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Mário Santiago de Carvalho
Henrique Jales Ribeiro
Montserrat Herrero
Hugo Mendes Amaral
Nuno Ricardo Silva
Pierre Guibentif
Michel Coutu
Edmundo Balsemão Pires
Luc-Henry Choquet

TOWARDS A LAW OF CULTURAL CEREMONIAL *

Edmundo Balsemão Pires
(Universidade de Coimbra)

Summary

Starting with the formulation of a general question one have to ask what are the distinctions one uses in order to schematize the meaning of the increasing juridical translation of cultural conflict.

«Cultural Rights» is an expression to be analysed within a specific political terminological frame, which is defined by the circumstances of the historical transformation of subjective rights into citizenship rights.

«Religious Rights» is the modern expression for the claim of autonomy, separation and independence towards political sovereignty and dominant religious forms. The philosophical discussion on the topic of tolerance from Locke to Voltaire turns itself to the problem of the adequacy of some religious ceremonials to a public space free of religious symbols. Rights can only be granted to religious communities if it is consented a certain limit for mutual indifference and freedom.

The concepts of ceremonial and ceremonial symbols became central along the religious debates of the XVI-XVII and XVIII centuries.

Since then one can notice that ceremonial symbols are always treated as aspects of self-identification of some communities.

On the other side the semantics of the modern "Civil Society" appears as the sociological conditioning of a contract of mutual indifference between different religious ceremonials.

After colonization and the discovery of the "primitive mind" and "primitive society" by ethnologists we face many transformations of the meaning of ceremonial symbols. Now, these symbols are supposed to be the ciphered soul of other cultures.

The ethnological mentality created this mixture between cultural artefacts and ceremonials, an interpretative attitude towards alien symbols, the need for cultural translation and the idea of the irreplaceable.

After globalization and the migration of native informants we can describe two main strategies in the cultural use of ceremonial symbols: *distinction strategies* and *recognition strategies*.

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The main argument in my paper claims that "cultural rights" are normative responses of the *law system* to a need of consistency between these two communicative strategies.

I will analyse recent literature about the so called "multiculturalism", the debates between the adepts of universalism and the communitarians.

But I will focus the presentation on the communicative use of that twofold cultural strategy, which leads to the individuation of cultures in contemporary societies.

1. From the concept of "culture" to "cultural discourse"

I'll start from the strong presupposition according to which we don't really face, today, any deep "return of the religious" or a dramatic "clash of civilizations" or even a rebirth of ethnicity. However, in some public discourses and in what I'll call "cultural discourse", "religion" and "culture" evolved into *quasi* essences in order to designate "identity" and "otherness", as if with "cultures", "nations", "religions" we were dealing with private, restricted, properties of human communities.

Nowadays, some authors are supporting the view of a "deprivatisation" of religious beliefs and a global redefinition of public space by means of a reference to the role of "religion" in the reshaping of civil society and public space of modern society. However, with the word "religion" one denotes a fuzzy concept.

According to my thesis the renaissance of "religion" and new forms of ethnicity are phenomena explainable by morphogenesis, boundaries formation, especially those boundaries that emerge alongside the distinction line between psychic systems and communication and are not explainable by a sort of inescapable seduction of religious mentality.

Morphogenesis of systemic boundaries is never a stable and continuous progress. Keeping in mind the meaning of Luhmann's concept, "functional differentiated society" is a contingent product of modern History strongly associated with the autonomy of social systems based on communication in relation to psychic forms, individual consciousness, and perception schemes.

The morphogenesis of communication and the development of its autonomy are always mediated by time and in modern society one can observe differentiation or de-differentiation trends.

However, precisely because of the tracing of the systemic boundary, the time of communication is never the same as the time of consciousness. Morphogenesis implies differences in time, inertia, reaction, resistance or acceleration, pressure and stress. The adequate description of the actual use of such concepts as "religion", "cultural identity" or "collective membership" depends on the fixation of the boundaries and couplings between psychic and communicative processing of meaning.

The oppositional effect of the *new primitivism* and the *new tribalism*, religious and ethnic, against what counts as "modern" or "modern society" is due to a non-effaceable difference in time between psychic time and communicative time. Here, we identify a great variety of coordination problems. One of these problems concerns the notion of modernity, discussed for example by S. N. Eisenstadt around the idea of "multiple modernities" (cf. S. N. EISENSTADT, 2002, pp. 1-29).

"Culture" and so called "cultural affairs" always entail the difference and the coordination between psychic and social aspects of meaning.

Saying this, we are also designating the theme of the present study: *around some public use of "culture" we face a particular expression of the coupling (but also distinction) between social systems and their environment and the corresponding coordination balance.*

In addition to the problems related to the morphogenesis of systemic boundaries (firstly regarding the distinctions between psychic and social systems) we face also an increasing development of an interconnected world expanding the model of "functional differentiation" and also its own coordination problems linking the time of communication and the psychic time to the planet earth as a whole.

Recently, describing the increasing public consciousness of the interconnected risk in the world, U. Beck called "methodological cosmopolitanism" what should correspond to the actual sociological observation of modern society, after the epoch of nation-states. In his book he scrutinizes, also, the image of the world of the ethnic "cultural discourse" and its deficiency (cf. U. BECK, 2006, p. 75).

"Culture" is a concept with an exact historical background and not a descriptive property of things that are "around us". We do not find "culture" here or there, or cultural properties of things or events here or there, but "culture" is always an historical, semantic, conceptual construct, in order to guarantee an observational practice or society's self-description. I'm referring to the *comparative practice* (cf. D. BAECKER, 2003, p. 16-17).

