FIXING THE BROKEN MIRROR: DIVERSITY AND SURVIVAL IN THE GLOBAL VILLAGE

*Payam Akhavan**

> *The truth was a mirror in the hands of God.*
> *It fell to earth and broke into pieces.*
> *Everyone took a piece, saw their own reflection, and thought they had the truth.*[1]
>
> *Rumi*

Rumi was a medieval jurist and mystic, born in what is now Afghanistan, in the closing years of the Islamic Golden Age. His family fled the Mongol invasions of 1215, wandering westward in search of refuge. Ripped away from his home, Rumi's childhood journey took him along the Silk Route, through the cosmopolitan cities of Baghdad and Damascus, to the Anatolian lands of the Byzantine Empire, an odyssey of wondrous sights, and bewildering diversity.[2] His poem on the broken mirror was a meditation on shared meaning in a world of loss and suffering.

A thousand years later, grappling with the horrors of totalitarianism, Jürgen Habermas would introduce "the intersubjectivity of mutual understanding" to critical social theory.[3] A *leitmotif* of the Frankfurt school, it

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* LL.M., S.J.D. (Harvard), Full Professor at McGill University's Faculty of Law in Montreal, Member of the Permanent Court of Arbitration, and former Legal Advisor to the Office of the Prosecutor of the International Criminal Tribunal for the former Yugoslavia at The Hague. This speech was the Opening Keynote presentation of the 48th Annual Meeting of the Canadian Council on International Law, on the theme of "Diversity in International Law," held in Ottawa on 24 October 2019. The research assistance of Jeremy Pizzi is gratefully acknowledged.

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1 Badi'ul-Zaman Furuzanfar, ed, *Kitab-e Fiye Mafiye, Mowlana* (Tehran: Negah, 2008) [translated by author].

2 See Reynold A Nicholson, *Rumi: Poet and Mystic (1207–1273)* (London, UK: George Allen & Unwin, 1950) at 17–18.

3 See Jürgen Habermas, *Knowledge and Human Interests*, translated by Jeremy J Shapiro (London, UK: Heinemann, 1972) at 176.

would be celebrated by postmodern thinkers as a cutting-edge concept, oblivious to the roots of pluralism in ancient wisdom.

The relationship between past and present, tradition and modernity; the cultural self-understanding of our place in history is a befitting point of departure in exploring diversity in international law.

We in Canada are Indigenous and immigrants, francophone and anglophone. We have embraced a multicultural postnational identity and a rule-based international order. It was a philosopher among us—a certain Marshall McLuhan—who popularized the term "global village" in the 1960s.[4] Half a century ago, it described a technology-induced transcendent consciousness, a prescient vision of the hyperconnected internet world of today, where we can explore the delicate boundaries of "self" and "other" through Instagram selfies and Twitter tantrums!

There is of course another, less appealing side to Canada: our Indigenous brothers and sisters struggle with the legacy of colonialism; in Québec there is the hijab hysteria known as Bill 21, in the shadow of the 29 January 2017 massacre at Québec City's Islamic Cultural Centre; and there are ominous undercurrents of racism, misogyny, and homophobia, just beneath the surface. "Canada's New Far Right," the Globe and Mail reported, is "actively recruiting new members, buying weapons and trying to influence political parties."[5] Where at the end of the Cold War, Western liberalism celebrated the "end of history,"[6] today we live in an age of rage, gripped by a hateful populism, battering the ethos of diversity and multilateralism that we once took for granted. We are witnessing, it seems, a prolonged episode of infantile regression in that reality TV show we call politics.

Whether we are critical theorists or progressive practitioners, we condemn these sinister forces of xenophobia and isolationism. But if we stare long enough in the mirror what do we see? Beyond liberal platitudes, have we embraced the more profound meaning of pluralism? And why should it matter at this particular point in the evolution of humankind?

The idea of international law is inherently cosmopolitan. Put differently, it is a response to a traumatic historical experience arising from the violent negation of diversity. The Westphalian peace treaties of 1648 that first recognized the sovereign equality of states emerged from the catastrophic Catholic-Protestant wars. The natural justice proclaimed by Hugo

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4 See Marshall McLuhan, *The Gutenberg Galaxy: The Making of Typographic Man* (Toronto: University of Toronto Press, 1962) at 31ff.

5 Shannon Carranco & Jon Milton, "Canada's New Far Right: A Trove of Private Chat Room Messages Reveals an Extremist Subculture" (27 April 2019), online: *The Globe and Mail* <www.theglobeandmail.com> [perma.cc/5PQE-P8FR].

