

Editorial afterthoughts

The organisers of the conference, being the editors of this volume, will each take up one or more of the issues that seem to be at stake across the various contributions on the possibility of intercultural law. By thus adding their personal 'afterthoughts' they hope to inspire further discussion of what appears to be one of the central challenges in contemporary societies.

The Liberal-Fundamentalist Cookbook

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Similar to Whitehead's remark that all of Western philosophy is but a series of footnotes to Plato it may be said that contemporary Western philosophy is but a series of footnotes to Wittgenstein. Many scholars try to incorporate Wittgenstein's idea that meaning cannot be simply empirically established, because it is a human activity that floats in the air¹ until the moment it becomes temporarily fixed through its practical reference. Indeed, Wittgenstein's message has been so forceful that it may be *expected* that the analysis of how meaning is established in practices is done with a strong awareness of the intricacy of doing so. Taking Wittgenstein seriously implies 'taking seriously that which has meaning', as Van Brakel put it.²

In my opinion, the pluriform academic background³ of the contributors of the conference demonstrates the very appreciation of this expectation, and the sincerity of the academic effort attached to it as well, which was to find a practical philosophical middle road⁴ between regressive essentialism on

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1 L. Wittgenstein, *Philosophische Untersuchungen*, at par. 198 (Suhkamp, Frankfurt a M, 1952).

2 See Van Brakel, in this issue at 264.

3 Sociology of law (Van Manen), theory of law (Glenn, Loth, An-Na'im, Berger), political science (Pierik), analytic philosophy (Van Brakel), media studies (Staat), sociological theory (Zijderfeld), and also Arabic studies (Berger).

4 Here I take the opportunity to put Glenn's thesis of the Aristotelean logical tradition of separation ('the rule of the excluded middle') somewhat into perspective, since Aristotle's practical or contextual ethics ('the golden rule') has been at least as influential in the Western scientific tradition, I would argue. 'Thus the master of any art avoids excess and defect, but seeks the intermediate and chooses this – the intermediate not in the object but relatively to us.' Aristotle, *The Nicomachean Ethics*, at 1106b6, D. Ross transl. and intr. (Oxford University Press, Oxford, 1980 [340 BC]).

the one hand and endless relativism on the other. All contributors have tried to deal with this matter in their own way, denoting their harmonizing objective with terms like 'tradition' (Glenn), 'attunement' (Van Brakel), 'practical accommodation' (Loth), 'creative understanding' (Staat), or 'minimally shared platform of rules and values' (Pinxten).

In public opinion making circles Wittgenstein's message is often not taken seriously. The difficulty of establishing meaning and understanding, let alone, the utter complexity of theorising meaning giving in respect to individual and group practices, does not withhold some to pervade public media with sweeping statements and alleged causal relations – believing that an idea or value increases in reasonability when dramatically and repetitively argued for. For example, Jan Peter Balkenende, Dutch Prime Minister, recently deemed it unproblematic to state that the cabinet's central message that the Dutch public should try to conform to respectable norms and behave ethically did work because three statistical surveys⁵ had shown a growing national interest in values like 'solidarity,' 'citizenship,' and 'decency'.⁶ Surely, such a declaration neglects questions about the comparability of such statistics in the first place, or about the scientific legitimacy to establish a causal relation between a governmental ideology and people's morals. To compare the anomaly under consideration, in his contribution Maurits Berger refers to the ideological usage of Sharia, in which both proponents and opponents merely use the concept as a populist slogan. With the result that for many Dutchmen 'Sharia' will be associated with barbarism or religious fundamentalism.

Both examples point to the transformation of the public sphere into a sphere of simulation in which the signifier simply implies that the sign (argument, sentence, word, message, image, etc.) is identical with what is signified.⁷ The contingent and multi-interpretative space between what is said ('people should try to conform to respectable norms') and the entity which is spoken of ('people who act') has disappeared and is left over to the scholars to investigate in journals and conferences.