The first question we shall face is this one: *what do we do when we communicate by means of "culture" and with "cultural" conceptual apparatus?*

The second question: *how do we compare when we use "cultural" yardsticks?*

The third question: *how do we observe the coordination of communication and consciousness by using "cultural" yardsticks?*

Perspectives on cultural communication in the so-called "cultural studies" are today descriptions predominantly based on action and symbolic (or linguistic) elements. Likewise, some aspects of the anthropological definition of culture tend to discover in this concept a system of instrumental and symbolic rules.

This view implies that "culture" as a special case of morphogenesis is neglected. Also are mistreated the observational and descriptive dimensions of cultural distinctions from a comparative and evolutionary perspective.

If we listen to narratives about intercultural relations and cultural diversity produced by mainstream forms of "cultural discourse" we have the impression of being touched by "identity" from one side and "otherness" from the other side, as if "identity" and "otherness" were the two members of a real relation between empirical entities.

I mean an "objective" identity and an "objective" otherness, something that belongs to the same frame of what one calls properties, as if with these notions one designates items comparable with other items at different geographical locations and sometimes also from different times, although with the same label of "products of culture". Designating the "other" or the "other cultures", the "cultural discourse" looks to a border and assigns objectivity to this imaginary partition line and also to what lies on both sides of the border.

During colonial and post-colonial periods studies on acculturation and "transculturation" were made with the faith in the given character of culture, cultural artefacts, rituals, attitudes and cultural symbols, more generally speaking. In a certain sense this faith in the given was based upon the territorial steadiness of some collective practices, such as gastronomy, medicine uses, body care and some purposive manipulation of materials and natural resources, which leads the ethnologist to take for granted the incorporation of populations in a precise territorial realm with its unambiguous symbolic, expressive, atmosphere. In this framework acculturation, hybridism, or "mestiçage" meant a lost of a primitive, untouched, identity.

In this way the observational and descriptive character of "culture" was not unveiled. Also, one can't understand why one says that "culture" is an historical concept.

Indeed, "culture" is not a single existential unit or an aggregate of existential predicates.

We cannot say that "there are" cultures, as we say that "there are" trees at the corner, at this time, available for this empirical observer, which are different from other trees at another corner of the same village, available for hypothetical observers on that point.

"Culture" is an aspect of the semantic evolution of societies which made-up the concept and as such "culture" means an observation tool within evolutionary systemic boundaries.

If we do not emphasize this aspect we misinterpret "culture" as a notion representing a mental content with its empirical counterpart.

Also, philosophically speaking, I think it is very inaccurate the idea that asserts that "culture" is a system of meanings, where it is possible to find aspirations to "good life", moral ideas of good and evil, of just and unjust, different from other "cultures" with other systems of meanings and of moral meanings in particular.

Observing the great variety of human contacts on earth we shall certainly recognize the geographic and ethnic changeability of humans, but we don't have good reasons to conclude from this any relevant moral or political ideas. Consequently, the combination of the use of "culture" and the use of moral ideas of "good life" shall be analysed very carefully.

What modern European semantics called "culture" denotes chiefly a difference on selective abilities to classify the world and social relations. "Culture" points to classifications and selections (cf. C. Levi-Strauss and V. Turner). *But we don't have good reasons to declare that peoples on earth with such and such habits have only these symbolic forms to organize their lives and we don't have also any reason to belief that these habits correspond to indigenous, unmovable, moral notions about good and evil. We can't translate selective abilities or classifications into moral ideas.*

The modern concept of culture denotes an observational and descriptive tool for the organization of comparisons across dividing borders.

In order to stay in the sociological and appropriate philosophical field we should abandon the perspective according to which "there are" cultures (coupled with "innate" moral notions) and try to understand what means to use "culture" as an observational and descriptive tool for communicative events and to describe social order.

"Culture" is an historical result of modern codifications for differences in the observation of symbolic selections. With this we are saying that only modern societies have "cultural" semantics with this characteristic. Ancient societies, tribal societies or stratified societies do not use "culture" with the same observational or descriptive meaning. Thus, when we use "culture" to define the selective and classificatory organization of social world we are referring to an historical form of comparison that emerges only in European modern society as a consequence of a great variety of influences. "Culture" is the concept appropriate to the designation of a *comparative praxis*, which engages both an *evolutionary comparison* and a *contrast in classifications*.

The recognition of these two properties of the comparative cultural praxis shall make clear how important is to have in mind the fact that "culture" is always a concept embedded in a European approach to what counts as the "rest of the world".

Populations with no contact with European society have no idea of "culture", "cultural" properties or "cultural" descriptions. They have no

equivalent to the evolutionary scheme current in the formation of the modern European semantics of "culture".

If we say that there is no human person in the world living out of a cultural context and cultural embodiment we are using an observational tool named "culture", born in Europe, and we are not describing external properties of things with such and such characteristics. We are comparing by using an asymmetrical yardstick.

The first encounters between distant human groups were never "cultural" encounters. Indeed, the immediate concern of the protagonists of these human mutual discoveries was the inspection and identification of new members of a common natural *species* for classification purposes in order to adjust the new perception of the aliens to older members of classification types.

We know well the stories about the mutual strangeness between distant populations brought together by the Discoveries and the enquiries concerning the humanity or the spiritual possession of a soul in the aliens. This kind of encounter is not yet a "cultural" encounter, properly speaking, because it accomplishes itself within a naturalistic scope, which is only a first stage in the complete formation of the use of "culture".