6 See Francis Fukuyama, *The End of History and the Last Man* (New York: Free Press, 1992) at xi.

Grotius was conceived amidst the Dutch War of Independence against Spanish rule. The contemporaneous Thirty Years War, between the House of Habsburg and the Kingdom of France, had resulted in an estimated eight million deaths, mostly in the Holy Roman Empire. "Throughout the Christian world," Grotius wrote in 1625 in *The Law of War and Peace*, "I observed a lack of restraint in relation to war, such as even barbarous races should be ashamed of."[7] For him, the ideal of religious tolerance was not a philosophical abstraction; it was born from intense suffering.

Beyond the Christian family of nations, jurists were also beginning to grapple with early colonial encounters. In his lecture of 1539 entitled *De Indis*, Francisco de Vitoria, founder of the school of Salamanca, invoked divine justice to condemn the atrocities of the conquistadores. A Dominican friar, he maintained that the Indigenous peoples of the Americas had "true dominion" over their affairs "just like Christians."[8] The Aztec, Mayan, and Inca Empires that Hernán Cortés subjugated were sophisticated civilizations. They had complex normative systems, including international laws regulating war and commerce. In the rapacious pursuit of colonial riches, however, instead of Dominican universalism, international law legitimized the conquest of Indigenous peoples by portraying them as "barbarians" and "savages."

The so-called Spanish discovery of the New World in 1492 had coincided with the conquest of the Emirate of Granada in Al-Andalus. The European Renaissance of Vitoria's time though was deeply influenced by the intellectual centres of Islamic Iberia, long after the Moors retreated to North Africa. Amidst the Dark Ages in Christendom, the Great Library of the Caliphate of Córdoba—founded by a legendary woman named Lubna—boasted 400,000 volumes. Before the Mongol siege of Baghdad in 1258, the Grand Library of the Abassid Caliphate was a thriving cosmopolitan academy. There, the eighth-century theologian Abu Hanifa pioneered the discipline of jurisprudence, including *Siyar*, the Islamic equivalent of international law, with principles on the sanctity of treaties, the treatment of aliens, freedom of the high seas, diplomatic protection, and expropriation of property.

The Laws of War by Anglo-Italian jurist Alberico Gentili, published in 1598, signaled a shift in the early modern period from theology and natural law to positivist theories based on state consent.[9] The Oxford publicist derived his ideas from the *jus gentium* of classical antiquity, regulating relations between the Roman Empire and others known as "barbarians." These included the Germanic, Celtic, Gaulish, and Iberian tribes: the ancestors of

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7 *De Jure Belli ac Pacis*, vol 2, translated by Francis W Kelsey (Oxford: Clarendon Press, 1927) at Prolegomena s 28.

8 Franciscus de Victoria, *De Indis e de Iure Belli Reflectiones*, ed by Ernest Nys, translated by John Pawley Bate (Washington, DC: Carnegie Institution, 1917) at 128.

9 See Alberici Gentilis, *De Jure Belli Libri Tres* (Hanau: Gulielmus Antonius, 1598).

present-day Western Europeans. History is full of unexpected twists and turns. Yesterday's "savage" can become tomorrow's saviour, and vice versa.

Jus gentium too had earlier antecedents. In 2550 BC, the *limitrophe* kingdoms of Lagash and Umma had concluded a boundary agreement in Mesopotamia, the oldest known expression of treaty law. Today, it sits in the Musée du Louvre in Paris, a clay pillar with inscriptions in cuneiform script. Even more impressive is the Cyrus Charter, a cuneiform text on a clay cylinder from 439 BC in the British Museum in London. It was arguably the first human rights declaration in history, granting religious freedom to subjects of the multinational Persian Empire.[10] It inspired Thomas Jefferson in drafting the US Constitution of 1787.[11]

The origin story always begins with the European "fathers" of international law; but there is nothing new, nothing unique, about the search for harmony through transcendent norms. Diversity is the very story of humankind, integral to our communal existence from time immemorial, across all cultures and civilizations. Even if we confine ourselves to the European narrative, the paternity of international law would still be in doubt. In 1410—two centuries before Grotius—the French writer Christine de Pizan had published *Livre de faits d'armes et de chevalerie* on the laws of war.[12] Apparently, the mother of international law did not have a good publicity agent!

From the eighteenth century onward, positivism became the dominant theory of international law. This coincided with the acceleration of European modernization. The Industrial Revolution created unprecedented prosperity, and urbanization transformed traditional social structures. Radical ideals of democracy and equality gradually spread, privileging individual autonomy over communal bonds. The intimate identity of the village was replaced by abstract belonging to this imagined community called a nation.

The vehicle of this progress was the modern bureaucratic state. "Nasty, brutish, and short"; it sounds like a law firm, but that is what Thomas Hobbes described in the *Leviathan* as the "war of every one against every

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10 See Paul Gordon Lauren, "The Foundations of Justice and Human Rights in Early Legal Texts and Thought" in Dinah Shelton, ed, *The Oxford Handbook of International Human Rights Law* (Oxford: Oxford University Press, 2013) 163 at 166–67. See also William J Talbott, *Which Rights Should Be Universal?* (New York: Oxford University Press, 2005) at 40; Hirad Abtahi, "Reflections on the Ambiguous Universality of Human Rights: Cyrus the Great's Proclamation as a Challenge to the Athenian Democracy's Perceived Monopoly on Human Rights" in Hirad Abtahi & Gideon Boas, eds, *The Dynamics of International Criminal Justice: Essays in Honour of Sir Richard May* (Leiden, Netherlands: Martinus Nijhoff, 2006) 1.

