker of allegedly immutable differences, one is faced with the twofold problem of determining which entities are to be considered as legally relevant, and what is at stake in the reproduction and stabilisation of cultural referents. Do communities have status in law (as is suggested by the term “*collectivité*,” which is the French Canadian equivalent of community)? However, the purely spatial inscription of *collectivité* covers but one aspect – and maybe not the most important one – of the various meanings that can be associated with the concept of community understood as a social group or as a certain quality of the social bond. Nor is it necessarily the sole criterion invoked in support of group rights. Setting legal standards with respect to given communities, therefore, is a delicate exercise. It must be determined if and how communities are likely to claim legal rights, and what this entails for others finding themselves in a similar situation. Likewise, it must be determined what role legal standards play in promoting or repressing specific key features of given communities. Finally, one must ask how to manage inter-communal relations via the law in a manner that reflects the diversity of the communities involved without neglecting that they form part of a wider structure tending to promote uniformity.

Addressing the juridical significance of communities also involves addressing the fundamental problem of the nature of law. Indeed, the location of a “law of communities” presupposes pluralism and, by way of consequence, a certain progression of the legal order. It is necessary to reach beyond the positivistic conception of law and to promote an approach informed by other fields of knowledge. This accounts for the relevance of the concept of legal pluralism and the methods of legal anthropology. The present report is thus an invitation to encourage research inspired by pluralism understood as an epistemological choice, especially in the treatment of topics that are typically dealt with by jurists.

AUTHOR'S NOTE REGARDING THE TRANSLATION

All quotations from non-translated references in French are paraphrased, with the original text given in the corresponding footnote.

Special thanks are due to Dr. Daphne Kelgard whose suggestions improved the English text considerably.

September 2001

ABOUT THE AUTHOR

Isabelle Schulte-Tenckhoff holds university degrees in political science and development studies, and a Ph.D. in anthropology and sociology, all obtained in Switzerland. She has taught at various universities in Europe and Canada, and also gained professional experience at the United Nations and other international organisations. She is a member of CER:FDP, Centre d'études et de recherches: Fondements du droit public (Universities of Paris XNanterre and Cergy-Pontoise, France). In Canada, she is an adjunct professor in the Department of Anthropology, McGill University.

Her research interests focus on indigenous and minority rights, intercultural relations, and legal pluralism. She has published several books, most recently the edited volume *Altérité et droit* (Brussels, 2001), and numerous scholarly articles. She is the co-founder and co-director (with G. Koubi) of the series "Droits, territoires, cultures" published by Bruylant in Brussels.

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THE MANDATE

The Law Commission of Canada asked me to explore the evolution of the concept of community in light of the larger tendencies in society, with the purpose of laying the foundations for future research under the Commission's Communities Project. The three main objectives of my mandate were formulated as follows:

- an analysis of the difference between the empirical and the ideal-typical approach in the study of community;
- a description of the main criteria or key elements that characterise community life, using examples drawn from the Canadian context;
- a study of the juridical significance of dichotomies involving the concept of community.

In discharging this mandate, my primary concern was with the first objective that I consider to be of fundamental importance for understanding the other two. The conceptual nature of the mandate, which excludes the possibility of large-scale empirical research and must focus on the specialised literature, justifies such an approach, which is based on deduction. In this instance, the references used are mainly from the social sciences, in particular my own field, anthropology. I also sought inspiration from the legal literature I have used in connection with previous research dealing with the rights of non-state groups.¹ Therefore, this report is written from an interdisciplinary perspective. Ideally, such a perspective allows one to transcend the limits of each individual discipline through the reciprocal enlightenment of the insights and conceptual tools of the other. It is understood that such an interdisciplinary approach is yet to be largely worked out from a legal point of view.

To avoid misunderstanding, it must be noted that the anthropological study of community involves a more restrictive approach than that suggested by the official French Canadian translation for “community,” which is “*collectivité*.” According to *Le Petit Robert*, “*collectivité*” has three main meanings. It may refer to a “naturally constituted group of individuals” (coinciding with “*communauté*” in its classic social science meaning); more generally, it also designates a group said “to pursue a common objective” (thus somewhat exceeding the aforementioned sense of “*communauté*”). Finally, to complicate matters, “*collectivité*” describes an administrative district having legal status. In the following, I shall focus, however, on social relationships and the issue of identity, as set out by the social science approach of community.

The report begins with a description of the problem to be addressed: the *problématique*. Section I deals with community as an ideal type on the basis of four classic authors: Tönnies, Durkheim, Weber, and Redfield. Section II recalls the evolution of the anthropology of communities, with a focus on three crucial issues: functionalism, culture, and the de-territorialisation of socio-cultural groups. Several examples drawn from the Canadian context are provided for the purpose of illustration. In conclusion, some thoughts are offered on the significance of the concept of community in and for law, from the perspective of legal pluralism.

I gratefully acknowledge Annick Lenoir-Achdjian for her contribution to the research, and Niloofar Ahmadzadeh for her help with the bibliography.

Westmount, 15 August 2001

¹ Cf. I. SCHULTE-TENCKHOFF, *La Question des peuples autochtones*, Brussels, Bruylant, Paris, L.G.D.J., 1997; *id.*, Les minorités en droit international, in: *Le Droit et les minorités: analyses et textes. Deuxième*

POSING THE PROBLEM

In the social sciences, the term “community” usually describes small local groups often viewed – rightly or wrongly – as “traditional” or “inward-looking.” It has been applied in this fashion to more or less isolated peasant groups that survive within modern industrial society with which they are said to contrast because of the logic of social proximity governing communal relationships. As we shall see, the opposition between communal and more impersonal associative relationships, plays an important role in the social sciences, whether these are concerned with the study of living communities understood as populations, local groups or minorities, or with that of community taken as a mental construct or ideal type.

The distinction between community (in the singular) and communities (in the plural) forms the backbone of this study. Viewing community as a constructed type involves the use of various dichotomies in which community – or an equivalent – forms one extreme. The most famous of these is Tönnies’s opposition between *Gemeinschaft* (community) and *Gesellschaft* (society), regarded as “archetypal” because of its status as a fundamental sociological reference.² Tönnies views “community” as an organic whole grounded in social relationships involving moral and emotional bonds that set them apart from the artificial and impersonal nature of associative relationships.

The term “community” is far from neutral: it conveys a certain ideal of social ties and social organisation. Such an ideal also underpins any reference to community in the description of projects or policies concerned with the interests and well being of the majority of the

édition (A. FENET, G. KOUBI, I. SCHULTE-TENCKHOFF), Brussels, Bruylant, 2000, p. 17-113.

² F. FARRUGIA, *La Crise du lien social: essai de sociologie critique*, Paris, L’Harmattan, 1993, p. 75.

population or popular sectors of society. Expressions like “community action,” “community development” and “community participation” are meant to convey principles such as participation from below, decentralisation, and devolution. Used in this manner, the concept of community fulfills an ideological function that is intimately linked to modern political thought. While this particular topic does not fall directly under my mandate, it has the advantage of highlighting the potential pitfalls of an uncritical valorisation of “community” when used rhetorically. It is necessary, therefore, to explore not only the uses of the concept of community but also its empirical dimension, that is, communities understood as local groups characterised by direct personal relationships unfolding in small-scale social networks.

While it is possible to approach living communities as well-defined socio-cultural entities, these too experience the effects of globalisation and mass migration. Local communities change or even disappear, “new” communities emerge; and so-called new social movements may undergo processes of “communitarisation.” It is in this context that the problem of “juridical management” of communities arises. The main challenge here lies in setting standards in response to the strategic invocation of communal ties to legitimise (or contest) collective rights claims – whether these are understood as individual human rights exercised collectively or as rights to be claimed by collectives or groups as such.

The concept of community, therefore, cannot be treated as a mere given. There is nothing self-evident about the idea of the social bond that “community” is meant to convey; nor can the structural properties of “communities” be taken for granted. As shall be seen, the meaning of “community” is more specific in the social sciences than in ordinary thinking that tends to concentrate on two aspects, namely spatialisation and the presence of common interests.

The combined study of community as an ideal type and of communities as social groups allows for some critical distance with regard to conventional wisdom. Jurists and policy makers in particular tend to approach the concept of community as conveying a clearly defined, culturally homogeneous and territorially anchored reality. They assume that spatial proximity is the foundation upon which communal relationships rest. This essentialist view of community has been the object of critical analysis, but the conceptual confusion this has brought about is of little comfort to those who wish to see the concept of community endowed with intrinsic analytical or normative value. Yet, despite its extreme complexity and its tendency to elude univocal definitions, the concept of community has generated some minimal consensus on the general characteristics to which it refers. The concluding section offers some thoughts on how to approach community from the point of view of law, based on this minimal consensus.

It should be added that in opting for an approach inspired by the social sciences one engages in a multi-tiered research endeavour. It is not only a matter of gaining insights into social and cultural facts but also of theorising praxis and encouraging critical thinking. Like any study concerned with human societies, the approach followed here raises questions about values:

Society is not, then, as has often been thought, a stranger to the moral world, or something which has only secondary repercussions. It is, on the contrary, the necessary condition of its existence. It is not a simple juxtaposition of individuals who bring an intrinsic morality with them; but rather man is a moral being only because he lives in society, since morality consists in being solidary with a group and varying with this solidarity.³

In posing the problem in these terms, one is taking an interest not only in the common values that make social life possible but also in the type of action that creates social order. Both involve processes that are relevant to law and legal theory.

³ E. DURKHEIM, *The Division of Labour in Society*, New York, The Free Press, 1933, p. 399 (1st ed. 1893).

I. Understanding Community: Milestones

Dichotomies or bipolar typologies represent an intermediate stage between the synthesis of empirical data and the elaboration of the abstract categories of so-called grand theory. One of these categories is the social bond (lien social). It is considered essential because failing it, society would have no real existence, nor be an object of knowledge.⁴ Dichotomies thus help to describe and explain social facts. But they also raise the problem of value. The community/society dichotomy generates a paradox that derives from the double meaning of the term “society:” in the last analysis, this term (or the corresponding adjectives) refers not to the reality of society (societas) but to what society is not, namely *communitas*. Strictly speaking, then, society ought to be community, for only community is said to involve genuine social ties.⁵ One must therefore keep in mind the various conceptual nuances of the term “society.” Society can be understood as a “neutral” or pure category of grand theory, and also as a value, notably a negative one when contrasted with community, as in Tönnies's work.

A. Community and Society (F. Tönnies)

The work *Gemeinschaft und Gesellschaft*⁶ by the German sociologist Ferdinand Tönnies (1855-1936) constitutes the basic reference for the study of community as a constructed or ideal type. Written at a time when the primordial nature of the communal bond was the widely held premise, it represented a radical departure from the utilitarianism of political economy. Likewise, it contradicted the contractual conception of Enlightenment political and legal theory.

⁴ FARRUGIA, *supra* note 2, p. 39: “le terme *social* finit par désigner non pas ce qui existe comme société, c’est-à-dire ‘societas’, mais, au contraire, ce qui n’existe pas comme société: la ‘communitas’. Au sens strict, est donc ‘société’ telle qu’elle devrait être, la ‘communauté’. Est lien social au sens fort, le lien communautaire”.

⁵ *Ibid.*, p. 26.

⁶ F. TÖNNIES, *Gemeinschaft und Gesellschaft*, 1887; I used the English translation by C. Loomis: *Community and Society*, East Lansing, Michigan State University Press, 1957.

Undoubtedly, the French Revolution played a crucial role as the founding myth of contractual liberal society, but it quickly led to a reflection on the concept of society itself. Society became an object of enquiry because it increasingly became a locus of contradictions.⁷ Formulated in Tönnies's terms, this contradiction hinges on the opposition between the communal and the associative type of social bond.