Apart from the more recent contact with exotic populations, in the ancient times relations across Europe, North of Africa and Asia were in a wide sense trade relations and the diversity of human populations represented an object of curiosity and mutual improvement or war and immediate mutual rejection.

In a different way, the modern use of culture implies science and scientific "objectivity".

Within this modern evolutionary frame we should notice the historical cohesion between the emergence of the functional differentiation of society, colonization, the origins of Anthropology as a scientific enterprise, the formation of the concept of "culture" itself, and the naturalization of the results of cultural analysis as "comparative praxis".

In this historical process "culture" starts from the need for comparison, under self reference presuppositions, but becomes something "naturalized", something that is "at hand" with such and such properties localized in some populations with such and such discriminated ethnic characteristics. In this sense, by means of science and scientific use of "objectivity", "culture" became a product of a sort of *naturalization of society*.

I will discriminate three forms in this naturalized sense of "culture".

1. *Culture as entity* – In a former connotation, E. Tylor's concept of culture was an attempt to encapsulate the comparative praxis into an inventory of definite items, taken as objective features, among which we could

find "knowledge, belief, art, morals, law, custom, and any other capabilities and habits".

2. *Culture as a closed political existence* – In addition to this scientific naturalism of "culture", since the XIX century the modern European political nationalism was a decisive contribution to the affirmation and expansion of the model of "culturally", ethnically and politically closed social spaces, called "nations", with the correspondent sovereignty power (cf. B. Anderson / J. Tully). According to some aspects of the romantic concept of culture and nation, after World War II the model of a territorially and ethnically closed world had undeniable strength in the expansion of African anti-colonial struggles, but this emancipative nationalism never seriously discussed the representation and description of "cultures" as closed, ethnic, self-contained, realms.

3. *Culture as "way of life"* – Avishai Margalit and Moshe Albertal continuing J. Rawls' notion of "comprehensive doctrines" and Kymlicka's concept of "social culture" referred to "the concept of culture as a comprehensive way of life". Such "comprehensive way of life" is a collective achievement and in the limits of the community embodies collective representations of group's identity and group's perception of what "good life" is, as if these representations were images of a real, existing form of objective identity or objective way to the "good life".

This summary leads us from bare objectivity of so called cultural properties passing through a cultural political closure until collective representations of group identity and so called "ways of life".

"Cultural discourse" is a recent, however old-fashioned, outcome of the modern, European, concept of "culture", coupled with the idea of a self-contained, closed, exclusive, restricted, space for the disclosure of the identity of social groups. This idea of "cultural identity" is itself an historical (and also geographical to a certain extent) effect of this "cultural discourse". C. Taylor scrutinized some aspects of the historical foundation of the concept of identity applied to "culture" and to social groups defined by "cultural" membership.

The most important feature of the contemporary use of "culture", which "cultural discourse" also mobilizes, without appropriate discussion, lies on the ability to designate a complex formation of symbolic borders.

I'm referring to a peculiar translation effect, which ensures that systemic borders of modern society, functionally differentiated, can capture, recognize and describe symbolic meanings located in different evolutionary stages, for example symbolic meanings located in pre-modern societies, by using science and other means, for the construction of "cultural" objectivity.

On the other side, from the perspective of social groups which do not use *Science* in the modern European sense of the word, mostly in tribal

or stratified societies, an inverted translation occurs, leading to such ideas as "lose of identity", "cultural aggression" or "symbolic injury".

We are facing here an equivalent to an evolutionary blended blind border. What one can see from one side of the border is not disclosed from the other side. Systemic borders clearly accessible from the side of modern society ("functionally differentiated society") are not recognized as such in communities or societies which chiefly select and organize communication through perception schemes.

If we have this feature in mind the use of "culture" has different systemic and evolutionary meanings and one cannot even distinguish between "culture" as the effect of this blind asymmetry and the embodied characteristics of what "cultural discourse" calls "cultural diversity".

But if we describe what we are doing in using "culture" we see that we are processing communication through comparison. In this sense, "culture" is a special case of observation across borders.

With "cultural discourse" the situation becomes different. Nowadays, this kind of discourse based on "culture" and "cultural entities" experiences itself an internal transformation and evolves from the status of a scientific tool for a comparative activity to a naturalized being in itself, as if one could speak of "cultures" as things "take for granted" in a given world.

However, one can speak of "cultural identity", "cultural objects", "cultural events", "cultural diversity", etc. in a given world "take for granted" because one transferred the results of observations and descriptions into "reality", thus creating the illusion of something "at hand", doubtless, "take for granted".

Undeniably, *this naturalization of observation effects is generated by imagination*.

In order to conceive the role of the imaginary naturalization or fixation of "culture" we need to identify the mechanisms responsible for the social use of imagination, which is independent from its psychological foundation.

Also, we should scrutinize the reason why some characteristics of imaginary processing of meaning are so important for political purposes.

2. Cultural Ceremonials

We observe ceremonial behaviour at the animal scale. But the concept I would like to employ here is limited to human groups and especially to the case of groups defined by *cultural membership*.

At the level of social interaction *ceremonials are sequences of actions tuned by a common acknowledgement of some symbols, material or others,*

in order to observe and control the "appropriate behaviour" regarding some collective finality. The conformity to rules and to what seems like a linguistic code was underlined by various authors (Cf. G. Geertz, E. Goofman, R. A. Schneider). Regarding the aspect of regularity in actions and observation of conformity in alien behaviour H. Spencer said, very acutely, that ceremonial institutions proceed as a "kind of government".