11 See Hamid Dabashi, *Persophilia: Persian Culture on the Global Scene* (Cambridge, Mass: Harvard University Press, 2015) at 30–32; Denny Rose & Rowan Allen, *Ancient Civilizations of the World* (Waltham Abbey: ED-Tech Press, 2019) at 286–87.

12 Online: *Gallica* <gallica.bnf.fr/ark:/12148/btv1b8448959c>.

one" that would prevail without centralized authority.[13] The rise of nationalism coincided with the decline of religious belief: the substitution of faith with reason. State-centric positivist theories of international law were shaped by the Hegelian premise that the rational alone is real;[14] beyond the command of the sovereign, there was no mystical authority from which transcendent norms could be derived. There was no such thing as morality or "soft law"; only hard law based on the objective reality of state consent. The seminal *Précis du droit des gens moderne de l'Europe*, published by Georg Friedrich von Martens in 1789, reflected this rigorous methodology.[15]

Modernity, Max Weber said, "is characterized by rationalization and intellectualization and, above all, by the 'disenchantment of the world.' "[16] The Europe of the Enlightenment would no longer tolerate blind imitation of Christian traditions, or the magical thinking of premodern "barbarians." Instead, the secular cult of occidental rationalism worshipped the critical mind as the sovereign of the universe, always on the forefront of time, the future a horizon of perpetual discovery and innovation. Liberated from a dark past of ignorance, instead of killing in the name of religion, civilized men would kill in the name of nationalism and colonialism; and they would do so with ever-greater efficiency, thanks to technological progress.

Instead of Christians and infidels, the Eurocentric international law of the nineteenth century distinguished between "civilized" and "uncivilized" nations, a view prevalent among thinkers from Montesquieu to Immanuel Kant. The common wisdom of the time considered British imperial rule "a blessing of unspeakable magnitude to the population of Hindustan."[17] "Even the utmost abuse of European power" was deemed "better ... than the most temperate exercise of Oriental despotism."[18] Even Karl Marx considered colonialism preferable to oriental despotism.[19] In *The Contemporary International Law of Civilised Nations*, published in 1881, the Russian jurist Frédéric de Martens maintained that the "inner life and order of a

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13 *Leviathan, or, the Matter, Form, and Power of a Commonwealth Ecclesiastical and Civil* (London, UK: Andrew Crooke, 1651) at 62, 64. See also Arash Abizadeh, *Hobbes and the Two Faces of Ethics* (Cambridge, UK: Cambridge University Press, 2018) at 136–37.

14 *Hegel's Philosophy of Right*, translated by SW Dyde (London, UK: George Bell and Sons, 1896) at xxvii.

15 See *Précis du droit des gens moderne de l'Europe fondé sur les traités et l'usage* (Göttingen: Dieterich, 1789).

16 "Science as a Vocation" in H Gerth & C Wright Mills, eds, *From Max Weber: Essays in Sociology* (New York: Oxford University Press, 1946) 129 at 155.

17 P Paulin de S Barthélemy, "Voyage aux Indes Orientales" (1810) 15:30 Edinburgh Review 363 at 372.

18 *Ibid*.

19 See Karl Marx, "The British Rule in India" in Shlomo Avineri, ed, *Karl Marx on Colonialism and Modernization* (Garden City, NY: Doubleday, 1968) at 88–89.

State determine the level of its participation in international life."[20] For better or for worse, there is, as Jack Donnelly notes, an element of continuity between the nineteenth-century "standard of civilization" and contemporary liberal discourse of human rights.[21]

There were three tiers to this civilizational hierarchy: whilst Europeans were at the pinnacle, there was a distinction below between "barbarians" and "savages." The barbaric club of "oriental despots"—the Ottoman, Persian, Siamese, Chinese, and Japanese empires—had limited legal personality on account of the cultural complexity associated with the notion of "civilization." So too did the Abyssinian Empire in Africa, labelled as the "Empire des N—— Blancs."[22]

At the bottom of the pyramid were the so-called savages; on account of their tribal structures and relation to nature, they were deemed to be the most in need of the civilizing mission. Sir Charles Dilke, the nineteenth-century British liberal, held that "the gradual extinction of the inferior races is not only a law of nature, but a blessing to mankind."[23] Two centuries later, the consequences of such ideas are still among us. The Truth and Reconciliation Commission of Canada observed in 2015 that "this universalizing of European values—so central to the colonial project— ... served as the prime justification and rationale for the imposition of a residential school system on the Indigenous peoples of Canada."[24]