The problem at hand is explained by Rousseau in *Émile*, I think, when he responds to Locke's suggestion that education ought to be focused on learning children reason by reasoning with them:

5 Sources the Dutch cabinet have referred to are: the Social Cultural Planning Office of the Netherlands (SCP), the private research bureau Motivaction, and the personal survey agency of Maurice de Hond.

6 'Kabinet zeer tevreden over campagne voor meer fatsoen', NRC Handelsblad, at 2, 10 October 2006.

7 Cf. for inspiration: J. Baudrillard, *Fatal Strategies*, Chapter 3 (MIT Press, Massachusetts, 1990 [1983]).

'If children understood reason they would not need education, but by talking to them from their earliest age in a language they do not understand you accustom them to be satisfied with words, to question all that is said to them, to think themselves as wise as their teachers; you train them to be argumentative and rebellious; and whatever you think you gain from motives of reason, you really gain from greediness, fear, or vanity with which you are obliged to reinforce your reasoning.'⁸

In other words, if the use of reason does not emerge from the development of character, but is only used as a delivery service of emotions and intentions, reason will remain empty. Knowing how to use reason can only be achieved if the richness and intricacies of reality is learned.⁹ In the simulative public sphere this message is increasingly being forgotten: many discussions have become formalized ideological debates in which speech is reduced to an instrument of persuasion.¹⁰

Now, to put Wittgenstein's message into political perspective, Marc Loth¹¹ has rightly stressed the importance of accommodation rather than argumentation to attain the necessary politico-legal organisation of cultural plurality. Political accommodation is the answer, because political appropriation of cultural plurality, say, for the argument of recovering a sense of national history or the creation of social cohesion, will only lead to ideological polarization. It is the great truth of democracy – and humble lesson to politicians – that unity or cohesion can only emerge from society itself. As Hannah Arendt put it:

'[T]he reality of the public realm relies on the simultaneous presence of innumerable perspectives and aspects in which the common world presents itself and for which no common measurement or denominator can ever be devised.'¹²

In a world with different individual and social ontologies a common world is possible; yet not characterised by substantive agreement but by what might be called 'ethical attunement' – paraphrasing Van Brakel.

8 J.-J. Rousseau, *Émile, or On Education*, Book II (B. Foxley transl. (Dutton, New York, 1957, [1762])).

9 'Nature would have them children before they are men. If we try to invert this order we shall produce a forced fruit immature and flavourless.' *Ibid.*

10 Rousseau's words bear an extra caution in the light of Wittgenstein: if words not merely float in the air but are picked up by the public turbulence of the media, it becomes practically impossible to bring them back to experiential grounds.

11 As did others during the conference, to be sure.

12 H. Arendt, *Human Condition* at 57 (Chicago University Press, Chicago, 1958). Loth refers to Arendt as well by the way.

To illustrate, (even) a liberal (atheist) and religious fundamentalist can have pleasant and approving conversations about raising children or cooking for friends; yet, the moment their conversation becomes political their contact fundamentally changes: argumentation comes to a quick halt and turns into an ideological fight.¹³ Here the political virtue of accommodation steps in; to provide a framework of coexistence in which both the liberal and fundamentalist can exist. Yet, as important as politics as accommodation may be, both to the organisation and pacification of cultural practices, it does not suffice. For – and this would be another political footnote to Wittgenstein – next to respecting that which has meaning by political accommodation, it needs to be determined under what legal standards political accommodation can actually succeed. This inevitably leads to the question of what legitimately constitutes political authority.¹⁴

13 See Y. Al-Saggaf, 'The Impact of Political Online Forums on Saudi Society', in: Proceedings of the Asia Pacific Computing and Philosophy Conference, 2005. See for a mirror imaged example of the same principle: the Israeli violin player who joined the Arab-Israeli orchestra (set up by Daniel Barenboim and the late Edward Said) pledged not to talk with Arab members of the orchestra, being an active soldier as he was. Yet he hopelessly fell in love with a Syrian violin player after three weeks of touring.

14 See still convincingly: J.-J. Rousseau, *The Social Contract or Principles of Political Right*, Books I and II, M. Cranston transl. and intr., (Penguin Books, Harmondsworth, 1968 [1762]).