In his *Principles of Sociology* H. Spencer distinguished between nine main types of ceremonials: trophies, mutilations, presents, visits, "obeisances", forms of address, titles, badges and costumes, and fashion.

He wrote that ceremonial control and regulation exist in all societies, even in animal behaviour, but is especially strong in the case of societies without political central control. His exemplification goes to cases of cultural unities such as Indian tribes or Bedouins.

Prior to the separation of sacred and profane powers ceremonials were the primitive form of social organization and control over behaviour. H. Spencer shows how ceremonials are highly formalized rituals. The formalism is exaggerated and obvious in the case of courtesy, but what ceremonials reveal in this rigidity is an undifferentiated form of political control over alien behaviour. Formalization of conduct and interaction patterns is a way to regulate mutual expectations in the absence of an autonomous centralized ruler or system of law. Ceremonials made an internal evolution from simple forms to compound and complex types, according to the differentiation of society, leading to code formalization in certain cases.

From Durkheim to M. Mauss and van Gennep French Sociology insisted upon the interdependence of magic, religion and ceremonial organization of action in certain types of non-industrial (pre-modern) societies, where one finds a strong association of taboo interdictions, time sequences, classifications and symbolic forms supporting group self reference.

Some aspects of mutual conditioning of actions in face-to-face relations, studied by E. Goffmann, have a symbolic and ritual structure and are connected to the preservation of *equilibrium* in interaction continuous reproduction. The organization of interaction in rituals preserves the integrity of face-to-face relations, giving them an autopoietic meaning and orientation.

The self in interaction systems is symbolically linked to the conditions of acceptable actions for others, by mediation of ritualized actions, which are always negotiable between a hypothetical "ego" and some hypothetical "alter". This particular type of socialized routine E. Goffmann called "ceremonies".

Evolutionary speaking, what makes vital for some human groups the reference to ceremonials is a strong association between the reproduction of interaction patterns and the survival of group structure in a face-to-face,

mainly oral, communication. In ceremonial institutions the role of perception schemes and perception reconstruction of communicative chains is vast. In societies robustly based on ceremonial institutions the subordination of communication to perception is the resulting form achieved by the combination of perception, symbols sharing, and reproduction of group structure along history and self-narration.

An important example is the case of religious groups and religious ceremonials. In this case, collective memory conserved in Holy Books is like the script to be enacted again by means of collective emotions, to be the guide for oral communication (in liturgical performances) and once again refundable for perceptions, for the use of symbolism and for the continuing of typified face-to-face relations.

In modern society religious ceremonials evolved towards forms increasingly distinguished from the quest for metaphysical truth. So called "secularization" brought the distinction between religious belief, scientific truth and political ruling and, consequently, religious ceremonials were included in the realm of a secondary bodily appearance of a more important, but inner and spiritual, mystery of God.

The separation of ceremonial or also called "convenient behaviour" from the question concerning the truth of God was an essential value in the formation of the modern State and modern civil society. Some aspects of Lutheran doctrine, the iconoclastic movement and the "Devotio Moderna" in the Christian side, but also some aspects of pre-modern and modern Jewish mystical Thought move on towards concepts of subjective virtue or to the theories of "double truth", as in the case of Espinosa (cf. L. Strauss), and gave the key for the Christian understanding of the separation of "external" ceremonials and pure, interior, faith and moral consciousness.

What we recognize today as religious ceremonial has its roots in the history of the modern state and modern secularization. Along the renaissance and reformation epochs, European states developed a political immunization towards religious divisions, creating a boundary to distinguish those things and practices which could be kept away from public life, and could be used in religious rituals without political or public injury, which J. Locke called "indifferent things", from other things and practices. This political immunization implied some ecclesiastic commitments towards political ruling but also towards the other religious rituals. Religious ceremonials became increasingly alert to these multiple boundaries and this produced strong effects in the self reference of ritualized community life.

The idea that religious belief should be privatized was at the heart of political secularization, but in such a way that privatization of religious beliefs ought to be normalized and controlled within some limits and

habits. Detecting and scrutinizing rituals and prescribing authorized forms of community life was an interesting way to instruct some canonical forms of religious life in conformity with an impartial public space, respecting symbolic borders of identity and difference. "Tolerance" was the idea for this agreement between a plurality of religious ways of life and the nonaligned status of public space. "Tolerance" was the semantic mark of the internal exclusion of religion from public life, a sign build from inside religious consciousness in the figure of a self contained ceremonial. "Tolerance" activates the language of morals and in a large extent it is a moral concept mobilized for the purposes of political ruling.

My thesis is that one should return to the meaning of this modern concept of tolerance, applied initially to religious groups, in order to describe the political ruling of "cultural ceremonials" today, in a society describing itself as "multicultural". In a certain sense I'm proposing to revisit some aspects of the ancient rhetoric concept of *decorum*, conceived from Plato to Aristotle and Cicero with the meaning of temperance and harmony in social life.

