

Lindahl's Phenomenology of Legality

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ABSTRACT

This contribution looks at the phenomenological thread that holds together Lindahl's argument and traces its origin back to Husserl. It asks whether the reliance on the structures of collective intentionality is a necessary component to legal phenomenology and whether it puts Lindahl at odds with other phenomenological approaches such as Marion's. It also asks whether the notion of 'a-legality' can sustain its position as a third value vis-à-vis the code difference of the legal system, in other words whether it can play the role of a 'rejection value', or whether it is instead committed sooner or later to collapse into the negative pole of the legal/illegal coding of the law.

KEYWORDS

Phenomenology, Husserl, a-legality, systems theory, Lindahl

1. In *Fault Lines of Globalization*, Hans Lindahl has given us a profound and highly original phenomenological reading of law. He offers it, in his own words, as 'a first-person plural concept of legal order' and this concise formulation provides an interpretation of legality centred on the problem of intentionality: 'the manifestation of something as something* for [a plural] someone.'

Lindahl commits to a decidedly *spatial* conception of the meaning of legality, where the inside/outside distinction is a constitutive feature of any legal order and allows a first-person plural preferential conditioning between inside and outside. In his own words, 'by closing itself as an inside with respect to an outside' a 'we' lays claim to a space as its own.' (68) Like Luhmann's concept of 'indication', one might interject, the significant moment comes in the form of the positing of preference or positive value in the order of closure.

The intriguing phenomenological moment in all this is the connection between the *closure* that comes with order and the *disclosure* of public space, and this connection between closure and disclosure that Lindahl returns to so often is a good place to begin this short excursus into Lindahl's phenomenological account of legality.

If his point of departure is a topography of legal ‘place’ it is because the emphasis is originally on ‘what appears as space and what space allows to appear.’ The concern with appearance shoots through the book forming the phenomenological thread on which all else hangs. And the key notion of the ‘strange’ that he borrows from the phenomenologists Husserl and Waldenfels marks the moment of disruption of these spatial economies. The disruption assumes the name ‘a-legality’.

Lindahl says:

According to Husserl, although intentions are always directed toward their object, the intended object appears with this or that determinate meaning. He distinguishes, accordingly, between the ‘*object as it is intended*’ and the ‘*object . . . which is intended*’.¹ Heidegger provides a particularly compact formulation of intentionality when elucidating the structure of practical activity oriented to the manipulation of things: the disclosure of ‘*something as something*’.² The single question that interests me is the following: What characterises the intentional relation whereby something is revealed *as* something in law? (119)

The main insight Lindahl borrows from Husserl is the correlation between the *what* of appearance and the structures of intentionality that take cognisance of it and, in that, effect its manifestation. We will refine this as we go along. The second debt is to the *intersubjective* moment of noesis – of the ‘making sense of’. The third is the distinction between what is familiar and what is *strange*: what is strange in effect emerges gradually as pivotal to Lindahl’s account of legal ordering. In one of its most succinct formulations in the book:

A fuller description of the intentional structure of legal acts would be, therefore, the following: the disclosure of something as something* from the perspective of a ‘we’ in joint action. To the extent that such disclosure is also always the co-disclosure of the referential unity whence it is intelligible who ought to do what, where and when, a collective is the correlate of a legal order. In their involvement with others and with things, individual participants in a legal practice orient themselves as to the what, where, when and who of behaviour by actualising, however implicitly and even anonymously, the

¹ Husserl, 1970a, 578 (emphasis in the original).

² Heidegger, 1962, 189 (emphasis in the original).

first-person plural perspective of a 'we' in joint action. Succinctly, by way of legal acts we jointly disclose something as something* in a legal order. (126)

This is both profound and highly suggestive. I want to take a step back to pick up the thread of phenomenology further back in order to see how much Lindahl has staked on the question of the manifestation of legal order and its internal connection to collective identity that becomes reflexive, or transparent, to itself through that conjunction. The identification of this conjunction between legal ordering and the emergence of identity as *dynamic*, explains Lindahl's attachment to the phenomenological method of Husserl, and accounts for his own very particular understanding of the reflexivity of collective action. In the final section, and in a more critical vein, I want to pose a query over the 'manifestation' of the 'strange', or of a-legality, in the constitutive role that Lindahl envisages for it.