Tönnies describes *Gemeinschaft* or community as an organic whole in which individual and group interests coincide. Communal relationships are based on moral and emotional ties and bring forth a relatively homogeneous, cohesive and traditional social order. Conversely, *Gesellschaft* – translated as “association” or “society” – results from competing individual interests, thus generating a social order dominated by impersonal contractual relationships. Tönnies's entire scheme hinges on the contrast between the “real and organic life” of community and the “imaginary and mechanical structure” of society: “*Gemeinschaft* should be understood as a living organism, *Gesellschaft* as a mechanical aggregate and artifact.”⁸ There is contradiction because of the inherent conflict between the organic and the mechanical: community confronts society and its encroachments. In Tönnies's work, the community/society dichotomy is part of an encompassing sociological theory addressing social relationships, the social bond, social groupings, and the norms that account for *Gemeinschaft* or *Gesellschaft*-type relationships. Nonetheless, it is addressed in terms of individual psychology. Tönnies was influenced here by the psychologism prevalent in the social sciences of late nineteenth-century Germany, whose representatives took an interest in folk psychology and the psychological foundations of law – to which Tönnies added the problem of the psychological foundations of social relationships.

⁷ FARRUGIA, *supra* note 2, p. 72.

⁸ TÖNNIES, *supra* note 6, pp. 33, 35.

According to Tönnies, the conflict between community and society is played out in social action, and social action is willed. Community is the product of natural will (*Wesenswille*, *Wesen* meaning “essence”) that involves liking, habit, memory, reason, imagination, learning... Society in turn results from rational will (*Kürwille*, sometimes *Willkür*), that is, choice; its forms include deliberation, discrimination, conceptualisation, and more generally what Tönnies calls systems of thoughts: intention, calculation, consciousness... The intrinsic opposition between these two types of will is an essential element in the understanding of Tönnies’s scheme, but it is also most controversial. Natural will, which “derives from and can be explained only in terms of the past,” is regarded as the fundamental principle of all action, and the driving force of behaviour; it envelopes and determines thinking.⁹ Conversely, rational will is oriented towards the future and regarded as “a product of thinking itself,” which is dominated by the idea of an object to be attained. However, thinking simply serves as an orientation, it is not the primordial source of volition.¹⁰ Rational will is only effective in relation to natural will; when “thinking establishes itself as the ruling power,¹¹” rational will prevails through the ordering or hierarchy of ends.¹² The opposition between natural and rational will is therefore a radical one. The former is life itself, the latter but a poor copy: “all rational will contains something false and unnatural.”¹³

Two fundamental types of social relationships correspond to these two types of will. Community is the product of the combined individual natural wills grounded in blood or kinship ties. To these must be added bonds of common locality, neighbourhood, and friendship. All these ties foster concord, that is, common understanding. Tönnies cites the village or small

⁹ *Ibid.*, p. 103-104.

¹⁰ *Ibid.*, pp. 103, 20.

¹¹ *Ibid.*, p. 121.

¹² *Ibid.*, p. 120.

¹³ *Ibid.*, p. 126.

town, the household economy, the prevalence of custom¹⁴ to illustrate community. In contrast, society groups individuals who have no genuine bonds and whose relationships are governed by money, credit, obligation, convention, politeness. Society's inhabitants live in a world dominated by interested exchange (disunity of goods), as illustrated by the metropolis and the world market – a world whose protagonists are the merchant and the salaried worker.¹⁵

One might wonder whether the community/society dichotomy only refers to opposite types of social relationships or whether it also expresses a temporal progression of particular cultural forms, leading to the marginalisation and eventual disappearance of community under the impact of society-type rationalisation and modernisation. Tönnies's work supports both hypotheses. The first is underscored by *Gemeinschaft und Gesellschaft*, the second by later publications applying his sociology to history.¹⁶

B. Topicality and Critique of Tönnies's Model

Grand social theory is often formulated in response to situations of abrupt change and new beginnings. It mirrors the evolution of society and thus permits a (re)interpretation of social movements and conditions. At the same time, it contains a plan of society. To this end, it considers the social transformations experienced by all. The study of the social bond on the basis of the community/society dichotomy is, simultaneously, an analysis of a concrete situation, a general theory of society extending beyond the particular situation, and a more or less explicit plan of society.

¹⁴ *Ibid.*, p. 50 sqq.

¹⁵ *Ibid.*, p. 76 sqq.

¹⁶ E.g. F. TÖNNIES, *Geist der Neuzeit*, Leipzig, Hans Buske, 1935.

Tönnies's scheme illustrates the consequences of late nineteenth-century industrialisation and urbanisation. Tönnies identifies two distinct rationales of social organisation, or two contradictory ways in which to establish social relationships. Because community actualises nearness and emotional ties, it involves social relationships that are likely to withstand rationalisation and modernisation. Conversely, society, as the reign of anonymity, operates like a machine. His study *Gemeinschaft und Gesellschaft* captures a form of social life regarded as original and natural at the moment of its waning or demise; it captures community through the prism of the battle it joins with a form of social life regarded as fabricated or artificial. In this manner, Tönnies's *œuvre*, although a product of its time, lends itself to a more modern (and critical) reading in light of recent developments.

It is no coincidence that community has resurfaced as a preferential vehicle to reflect on social relationships at a time of globalisation, mass migrations, and transnational culture flows. According to Guy Rocher, Tönnies did not hide his sympathy for *Gemeinschaft*-type relationships, in which he saw some kind of natural morality. It has been argued that his work contributed to the proliferation of romantic and nationalist movements in Germany, including Nazism.¹⁷ But Tönnies is not the only sociologist who let himself be guided in his analysis by his personal preferences. It is sufficient here merely to allude to the number of works governed by an evolutionism that postulates the alleged superiority of the West over the rest.

Beyond its psychologism and romanticism, the topicality of Tönnies's model stems from its "methodological naturalism"¹⁸ that posits the fundamental naturalness of community as a necessary ideal fiction. The meaning of this fiction becomes clear in Tönnies's later work where community acquires the status of a "normal concept" similar to the better-known Weberian "ideal

¹⁷ G. ROCHER, *Introduction à la sociologie générale*, vol. 2, Paris, HMH, 1968, p. 58.

¹⁸ FARRUGIA, *supra* note 2, p. 92

type" (cf. *infra*). But first of all, it is useful to show the parallel between Tönnies's scheme and Durkheim's opposition between mechanical and organic solidarity.

C. Mechanical and Organic Solidarity (E. Durkheim)

According to the French sociologist Emile Durkheim (1858-1917), social structures are determined by their degree of cohesion. This leads to a typology similar to that of Tönnies, but in which the qualifiers are reversed. According to Durkheim, some social systems are governed by mechanical solidarity resulting from the likeness of the groups and individuals that compose them. This likeness arises from the fact that in the societies considered, the collective personality constrains its members and prevents them from expressing themselves as individuals. Mechanical solidarity, then, "is at its maximum when the collective conscience completely envelopes our whole conscience and coincides in all points with it. But at that moment our individuality is nil [...] our personality vanishes."¹⁹ Other societies in turn are said to be characterised by the division of labour and individualism. Owing to the complementarity of their constitutive units, they generate so-called organic solidarity, which "is possible only if each one has a sphere of action which is peculiar to him; that is, a personality." The more such personality and individuality become evident, "the stronger is the cohesion which results from this solidarity."²⁰ Adopting an evolutionist outlook, Durkheim considers the opposition between mechanical and organic solidarity as doubly relevant. On the one hand, the alleged simplicity of the societies of the "mechanical" type facilitates the study of the fundamental structural processes governing social life in general. On the other hand, the research results thus obtained may also render modern industrial society more intelligible.

¹⁹ DURKHEIM, *supra* note 3, p. 130.

²⁰ *Ibid.*, p. 131.

Durkheim was familiar with German sociology. In a critique of Tönnies, he describes community in terms inspired by his treatment of mechanical versus organic solidarity, namely as a compact and undifferentiated mass.²¹ In his view, community is domestic society rooted in a common origin, shared memories of a common past, and the fact of living together in the same locality; it is therefore of an entirely natural origin, and constitutes an organic group; this is what distinguishes it from *Gesellschaft*.²²

D. Communal and Associative Relationships (M. Weber)

Max Weber (1864-1920), who was trained in law, is known *inter alia* for his contribution to the methodology and theory of sociology – a discipline he defines as “a science concerned with the interpretive understanding of social action and thereby with a causal explanation of its course and consequences.”²³ What sociology seeks to understand is the meaning of action, the significance of social behaviour and institutions. To explain, it uses two devices, the “type” and the “ideal type”. The type does not convey an average but rather the constitutive or essential properties of social action, which implies a “meaningful relationship between the behaviour of the individual and the fact that he is a member of a crowd.”²⁴ As to the ideal type, Weber obtains it by emphasizing one-sidedly one or several points of view and ordering, on that basis, a large number of isolated phenomena with the purpose of creating a integrated mental image.²⁵ The

²¹ E. DURKHEIM, *Communauté et société selon Tönnies*, in: *Textes: éléments d'une théorie sociale*, Paris, Minuit, 1975, p. 384 (1st ed. 1889): “une unité absolue qui exclut la distinction des parties;” “une masse indistincte et compacte qui n'est capable que de mouvements d'ensemble, que ceux-ci soient dirigés par la masse elle-même ou par un de ses éléments chargés de la représenter.”

²² *Ibid.*: community “est donc d'origine absolument naturelle, c'est un groupement organique [...] c'est par ce caractère qu'elle se distingue essentiellement de la *Gesellschaft*.”

²³ M. WEBER, *Economy and Society: An Outline of Interpretive Sociology*, G. Roth & C. Wittich eds, Berkeley, University of California Press, 1978 (1st ed. 1921), p. 4.

²⁴ WEBER, *supra* note 23, p. 23.

²⁵ M. WEBER, *Gesammelte Aufsätze zur Wissenschaftslehre*, Tübingen, J.C.B. Mohr, 1982 (1st ed. 1922).

ideal type can be defined as a mental construct and factor of intelligibility.²⁶ It corresponds to no living social group but is helpful in formulating hypotheses to explain and interpret social facts: it is a heuristic tool to aid the sociologist in “flushing out” configurations of meaning.²⁷

Weber regards social relationships as a fundamental category because individuals orient their behaviour reciprocally. Following an opposition recalling Tönnies’s dichotomy – albeit in more general terms – Weber distinguishes between processes relating to communal social relationships (*Vergemeinschaftung*) and those relating to associative social relationships (*Vergesellschaftung*). A communal relationship is based on the fact that human beings interact because they feel “that they belong together.” An associative relationship is grounded in a rationally motivated agreement or adjustment of interests.²⁸ The communal relationships type covers “a very heterogeneous group of phenomena,”²⁹ although it is “most conveniently illustrated by the family.”³⁰ The purest types of associative relationships, in turn, are rational free market exchange, the pure voluntary association based on self-interest, and the voluntary association based on the adherence to a set of common values.³¹ But Weber stresses immediately that most social relationships are governed simultaneously by the principles of *Vergemeinschaftung* and *Vergesellschaftung*. Even the most rationally motivated relationship may “involve emotional values which transcend its utilitarian significance.”³²

²⁶ C. JAVEAU, Définition préalable et idéal-type: une comparaison méthodologique, in: *Durkheim, Weber: vers la fin des malentendus*, M. HIRSCHHORN and J. COENEN-HUTER eds, Paris, L’Harmattan, 1994, p. 123-134.

²⁷ *Ibid.*, p. 132.

²⁸ WEBER, *supra* note 23, p. 40-41.

²⁹ *Ibid.*, p. 42.

³⁰ *Ibid.*, p. 41.

³¹ *Ibid.*

³² *Ibid.*

The concept of rationality is fundamental in this context since it refers to the characteristic trait of western civilisation, which is of central concern to Weber. Rationality describes the capitalist economy because of its mode of organisation, its search for maximum profit, its recourse to technology and science. It also encompasses religion and, above all, law. Weber argues that social action is either instrumentally rational (*zweckrational*) or value-rational (*wertrational*). Instrumentally rational action occurs “when the ends, the means, and the secondary results are all rationally taken into account and weighed [involving] rational consideration of alternative means to the end, of the relations to the end to the secondary consequences, and finally of the relative importance of different possible ends.”³³ Value-rational action, in turn, “always involves ‘commands’ or ‘demands’ which, in the actor’s opinion, are binding on him.”³⁴ But once again, one cannot affirm that social action is determined exclusively by one or the other.