Modern ideas of civil society and "public space" were born from this process of internal exclusion of religious belief from the political arena. But in order to achieve this differentiation the political system forced a regulative conception of public manifestations of religious belief. In religious matters one can't reveal the faith in an unlimited fashion. One shall bring under control those aspects of the demonstration of faith which menace the religious consciousness of others or the integrity of public space. In this sense the modern political system conceived public life by the negotiation of the privatization of religious consciousness and a sort of self containment of religious expressions or ceremonials. Religious ceremonials were the indicators, the attestation, needed for the calculus of such negotiation. On the other side, ceremonials were also very important to discriminate and categorize "insiders" from "outsiders", creating symbolic borders to deal with the binary inclusion/exclusion in communal decisions. In this sense, the modern political reference to religious ceremonials generated the need for strong reflexive expressions of the religious group in the relation to itself, to the political system and to "others". This strong reflexive aspect constitutes, after the epoch of religious conflicts across Europe, the idiosyncratic character of modern ceremonial life.

The historical situation here described is prior to the history of authenticity, which C. Taylor describes as an essential ingredient in the contemporary concept of culture.

In ceremonials the observation of group symbolic identity is carried by the reproduction of the same ritualized constellation of actions, sym-

bols and emotions, obeying to rules of repetition. Here I mean by "ritualization" the repetition of the same action sequences conducing to the fixation of meaning. The ritual value of the ritualized sequences of actions lies on its own differentiation regarding what appears as "contingent" or "everyday life". In the History of Religions the distinction between consecrated and profane shows how this distinction operates from inside the use of symbols. Formalized sequences of actions are needed to accomplish a ceremonial. R. Schneider in his study about Toulouse in the XVIII century (*The Ceremonial City*) emphasized this point calling attention to the character of "highly rule-governed activity" in ceremonial life (Schneider, p. 139).

Some forms of interaction acquired by tradition and custom are intimately associated with expressions of identity and authenticity of groups in such a way that reproduction of custom in action sequences is, *ipso facto*, reproduction of group authenticity. On the other side, group authenticity owes its own character to the differential power of the opposition of some customs to other customs, of some rituals to another or to the lack of any rule of repetition or contingent events. Also social integration of individuals is ensured by means of the reference to group structures and group stability. Aggregation and separation of individuals are dynamic products of conservation and reproduction of group's identity by ceremonial mediation (cf. van Gennep's idea about ceremonials and the organization of collective time).

We need to describe the reflexive mechanisms able to observe and reproduce identity in communities. Such tools constitute, properly, what one can call *collective mnemonic* and they function always inside the frame of that constellation of actions, symbols and emotions. With this in mind we are surely saying that ceremonials represent the double reference of interaction to observation and of observation to interaction.

Summarizing, ceremonials are expressive and temporal tools associated with semiotic codes, very rigid in some cases, for the creation of group behavioural models. Ceremonials are semiotic *texts* validating types of allowed behaviour, functioning as *scripts* for what we could call *stage performances* in a temporal series of actions, which van Gennep called "sequences cérémonielles" (van Gennep, p. 13). As models of collective life ceremonials evolve and are self reflexive.

But we should take care and do not reduce ceremonials to custom, because custom denotes only the static aspect of ceremonials, the absence of differentiation activity and also the unawareness of recognition processes. Group differentiation from "aliens" and recognition of "others", both represent reflexive mechanisms in group's identity formation.

What I call *cultural ceremonials* are ceremonials which use "culture" and the notion of a cultural membership to localize communities of peo-

ple and to give to its members a particular label which is associated with a social address, expectations, the use of special symbols, and aspects of "comprehensive doctrines". This kind of ceremonials is typical of modern society and presumes the ability to recognize "culture" as a criterion of group differentiation.

Today, we notice important political strategies around cultural ceremonials, which demand an adequate understanding of what really one means with this concept.

Cultural rituals supporting ceremonials are interaction patterns and control mechanisms but also observational tools which imply some degree of personal proximity. As a particular kind of ritual, cultural ceremonials are reflexive praxis. Reflexion occurs in a variety of forms, but always by mediation of actions, symbols and emotions. A very important consequence of the contemporary ceremonial institutionalization of "culture" is the fiction of cultural identities collapsing and fighting for survival, reproducing some important features of the religious European conflict of XVI--XVII centuries. The emergency of the idea of cultural conflict is a product of a high reflexive stage in the evolution of culture itself and of cultural ceremonials.

In the functionally differentiated society and for the purpose of political protest the mnemonic function of "culture" can be used, and is used, as an oppositional mark designating resistance or a political alternative.

However, when we turn to other uses of the mnemonic function of ceremonials we can perceive also the aspect of evolutionary resistance and canonization of the historical past.

This last aspect is itself related to the difference in the use of perception schemes and communicative schemes between distinct social differentiation forms. When these aspects intersect we have almost all the references of the situation of the so-called "cultural conflict" in modern society.

In the particular case of evolutionary resistance and canonization of the past one should also have in mind the consequences of moral discourse.

Moral discourse may arise from the need to regulate the double reference of interaction and observation in the conservation of mnemonic mechanisms. Obsession with moral concerns may occur as a consequence of the observation of the temporal fragility of this coherence. In this context, imperatives and generally "moral talk" are mnemonic implements. We know how religious communities are vitally engaged in the associative tie of ritual and morality. But this knot also involves self-observation and a recursive production of identity. This complex structure contributes to the formation of the notion of "adequate behaviour", conformity to rules or even, morally speaking, "virtuous" way of life. If ceremonials are kept

alive in groups individuals tend to live in accordance with the rules. However, rules' plasticity and some degree of accommodation are required in the l*ong run* of group reproduction. Ceremonials change keeping always a reference to an unchangeable structure. That's why they are mnemonic but also adaptation mechanisms. *Because ceremonials are symbolic and temporal settings for repetition, they are the appropriate settings for group disclosure to others and for a continuous alien observation*. Groups may take advantage of ceremonial settings, as symbolic disclosure, to make appear to others what they think adequate to identity conservation.