Edward Gibbon famously wrote that history is "little more than the register of the crimes, follies, and misfortunes of mankind."[25] It is difficult from our privileged existence to understand the brutality of our common past. The talent for conquest and cruelty is, of course, not unique to European colonialism: it is a shared feature of diverse cultures and civilizations throughout the ages. But even among the bloodstained pages of history, it

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20 Friedrich von Martens, *Völkerrecht. Das internationale Recht der civilisirten Nationen*, translated by Carl Bergbohm (Berlin: Weidmannsche Buchhandlung, 1883) at 25, cited in Lauri Mälksoo "F.F. Martens and His Time: When Russia Was an Integral Part of the European Tradition of International Law" (2014) 25:3 Eur J Int L 811 at 824.

21 "Human Rights: A New Standard of Civilization?" (1998) 74:1 Intl Affairs 1 at 22.

22 The term is redacted because it is a racial slur.

23 Charles Wentworth Dilke, *Greater Britain: A Record of Travel in English-Speaking Countries During 1866 and 1867*, vol 1 (London, UK: Macmillan and Co, 1868) at 130.

24 *Honouring the Truth, Reconciling the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada* (Ottawa: Truth and Reconciliation Commission, 2015) at 49–50 [*TRC*]. On the question of "cultural genocide," see also: Payam Akhavan, "Cultural Genocide: Legal Label or Mourning Metaphor?" (2016) 62:1 McGill LJ 243.

25 *The History of the Decline and Fall of the Roman Empire*, ed by J B Bury, (London, UK: Methuen & Co, 1900) vol 1 at 77.

was the unprecedented horrors of the twentieth century that finally gave rise to the emergence of a universal order.

Just as modern civilization condemned premodern idol worship, it sacrificed millions at the altar of totalitarian ideologies, all in the name of progress. "Religion," Karl Marx wrote, "is the opium of the people."[26] And yet so too were delusional modern utopias. The Mongol massacres that shaped Rumi's medieval world, or the Catholic-Protestant wars of Grotius' time, paled in comparison with the horrors of Nazism and Stalinism. The extreme violence that shattered modernity's promise of progress was not an aberration: it was intrinsic to a technologically advanced civilization that had emptied itself of morality and mysticism. "The Holocaust," Zygmunt Bauman wrote, was "a legitimate resident in the house of modernity; indeed, one who would not be at home in any other house."[27]

Just like the religious wars of Grotius' time, contemporary international law was conceived in the crucible of suffering—not of intellectual abstractions—and it was intertwined with divisive beliefs that failed to embrace the diversity of humankind. The Nuremberg Charter, the UN Charter, the *Universal Declaration of Human Rights*, the Genocide Convention, and the *Declaration on the Granting of Independence to Colonial Countries and Peoples*: these unimpeachable axioms at the core of a new global ethos were a radical departure from the rationalist creed of positivism. They resurrected the sacred in the secular guise of state consent. Crimes against humanity, for instance, were defined as acts that "shocked the conscience of mankind."[28] But their prosecution at the Nuremberg trials was in plain disregard of existing international law and the *nullum crimen sine lege* principle.[29]

This abrupt turn to natural justice calls to mind Émile Durkheim's *The Elementary Forms of the Religious Life*; "the distinctive trait of religious thought," he wrote, was the division of the world between the sacred and the profane, not between the sacred and the secular.[30] Falling from the great heights of hubris, a devastated modern civilization looked to the heavens in desperation, and rediscovered the sacred. The human-centric

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26 *Critique of Hegel's 'Philosophy of Right'*, ed by Joseph O'Malley, translated by Annette Jolin & Joseph O'Malley (Cambridge, UK: Cambridge University Press, 1970) at 131.

27 *Modernity and the Holocaust* (Ithaca, NY: Cornell University Press, 1989) at 17.

28 United Nations War Crimes Commission, *History of the United Nations War Crimes Commission and the Development of the Laws of War* (London, UK: His Majesty's Stationery Office, 1948) at 179.

29 See e.g. Payam Akhavan, "The Origin and Evolution of Crimes Against Humanity: An Uneasy Encounter Between Positive Law and Moral Outrage" in Morten Bergsmo, ed, *Human Rights and Criminal Justice for the Downtrodden: Essays in Honour of Asbjørn Eide* (Leiden, Netherlands: Marinus Nijhoff, 2003).

30 Translated by Joseph Ward Swain (London, UK: George Allen & Unwin, 1915) at 37.

international law that emerged blurred the hitherto rigid boundaries between *lex lata* and *lex ferenda*.