In distinguishing *Vergemeinschaftung* and *Vergesellschaftung*, Weber emphasises that communal sentiment is above all a cultural reality transmitted through socialization, which is the process that teaches individuals the roles they are meant to fulfil in society, and the norms that govern society. Weber suggests that *Vergemeinschaftung* combines objective and subjective criteria. A relevant illustration in this regard is the current debate on ethnic communities defined as identity groups whose members share certain sentiments, modes of thought or forms of social behaviour. This debate leads me to the anthropology of communities (in the plural). The link between them and the ideal-typical approach is illustrated by the work of Robert Redfield.

³³ *Ibid.*, p. 26.

³⁴ *Ibid.*, p. 25.

E. The Folk-Urban Continuum (R. Redfield)

Drawing inspiration from Tönnies's scheme, the American anthropologist Robert Redfield (1897-1958) – who was also trained in law – devised the folk-urban continuum. Through fieldwork in four Mexican communities,³⁵ he sought to account for the transformations that traditional rural communities undergo as they grow larger and more complex. Urbanisation plays a crucial role and, according to Redfield, causes three major changes. First of all, communities experience cultural disorganisation that involves the loss of their original homogeneity, the emergence of a wide range of cultural choices for individuals, a decrease in the degree of interdependence of the various culture elements, and the emergence of conflict and inconsistency among different norms. Moreover, the community becomes more secularised and increasingly marked by individualism. In its “pure” form, the traditional community is characterised by a highly homogeneous population living in geographic and social isolation, so that the various culture elements form a consistent whole. The focus lies on the sacred nature of social practices, and the members of the community value the group rather than the individual. At the other end of the continuum, the urban community is characterised by cultural disorganisation, secularity, and individualism.

This model has been criticised. Some have argued that communities may undergo change independently of urbanisation (e.g. technological change). Moreover, the variables used in the folk-urban continuum are not necessarily interdependent. Redfield states for instance that if a community comes out of isolation, it automatically experiences cultural disorganisation. But one may well imagine one without the other. The importance of Redfield's model nevertheless lies in its general contribution to the study of peasant societies and other groups living at the

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All located in Yucatán, viz. an urban centre, an isolated indigenous village, an indigenous village seeking regional integration, and small town poised between rural and urban life; see R. REDFIELD, *The Folk Culture of Yucatán*, Chicago, University of Chicago Press, 1941.

margin or within industrial society, as well as to the study of the city. It has thus aided in leading anthropology away from “primitive” and exotic cultures whose study dominated the different schools of thought until the 1940s. Redfield's dichotomy can therefore be found also in the works of the Chicago school of urban anthropology interested in the apparent social disorganisation characteristic of the modern city – a process viewed as contrasting with the high level of social integration regarded as the hallmark of traditional communities. In this context, the concept of community may be helpful in understanding how marginalised sectors of society (such as “ethnic” immigrants and African Americans) regroup in shared and morally defined social spaces whose rules they alone determine. But these so-called community studies continue to be modeled on classic ethnographies determined by the functionalist paradigm. These studies focus on the interrelations between social institutions and cultural patterns within communities to describe their modes of social interaction, values and institutions, and to analyse how social structures and the cultural system are maintained over time. In this connection, Redfield uses the concept of world view. For him, the continuity of traditional culture is made possible by a comprehensive set of acts, sentiments and modes of thought that express themselves in an exemplary fashion in religious ceremonies and rituals. Such a synthetic and synchronic approach to the study of communities has provoked considerable controversy, however. One criticism deals with the idea of traditional society that underpins Redfield's continuum. The American anthropologist Oscar Lewis conducted fieldwork in one of the villages studied twenty years earlier by Redfield.³⁶ Lewis's description departs significantly from Redfield's and focuses rather on social conflict than continuity. According to Lewis, Redfield was mistaken in stressing the internal cohesiveness and stability of the village in question but did so because he approached it through his model of the traditional community.

³⁶ R. REDFIELD, *Tepotzlán, A Mexican Village: A Study of Folk Life*, Chicago, University of Chicago Press, 1930; O. LEWIS, *Life in a Mexican Village: Tepotzlán Revisited*, Urbana, University of Illinois Press, 1951.

F. Assessment

Community as ideal type conveys the idea of a certain quality of social bond stemming from spatial proximity, emotional or moral ties, and so forth. It also serves as a tool of classification, which accounts for the somewhat problematic character of dichotomies or bipolar typologies. These are conceptual models helpful in the comparative study of social systems across time and space. They are not meant to reflect social reality directly but rather to exaggerate certain traits of that reality, the objective being to master the multitude and diversity of existing social systems by reducing them to a few general categories. This so-called classificatory approach lies at the heart of “community” in its conceptual evolution in classic sociology. But the approach raises problems (as is evident from Redfield’s continuum) when used to guide the empirical study of living communities. Here lies the importance of a complementary analytical approach to highlight the internal dynamics and structure of social groups and to build theoretical models facilitating the study of social organisation and change. It is this type of analytical approach that governs the anthropological study of communities.

II. Understanding Communities: Challenges

As the “offspring of colonialism,” in Lévi-Strauss’s terms,³⁷ anthropology became specialised in the study of so-called primitive peoples that – it was generally held – were doomed to vanish under the assault of modernisation. The concept of community characteristic of this outlook was reserved for small-scale settlements having their own culture and living in a common territory that defined their social relationships.

³⁷ C. LÉVI-STRAUSS, *Anthropologie structurale deux*, Paris, Plon, 1973, p. 69.

The anthropology of communities is governed by the principles of functionalism to a large extent. It focuses on the local group and the interrelations of group's social institutions and cultural patterns. Moreover, it is strongly influenced by the culture concept ("culturalism"), which raises certain problems when applied outside of anthropology. As shall be shown, functionalism and culturalism have important limitations for the problem at hand. In concentrating on intra-group dynamics, they tend to neglect the wider social, economic and political structures, despite the fact that these affect communities themselves as well as the modalities of their interaction with national, regional and international systems. Moreover, these approaches run the risk of reifying culture by essentialising it, that is, by assuming that the world is made up of discrete and integrated cultural systems.

At present, the communities debate is influenced not only by a critique of these classic premises but also by the determination to account for two relatively new realities. These are the transformations experienced by "exotic" societies traditionally studied by anthropologists, and the consequences of the "implosion of peripheries into centres"³⁸ as a result of globalisation. In this field which is dominated by the issue of ethnicity, it is mainly the so-called constructionist approach of socio-cultural relations that occupies centre stage (see *infra*). It is nevertheless imperative to question the relevance of this approach beyond the study of so-called transnational or diasporic communities which are the focus of current research.

A. The Functionalist Study of Social Groups

The term "function" has several meanings in the social sciences. While these cannot be reviewed here in detail, it is nevertheless useful to stress the difference between functional analysis in general and anthropological functionalism in particular. Functional analysis seeks to

explain a given phenomenon – such as suicide, to refer to a classic study in the field³⁹ – in light of the influence that other phenomena exert upon it. This means identifying the independent variables most heavily charged with consequences in the explanation of the phenomenon. In this instance, “suicide varies inversely with the degree of integration of the social group of which the individual forms a part.”⁴⁰ Functional analysis, then, cannot be dissociated from the inductive method, which proceeds from factual data to theory and plays a major role in empirical research.

But the term “function” may also refer to the contribution that one part of an activity makes to the activity of the whole,⁴¹ according to the meaning suggested by the organic analogy. Understood in this manner, the term “functionalism” expresses theoretical concern with explaining social institutions, relations, and practices, by reference to the functions they fulfil within a given socio-cultural system; with the objective of discerning which need of that system they satisfy.⁴² The same reasoning can be found in the first anthropological formulation of the functionalist principle by Bronislaw Malinowski (1884-1942): in its most basic aspect, function “can be defined as the satisfaction of an organic impulse by the appropriate act.”⁴³

Malinowski, who mainly studied Melanesian groups, is credited with having demonstrated the need for fieldwork based on participant observation (in lieu of recourse to indigenous informants). This endeavour is guided by three objectives: to study the society from

³⁸ M. KEARNEY, The Local and the Global: the Anthropology of Globalization and Transnationalism, *Annual Review of Anthropology* 24 (1995): 547-565, at 550.

³⁹ E. DURKHEIM, *Suicide: a Study in Sociology*, translated by J. A. Spaulding & G. Simpson, New York, The Free Press, 1951 (1st ed. 1897).

⁴⁰ *Ibid.*, p. 209.

⁴¹ See B. MALINOWSKI, *A Scientific Theory of Culture, and Other Essays*, Chapel Hill, University of North Carolina Press, 1944.

⁴² E.g. DURKHEIM, *supra* note 3, p. 45: “To determine the function of the division of labor, that is to say, what social need it satisfies.”

within by following closely its everyday functioning; to understand the point of view of its members, with a view to compensating for the ethnocentric bias that all researchers are exposed to, which leads them to look at social and cultural phenomena through the lens of their own preconceptions; and finally, to approach social groups dynamically, not in historical terms but with the purpose of uncovering contradictions between the group's self-image (based on its normative outlook), and the social reality.

According to Malinowski, each society has its own culture that constitutes a consistent and integrated system. Its singularity stems from the way in which it organises the interconnections between its constitutive units. Anthropology must therefore be viewed as a functional science of culture. The term "culture" is understood here as an assemblage of contrivances for satisfying basic needs imposed by nature, whether primary (physiological and emotional) or derived (social). Malinowski regarded culture as a sort of machine or the totality of the means used by human beings to satisfy their needs.⁴⁴ Going even further, he asserted that each cultural element fulfils a vital function and forms an indispensable part of an organic whole.⁴⁵ The affirmation that such a function responds to the "need" of a culture to endure as a whole is problematic, however. Malinowski accords particular analytical importance to institutions (family or kinship, economic, legal, etc.) which he views as "units of human organisation" that provide the key to the understanding of social groups. He postulated that each institution necessarily satisfies a need. It is therefore impossible in his model to imagine an institution not fulfilling a function, or being superfluous to the system to which it belongs – which is not borne out by reality. Anthropological functionalism is little concerned, however, with the disruptive potential inherent in socio-cultural systems.

⁴³ MALINOWSKI, *supra* note 41, p. 83.

⁴⁴ MALINOWSKI, *supra* note 41.

⁴⁵ See ROCHER, *supra* note 17, p. 169.

The most controversial aspect of anthropological functionalism has to do with the postulate that the basis for social integration lies in the wholeness of culture (to take up Malinowski's view), or, according to another representative of this school of thought, A. R. Radcliffe-Brown⁴⁶ (1881-1955), in the continued survival of society. (The term society is taken here in its neutral meaning as a sociological category.) According to Radcliffe-Brown, social systems are self-perpetuating because of social solidarity, i.e. the existence, at the individual level, of a set of sentiments that accord ultimate value to the permanency of the social order. Such sentiments are said to be the result of social constraint. Because the psychological element is subjected to the "necessary conditions of existence" of society, it is not helpful as such to explain how society actually works (here Radcliffe-Brown differs fundamentally from Tönnies). Consequently, the anthropologist's task is to highlight how social institutions, customs and beliefs contribute to social solidarity, that is, how they fulfill what he considers to be their function. In Radcliffe-Brown's work, the notion of social function is associated with the idea of social structure understood as referring to the entire network of social relations between individuals and groups at a given moment⁴⁷ but also as a response to the need for integration attributed to each society. Social function thus is defined by its relation to social structure, whose existence and permanency it ensures. This is illustrated by social rituals and ceremonies that, because of their collective nature, reinforce social solidarity among group members. Here, Radcliffe-Brown draws inspiration from Durkheim's concept of common or collective conscience.⁴⁸

There is nothing self-evident, however, about the idea that all socio-cultural systems inherently tend towards stability, i.e. that there exists a functional equilibrium between the

⁴⁶ A.R. RADCLIFFE-BROWN, *Structure and Function in Primitive Society*, London, Routledge & Kegan, 1952.

⁴⁷ The Anglo-Saxon meaning of "structure" differs in this regard from that retained by French structuralism that conceives of structure as a pre-established abstract model.