Around cultural ceremonials we can identify a succession of political negotiations taking "culture" or "identity" as references. In modern society cultural discourses use this kind of ceremonials as a direct "proof" of the identity and personality of "cultures". We listen to people asking for respect for their symbols and practices as if an injury against both would come from a "cold", uniform, society. Certainly, in this sense, the use of ceremonials and ceremonial components are important indicators for cultural sensitivity or cultural indifference.

3. Moralizing the use of "culture"

Freud reproduced in his work an evolutionary formula for the expression of the autonomy between consciousness and communication, which has decisive importance in discriminating what one calls "culture". Such a formula is "malaise in civilization". Although by Freud this idea didn't have a special moral signification, important aspects of its meaning are mobilized by moral language and argumentation.

For our purpose here, and generally speaking, *we take moral discourse as a communicative channel for the communicative generalization of conditions of respect in modern society*.

In this sense we shall say that moral argumentation is grounded in interaction, but articulates meaning effects beyond the interaction level. Moral discourse can reveal how psychic systems react under communicative conditions, by using general notions as injury, hurt, despair, depression or "malaise". Looking into these notions we observe how communication can be considered as cause of psychic phenomena as "suffering" and "symbolic suffering".

From a systemic point of view "malaise in civilization" designates the acknowledgment of the evolutionary fixation of systemic boundaries, in particular the systemic boundary between psychic and social systems.

Also, as a moral formula "malaise in civilization" shows how psychic systems react under social (communicative) pressure and how people res-

pond to social complexity and increasing communicative abstraction. I understand descriptions under the formula "malaise in civilization" as cases of moral appropriation of the boundary mark between psychic and social systems. As such "malaise in civilization" is a symptom of the evolutionary fixation of the systemic autonomy between consciousness and communication.

Such symptom uses the vehicle of moral language to show how people in everyday life are affected, and certainly in mental condition, by the evolutionary fixation of those boundaries.

Moral argumentation is easily added to the symptom in order to generalise or intensify the symptom itself. Consequently, one is able to express his own discontent; one is able to show how one suffers from symbolic pain in everyday life. Naturally, the expressive character of this moral discourse creates very easily the adequate atmosphere, the proper vehicle, for political pressure, political opposition and all sorts of power dramaturgy.

Important features of what I will call "cultural discourse" have the same general design as the moral use of "malaise in civilization".

In addition, using the language of Moral Philosophy, some theorists of justice, as C. Taylor or W. Kymlicka and others, continuing some aspects of Rawls' concept of primary goods, didn't hesitate to treat cultural claims as moral claims, presupposing in the concept of culture a moral meaning, a meaning concerning the realization of the "good life" under certain "cultural", and for certain determinations "impermeable", conditions. Accordingly, Nation theorists conceive "nation" as the original "demos" criticizing the imperialist tendency to spread the western model of "democracy" by military means, as a way to destruct moral realizations of collective life.

But we never find an adequate discussion of this dangerous equation between cultural habits and the moral understanding of the "good life" in human groups. However, this equation is very disputable and problematic. In the limit such equation is invalid.

In order to know what cultural goods are we need to have some idea about the negative experience of injury, of "cultural injury". If a cultural right is an enjoyment of some good, cultural injury must be privation, adversity, and neediness.

We should ask what happens when a "cultural injury" occurs.

The communication about cultural deprivation designates a *lost*.

The lost appears in the form of a *vanishing past* and never in the abstract form of a lost item. This lost, the *vanishing past*, must be devised by the special case of observation we called "cultural observation". If there is no cultural observation one cannot talk about cultural deprivation. The vanishing past is an aspect, a fragment, in a narrative, which is itself a piece of self-observation.

In stories the discernment of a lost appears to be something one often communicates by describing a tale about origins, roots and a pristine way of life. In the case of past civilizations the vanishing past is identified by comparing the ancient glory with the present. The vanishing past is part of the communal cultural self reference, but as something which is no longer real, while being the true essence of the community life. Suffering with the disappearance of what once counted as glory and wonder the communities tend to regain access to the past by ceremonial enactment. What disappears from the scene of History reappears in ceremonies. Indeed, this is an important role of the ceremonial modelling of communal behaviour in the global society. Ceremonial enactment of the vanishing past is not only collective memory, but resistance and, according to the context, also political protest.

Another typical form of moral cultural discourse uses the concept of Right.

What is the meaning of public discourse about "cultural rights"?

This kind of discourse increases the tendency to objectivise the cultural categories. Indeed the discourse about "cultural rights" is always a discourse about legal mechanisms for protecting some kinds of social (collective) goods. If we try to identify these aspects of collective life, certainly we must be able to apply to cultural categories the concept of good.

"Cultural goods" are correlates for "cultural rights".

The link between cultural self-observation and the observation of law is not immediate, but mediated by a translation process from native narratives of self-observation to the code of the system of law of the functional differentiated society. This link is not in itself a homogenous chain, but it is characterized by phenomena of internal inertia.

The system of law must submit this "cultural" self-observation to its own code and procedural mechanisms. This will imply a semantic modification of the meaning of cultural observation in itself and of the cultural lost. By intercession of the law system "cultural lost" will mean violation of a right. From the side of the law system such modification occurs by means of an extension of some conventional rights to aspects of social life that are not conditioned by law. I'm referring to some constitutional guarantees and also to some aspects of subjective rights.