There was, for a brief window of time, a notable postwar idealism. *World Peace Through World Law* by Louis Sohn and Grenville Clark, published in 1958, called for a revised UN Charter, a world legislature, executive, and police force.[31] Writing such a book today would be the surest path to denial of academic tenure; no self-respecting scholar would replace hard-earned cynicism for such shameful idealism!

From the 1960s onwards, the post-colonial period thrust diversity in a very different light. The expanding family of nations introduced a new dimension to the universality and legitimacy of international law. Each nation brought with it concerns regarding self-determination, state succession, sovereignty over natural resources, a new international economic order, and so on. The composition of international courts and tribunals too began to change as jurists from the global south were appointed to the bench.

There is, however, a notable contrast between the bench and bar among international jurists. At hearings before the International Court of Justice (ICJ) in the ornate Peace Palace in The Hague, the sartorial splendour of *les professeurs parisiens* in red robes and rabbit fur is on display as are the horsehair wigs and black gowns of the English barristers. Eloquent pleadings are peppered with peculiar twists of phrase and the occasional reference to Shakespeare or Molière. It is a remnant of an earlier time, seemingly out of place in the world of today, a distinguished community of counsel and advocates that has yet to fully open the door to diversity.

Unlike the organic composition of the ICJ bar, Article 9 of the ICJ Statute formally imposes diversity among judges. It requires "the representation of the main forms of civilization and of the principal legal systems of the world".[32] There was an identical provision in the *Statute of the Permanent Court of International Justice*.[33] In 1920, the US Secretary of State, Elihu Root, noted before the League of Nations that such diversity was imperative for "a real World Court for the Society of all Nations."[34] At the time, this was no more than a representation of the Anglo-American common law and continental European civil law traditions. The only exceptions were the judges from China and Japan. Today, diversity requires representation of a wider spectrum of legal systems. The *Southwest Africa Cases*,

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31 3rd ed (Cambridge, Mass: Harvard University Press, 1966).

32 *Statute of the International Court of Justice*, 26 June 1945, Can TS 1945 No 7, art 9.

33 See *Statute of the Permanent Court of International Justice*. 16 December 1920, LNTS 1921 No 170, art 9.

34 Permanent Court of International Justice, *Procès-verbaux of the Proceedings of the Advisory Committee of Jurists, June 16th–July 24th, 1920* (Clark, NJ: The Lawbook Exchange, 2006) at 710.

during the decolonization period in the 1960s, demonstrated the consequences of an unrepresentative bench.[35] Today, pluralism is ensured through geographical distribution of seats in the election of ICJ judges. But its impact on jurisprudence has been limited.

Some would say it is a good thing that a diverse bench doesn't result in diversification of jurisprudence. Amidst the proliferation of jurisdictions, they would point out, fragmentation is already a threat to the unity of international law. Pluralist legal traditions would only exacerbate the problem. Perhaps diversity is more subtle than overt reference to specific legal systems. The Canadian jurist Edward McWhinney described it as the interaction among judges "with the cross-currents in their legal education and professional formation operating to produce collegial decision-making that transcends conventional political-ideological, ethno-cultural, and legal-systemic divisions."[36]

Beyond such transsystemic conversation, however, there is scant reference to diverse legal traditions in jurisprudence. An exception was the Sri Lankan ICJ Judge Christopher Weeramantry. A notable instance is his Separate Opinion in *Gabčíkovo-Nagymaros*, delivered in 1997, where he derived the universality of environmental norms from multiple legal traditions.[37] His *obiter dictum* on intergenerational equity was remarkable. *Our Common Future*, the UN Bruntland Commission Report popularizing the concept of "sustainable development," had only been published in 1987. The Earth Summit in Rio de Janeiro had been held in 1992, just five years before the judgment. Despite these efforts, the prevailing sentiment of the 1990s post–Cold War period was one of triumphant Western liberalism, accompanied by the spread of consumer capitalism and the rise of specialized regimes for the management of a rapidly globalizing market economy. In sharp contrast with the prevailing materialistic conception of progress—together with functional views of international law—Weeramantry invoked spiritual traditions as a normative source, including Indigenous law in particular.

"Native American wisdom," Weeramantry wrote, "with its deep love of nature, ordained that no activity affecting the land should be undertaken

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35 See *South West Africa Cases (Ethiopia v South Africa; Liberia v South Africa)*, [1962] ICJ Rep 319; *South West Africa Cases (Ethiopia v South Africa; Liberia v South Africa)*, [1966] ICJ Rep 6. For a discussion of the impact of colonialism on the *Southwest Africa Cases*, see Victor Kattan, "Decolonizing the International Court of Justice: The Experience of Judge Sir Muhammad Zafrulla Khan in the *South West Africa* Cases" (2015) 5:2 Asian J Intl L 310.

36 *The International Court of Justice and the Western Tradition of International Law*: *The Paul Martin Lectures in International Relations and Law* (Dordrecht, Netherlands: Martinus Nijhoff, 1987) at 138.