2. What defines phenomenology is that objective themes on the one hand, and the modality of access to them on the other, cannot be separated: what appears, appears as something to someone. And thus whatever truth value we assign to objects cannot be done so independently of their *givenness* to structures of intentionality. The latter at least is true and foundational for Husserl who made the phenomenological 'breakthrough' at the turn of the twentieth century. His phenomenology was conceived as the science of the intentional correlation of acts of consciousness with their objects. His preoccupation, which on one reading accounts for the development of his theory from an initial exclusive focus on the object of intuition as sense perception, to temporal, cultural, etc, 'objects', was how one might account for the truth of acts of consciousness which, in his own words, are caught up in a 'Heraclitean flux'. Since his point of departure was always the modality in which intentional lived experience correlated to its object, the fundamental problem of phenomenology was inextricably linked with its most profound insight, that of *the 'origin' of objects in consciousness*. Husserl's endeavour thereafter became that of 'purifying' consciousness of what we might call its worldly apperception, in order that it might 'receive' the reality of phenomena unencumbered by its immanent limitations.

The steps in that endeavour are relatively familiar marks along the fascinating trajectory of the development of his thought, centring on the shifting notion of the *phenomenological reduction*: Husserlian phenomenology displaces ontology in the thesis that 'Being' must be reduced to intuition - *made present* - in order

that it appear as a phenomenon. In the early ‘breakthrough’ of the *Logical investigations* (1900) the ‘eidetic’ reduction introduced a distinction between an ‘empirical’ and a ‘pure’ psychology, allowing Husserl a first form of ‘bracketing’ of the world so that the reality of the consciousness of it could emerge as something different to the reality it attempted to know. More importantly, it allowed the emergence of a new understanding of intuition as *categorial*, because its orientation was toward universal categorial forms (‘essences’), as pertaining, in Husserl’s words, to the ‘pure form of possible objects of consciousness as such.’ The aim throughout was to direct intuition toward truths of reason rather than the factual truths of an empirical psychology. The *General Introduction to a Pure Phenomenology* of 1913 introduced the ‘transcendental’ reduction, while later Husserl turned to a ‘genetic’ phenomenology whose emphasis was on intersubjectivity and history – Lindahl discusses these in turn. It is well beyond the remit of this short comment to look at these movements in Husserl’s thought in depth. Let us simply re-state that throughout its stages what is at stake is the modality of the correlation between acts of consciousness and *the objects that give themselves* in those acts, the correlation in other words between *noesis* (acts) and *noema* (objects).

As fundamental a re-orientation of philosophical inquiry as this is, its very inaugurating gesture remains fundamentally opaque in its ‘terrifying simplicity’: to return to the objects in question. If we take Husserl’s classic definition - ‘[t]he word phenomenon is ambiguous by virtue of the essential correlation between appearing [Erscheinen] and that which appears [Erscheinden],’³ - it would not be an exaggeration to say that the whole of phenomenology is contained in the promise and problématique of that ‘ambiguity’.

By the time Husserl writes the *Cartesian Meditations* (1931) the world is analysed as that which constitutes itself in the course of the experience of a community: the emphasis has moved to intersubjectivity. The development is traceable to Husserl’s insistence to account for the full *extension* of intentional consciousness, of noesis, as it appears across its many forms (imagination, memory, empathy) engaging what we might call both its social and temporal dimensions, and the different modes of being of the transcendental subjects as individual and collective, intersubjective and generative communities. In the *Idea of Phenomenology* he defines: ‘the task [as] just this: within the field of pure evidence or self-givenness to study all forms of givenness and all correlations and to conduct an elucidatory analysis of them all.’ (p 10) And in this context we have another significant shift of the phenomenological insight in Husserl: it shifts from being a ‘discovery’ of the thing in the world, as perceived by an act of consciousness, to a

³ Quoted in Marion, 1998, 21.

'justification' of the meaning of its individuation as a phenomenon. Phenomena do not just appear to consciousness; their appearance is mediated through a commonality of experience and anticipation, furnished by memory, empathy, and imagination. Noesis is a category that engages a collective and is embedded in the context of the *Heimwelt*, a familiar world. Through such engagement and association is the subject 'awakened' to an intending.