In modern society "subjective rights" are normative statements which result from "transcodifications" of moral discourse and juridical code. Also with "subjective rights" one denotes aspects of the history of power limitation and tyranny resistance, as well as modern "constitutionalism". Modern political semantics and the political arguments in favour of the separation of the state from the church and religious power are also enacted in the association of "cultural rights" and "subjective rights". In this sense,

and in accordance with some fundamental international declarations, one can expect not to be misunderstood when saying that an injury over its own cultural heritage is like a violation of a human right. However, this needs clarification.

For example, is a "cultural right" *ipso facto* a human right or a "subjective right"? Or we shall impose limits over the acknowledgment of an indiscriminate right to assert a cultural identity. Do we need moral argumentation, juridical reasoning or a systemic approach or a combination of the three to judge about this kind of limitation?

The expression "cultural rights" has a common aspect with the concept of "culture" in the sense that it designates an observation tool of modern society and it is not an expression acceptable for a pre-modern semantics. Thus, there are "cultural rights" only in the conditions of modern society functionally differentiated. Moral argumentation and law principles go after this more general frame.

4. From moral claims to political claims concerning "culture"

An essential part of political problems concerning the use of "culture" in the "global" society shall be analysed under the dichotomy of inclusion/exclusion. This one is a political distinction and not a cultural difference based on real cultural distinctions.

There is always the possibility to change the political difference in a cultural meaning, but when I say that we are facing here a political dichotomy this means that the thickness of the distinction inclusion/exclusion shall be politically treated.

Inclusion/exclusion distinction may have economic and social underpinnings, but it is politically controllable under certain systemic circumstances. The dichotomy inclusion/exclusion is translated in the cultural language if and only if some power conflicts use the semantics of "culture" as a means to divide the included from the excluded, those which have power from the deprived of power. However, even in this case, especially relevant in the case of the "apartheid", the inclusion/exclusion partition is politically treatable, negotiable and never denotes an inescapable cultural difference.

The impression of an inescapable culturally embodied conflict is a result of a peculiar combination of cultural discourse and political negotiation, persistent nowadays.

The emancipation of colonies and the post colonization period brought the intensification of cultural discourses in the form of rights' claim. New forms of political nationalism modified in the recent past the meaning of

the XIX century concept of culture introducing notions of resistance, independence and fighting against alien political control. Within these notions we can identify the increasing importance of the alliance between cultural self-observation, law system and State politics, for instance in the idea of self-determination as a right assigned to collective units with some kind of "cultural identity" or/and historical homogeneity (nations).

The mediation of the discourse of law intensifies the *factual* use of cultural discourse. Protection and guarantee of rights is always in some way linked to protection of goods, collective goods in this case, that shall be identified and classified as clear as possible.

If political negotiation takes "culture" as its own affair the differences generated in order to develop conditions for agreement and for the readability of conflict make what will count as "culture" and as cultural differences *as such*. Cultural objectivities are effects of politically motivated distinctions in the political system.

Mass media communication is thematic communication. In order to organize themes the mass media must select information material by using dichotomised frames. Polarities, lateralization, binary schemes are such types of forms, which deal with time differences, power differences or with the true/false opposition suitable to the selection of news and public agenda. In this sense, public themes (so called "cultural conflict", for instance) are forms of reduction of possibilities and make available the conditions of the visibility of conflict and political conflict in particular.

Political negotiation increases its public impact by adopting media communication. By transferring the thematic structure of *mass media* discourse in the identity / difference scheme of cultural discourse, the political system makes available cultural distinctions in mass media distinctions and oversimplifies the complexity of cultural observation.

The amalgamation of politics, thematic media discourse and the scheme for cultural difference leads to the impression of a "clash of civilizations" or a "clash of cultures" as if there were civilizations or cultures *as such*, prior to observations or political negotiations.

The need for political struggle and political recognition brings this paradoxical effect of extreme naturalization of the cultural binary identity/difference. It seems then possible to talk about "cultures", as such, without any account of observational viewpoints, evolution, systemic codifications or the History of political negotiations. Manipulating cultural binary oppositional schemes mass media communication explores events and interpretations of political events, in particular, with an extreme tendency to the "lateralization" of the sides of the oppositions. Mass media theme *terror* generated the impression of a war going on between two sides defined by cultural membership. Dramatising and intensifying this

impression came also the archaic fascination with the polarity friend/enemy and, recently, the idea of a generalized "State of Exception".

By using the *mass media* dramaturgy of terror the cultural discourse evolves to a discourse of ethnic violence. In these circumstances, the world forged by mass media communication will be, soon or later, the stage for a generalized cultural fight. On the other side, ceremonial convenience and ritualized oppositions and classifications reverberates this scenario of fight.

5. "Cultural Rights"

However, the modern society is polycentric and what happens at the political level is no longer the unique focal point for the reproduction of society and communication. This makes an important difference in relation to other forms of social differentiation of the past.

The recent UNESCO declaration on "Social, Economics and Cultural Rights" uses the language of the modern tradition of "subjective rights" to give meaning to the notion of "cultural rights".

Being "y" the content of the right, a good or a capability, the synthetic principle for subjective rights is: "X1 has a right to y if X1 behaves as a human person".

The synthetic principle for "cultural rights" implies the synthetic principle for subjective rights plus the recognition of collective membership: "X1 has a right to y if X1 behaves as a human person and enacts ceremonial expressions of traditions common to X2, X3 and Xn.

Realizing that the law system of modern society can't authorize an unlimited expression of ritualized forms of cultural membership, one shall organize an inventory with priorities with absolute limitations, abstention clauses and conditional consents.