⁴⁸ E. DURKHEIM, *The Elementary Forms of Religious Life*, New York, The Free Press, 1995 (1st ed. 1912).

internal dynamics of such systems and their environment (in the most general sense). This position is devoid of inherent analytical or explanatory value, for it does not allow one to determine the rationale of a given social practice, institution or relationship. As a consequence, the pitfalls of the functionalist model are tautology (or circularity) and teleology. Tautological reasoning emphasizes the interconnectedness of socio-cultural elements which are then simply used to explain each other. Teleological reasoning explains one element by reference to its contribution to the stability of the system as a whole, that is, it explains the cause by its effect. In this manner, the functionalist model fails to address the problem of social conflict, which is dismissed by virtue of the idea of functional equilibrium. In giving priority to the synchronic analysis of social groups, functionalism equally discounts the historical dimension.

If communities can indeed be viewed as empirical and clearly defined socio-cultural groups, their relevance as fundamental units of anthropological analysis is now open to question. In the era of globalisation, under the impact of mass migration, local communities change and disappear, “new” communities emerge, and one also notes that so-called new social movements undergo processes of “communitarisation” (Weber’s *Vergemeinschaftung*). Hence the profusion of highly diverse communities shaped by a number of differentiating processes that involve various factors, for example the shared memory of an historical event, as in the case of the 1915 Armenian genocide.

The politics of memory characteristic of the Armenian Diaspora, focusing on the individual’s duty towards the nation, unfolds via a contradictory discourse. On the one hand, it evokes the historical memory shared by all Armenians, and advocates national unity beyond differences in religion, politics, or country of origin. On the other hand, it institutes certain opposites, e.g. the state of Armenia (seeking to embody the nation) versus the Diaspora; West Armenians from the former Ottoman empire, who are descendants of the survivors of the 1915

genocide, versus East Armenians from Armenia and Iran, who did not experience genocide; community members versus representatives of community associations. Active transmission of an Armenian identity and commitment to the Armenian cause have brought forth a high level of community organisation in the form of a “virtual” Armenia. Participation in this structure legitimises claims of belonging to the Armenian nation – the form of belonging depending on how high a priority it is given by members of the Armenian Diaspora in Canada or elsewhere.⁴⁹

In processes of *Vergemeinschaftung*, the idea of a continuity with the past (the terms “origin” and “descent” are frequently used in positing group identity claims) may play a crucial role. More often, however, it is in terms of cultural differences that membership in a given group is argued. Such differences are generally understood as referring to aspects of a shared culture; they are often likened to the tradition and invoked in terms of the memory of the group’s allegedly authentic or original condition, whatever the group’s current situation. Factors of differentiation such as recourse to past events, but also religion, language, locality or ethnicity, involve the twofold problematic of culture and identity. While these two key issues cannot be discussed here in detail, it is equally impossible to leave them aside entirely, given their fundamental role in providing the qualifiers used by communities in arguing legal rights claims.

B. The Problematic of Culture

Briefly, three fundamental aspects of culture can be identified, *viz.* the empirical aspect (referring to cultures understood as communities or population groups having specific culture traits), the analytical aspect (Culture used as a conceptual tool), and the strategic aspect (instrumentalisation of culture to advance identity claims). Although overlapping in part, they

⁴⁹ A. LENOIR-ACHDJIAN, *Appréhender la nation, vivre la diaspora: regards arméniens*, unpublished doctoral thesis, Department of Anthropology, University of Montréal, 2001.

three dimensions must be clearly distinguished because they involve different levels of analysis. First of all, the traditional anthropological endeavour of collecting data about individual cultures has always been accompanied by an effort to conceptualise Culture – the latter being understood generally as the interface between the individual and society. The transition from the empirical to the theoretical understanding of culture represents a milestone in anthropology: it is the prerequisite for anthropologists to gain a minimum of critical distance with regard to their own situation as cultural subjects.

The main challenge for anthropological theorising lies in the need to reconcile two fundamental ideas of culture linked to two divergent intellectual traditions. Universalistic Enlightenment thought regarded culture as the opposite of nature and the prerogative of humans (as opposed to animals). Conversely, German historical romanticism advocated a particularistic conception of culture understood as the genius of a group or a people. The former tradition minimised (cultural) differences of groups, while the latter regarded culture as a means to delineate groups, thus exacerbating cultural differences. Ideally, anthropology, poised between the two traditions, establishes the unity of humankind (or human culture understood generically), while highlighting the diversity of human groups (or individual cultures) across time and space.⁵⁰ Striving for some enlightened combination of universalistic and particularistic principles is imperative if one is to avoid the pitfalls of reductionist universalism (which consists in measuring everything by the western subject and culture), and if one is to promote a (self-)critical perspective that can be described as controlled relativism.

The prevalence of fieldwork in classic anthropology has encouraged the study of the systemic nature of individual cultures. These are assessed according to what is assumed to be

⁵⁰ I. SCHULTE-TENCKHOFF, *La Vue portée au loin: une histoire de la pensée anthropologique*, Lausanne (Suisse), éd. d'En Bas, 1985.

their holistic logic (on the premise that each culture has its own rationality to guide the study of its social life and modes of thought). This thinking is clearly apparent in North-American cultural anthropology, which, owing to the work of Franz Boas among others, has been traditionally dominated by the German particularistic understanding of culture.⁵¹ Cultural relativism, which is characteristic of this tradition, rightly draws the line at any pretension of establishing a hierarchy among cultures, and rejects eurocentrism, which alleges the superiority of western culture. Taken to extremes, however, cultural relativism courts the twofold risk of excessive differentialism and essentialism, claiming that it can dispense with any form of value judgement and that genuine intercultural communication is impossible. In this manner, extreme relativism deprives anthropology of any solid base for theorising, i.e. making comparisons and (prudent) generalisations. Yet both are needed for a better understanding of human groups. Moreover, extreme relativism can be used in a pseudo-scientific fashion to support xenophobia.

Essentialism in turn means reifying culture by considering cultural systems as discrete and homogeneous units, “naturally given” and rooted in locality. Yet culture is not “out there,” nor can it be “personalised.” It is not culture that researchers encounter in the field but individuals who act and interact and express their own views about their culture. The anthropologist’s task thus consists in reconstructing and conceptualising the culture of those observed. This presupposes a systemic and historical outlook, for cultures are structured (rather than made up of disparate elements) and in constant transformation.

It must be stressed that the use of Culture (as an analytical concept) to reflect about cultural diversity and individual/society relations rests on a mapping of cultures (as groups) whose relevance is being contested. The main challenge of anthropology thus lies in rethinking

⁵¹ I. SCHULTE-TENCKHOFF, L'anthropologie contemporaine face au défi de la culture, in: *Le Monde et son double*, L. AUBERT ed., Paris, A. Biro, 2000, p. 18-24.

the culture concept without discounting the profound changes undergone by individual cultures, as these put to the test essentialist assumptions and give new prominence to the strategic potential of culture – especially with respect to ethnicity. The study of ethnicity is closely related to the constructionist approach generally associated with the Norwegian anthropologist Fredrik Barth. Barth's focus lies not on culture traits but on relations *between* groups (insider/outsider) and on the way in which culture serves to generate and preserve these relations. For each act of identification (as culture, community, nation....) necessarily and simultaneously entails an act of differentiation, even exclusion. Barth rejects the idea that group differences “become differences in trait inventories.”⁵² On the contrary, cultural diversity and socio-ethnic boundaries are rarely coterminous:

[...] although ethnic categories take cultural differences into account, we can assume no simple one-to-one correspondence between ethnic units and cultural similarities and differences.⁵³

One must therefore understand ethnicity as a “form of social organisation” that “classifies a person in terms of his basic, most general identity, presumptively determined by his origin and background.”⁵⁴ But this identity is not entirely attributed, nor acquired once and for all. Individuals or groups often feel moved to change their (social, cultural, ethnic) identity. Ethnic membership evolves according to its overall social context and is subjected to the reciprocal process of identification that occurs between individual and group.⁵⁵ Ethnic groups endure not because of some biological or cultural continuity (both at the individual and collective levels) but

⁵² F. BARTH (ed.), *Ethnic Groups and Boundaries: the Social Organisation of Cultural Difference*, Boston, Little, Brown, 1969, p. 12.

⁵³ *Ibid.*, p. 14.

⁵⁴ *Ibid.*, p. 13.

⁵⁵ See also G. ELWERT, Boundaries, cohesion and switching: on we-groups in ethnic national and religious forms, in: *Rethinking Nationalism and Ethnicity: The Struggle for Meaning and Order in Europe*, H.-R. WICKER ed., Oxford/New York, Berg, 1997, p. 251-271.

owing to the maintenance of a boundary⁵⁶ between members of the group and outsiders. To take up Barth's most famous phrase, it is "the ethnic boundary that defines the group, not the cultural stuff that it encloses."⁵⁷

C. The Problematic of Identity

Individual identity is the product of a process of social construction that social actors have assimilated to a certain degree and use as a point of reference in their interaction with others. Group identity entails a normative dimension: individuals need to be able to recognise themselves in certain traits associated with the group. Identity transmission occurs through socialisation within the family and various social networks based on religion, locality, region, and community.⁵⁸ Inclusion and exclusion are constructed both at the level of "primary" (informal) and "secondary" relationships. The former involve ties among family, friends, and neighbours, while the latter are utilitarian exchanges governed by pre-established rules.⁵⁹ Exclusionary attitudes manifested at the primary informal level have direct repercussions on secondary-level relationships, which suggests the following hypothesis:⁶⁰ ethnic boundaries have both an inside and an outside; the inside boundary is ruled by the principle of socialisation at the primary or community level, the outer by the principle of categorisation at the secondary or social level. Both simultaneously contribute to identity construction. Because this process involves power

⁵⁶ "Boundaries are the demarcation lines or regions for the definition of appropriate system activity, for admission of members into the system, and for the other imports into the system. The boundary constitutes a barrier for many types of interaction between the people on the inside and the people on the outside, but it includes some facilitating device for the particular types of transactions necessary for organizational functioning. [...] The incursion of environmental influence would be uncontrolled and would vitiate the intra-system influence"; cf. D. KATZ and KAHN, *Open-systems theory*, in: *Readings in Organization Theory: Open-System Approaches*, J. G. MAURER ed., New York, Random House, 1971, p. 17.

⁵⁷ BARTH, *supra* note 52, p. 15.

⁵⁸ M. CATANI, *Le transnational et les migrations*, *Peuples méditerranéens* 35-36 (1986): 149-163.

⁵⁹ A. LEDOYEN, *Montréal au pluriel: huit communautés ethno-culturelles de la région montréalaise*, Montréal, IQRC, 1992.

relations, social relationships that unfold on the outside have a direct (albeit invisible) effect on socialisation, even “ethnicisation,” on the inside. Domination always generates a static view of identity (boundary fixation). In other words, community boundaries are established all at once via stigmatisation imposed from the outside, and reaction to stigmatisation on the inside.

Consequently, social categorisation serves as an organising principle that varies substantially according to individual and collective choices determined by the overall socio-cultural environment. These choices based on cultural norms can be understood as means of managing social relationships by isolating certain cultural elements to protect them against all outside influence. Such identity markers (to take up Barth’s expression) can never be considered a given. Rather, they are political stakes⁶¹ whose meaning is open for debate. Many examples show that, as the result of a social process, group membership evolves according to variations in meaning at the level of social interaction, depending on how social actors locate themselves. Nonetheless, society basically seeks self-perpetuation, which requires a unitary viewpoint. According to Halbwachs, society endeavours to forget all that is cause for division among its members and constitutive groups, and at given times reviews its recollections of the past to bring them in line with the variable conditions of its equilibrium.⁶²

Identity-related processes thus pivot on control over collective memory, that is, on a particular politics of memory. What is at stake is the permanency of the markers that delineate group boundaries on the basis of symbolic, linguistic, religious, social, or spatial referents, thus

⁶⁰ Cf. D. JUTEAU, Les communalisations ethniques, in: *L’Ethnicité et ses frontières*, Montréal, Presses de l’Université de Montréal, 1999, p. 151-176.

⁶¹ Cf. R. BRETON, La communauté ethnique, communauté politique, *Sociologie et sociétés* 15(2) (1983): 23-37.