37 See *Case Concerning the Gabčíkovo-Nagymaros Project (Hungary v Slovakia)*, [1997] ICJ Rep 7 at 88ff.

without giving thought to its impact ... for seven generations."[38] This was a reflection of "the ancient wisdom of the human family which the legal systems of the time and the tribe absorbed."[39] Love for the environment, he noted, was also "a prominent feature of European culture, until the industrial revolution pushed these concerns into the background."[40] The preservation of nature, he concluded, is a universal value that could be revitalized through these global legal traditions.[41]

Weeramantry was a notable exception to the ICJ jurisprudence. Perhaps the dearth of legal pluralism may be attributed to the formal and practical constraints of the judicial process and legal reasoning. What is more notable is its conspicuous absence in scholarship. Across a broad spectrum of international law theories—realism, liberalism, law and economics, international legal process, and others—perspectives outside the culture of occidental rationalism are usually nowhere to be found. What is even more remarkable is that critical theories too ignore these traditions, just as they preach the gospel of pluralism. What amounts to reinvention of the wheel is often hailed as a groundbreaking theory, so long as it is expressed in fashionable terminology. Habermas' intersubjectivity and Rumi's broken mirror may express the same idea, but one is venerated as philosophy while the other is dismissed as poetry. It seems that difference is desirable so long as it isn't different from our comfort zone of particularistic theorization.

The New Haven school at least invokes diverse civilizations to legitimize its policy-oriented world order, even if it stands accused of disguising American hegemony. But like Third World Approaches to International Law, these surveys are largely focused on how the Global South has contributed to the norms of international law. There isn't much consideration of the differing conceptions of normativity derived from the cosmology, epistemology, and ontology of other traditions. This reflects what has been described as "shallow cosmopolitanism."[42]

The reluctance to go beyond perfunctory pluralism is often shaped by the fear that a deeper conversation on diversity will lead to cultural exceptionalism and refutation of universal norms. There may be some truth to this concern. In 1983, as thousands were executed in Ayatollah Khomeini's totalitarian theocracy, an Iranian diplomat rebuked UN condemnation, arguing that "[t]he Universal Declaration of Human Rights ... represented [a]

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38 *Ibid* at 107.

39 *Ibid*.

40 *Ibid* at 108.

41 See *ibid* at 108–09.

42 Antony Anghie & Garry Sturgess, "Preface" in Antony Anghie & Garry Sturgess, eds, *Legal Visions of the 21st Century: Essays in Honour of Judge Christopher Weeramantry* (The Hague: Kluwer Law International, 1998) ix at x.

secular understanding of the Judeo-Christian tradition [that] could not be implemented by Muslims and did not accord with the system of values recognized by the Islamic Republic of Iran."[43] His government, he concluded, would "not hesitate to violate its provisions, since it had to choose between violating the divine law of the country and violating secular conventions."[44]

But the relationship between universality and culture is far more complex than such disingenuous pretexts for tyranny or the tired debate on cultural relativism. There is, in the liberal culture, a deeper suspicion of tradition as an obstacle to progress. Sally Engle Merry speaks of "human rights law and the demonization of culture," observing that "[c]onceptions of culture as static tradition are fundamental to contemporary transnational human rights discourse."[45] Culture is viewed through the narrow prism of "harmful traditional cultural practices" such as female genital mutilation rather than the wider universe of beliefs and practices that it defines.[46] There is a "critique of cultural practices that harm women, while cultural practices that protect women receive far less attention."[47] Women of the Global South are thus robbed of agency, and become passive victims of premodern traditions, rather than participants in rich, multilayered, dynamic and evolving cultures.

This brings me to identity politics as a means of responding to oppression. Marginalized communities should have their voices heard. But instead of a genuine dialogue, the discourse of diversity is often a dance of victimhood and virtue-signaling. There is grievance on one side, and guilt on the other—a routine of reproach and remorse, accusation and apology, rather than a deeper conversation leading to a shared humanity. It is even worse in intellectual circles, where postmodern rebellion is expressed in obtuse, impenetrable jargon, inaccessible to the very masses it is supposed to liberate. Instead of intersubjective understanding, it leads to syllable fatigue! This monopolization of anti-oppression terminology is itself a negation of diversity; its supposedly emancipatory ideological polemics are in reality an expression of cultural particularism. Furthermore, such facile platitudes privilege abstractions over empathy. It takes a lot more effort and depth to listen humbly and learn from the intimate stories of suffering that convey the deeper meaning of human dignity. Dialogue is not a one-way conversation in the echo chamber of radical slogans.

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43 UNGAOR, 39th Sess, 65th Mtg, UN Doc A/C.3/39/SR.65 (1984) at para 95.

44 *Ibid*.

45 "Human Rights Law and the Demonization of Culture (And Anthropology Along the Way)" (2003) 26:1 Political & Leg Anthropology Rev 55 at 58.

