

FROM JUSTIFICATION TO VINDICATION: LINDAHL AND ASYMMETRICAL RECOGNITION

DAVID OWEN

University of Southampton, UK
downen@soton.ac.uk

ABSTRACT

This commentary addresses Lindahl's discussion of asymmetrical recognition and his critique of legal universalism. I highlight some salient links between Lindahl's work and that of James Tully and Jacques Rancière, before drawing attention to two different ways in which he appeals to the concept 'unjustified' and proposing that his analysis needs to deploy a distinction between justification and vindication as modes of normativity.

KEYWORDS

Recognition, Exclusion, Justification, Vindication, Rancière.

In chapter 6 'Asymmetrical Recognition', Lindahl works out the implications of the IACA model for the politics of boundary setting and what counts as authoritative boundary setting. As part of this account, he draws a contrast with legal universalism that he takes to expose three problems with that account:

1. That legal universalism focuses only on unjustified exclusion thereby losing sight of when *inclusion* - or, more precisely, inclusion *as x* - is the problem rather than the solution.
2. The second turns on the condition that recognition requires *unjustified* exclusion and inclusion. Lindahl refers to this as the blind spot of reciprocity that elides the dimension of domination ever present in collective recognition, namely, the assimilation of the other to one of us.
3. This blind spot is then related to the dynamic of representation in which *a* represents collective *b* as *x* (rather than as *y*).

This point about representation is critical because Lindahl's argument is predicated on the following claims:

- a) The unity of a collective is always a represented unity.
- b) The collective is instituted through a representative act that say 'we' on behalf of a 'we' and hence presupposes a 'we' that is prior to the enunciation of this 'we' - the act of representing involves a narrative of origins through which the first/inaugural act constituting the 'we' is presented as second.
- c) It is, in other words, retroactive in that originates a putative collective unity to the extent that it succeeds in representing an original unity.

These critical reflections on legal universalism leads Lindahl to endorse the claim that, for the IACA model of law, recognition is always and necessarily an ambiguous achievement, collective recognition is always already also collective misrecognition.

Consider an example - nicely illustrated by Barry Hindess:

European imperial expansion in other parts of the world brought new territories and populations into the remit of the Westphalian system. Imperial acquisitions ... eventually resulted in the subordination of the greater part of humanity to direct or indirect rule by Western states. Modern imperialism was clearly a matter of subordinating non-European populations to rule by European states, but it was at the same time a matter of incorporating the government of those populations into the European states' system. While most discussions of imperialism focus on the first aspect the second is equally important: imperial domination was the earliest form of globalization and it remains still the most consequential. It divided the world into several kinds of populations: citizens of Western states; non-citizen subjects of Western states; and various residual populations, consisting of the subjects of states that were independent but not fully accepted as part of the states' system. This process of incorporating non-European populations into the European system of states was followed, more or less rapidly, by the second stage in the globalization of the European states system: the formation of independent states in what had once been imperial domains. The achievement or imposition of independence during the 19th century in much of Central and South America and around the middle of the 20th century elsewhere had the effect of dismantling the first aspect of imperial rule while leaving the second firmly in place. To be an independent state in the modern world is not to be subject to the rule of another state but it is still to be a member of the states' system and subject to the regulatory regimes which operate within that system. (Hindess, 2003: 23)

The universalisation of the institution of state citizenship is an act of collective recognition - and it is one which immediately raises for legal universalism the question of unjustified exclusion both at the level of the international order of states as a dispersed regime of global governance in terms of political bodies that do not neatly align with this system (peoples without states) and individuals excluded by it (stateless persons) and at the level of the individual states that compose this order (nationals who are not citizens, residents who are not nationals,

etc.) This focus on unjustified exclusion sets up a normative dynamic of problems to be addressed – and at the same time conceptualises this normative dynamic in terms of a particular form of historiographical *narrative* in which the universal norm is gradually and progressively realized – so, for example, a narrative of voting rights as gradually extending from propertied white males to all competent adult who are resident citizens and beyond (i.e., in contemporary debates about age limits, residency and citizenship requirements, and even species-requirements). Unjustified exclusions are, it turns out, always unjustified by relation to proper understanding of the norm, the problem is simply freeing our understanding of the norm from contamination by social power. Struggles for recognition are the (or at least one) vehicle through which this happens – such struggles bring us to recognize that the norm encompasses those excluded and hence that their exclusion is – and always was – unjustified. This type of narration alerts us to danger, encourages humility and offers reassurance.

Lindahl's first critical point about legal universalism can then be illustrated by the case of indigenous peoples in colonial settler states who are dominated precisely by being included in this legal order as nationals, eventually citizens, of sovereign states – and thereby confront the problem sketched by Jim Tully many years ago:

How can the proponents of recognition bring forth their claims in a public forum in which their cultures have been excluded or demeaned for centuries? They can accept the authoritative language and institutions, in which case their claims are rejected by conservatives or comprehended by progressives within the very languages and institutions whose sovereignty and impartiality they question. Or they can refuse to play the game, in which case they become marginal and reluctant conscripts or they take up arms. (1995: 56)

In being represented *as x*, those included are constrained to represent their claims within the terms of intelligibility established by this representation. Here Lindahl's view seems close to the stance of Rancière in his analysis of 'police' orders – and identification of politics with what disrupts or transforms police orders. We might consider Lindahl's analysis of legal orders – in which, first, law orders behavior by setting spatial, temporal, material and subjective boundaries and, second, that legal boundaries can only join and separate ought-places, ought-times, ought-acts and ought-subjects given the putative unity of a legal order as a species of joint-action with a normative point, that is, as a form of order that constitutively involves the first person plural standpoint – as a subset of Rancière's more general analysis of police orders. The concept of 'police' as "an order of bodies that defines the allocation of ways of doing, ways of being, and ways of saying, and sees that those bodies are assigned by name to a particular place and task; it is an order of the visible and the sayable" (Rancière 1999, 29). This last phrase highlights the point that a police order is constitutive of, and constituted by, what Rancière calls