⁶² M. HALBWACHS, *Les Cadres sociaux de la mémoire*, Paris/La Haye, Mouton, 1976, p. 290 [1^{re} éd. 1925]: “la société tend à éliminer de sa mémoire tout ce qui pourrait séparer les individus, éloigner les groupes les uns des autres, et [...] à chaque époque elle remanie ses souvenirs de manière à les mettre en accord avec les conditions variables de son équilibre.”

ensuring collective identification within as well as exclusion of outsiders. These processes necessarily involve power relations and may give rise to social mobilisation, i.e. group organisation on the basis of a shared identity and with the purpose of collective action.⁶³

One must avoid confusion between the social reality of a given group on the one hand, and the group's self-description or the collective image conveyed by group representatives to outsiders on the other hand. Although generally described as integrated and homogeneous, communities as loci of production, transmission, and evolution of group membership foster conflict through the negotiation and manipulation of social representations. But such conflict is not necessarily "bad." Indeed, instead of undermining the idea of common membership, it may revitalise it and reinforce collective participation. Above all, it may confirm group members in their conviction that the common heritage at stake in the conflict provides an inexhaustible resource for the definition of a representative standpoint.⁶⁴

For more than four centuries, the Mennonite community⁶⁵ has preserved a system of beliefs and social practices that differ fundamentally from those of mainstream society. It now appears, however, that with time and the gradual dispersal of the congregation, Mennonite traditional culture experiences an "identity crisis" brought about by urbanisation, globalisation, and frequent interaction with non-Mennonites. For some time, Mennonite identity has been the object of an internal debate that mainly addresses the following predicament: is it better to restrict membership criteria by giving priority to common ethnicity over religion or, conversely, to extend the community boundaries by giving priority to (evangelical) religion over ethnicity?

⁶³ M. MARTINELLO, *L'Ethnicité dans les sciences sociales contemporaines*, Paris, P.U.F., 1995, p. 23.

⁶⁴ See M. ORIOL, *Modèle idéologique et modèles culturels dans la reproduction des identités collectives en situation d'émigration*, *Revue internationale d'action communautaire* 21(61) (1989): 117-123.

⁶⁵ Cf. D. WINLAND, *The Quest for Mennonite Peoplehood: Ethno-dilemma of Definitions*, *Canadian Review of Sociology and Anthropology* 30 (1) (1993): 110-152.

Paradoxically, the endeavour to specify Mennonite identity for the purpose of unification has generated multiple definitions. These involve various social, geographic, ethnic, and religious criteria that suddenly seem to jeopardise the idea of community. Nonetheless, one element is still shared by all Mennonites despite diverse living conditions, namely a common system of beliefs and a sense of belonging. One thus notes among some community leaders a tendency to hush up internal tensions and to underrate certain identity markers in view of making outsiders believe in the existence of a united community.

Identity management by community leaders raises another important issue. In thinking about inclusion/exclusion and the power relations underlying it, one is dealing with what may be termed the political dimension of ethnic or other communities. As we have seen, communities seek to minimise and control relations with outsiders, while at the same time preserving intra-group connections. Both tendencies become reinforced when the group in question practices a language other than that of mainstream society, when its members experience discrimination, and when the collective is in a position to provide economic, cultural or social assistance. The type of migration experienced by the group (voluntary or forced, economic or political, etc.) also plays a role. Moreover, any form of collective action requires the mobilisation of material, financial and human resources, which in turn implies some form of organisation (in terms of time, work and funds) and minimal member participation. Not all groups have access to the same amount of resources or identical organisational skills. Sometimes, the scope of political action even tends to be entirely coterminous with that of social organisation, as illustrated by the case of the Italians⁶⁶ who are said to favour informal community networks based on bonds of kinship, friendship, neighbourhood, and region of origin.

⁶⁶ M. ROSENBERG and J. JEDWAB, Institutional Completeness, Ethnic Organizational Style and the Role of the State: the Jewish, Italian, and Greek Communities of Montreal, *Canadian Review of Sociology and Anthropology* 29(3) (1992): 266-287.

D. The Concept of Ethnic Community (I): Taking Stock

By and large, the study of ethnic communities concentrates on the city. Urban sociology and anthropology concern themselves, among others, with the topics of rural exodus, inter-ethnic relations, and the socio-cultural characteristics of marginal districts. Until the 1970s, researchers gave priority to the assimilation of immigrants, both in countries like Canada that openly promote immigration, or in Europe where certain countries became the destination of former colonial subjects and, subsequently, migrants from other regions. In their present form, immigration studies seem to focus naturally on ethnicity because of the persistence of cultural differences among migrants and the failure of assimilationist policies (a failure that was decisive in the adoption of multiculturalist policies in various countries, including Canada). In this context dominated by community studies (see above), the term “communities” is mainly reserved for groups of “new” immigrants (those who have come to Canada since the 1970s) or former colonial subjects. Through a shift in meaning, “communities” thus are collapsed in “ethnic groups” but distinguished from the “national community.”⁶⁷ Defining individuals on the basis of their ethnicity, or their belonging to a minority, amounts to positing a relationship of domination in favour of the group that is declared to embody the nation or the majority.

Owing to its means of real or symbolic coercion (army, police, education, media), the state is in a position to determine who is part of, and who is excluded from, the nation. In this manner, it has some responsibility in the emergence of ethnic or ethnicist claims: those who are – or feel – excluded react by claiming recognition of a form of group identity within state institutions. A discourse relying on ethnic criteria is therefore both defensive, since it is meant to counteract destructive influences from without, and counter-offensive, in that it seeks to

⁶⁷ D. SCHNAPPER, Traditions nationales et connaissances rationnelles, *Sociologie et sociétés* 31(2) (1999): 5-13.

restructure membership meaningfully via a common endeavour.⁶⁸ The case of the Chinese⁶⁹ is a relevant example.

The first wave of Chinese migration to Canada dates back to 1875. But contrary to other groups, the Chinese, who were hired to build the Canadian Pacific Railway, did not view themselves as genuine immigrants. They only planned to stay briefly for economic reasons to aid their families who remained at home. Most Chinese came to Canada via the system of passage by credit in which an entrepreneur paid for their passage and recovered the funds by selling the labour of this workforce. This explains why this group of migrants was almost exclusively male. They arrived in a country characterised by identity with Britain and British perspectives. The Chinese migrants were declared incapable of assimilating, and rapidly experienced discriminatory measures that led to double isolation. On the one hand, between 1875 and 1923, they were singled out to pay an entry fee; and in 1923, a law prohibiting family reunification was passed. On the other hand, the strong social, economic, and residential segregation they experienced led to spatial concentration, and fostered the creation of associations and ethnic businesses. In building community ties, their main intent was to counter the racism they suffered, which excluded them from all participation in the Anglo-Canadian system, rather than to transplant their culture onto Canadian soil. In this way, ambient racism contributed directly to the emergence of a Chinese community.

This community is far from homogeneous, however. From the start, it experienced internal differentiation by “clans” (a term with more than kinship connotations) competing for economic resources. Most of the migrants came from the same Chinese provinces. They were

⁶⁸ M. GADANT *et al.*, *L'identité, alibi? Peuples méditerranéens* 16 (1981): 3-29.

⁶⁹ Cf. P. S. LI, *The Chinese in Canada*, Toronto, Oxford University Press, 1988; J. TAN and P. ROY, *Les Chinois au Canada*, Ottawa, Multiculturalisme et Citoyenneté Canada, 1985.

either kin or members of the same social networks; and some had identical ethnonyms. At the outset, they became organised on the basis of solidarity networks with the purpose of solving everyday problems; in this manner, their associations became stopping-off places. But given the vast linguistic diversity, people who carried the same surname or came originally from the same locality tended to congregate, forming networks of fictive kinship. Although initially set up to offer moral and sometimes also material support to members, the associations quickly started to function as mediators and arbitrators in cases of intra-group conflict as well.

It must be stressed that the present-day Chinese community differs considerably from that of the early twentieth century. First of all, immigrants now have a high level of education ensuring their socio-professional mobility. Secondly, few of them reside in Chinatowns across Canada. Thirdly, many migrate as families. Nonetheless, most Chinese continue to identify with the community; they retain their language and until recently rarely envisaged active participation in Canadian political life. Despite its metamorphosis over a century of existence, the Chinese community thus remains a rallying point for its members, to the extent it is grounded in the common – and persistent – experience of racism.

E. The Concept of Ethnic Community (II): Problems

Although widely accepted and officially used, the qualifier “ethnic” raises problems. Two of these are particularly relevant here. Etymologically, the Greek *ethnos* (the root from which derive “ethnic,” “ethnicity,” “ethnology”...) imposes a division between what is regarded as the centre and its periphery. In ancient Greece, *ethnos* was applied to peoples that had not adopted the model of the Hellenic *polis* and whose members did not speak Greek.⁷⁰ Moreover, beyond

⁷⁰ Cf. J.-L. AMSELLE, *Ethnies et espaces: pour une anthropologie topologique*, in: *Au cœur de l'ethnie*, J.-L. AMSELLE and E. M'BOKOLOeds, Paris, Payot, 1985, p. 11-49.

its connotation of alterity or otherness, the term “ethnic” alludes to the scientifically invalid term “race.”

In common parlance, “race” refers to a group of people sharing certain physical traits and forming a distinct entity. This understanding of “race” has no scientific relevance (this ought to be apparent to all since the human genome has been decoded). There are no “racial” groups within the human population; humanity forms but one single species. Distinguishing “races” on the basis of physical appearance serves purely classificatory ends for reasons that are entirely social and political. There is no scientifically proven correspondence between genes determining visible traits (on the condition that these are indeed hereditary) and other genetic traits likely to determine behaviour. Similarities within particular groups – e.g. speaking the same language – are the product of cultural, not hereditary transmission. Moreover, social behaviour changes quickly, which is also a proof of cultural transmission (genetic transmission is very slow). Consequently, exclusionary attempts justified in allegedly “racial” terms refer in reality to social groupings (class, caste) or religion, for example.

Racism is a form of xenophobia. Like ethnocentrism, it is a cultural phenomenon. A social group that seeks to advance its identity may reject those who are different. In a sense, racists reformulate the xenophobic tendencies inherent in humankind in racist terms because they hope to gain from it either now or in the future. That racism flourishes in situations of economic crisis is therefore hardly surprising.

The issue of racism leads to the universalism/relativism dichotomy that plays a fundamental role in anthropology. The unity of the human species, manifest in universals such as the capacity for language, symbol-making and sociability, contrasts with the multiplicity of human creations, or cultures. But cultural diversity is not reflected at the level of the species

itself. There is no correlation between “races” and cultures, between hereditary and culturally transmitted traits. Consequently, in dissociating ethnicity from culture (which can be viewed as synonymous), the qualifier “ethnocultural” widely used in Canada is problematic because it implies a “racial” criterion, as is also suggested by the expression “visible minority.”⁷¹ This brings me to the second problem.

The concept of ethnic group, because of the colonial legacy associated with it, has significant implications for an immigrant country like Canada. It perpetuates internally, and in a reflex of defensive nationalism, an international pattern of domination.⁷² Here, the invocation of ethnicity means that *de jure* equality is addressed via the stabilisation of cultural referents.⁷³ The individual only exists by virtue of belonging to an ethnic group. The differences institutionalised in this manner mainly serve to justify a hierarchy of groups (e.g. “visible minorities”) within the nation.⁷⁴

This essentialist outlook goes hand in hand with a spatial image of communities inspired by the classic approach, which considers communities as discrete cultures rooted in a locality. This outlook is now the object of justified criticism,⁷⁵ but one must not lapse into the other extreme and view cultural attributes of (ethnic) groups as totally situational and circumstantial.

⁷¹ Cf. A. SYNNOTT and D. HOWSE, Canada's Visible Minorities: Identity and Representation, in: *Re-situating Identities: The Politics of Race, Ethnicity, Culture*, V. AMIT-TALAI and C. KNOWLES eds, Peterborough, Broadview Press, 1996, p. 137-160.

⁷² R. G. ALLISSOT, L'interrogation continue: minorités et immigration, *La France au pluriel* 34-35 (1984): 248-254; D. JUTEAU, L'ethnicité et la modernité, in: *L'Ethnicité et ses frontières*, Montréal, Presses de l'Université de Montréal, 1999, p. 185-197.