46 *Ibid*.

47 *Ibid*.

This need for dialogue calls to mind reconciliation with Canada's Indigenous peoples. As the National Inquiry into Missing and Murdered Indigenous Women and Girls pointed out: "The fact that this National Inquiry is happening now doesn't mean that Indigenous Peoples waited this long to speak up; it means it took this long for Canada to listen."[48] Reconciliation is impossible if the mainstream culture does not listen to voices that have been silenced for so long. But there is a deeper dimension to this dialogue that goes beyond the need for healing and justice. The Truth and Reconciliation Commission noted that

> Canadians have much to benefit from listening to the voices, experiences, and wisdom of Survivors, Elders, and Traditional Knowledge Keepers .... Aboriginal peoples have an important contribution to make to reconciliation. Their knowledge systems, oral histories, laws, and connections to the land have vitally informed the reconciliation process to date, and are essential to its ongoing progress.[49]

So what, you might ask, does all this have to do with diversity and international law? Let us briefly consider the intellectual odyssey of legal pluralism. A turning point was Leopold Pospíšil's doctoral dissertation, published in 1958, on the structure and function of law in the Kapauku Papuan confederacy of what was then Dutch New Guinea.[50] His elaborate defence of Indigenous legal systems was a significant development in contemporary scholarship. In *Anthropology of Law*, published in 1971, he noted that the "Western Weltanschauung" is characterized by a dichotomy "of qualitatively different opposites," between "civilized logical thinkers" and "primitives" with "pre-logical mentality"; he made the heretic assertion that "there is no basic qualitative difference between tribal ... and civilized law."[51]

It is now widely accepted that legal systems exist in a multiplicity of cultural contexts. The University of Victoria offers a joint degree in common law and Indigenous law, just as McGill offers a joint degree in common law and civil law. This is a significant step in expanding the intellectual and cultural horizons of the legal discipline. It reflects an increasing awareness that beyond rules, law is also a language and intuition through which we communicate our fundamental beliefs and moral convictions. In this respect, Indigenous law draws essentially on the spiritual and sacred as a source of authority: a conception of normativity derived from communal,

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48 Canada, *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls*, vol 1a (Ottawa: Crown-Indigenous Relations and Northern Affairs Canada, 2019) at 49.

49 *TRC*, *supra* note 23 at 9.

50 Leopold Pospisil, *Kapauku Papuans and Their Law* (New Haven: Yale University Publications in Anthropology, 1958).

51 Leopold Pospíšil, *Anthropology of Law: A Comparative Theory* (New York: Harper & Row, 1971) at 341.

harmonious relations with nature. John Borrows, for instance, notes that "Anishinaabe people are encouraged to draw analogies from our surroundings and carefully apply or distinguish them in our daily lives. The Earth is a profound resource for legal reasoning."[52] Similarly, Val Napoleon points out that "[s]ome Indigenous peoples equate their own laws with the laws of the natural world and so describe their law as 'natural law.' Other Indigenous peoples believe that their laws come from the Creator, and therefore consider them to be sacred."[53] In a fickle consumerist culture of frenetic change, such ancient wisdom is a reminder of enduring, transcendent truths that have withstood the test of time.

It may be unfashionable today for the sophisticated intellectual to speak of natural law; but in the shadow of catastrophic climate change and mass extinction, it doesn't matter what we think, because natural law is back with a vengeance! Mother Earth is literally enforcing her laws, telling us that our consumerist culture, our greedy, wasteful way of life, is no longer sustainable. She is reminding us that despite our self-importance, we are but an insignificant speck in an infinite universe; that the world will go on with or without us.

Against this backdrop, diversity assumes far greater significance than what shallow cosmopolitanism may lead us to believe. Spiritual and sacred conceptions of law, whether rooted in Indigenous knowledge, oriental mysticism, or other premodern traditions, facilitate the rediscovery of ancient wisdom in the postmodern global village; this may well be a matter of survival for humankind. There is in fact an Indigenous renaissance, teaching us to look at the world with different eyes, at a crucial juncture in our historical evolution. Here are the words of Raoni Metuktire, Chief of the Kayapó people of Brazil:

> For many years we, the indigenous leaders and peoples of the Amazon, have been warning you, our brothers who have brought so much damage to our forests. What you are doing will change the whole world and will destroy our home—and it will destroy your home too.
>
> ...
>
> We call on you to stop what you are doing, to stop the destruction, to stop your attack on the spirits of the Earth ... If the land dies, if our Earth dies, then none of us will be able to live, and we too will all die.
>
> ...
>
> So why do you do this? We can see that it is so that some of you can get a great deal of money. In the Kayapó language we call your money

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52 *Freedom and Indigenous Constitutionalism* (Toronto: University of Toronto Press, 2016) at 95.