“a distribution of the sensible” (1999, 29) and refers to what, following Wittgenstein, we may call ‘a regime of continuous aspect perception’ (where ‘perception’ stands for the senses more generally). Rancière defines ‘politics’ as ‘whatever shifts a body from the place assigned to it or changes a place’s destination. It makes visible what had no business being seen, and makes heard a discourse what was once only heard as noise’ (1999, 30). Politics in this formal sense necessarily takes the form of aspect-change. Following the recent exchange between Rancière and Honneth (2016), we can put this point another way: *a police order is an order of recognition; politics is a struggle over recognition.*

Notably, however, Lindahl’s analysis is rather more conceptually refined than Rancière’s in its treatment of boundaries and the politics of boundary-setting. When Lindahl speaks of boundaries, he is pointing out that it is a condition of possibility of individuating (il)legal acts that we refer to ‘ought-places’ where such ‘places’ must be distinguished from what is outside – or not within – them. Notice then that such places are located in legal space and, more generally, normative space – they are spatialized. As such, although any ‘place’ can be related to physical locations to which we can assign map coordinates, the mode of space and spatial boundary that is disclosed here is not that of physical space any more than the topological map of the London Underground is a representation of the relations in physical space of the stations whose relations it discloses. In being bounded in this sense, a legal order is also necessarily limited, Lindahl proposes, because limits (along each boundary) are conditions of collective identity. A limit opens up a realm of practical possibilities and closes down others and this opening up and closing down, including and excluding, is just the articulation of the collective identity – in both *idem* and *ipse* senses – of the ‘we’ whose joint action with a normative point individuates a legal order as the/*our* legal order. Limits – which denote the distinction between legal (dis)order and the ‘unordered’ (that which is ‘irrelevant and unimportant’ from the standpoint of the/*our* legal order) – are disclosed when the a-legal interrupts legal (dis)order to bring to light the possibility of an *other* legal order. A-legal acts are act that make the limits of a legal order appear by introducing the strange into relationship with the familiar. Importantly, Lindahl distinguishes ‘weak’ and ‘strong’ forms of a-legality. The former refers to contexts in which the transformation of the legal order called for by engagement with an a-legal act can be accomplished without the destruction of the legal collective. By contrast, ‘strong’ a-legality that is incompatible with such continuity-in-transformation. He refers to the latter as the disclosing of ‘fault-lines’. The question posed by Tully’s reflection on the dilemma of indigenous peoples is thus whether it is an instance of weak or strong a-legality.

The parallel with Rancière may help with the second of Lindahl’s criticisms of legal universalism, namely, that recognition requires *unjustified* exclusion and inclusion. The sense of ‘unjustified’ here though is not that of the first criticism

against legal universalism. Rather we need to distinguish between (a) ‘unjustified’ as failure to comply with, or fall under, the relevant rule or standard and (b) ‘unjustified’ as not subject to a normative rule or standard, that is, outside the game of justification (we may see this distinction as analogous to that between illegality and a-legality). This is, of course, Rancière’s point about politics as a transformation of police that cannot be given normative articulation as justified or unjustified by reference to a norm within the terms of the existing police order. Again it seems to me that Lindahl’s analysis offers rather more resources for addressing this issue – this is the point of his invocation of prudence, of *phronesis*. This is open to challenge since *phronesis* in both classical and contemporary understanding is typically seen as requiring an order of continuous aspect perception against which discernment of the relevant saliences occurs; it is less obvious that it pertains other than in a rather limited form concern with prudence in the narrow realist sense in the kind of context that Lindahl wishes to engage it. However, even if this challenge can be met, there remains the question of how to conceptualise the normativity of the constitutive exclusion and inclusion entailed in act of representation by which a putative collective unity is constituted as a unity and of the authority of such acts.

Here it may be helpful to introduce a distinction between two distinct modes of normativity: justification and vindication. Justification finds its home in practices of practical deliberation that are prospectively oriented to whether, all things considered, one (or we) have reason to do or not do *x*. When we ask whether an exclusion is justified or not, we are asking whether we have reason to take it as a practical norm of conduct in our future actions.

By contrast, vindication is at home of practices of practical deliberation that are retrospectively oriented to whether, all things considered, one (or we) have reasons to affirm or regret what, it turns out, we have done. (This is, if you like, the domain of what Bernard Williams called ‘moral luck’.) These need not, and often may not, align – when Machiavelli outrages decorum through the insertion of deliberative rhetoric into the demonstrative rhetoric that was dictated by the humanist ‘mirror for princes tradition’ tradition in order to make the point, as Max Weber and Hannah Arendt comment, that ‘politics is not the nursery’, his – and their – point is that whether an act is justified is not the only – and may not be the most important – normative consideration. The central question with respect to founding, re-founding or transforming a polity is not whether the actions are justified – often they may, at least in moral terms, have as a success condition that they are not justified (the founder may need to perform evil actions to achieve good ends) – but whether they are vindicated. Introducing this distinction into his argument would both conceptually clarify and provide grounds for the development of Lindahl’s argument that connect it to the classical political tradition that recognizes

that the language of justification is not – and cannot be for any adequate account of politics – the only game in town.

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