⁷³ G. KOUBI, Les “droits culturels”: un nouveau concept ? in: *Savoir innover en droit: concepts, outils, systèmes. Hommage à Lucien Mehl*, Paris, La Documentation française, 1999, p. 241-251

⁷⁴ SCHNAPPER, *supra* note 67; J.-L. AMSELLE, Quelques réflexions sur la question des identités collectives en France aujourd'hui, in: *Ethnicisation des rapports sociaux* 3, M. FOURIER and G. VERMES eds, Paris, L'Harmattan, 1994, p. 44-53; N. KHOURI, Discours et mythes de l'ethnicité, *Les Cahiers scientifiques* 78 (1992): 1-17.

⁷⁵ Cf. A. GUPTA and J. FERGUSON, Beyond “Culture”: Space, Identity, and the Politics of Difference, in: *id., Culture, Power, Place: Explorations in Critical Anthropology*, Durham, Duke University Press, 1997, p. 33-51.

This would mean that such attributes have no analytical relevance whatsoever. It is therefore a matter of giving culture its proper place without succumbing yet again to essentialism or extreme relativism: ethnicity is not devoid of cultural content, nor is it simply the mirror image of a pre-existing culture.⁷⁶

Barth's famous statement about ethnic boundaries versus "cultural stuff" must therefore not be interpreted as if ethnic boundaries or identities were constructed and mobilised without reference to their cultural content. After all, Barth is an anthropologist, and his study of social relationships can hardly be envisaged in the absence of culture. As pointed out in a French critique, for Barth, members of ethnic groups are not cold tacticians motivated by self-interest or social actors fashioning infinitely malleable cultural elements according to specific situations of interaction. On the contrary, shared cultural values occupy an important place in Barth's theory, not because they substantially define ethnic identities but because they constrain the roles and interaction of ethnic groups situationally.⁷⁷

The growing interest of social scientists in so-called transnational communities or in what Marc Augé has called "non-places" (characterised by a lack of social relationships, historical referents, even identity inscription)⁷⁸ may promote in an exaggerated fashion the deconstruction of concepts such as culture, community, or ethnicity. By dint of deconstructing in this manner, one excludes, among others, the problem of the meaning that social actors attribute to these

⁷⁶ J. D. ELLER, *From Culture to Ethnicity to Conflict. An Anthropological Perspective on International Ethnic Conflict*, Ann Arbor, University of Michigan Press, 1999.

⁷⁷ P. POUTIGNAT and J. STREIFF-FENART, 1995, *Théories de l'ethnicité*, Paris, P.U.F., p. 145: "[le modèle de Barth] ne revient donc pas à voir les membres des groupes ethniques comme de froids tacticiens déterminés par la seule poursuite de leurs intérêts matériels ou comme des acteurs créant et recréant au gré des situations d'interaction des cultures infiniment malléables et manipulables. Les valeurs culturelles communes occupent au contraire dans sa théorie une place importante, non pas parce qu'elles définissent substantiellement les identités ethniques, mais parce qu'elles contraignent situationnellement les rôles et les interactions ethniques."

⁷⁸ An example of "non-place" is the computer network; see M. AUGÉ, *Non-Places: Introduction to an Anthropology of Supermodernity*, London, Verso, 1995 (1st ed. 1992).

concepts. Consequently, the challenge lies in rethinking the opposition between cultural essentialism and Barth's relational formalism – an approach yet to be properly worked out.

F. Communities Scattered and Reassembled

Starting in the late nineteenth century, the rationale of capital accumulation has led to economic globalisation. Large-scale industrialisation, the development of transports, the internationalisation of capital and the establishment of transnational companies has fostered growing interdependence among states. These processes have created a world system⁷⁹ where problems arising in one place have repercussions for the system as a whole, with the result that there remains no protected niche.⁸⁰ This goes hand in hand with a marked change in migration flows. Economic and temporary migration of a mainly male workforce is gradually being replaced by permanent migration for political reasons and involving a population mainly composed of refugees and women migrants.

In the study of communities, such a “displacement of the world”⁸¹ has favoured an outlook centred on the existence of shared interests, rather than aspects traditionally associated with communities, such as a common locality or a shared culture. In viewing communities as networks rather than territorial units, social scientists have extended the scope of the economic concept of transnationalisation to encompass human populations. In this manner, the focus is on the transfer of ideas and political institutionalisation beyond state borders, and on the way in which accelerating migration flows threaten the effective unity of states by casting doubt on their

⁷⁹ See R. BOYER, P. DEWITT *et al.*, *Mondialisation: au-delà des mythes*, Paris, La Découverte, 1997.

⁸⁰ A. MELUCCI, Individualisation et globalisation, *Cahiers de recherches sociologiques* 24 (1995): 184-206, at 188.

⁸¹ Cf. S. NAÏR and J. de LUCAS (dir.), *Le Déplacement du monde: immigration et thématiques identitaires*, Paris, Kimé, 1996.

legitimacy.⁸² The concept of “transnational community” encompasses this new reality of a global space where centre/periphery boundaries become blurred. The related concept of “de-territorialisation,” applied to all migrants independent of their place of residence and of their legal citizenship, defines state borders in social rather than geographic terms. In this way, the extension of transnational networks profoundly transforms the modalities of group membership, and brings about new forms of social interaction.

Generally, transnational communities emerge as a response to the establishment of a political and economic logic pivoting on the phenomenon of displacement in conjunction with the growing impenetrability of national borders. The gradual closure of state borders in western countries hampers migrant mobility and encourages permanent settlement. This results in the formation of minorities whose members live in several countries, and in the establishment of more or less informal transnational networks that constitute polycentric spaces based on multiple allegiances and multi-polar solidarity.⁸³ Thus, migrants endeavour to rebuild networks of interpersonal links and to organise their membership socially. Gradually, other collective referents emerge through the pursuit of common objectives. Social networks resulting from migration have distinctive characteristics.⁸⁴ They are generally highly diverse geographically; solidarity among members is inspired by a common sense of uncertainty; and they use family and community – sometimes neighbourhood – relationships⁸⁵ in a manner to establish a common origin, whether real or putative.⁸⁶

⁸² N. GLICK-SCHILLER, L. BASCH, C. SZANTON BLANC, From Immigrant to Transmigrant: Theorizing Transnational Migration, *Anthropological Quarterly* 68(1) (1995): 48-63; L. MALKKI, National Geographic: The Rooting of Peoples and the Territorialization of National Identity Among Scholars and Refugees, in: *Culture, Power, Place, Explorations in Critical Anthropology*, in: GUPTA and FERGUSON, *supra* note 75, p. 52-74.

⁸³ BOYER, DEWITT *et al.*, *supra* note 79.

⁸⁴ A. PORTES, La mondialisation par le bas: l'émergence des communautés transnationales, *Actes de la recherche en sciences sociales* 129 (1999): 15-25.

⁸⁵ E.g. G. SHEFFER, Whither the Study of Ethnic Diasporas? Some Theoretical, Definitional, Analytical and Comparative Considerations, in: *Les Réseaux des Diasporas*, G. PREVELAKIS ed., Nicosia, Cyprus

The boundaries of these multi-dimensional communities are never defined once and for all, and in many cases their “territory” is of a symbolic or even a mythical order. In this configuration, the concept of community refers to a collective of social actors whose ties are tenuous at best; like nations, they are “imagined communities.”⁸⁷

Haitian youth⁸⁸ for example rarely consider the country of their forebears as a point of reference – Canada is their country. In this sense, their commitment to Haitian associations is of a purely sentimental order. However, their experience of racism serves to reinforce an identity based on perceived skin colour and constructed through opposition. The idea of an African American “Diaspora” supports this particular form of identity construction that, in transcending Haitian-ness, aims at the constitution of “real” community. The movement is strongly influenced by that of Black Americans, in particular on the basis of civil and equal rights claims and manifestations of cultural creativity to assert a positive identity constructed for and by Blacks. However, the boundaries of this – like any other – type of community are blurred. Although the main marker remains skin colour, other referents are added, such as country of residence, language, and religion (notably Islam).

Because of the referents it involves, the Haitian example illustrates a form of community that symbolically links people who, in fact, have little personal contact. They nevertheless observe an “Us/They” dichotomy. Viewed in this manner, “community” directly refers to

Research Centre, 1996, p. 37-46; A. TARRIUS, Territoires circulatoires des entrepreneurs commerciaux maghrébins de Marseille: du commerce communautaire aux réseaux de l'économie souterraine mondiale, *Journal des anthropologues* 59 (1995): 15-36; A. ABDULKARIM, La diaspora libanaise: une organisation communautaire, in: *Diaspora*, M. BRUNEAU ed., Paris, GIP Reclus, 1995, p. 90-97; see also J. CLIFFORD, Diasporas, *Cultural Anthropology* 9(3) (1994): 302-338.

⁸⁶ CATANI, *supra* note 58.

⁸⁷ B. ANDERSON, *Imagined Communities: Reflections on the Origin and Spread of Nationalism*, London, Verso, 1991 (1st ed. 1983).

⁸⁸ M. POTVIN, Second-generation Haitian Youth in Québec: Between “Real” Community and the “Represented” Community, *Canadian Ethnic Studies*, 31(1) (1999): 43-72.

“identity.” As one researcher pointed out, beyond spatial and temporal form, beyond internal structure and rules of operation, beyond “visible” traits, communal relationships may well represent the fundamental dimension of the social bond lodged deep inside the individual. They convey the primordial datum of humankind highlighted by psychoanalysis, namely that the Other is constitutive of the Self.⁸⁹

The Self/Other relation induces comparisons used by social actors to describe themselves or to describe others, depending on their location. In locking a given group into a substantially transformed identity, one constructs and immobilises this relation so that it operates in favour of those to whose advantage it is.⁹⁰ While this “operation of authentication” mainly serves to confirm or contest individual self-perception, the process as a whole works towards developing and maintaining group norms, defining positively or negatively valued social behaviour, and so forth.⁹¹ Consequently, the production of group identity presupposes that the group concerned is able to recognise itself in these norms, forms of behaviour, etc. This is why the construction of group membership and the determination of identity markers are intimately linked to social representations.

In a sense, community may be based on the perception of a group’s singularity or difference in comparison to other groups rather than on the objective nature of this singularity or

⁸⁹ N. MOHIANAVET, De l'exil à la communauté, *Cultures et Sociétés* 6 (1995): 41-51, at 48: “Au-delà de sa forme délimitée dans l'espace et dans le temps [...], au-delà de ses structures internes et de ses règles de fonctionnement relativement rigides, au-delà de tous ses traits de caractères presque “visibles”, la communauté représenterait bien *la dimension sociale fondamentale agissante au plus profond de l'individu*. Elle serait l'expression, la mise en pratique, la traduction dans l'espace et le temps de cette donnée primordiale de l'être humain mise en évidence par la psychanalyse: *l'Autre est constitutif de soi*.”

⁹⁰ C. CAMILLERI, Changements culturels, problèmes de socialisation et construction de l'identité, *Annales de Vaucresson* 28(1) (1988): 35-48, at 38: “enfermer un groupe (les étrangers, les femmes, etc.) dans une identité transformée en substance, en nature, c'est chercher à construire et à immobiliser ce rapport en faveur de ceux à qui il profite.”

⁹¹ E.g. P. SMITH, *Groups within Organizations*, London, Harper & Row, 1973.

difference. This is especially true in the case of ethnic communities that, to quote Max Weber, are

[...] those human groups that entertain a subjective belief in their common descent because of similarities of physical type or of customs or both, or because of memories of colonization and migration; this belief must be important for the propagation of group formation; conversely, it does not matter whether or not an objective blood relationship exists.⁹²

Globalisation and transnationalism have radically altered the meaning of territory and identity. Moreover, the establishment of global networks fosters new de-territorialised moral communities towards which processes of identity construction now tend to converge. Such communities become more and more diversified. They may bring together individuals on the basis of shared traits as in the case of ethnic groups (shared history, culture, or origin). However, they focus increasingly on interests which themselves become more and more diversified, relating to a profession (the medical community), religion (the Catholic community), condition (the community of the deaf) or lifestyle (the vegans), or even a shared hobby (the community of divers). Awareness of shared interests promotes collective mobilisation and action; both are factors of *Vergemeinschaftung*. As a result, these communities are led to discover their “social capital.”⁹³ Viewed from this angle, the concept of community can be applied to groups that differ considerably in their characteristics and conditions of emergence.