53 "Thinking About Indigenous Legal Orders" in René Provost & Colleen Sheppard, eds, *Dialogues on Human Rights and Legal Pluralism* (Dordrecht, Netherlands: Springer, 2013) 229 at 234.

> *piu caprim*, "sad leaves", because it is a dead and useless thing, and it brings only harm and sadness.[54]

The UN Declaration on the Rights of Indigenous Peoples recognizes that "respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment."[55] It seems to me an understatement.

It is intriguing to contrast the serenity of ancient wisdom with sophisticated scholarly skepticism. The disillusionment with which some speak of international law is remarkable; in my experience, even genocide survivors are less pessimistic! The postmodern search for transcendence is paradoxical, because while Western civilization has brought unprecedented freedom and prosperity, we live in a time of widespread despair and disenchantment. Our ancestors could have scarcely imagined our world of technological wonders and endless possibilities; but they may have been equally perplexed at the prevalence of anxiety and depression, the confusion and emptiness of our times.

In *The Art of Loving*, published in 1956, Erich Fromm described the modern human as "well fed, well clad, satisfied sexually, yet without self, without any except the most superficial contact with his fellow men."[56] Happiness, he observed, "consists in 'having fun' ... in the satisfaction of consuming and 'taking in' commodities, sights, food, drinks, cigarettes, people, lectures, books, movies—all are consumed, swallowed."[57] If this is what he perceived in 1956, what would he have thought of our cybersociety of endless entertainment and instant gratification? We live today in a world where people are electronically hyperconnected but experience only the most superficial of human connections—an exhausted civilization poisoning the planet in pursuit of happiness.

Liberalism is suspicious of the sort of unified meaning contained in sacred and spiritual traditions. In our secular, individualistic, consumerist culture, ideas such as belonging and community, living in harmony with nature, and knowing our place in the universe have become so alien, so difficult to grasp, that we may have to unlearn before we can start to learn again. While looking forward to the future, we must also retrieve the ancient wisdom that we have left behind in our mad rush to progress; we must rediscover the past through the prism of the present, a new beginning from where we once began. "We shall not cease from exploration," T. S. Eliot

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54 "We, the Peoples of the Amazon, Are Full of Fear. Soon You Will Be Too" (2 September 2019), online: *The Guardian* <www.theguardian.com> [perma.cc/9MGA-7SMT].

55 GA Res 61/295, UNGAOR, 61st Sess, Supp No 49, UN Doc A/RES/61/295 (2007) at 2.

56 (New York: Open Road Integrated Media, 2013) at 132–33 (referring to Aldous Huxley's *Brave New World*).

57 *Ibid* at 133.

wrote, "[a]nd the end of all our exploring / Will be to arrive where we started and know the place for the first time."[58]

We may suffer from postmodern angst and confusion; we may be alarmed at political chaos and hateful populism, the decline of diversity and international law; but the one certainty of our age is the inextricable interdependence of humankind. We are witnessing today, in the prescient words of Pierre Teilhard de Chardin half a century ago, "la planétisation humaine."[59] For the first time in history, we have no choice but to assume an inclusive identity, to mediate the boundaries of self and other in unprecedented ways, to reimagine international law in light of an inescapable common destiny. In this turbulent transition to an all-embracing world civilization, those who were once stigmatized as "savages" may well become our saviours by imbuing us with a deeper knowledge of our place in the universe: a spiritual vision of normativity rooted in the sacred.

Arnold Toynbee famously said that civilizations die by suicide, not murder.[60] Calamity has been the predominant catalyst for the evolution of international law into a universal order; but we can do better. From where we stand at this historical juncture, we will either embrace the oneness of humankind through vision and volition, or we will be forced to do so after unimaginable catastrophes leave us with no other choice.

I have spoken today about the Salamanca, the Frankfurt, and the New Haven schools. I would propose that it is now time for a Canadian school, a fusion between ancient wisdom and cosmopolitan modernity; a profound pluralism that replicates primordial belonging and communion with nature in the increasingly intimate, interdependent, and technologically advanced global village.

It is time to glue the pieces together, to fix the broken mirror, so that we can see the paradoxical yet manifest truth that diversity is the most powerful reflection of our unity. In the words of Rumi:

> *I see my beauty in you. I become a mirror that cannot close its eyes to your longing.*[61]

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58 "Little Gidding" in *Four Quartets* (New York: Harcourt, Brace & Company, 1943) 31 at 39.

59 "Un grand événement qui se dessine : la planétisation humaine" (1946) 2:7 Cahiers du monde nouveau 1.

60 See Arnold Toynbee, *A Study of History*, ed by Jane Caplan (New York: Oxford University Press, 1972) at 161.

61 Jalāl ad-Dīn Rūmī, "I See My Beauty in You" in *The Glance: Songs of Soul-Meeting*, translated by Coleman Barks (New York: Penguin Books, 1999) 12 at 12.