The law system shall consider cultural rights as a special kind of conditional subjective rights regarding ceremonial expressions of collective membership. Only in this sense it is really possible to talk about protection of some kind of goods, precisely those goods which come together with the active, lively ceremonial. At this point, moral talk about "good life" is a contribution to obscurity.

Public Law and political decision depend on the legacy of the laic liberal State, professing a "non comprehensive doctrine" (J. Rawls) of social reality, in order to categorize a hierarchical disposition of Constitutional Rights, constitutional safeguards and eventually a "Cultural Bill of Rights". Non-laic and non-liberal States are incompatible with the core presuppositions of tolerance.

Subjective Rights vs. Cultural Rights

Some subjective rights are peremptory rights, such as Life and Property. "Cultural rights" can't be treated as peremptory rights in this sense, unless we are looking for something like the vague figure of a right to express its own "culture", which remains very doubtful and ambiguous. If we envisage constitutional safeguards regarding "cultural rights" we should be clearer and discriminate these rights from subjective rights in the peremptory sense. "Cultural Rights" are conditional rights in the sense above mentioned.

Human Rights vs. Cultural Rights

"Culture" can't have the same dignity or superiority over "humanity". Cultural Rights shouldn't have the same hierarchical position as Human Rights. A clause of prevalence is here mandatory: no "cultural right" can prevail over a human right.

Non discrimination Safeguards vs. Cultural Rights

From the constitutional experience of democratic nations one knows also normative arrangements such as non discriminatory safeguards – statements prohibiting discrimination on the basis of race or colour, national origin, religion, sex (gender), familial status, handicap, creed, marital status, etc. Some critical multiculturalists say that this kind of protection of rights is only formal and can't be aware of the vivid cultural richness and diversity. Nevertheless, such non-discrimination safeguards are important aspects in a complete protection of rights of a "cultural bill of rights".

Some historical information will be needed in the appropriated cases to support the supplementation of human rights and constitutional safeguards with a "cultural bill of rights". The need for a supplementation is variable and dependable on the "cultural" importance and "cultural" sensitiveness of the inclusion/exclusion political dichotomy.

Constitutional grammar needs historical references to the evolution of political struggle and the use of "culture" as an oppositional sign, or some reference to the equivalent of a "cultural injury", politically motivated, in order to limit political power.

There is no such thing as an absolute right to "cultural" identity, but what UNESCO called "cultural rights" shall be recognized, in the historical appropriate cases, as a consequence of a limitation of power in situations characterized by evident cultural appropriation and translation of the political distinction of inclusion / exclusion.

In this sense "cultural rights" should be understood as components of non-discrimination safeguards of a liberal, laic, constitutional state.

Right to a tolerant ceremonial expression of cultural membership

This principle comes from the idea of cultural ceremonial and introduces a positive principle and some clauses of exception.

The positive principle says that each person X1 shall have the right to express his/her group membership by means of ritualized behaviour, in accordance with his/her own understanding of "appropriate" or "ceremonial" behaviour if there is more than an X1 sharing the notion of "appropriate collective ceremonial behaviour".

The clauses of exception say that no one shall be enforced to adopt ritualized behaviours against his/her will and understanding of "appropriate" or "ceremonial" behaviour and, consequently, the State may consider inappropriate for the welfare and security of the citizens and the defence of the public interest the implementation of enforced ceremonials, and totally inadequate the appropriation of portions of public space for the purpose of such performance, as well as the use of public space for explicit manifestations of violence or the abusive ostentation of ceremonial symbols, which shall remain restrict to ceremonial use.

We are now able to express the twofold formula of "cultural rights".

1. Right to a collective belonging and to express oneself in ways appropriate to this belonging, including language, use of symbols and all kinds of artefacts.
2. Right to ceremonial behaviours according to the collective notion of the appropriate actions, symbols and emotions and correspondent "scripts".
3. Right to dismiss at any time any collective binding relations to collective bodies identified with "cultural" communities.
4. Right to not be punished, persecuted or offended in virtue of individual choices concerning ceremonial matters and associated beliefs, habits and use of symbols.

From the recent post-colonial history and from what J. Tully describes as a post-imperial understanding of cultural belonging, one is leaded to a redesigning of constitutionalism. The need for a redesigning of constitutionalism is partially the result of political protest against "injustice" and political exclusion in modern society.

The struggle for self government and the organization of independent nations was the way follow in the past, but it makes no sense the unrestricted "nationalization" of cultures across the planet.

Multiethnic and multicultural nations are today the norm. But even in the cases of multicultural nations we can identify public claims and political protests concerning "culture" and the sense of cultural belonging. Self respect and respect of others are two faces of the same medal.

Thus, the primary good of self respect as a constitutional principle regarding cultural diversity implies two aspects: the protection of cultural variety and the engendering of a "public attitude of mutual respect" (J. Tully, p. 190). From the combination of these two aspects of the more general constitutional principle comes the idea of an "intercultural dialogue" at the core of popular sovereignty in contemporary constitutionalism conducing to a "critical freedom" and to a fair sense of belonging.

The balance between "critical freedom" and the "sense of belonging" frustrates any attempt to exaggerate the importance of the group's symbolic identity.

But this *equilibrium* should be adopted in new forms of ceremonial life, perhaps in those forms I don't hesitate to call here "civic ceremonials".

"Civic ceremonials" represent a compromise between cultural ceremonials embedded in traditional representations of communal life and the need for self-restraint, *decorum*, in public life".

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