On this basis, scholars as well as state authorities increasingly regard communities as sub-divisions of civil society. This is well illustrated by the use of the concept of community within the Canadian health sector. Encompassing a multitude of constitutive networks, “community” here refers to an informal unit based on spatial proximity, which is therefore better

⁹² WEBER, *supra* note 23, p. 389.

⁹³ P. A. TREMBLAY and J. L. KLEIN, De l'appauvrissement des lieux à la reconstruction des communautés, *Cahiers de recherche sociologique* 29 (1997): 103-118, at 104.

adapted to respond to patient needs and expectations. By transferring responsibility to families as well as socio-communal networks, the state justifies its gradual disengagement (both financial and otherwise) from the health sector.⁹⁴

But community bodies do not in themselves make communities, any more than a shared space suffices to define a community (although a shared space may be a factor of *Vergemeinschaftung*, as is illustrated by neighbourhood associations).⁹⁵ This point is clearly demonstrated by the example of Aboriginal communities. The terminological clarification placed at the beginning of the final report of the Royal Commission on Aboriginal Peoples⁹⁶ specifies that the term “Aboriginal community” refers to an Aboriginal group that shares the same locality, generally a reserve. It has mainly an administrative role. In this instance, “community” designates the preferred interlocutor of various levels of government, whereas its genuine cultural or political meaning for Aboriginal people themselves is a different matter.

It is widely held that communities rest above all on member solidarity and a shared sentiment of belonging. These two aspects cannot be taken for granted, however. They are constructed, sometimes under pressure. In the case of the socio-communal management of healthcare, “community” implies that each and everyone be integrated into some kind of informal and volunteer network.⁹⁷ Those who refuse to play the community game, those who transgress the norms of the community or contest its legitimacy therefore engage in a new form of “deviance.” Reference to community, then, operates as a symbolic and ideological criterion

⁹⁴ L.-H. GROULX, Essai critique sur le discours sociocommunitaire, *Cahiers canadiens de sociologie* 25(3) (2000): 343-367.

⁹⁵ Cf. G. BRAGER, H. SPECHT, J. L. TORCZYNER, *Community Organizing*, New York, Columbia University Press, 1987.

⁹⁶ *Rapport final de la Commission royale sur les peuples autochtones*, Ottawa, Approvisionnement et Services Canada, 1996, vol. 1.

that prescribes a particular type of social bond, organisation or action, recalling the ideal-typical approach of community described in Section I.

Whether directly or indirectly, the state exerts considerable influence on community organisation, notably through granting subsidies based on the requirement that community bodies choose representatives whom governments can refer to as interlocutors. It is with this purpose that the Lao Association of Canada was founded in 1980, followed in 1982 by its Quebec equivalent, the Communauté laotienne du Québec.⁹⁸ Since their inception, at the demand of the governments concerned, both associations share community tasks and subsidies. Their leaders have a high level of education and good knowledge of either or both national languages and Canadian or Quebecois culture. By virtue of their requirements, the federal and provincial governments thus influence the selection of community representatives whom they themselves trust. They do so in a manner that allows them to impose their language, expectations and own view of the situation.⁹⁹ The elite likely to correspond to these criteria is far from numerous and does not reflect the characteristics of the Lao community itself. Moreover, the aforementioned subsidised associations are expected to provide services to community members – an expectation that fails to take into account Lao culture, which places those who avail themselves of such services in the uncomfortable position of debtors. As a result, community members tend to bypass both associations to address themselves to public bodies to which they do not feel indebted, or to non-subsidised cultural associations. Thus one finds two parallel “communities.” One is defined by the state authorities but the Lao of Canada do not consider it to be representative. The other rests on its membership and promotes actual Lao

⁹⁷ GROULX, *supra*, note 94, p. 359: “La conception de la community, défendue par l’orientation sociocommunautaire présuppose que tous et chacun soient intégrés dans un réseau informel et volontaire d’aide et d’entraide ou sinon doivent s’y intégrer et y être intégrés.”

⁹⁸ Cf. H. BERTHELEU, Les modes d’organisation collective des Lao à Montréal, *Études ethniques au Canada* 27(2) (1995): 81-100.

⁹⁹ *Ibid.*, p. 86.

community life. It should be added that the Lao interlocutors designated by the provincial and federal governments in fact do not represent either of these parallel communities, while the real community leaders remain in obscurity.

Conventional wisdom holds that any formal or informal group that plans or undertakes collective action forms a community; and often, when speaking of community, one actually thinks of the associations that claim to represent it.¹⁰⁰ But what about representativity? Looking at the Irish for example, one sees a highly heterogeneous group characterised by an allegedly “ethnic” difference between native Irish and Irish from England or Scotland. This distinction has fostered stereotypes to which must be added the well-known religious divisions. Contrary to other immigrant groups, the Irish have not suffered racial discrimination in the recent past, but they have brought their age-old divisions to their host country. Upon arriving in Canada from the mid-nineteenth century on, they found themselves in a society organised along religious and linguistic lines. New solidarity networks thus emerged, depending on the local context. The Irish unanimously preferred English to French. In Montreal, Protestants and Presbyterians united against Catholics. As the result, Catholic Irish found themselves triply isolated: they did not identify either with French speakers or with Protestants, nor did they wish to be lumped together with people from Britain. As a result, many left Canada for the United States. While the Irish from England and Scotland had no difficulty in assimilating into Canadian society as their Irish identity gradually faded, Catholic Irish in the US felt moved to preserve their identity under pressure from discriminatory policies, which in turn has fostered Irish nationalism.¹⁰¹

¹⁰⁰ D. WHITE, La question communautaire de l'exclusion, *Lien social-RIAC* 32 (1994): 37-52.

¹⁰¹ Cf. D. A. WILSON, *Les Irlandais au Canada*, Ottawa, Multiculturalisme et Citoyenneté Canada, 1989.

G. Assessment

Recent community studies in the social sciences demonstrate that the concept of community has shifted in meaning from a homogeneous and territorially anchored social group to a heterogeneous and symbolic entity constructed by individuals in the pursuit of common objectives. In this manner, reference to community has gained a strategic dimension in that it channels the reaction to conditions of inequality or minority situations within liberal and pluralist states.

In the Canadian context, one finds a large variety of communities. Some distinguish themselves by their ethnicity, others by their religion, still others emerge in response to a local situation or to perpetuate the memory of an historical event, and many involve any combination of these traits. Some communities exhibit a high level of organisation; others are more informal. Some last, others disappear. But despite the high number of variables entering into consideration, the existing literature allows to identify a series of similarities.

To speak of communities, one must be able to identify among their members a form of solidarity and a sense of belonging, a common interest, as well as a given level of (active or passive) participation and (more or less formal) organisation including representation. Communities potentially experience internal conflict, especially with respect to issues of identity and representativity. Community boundaries are rarely defined with precision; they vary according to the interlocutor's vantage point. The way in which outsiders look at a given community influences its self-perception. Finally, official community discourse often seeks to convey the idea of communal homogeneity, although communities are in reality heterogeneous and complex. This is why one tends to view communities nowadays as changing entities whose boundaries are not defined territorially but on the basis of social interaction and interpersonal

exchange. Community-related processes or processes of *Vergemeinschaftung* thus differ according to their social context. Some advocates of extreme relativism even go so far as to affirm that no community resembles another, each possessing its own history and distinctive structure.¹⁰²

Without going that far, one is certainly moved to rethink the classic binary oppositions, such as centre/periphery, local/national, tradition/modernity, even society/community, considering the dynamics of de-territorialisation (or “re-territorialisation”) of socio-cultural groups and identities. For these dichotomies do little justice to the complex nature of the sentiments of belonging, the organisational networks, and the collective loyalties that accompany on-going migratory and transnational processes. In this context, the strategic invocation of culture operates as the “naturalised” marker of allegedly immutable differences. From the legal viewpoint, then, one is confronted with the twofold problem of delineating legally relevant cultural units, and of assessing the reproduction and stabilisation of cultural referents.

III. Prospect: The Legal Significance Of Community

The French title of this concluding section (“*Penser les communautés en droit*”) is adapted from a chapter by G. Koubi¹⁰³ to underline the following: communities (no less than minorities – both concepts are frequently collapsed) can only be made legally significant within a pluralist polity: the term “minority” is of conceptual validity solely to the extent that legal provisions address minorities explicitly or implicitly as objects or subjects of law.¹⁰⁴ The same

¹⁰² J. C. WALSH and HIGH, Rethinking the Concept of Community, *Social History* 32(64) (1999): 255-274.

¹⁰³ G. KOUBI, Penser les minorités en droit, in: FENET, KOUBI, SCHULTE-TENCKHOFF, *supra* note 1, p. 385-468.

¹⁰⁴ *Ibid.*, p. 388: “La notion de minorité ne revêt de validité que lorsque les politiques juridiques des États situent les minorités soit en objet du droit, soit en sujets de droits, explicitement ou implicitement.”

can be said for “community” and “communities.” This location of a law of minorities or communities within pluralist polities presupposes the evolution of the legal order towards the recognition of collective rights, i.e. both individual (human) rights exercised collectively, and rights that a collective may claim as such.¹⁰⁵ I consider this distinction to be fundamental in any discussion of special rights, particularly with respect to so-called group rights which raise the most vexing problems, as is illustrated in the Canadian context by the debate over the rights of Aboriginal peoples.¹⁰⁶

One is dealing with a twofold problematic, some elements of which shall be spelt out here as a prospect for future research. On the one hand, one must ask whether communities as such have status in law. The French terminology is ambiguous in this regard, since the official French Canadian equivalent of community is “*collectivité*” – a term referring, *inter alia*, to an administrative district having a juridical personality (according to *Le Petit Robert*). However, the purely “spatial” inscription of *collectivité* covers but one aspect – and maybe not the most important one – of the various meanings that, as we saw, are associated with the concept of community understood as a social group or as a certain quality of the social bond. Nor is it necessarily the sole criterion invoked in support of group rights. This is one more reason, then, to avoid considering the concept of community as self-explanatory – especially when it is a matter of setting legal standards in response to the strategic invocation of community ties to legitimise or, conversely, to contest collective rights claims. Rather, setting legal standards in favour of particular communities is a delicate undertaking. One must determine under what

¹⁰⁵ Cf. G. KOUBI, Réflexions sur les distinctions entre droits individuels, droits collectifs et “droits de groupe”, in: *Du droit interne au droit international: le facteur religieux et l'exigence des droits de l'homme*, Rouen, Publications de l'Université, 1998, p. 105-117; P. JONES, Human Rights, Group Rights, and Peoples' Rights, *Human Rights Quarterly* 21 (1999): 80-107.

¹⁰⁶ E.g. G. KOUBI and I. SCHULTE-TENCKHOFF, “Peuple autochtone” et “minorité” dans les discours juridiques: imbrications et dissociations, *Revue interdisciplinaire d'études juridiques* 45 (2000): 1-26; see also I. SCHULTE-TENCKHOFF, Droits collectifs et autochtonie: que penser des “traités modernes” au Canada ? in: *Quels droits collectifs ?*, T. BERNS ed., Brussels, Bruylant (forthcoming).

conditions and according to what modalities a community is likely to demand special rights. One must explore the possible repercussions on other communities that may find themselves in a comparable situation. One must ask what role law plays in the promotion or repression of the specific traits of a given community and, more generally, how to manage inter-communal relations via the law without neglecting the fact that the communities involved are highly diverse and also part of wider structure tending to promote uniformity. The various examples mentioned in Section II of this report give an idea of the potentially perverse effects of state or legal recognition of particular communities.

The second aspect to be mentioned here concerns the fundamental problem of the nature of law. In this instance – considering the starting point for this research, namely Tönnies’s work – this problem hinges on the idea of declining “communitarian” regimes of law under the impact of contractual and individualist ideology. This may be an inducement to revisit the work of the jurists and “founding fathers” of anthropology like Bachofen, Maine, Morgan and McLennan... but one must do so by shedding part of their legacy, i.e. their evolutionist outlook.¹⁰⁷ Similarly, in the attempt to refute evolutionism, one must avoid lapsing into the other extreme which consists in rejecting any form of historical approach, i.e. any possibility of large-scale comparisons of diverse legal systems. Tönnies attempted such a comparison, albeit with incomplete success, as we saw. Taking the opposite view to Rousseau’s, he conceived of a sort of natural bond as the foundation of sociability, whose ultimate manifestation is community:

This presupposes a solidarity of mankind and, furthermore, a protoplasm or essence of law as the original and necessary product of their collective living and thinking [...] Such reasoning led to the theory of law which nature has taught to all its creations and which, as such, is common also to mankind.¹⁰⁸

¹⁰⁷ E. LE ROY, *Juristique et anthropologie: un pari sur l’avenir*, *Journal of Legal Pluralism and Unofficial Law* 29 (1990): 5-21.

¹⁰⁸ TÖNNIES, *supra* note 6, p. 197.

This natural law, defined as the common law, is said to supersede the civil law of the Romans (that Tönnies specifically refers to) as well as the law “of all political communities of the classical culture.”¹⁰⁹ It does so as an afterthought, so to speak. Tönnies stressed that although common law preceded in time the specific forms of law, in reality the reverse process occurred:

Therefore, [common law] followed upon the specific law; it was not its basis or precedent, but its follower and negation. For common law is nothing but an impediment to specific law. It is as natural and simple as if it had existed since the beginning of time and as if it were not bound by any conditions precedent but had only been obscured by artificial inventions and regulations, the delegation of which, therefore, means the restitution of the original status.¹¹⁰

In other words, what is simple comes first *de iure*, although this is not the case *de facto*, for it must serve as the foundation of law itself. It is therefore in his sociology of law that one clearly sees Tönnies’s main concern, which is to uncover the nature of the social bond as it endures underneath the artifice of civil society.¹¹¹

Consequently, to understand communities in law, one is led to reconsider the idea of a *Gemeinschaft*-type social bond, and to explore its juridical meaning. This raises abstract philosophical and anthropological questions whose treatment would undoubtedly transcend the scope of this report. Future research would nevertheless be useful, given the widespread rhetorical use of the concept of community. What is often implicit must be rendered explicit, in particular to gain a critical perspective on the strategic invocation of community ties beyond the now somewhat sterile controversy opposing liberals and communitarians.

In more practical terms, understanding communities in law also means identifying, on a case-by-case basis, the various empirical realities to which the concept of community may refer.

¹⁰⁹ *Ibid.*, p. 198.

¹¹⁰ *Ibid.*

Here, the main challenges lie in the multiplication of processes of *Vergemeinschaftung* under conditions of globalisation, and in what may be termed its intercultural dimension. The remainder of this concluding section addresses one of the various ways of taking up these challenges.

If the location of a law of communities within pluralist societies presupposes a certain evolution of the legal order towards the recognition of collective rights, it must be possible to reach beyond the dominant statist or positivistic conception of law. This broadening of scope goes hand in hand with the scholarly endeavour of enriching legal thinking by other forms of knowledge, notably those inspired by the social sciences. Hence the relevance of the concept of legal pluralism. This in turn refers to legal anthropology. Without going into detail, it is useful to stress one particular aspect of this interdisciplinary endeavour to understand cultures of law different from our own, namely the distinction between normative and processual analysis.

Normative analysis corresponds to the view embodied by the civil law tradition, according to which law is equivalent to codified legal standards. Processual analysis grew out of the common law tradition that relies on judicial precedent and the case method. The conception of law as process – especially in the form of dispute processes¹¹² – has played a crucial role in anthropology, and fostered a number of theoretical debates. Normativists, both legal anthropologists and jurists, endeavour to establish an inventory of the norms and rules that govern a given social group, thereby excluding numerous legal cultures from the realm of law. This form of reductionism is problematic because few societies apart from western ones have adopted a normative conception of law.¹¹³ For this reason, processual analysis seems better

¹¹¹ FARRUGIA, *supra* note 2, p. 93.

¹¹² E.g. B. MALINOWSKI, *Crime and Custom in Savage Society*, London, Kegan Paul, 1926.

¹¹³ See for example N. ROULAND, *Anthropologie juridique*, Paris, P.U.F., 1988, p. 71.

adapted to the study of the intercultural dimension of law and of (legal) change – which does not mean, however, that law should be reduced to dispute processes and processing.¹¹⁴

Processual analysis has also played an important role in highlighting legal pluralism – a crucial accomplishment of legal anthropology which thus reflects the *de facto* plurality of most human societies. It should be noted, however, that the expression “legal pluralism” refers to various levels likely to be confused, namely socio-political groups or communities, legal systems, and methods of analysis. In some cases, the term “plurality” may therefore be preferable to “pluralism.” Similarly, one must distinguish between legal pluralism in the anthropological sense and the plurality of sources of law. While it is possible to identify several formal sources of law (jurisprudence, legislation, decree, for example), it is equally possible that none of these transcend legal centralism if they all originate in the state.¹¹⁵

The issue of legal pluralism has been approached from various angles, as is illustrated by the following classic examples. The French sociologist Henri Lévy-Bruhl¹¹⁶ distinguished between law (as the product of differentiated political power) and custom understood as system of rules followed by a particular social group. This is a distinction mainly applied in the French school as an organising principle of theory; one does not encounter it in this form in the Anglo-Saxon tradition.¹¹⁷ The latter tradition may be illustrated by the work of the anthropologist

¹¹⁴ For case studies, see for example P. BOHANNAN (ed.), *Law and Warfare: Studies in the Anthropology of Conflict*, Garden City, N.Y., American Museum of Natural History Press, 1967; L. NADER and H. F. TODD eds, *The Disputing Process: Law in Ten Societies*, New York, Columbia University Press, 1978; J. L. COMAROFF and S. ROBERTS, *Rules and Processes: The Cultural Logic of Dispute in African Context*, Chicago, University of Chicago Press, 1981. The term “dispute processing” (as distinct from “dispute processes”) refers to “the procedural forms by which disputes are handled;” see F. SNYDER, *Law and anthropology*, in: *Legal Frontiers*, P. A. THOMAS ed., Aldershot, Dartmouth, 1996, p. 135-179, at 141.

¹¹⁵ G. GURVITCH, *Sociology of Law*. London: Routledge & Kegan, 1947.

¹¹⁶ H. LÉVY-BRUHL, *Introduction à l'étude de la sociologie du droit*, Paris, Rousseau, 1951.

¹¹⁷ But see also Rüdiger Schott's distinction between justice (*Recht*) and law (*Gesetz*); R. SCHOTT, Justice versus the Law: Traditional and Modern Jurisdiction among the Balsa of Northern Ghana, in: *Law and State – A Biannual Collection of Recent German Contributions* 21 (1980): 121-133.

Pospisil in whose view society is “a patterned mosaic of subgroups that belong to certain, usually well-defined (or definable) types.” Each subgroup has its own legal system. All legal systems “form a hierarchy reflecting the degree of inclusiveness of the corresponding subgroups” (e.g. family, community). On this basis, Pospisil formulates his theory of “legal levels” to describe “the total of the legal systems of subgroups of the same type and inclusiveness.” As individuals usually belong to several subgroups, they are also subjected to several legal systems.¹¹⁸

For Vanderlinden,¹¹⁹ a professor of law, legal pluralism must be understood as the existence of different legal mechanisms applicable to the same situation within a specific social group. In a controversial and much discussed article, J. Griffiths¹²⁰ goes further by stressing the necessary correlation between social and legal pluralism. To this end, he adapts the concept of “semi-autonomous social field” fashioned by Sally Falk Moore to account for the horizontal and not only vertical (as in Pospisil’s case) dimension of pluralism.¹²¹ His objective is to forge a concept applicable to any type of society and to the forms of social organisation that come between the individual and the state as legislator.

For both Griffiths and Moore, legal pluralism is “normal.” It is the product of the pluralism that characterises all human societies. Moreover, each social field, rather than forming a single legal order, is subjected to several legal systems: one that it generates itself, those belonging to

¹¹⁸ L. POSPISIL, *The Anthropology of Law: A Comparative Theory of Law*, New York, Harper & Row, 1971, pp. 125, 107.

¹¹⁹ J. VANDERLINDEN, Le pluralisme juridique: essai de synthèse, in: *Le pluralisme juridique*, J. GILISSEN ed., Bruxelles, éd. Université de Bruxelles, 1972, p. 19: [le pluralisme juridique est] “l’existence, au sein d’une société déterminée, de mécanismes juridiques différents s’appliquant à des situations identiques.”

¹²⁰ J. GRIFFITHS, What is legal pluralism? *Journal of Legal Pluralism and Unofficial Law* 24 (1986): 1-55.

¹²¹ For Moore, the semi-autonomous social field “has rule-making capacities, and the means to induce or coerce compliance [...] but [...] is simultaneously set in as larger matrix which can, and does, affect and invade it, sometimes at the invitation of persons inside it, sometimes at its own instance”; see S. F. MOORE,

other social fields, and state law. While legal pluralism refers to the existence of multiple legal systems within a single social field, states nonetheless tend towards legal and political uniformity. This is why Griffiths feels moved to distinguish two kinds of pluralism: one that is authorised by the state, another that eludes state control. However, only the latter is authentic pluralism in Griffiths's view, for pluralism essentially contradicts the state's propensity to uniformity. This leads to the problem of sham pluralism, namely state recognition of certain manifestations of pluralism (e.g. minority rights) in exchange for compliance with state-defined modalities of sharing out spheres of competence, and acceptance of the idea that non-state law is automatically subjected to state law.

The main interest of the debate concerning legal pluralism is that it renders the role of the state with respect to social organisation and the law relative. Indeed, all theories of legal pluralism question that role in a more or less radical fashion. Undoubtedly, Griffiths goes the furthest in considering state law to be no more than one possible manifestation of law. He defines law as the self-regulation of semi-autonomous social fields, each of which is endowed with a particular degree of juridical legitimacy. However, this definition seems circular, for the semi-autonomous social field is defined, in turn, by its capacity to generate norms. This would mean, then, that ultimately all norms are law. This criticism concerns all theories of legal pluralism for they tend to neglect the difference between law and other forms of social regulation. In the same vein, the French jurist, Jean Carbonnier¹²² has sought to expose the "grand illusion" of legal pluralism which, in his view, actually refers to what he calls "sub-law (*infra-droit*). The problem of the definition and localisation of law thus persists, especially when it

Law and Social Change: the Semi-autonomous Social Field as an Appropriate Subject of Study, in: *Law as Process: An Anthropological Approach*, London, Routledge & Kegan Paul, 1978, p. 55-56.

¹²² J. CARBONNIER, *Sociologie juridique*, Paris, P.U.F., 1995 (1^{re} éd. 1978).

is a matter of “managing” collective legal rights claims based on criteria of community existence or membership.¹²³

Beyond stating the existence of a plurality of systems and ideas of law, one can also approach legal pluralism as an epistemological choice, in the sense of drawing lessons with respect to the theoretical principles and conceptual tools to be used in the study of such systems and ideas. Much work still needs to be done in this regard, for example in approaching central concerns of academic legal studies from a legal-pluralist viewpoint.¹²⁴ The projected research of the Law Commission may go some distance towards meeting this goal.

¹²³

One might also explore the relevance of Carbonnier's concept of inter-normativity, based on the assumption that there exists a plurality of normative orders whose modalities of interaction warrant closer scrutiny; *ibid*, p. 317-318. Guy Rocher in turn has stressed that inter-normativity creates a bridge between legal analysis and the social sciences; G. ROCHER, Les “phénomènes d'internormativité”: faits et obstacles, in: *Le droit soluble: contributions québécoises à l'étude de l'internormativité*, J.-G. BELLEY ed., Paris, L.G.D.J., 1996, p. 26-28.

¹²⁴

E.g. Snyder's work on European community law; F. SNYDER, *New Directions in European Community Law*, London, Weidenfeld & Nicolson, 1990.

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