Now Lindahl says clearly that he does not endorse Husserl's transcendental subjectivity as part of the phenomenological programme, but, on my reading, he does not clarify the core or magnitude of this disagreement. This is in any case perhaps incidental. But there is still something crucially relevant here in Husserl for Lindahl's own argument. Along the temporal dimension, consciousness, from the very start, is conceived as caught up in time, never still, constitutively restless, in a profound sense always-already an alteration of itself. And along the social dimension of *inter*-subjectivity, it is constitutively reliant on those associations that 'awaken' the subject to an active intending, associations that are embedded in communal resources, in expectational/motivational structures of the lifeworld and its processes of symbolic reproduction. They inform the occasions and modalities of consciousness and provide for the dynamic unity of 'we' identifications.⁴

Of course Lindahl knows this well and *Fault Lines* develops a fascinating account of these movements in phenomenological thought. Drawing on the last important work of Husserl's, the 1936 *Crisis of European Sciences and Transcendental Phenomenology*, Lindahl alerts us to Husserl's careful account of how the phenomenality of the world is situated against a horizon, and is co-experienced by a plurality of consciousnesses, in a crucial way, thus, both 'pre-given' (horizon) and 'co-given' (intersubjectivity). He talks of

a fundamental difference in the modes of appearance of things and of the world in which they are positioned. For the one, 'things, objects . . . , are "given" as being valid for us in each case . . . but in principle only in such a way that we are conscious of them as things or objects *within the world-horizon*'. For the other, 'we are conscious of this horizon only as a horizon for existing objects; without particular objects of consciousness it cannot be actual'.⁵ In

⁴ And this is why Ricoeur overstates his critique when he says that Husserl's is 'a new idealism the sense of being reduced to the simple correlate of the subjective modes of intention.' Ricoeur, 1974, 9.

⁵ Husserl, 1970b, 142.

addition to being *co-given*, the world is also *pre-given*, Husserl notes. There is always-already a world into which things, acts and events make their way, and which remains, even if in modified form, when they disappear. Indeed, in the absence of this pre-given world we could not even begin to make sense of a novel apparition as more or less unintelligible; that something cannot be completely understood presupposes a totality of meaning-relations with respect to which it appears as ‘meaningless’. (263)

For Lindahl, whose primary concern, as we said, is to give us ‘a first-person plural concept of legal order’ there is something vastly important in this later work of Husserl’s (these themes do appear late in his oeuvre) about the plural subject-centredness of the appearance on the world:

[P]henomenology has insisted ... that a world is *subject-relative*. When describing the structures of the world, one describes its mode of *givenness*, that is, how it appears to *us*, where ‘us’ denotes both the first-person singular and the first-person plural perspective. In contrast to science, which seeks to factor out subject-relative aspects of knowledge in its quest for objectivity, phenomenology has pointed out that the scientific endeavour presupposes and takes place on the ground of an experience of the world that is subject-relative. Crucially, it is precisely insofar as the world is subject-relative that it not only ‘appears’ (to someone), but appears as *bounded* totality of meaning-relations: as ‘horizontal’. Moreover, although a world is always co-given as a bounded totality of meaning-relations, its bounded character usually remains more or less invisible and unthematic for us. (263-4)

There is much to unpack here. What an interesting distinction this, between the thematic and the ‘unthematic’, and how improbable the passage of the latter to the former in the logic of *thematizing*. ‘A-legality’ for Lindahl - the irruption of the strange - is absolutely crucial to this passage (of ‘thematizing’). But before we go there, let us stay for a little longer with the emergence of the plural perspective as constitutive of what is ‘co-given’ and ‘pre-given’ to us as world - the social and temporal coordinates, respectively, of its ‘givenness’ or disclosure. Because Lindahl’s phenomenological take builds on both dimensions, the partiality (co-given) and the temporality (pre-given) of the manifestation of phenomena, or as he focuses on law, of legal determinations.

3. Throughout his work Husserl had been concerned with harnessing phenomenology to the extension of appearance. That is without doubt still crucial. But in

the later work a certain humility attaches itself to the phenomenological gaze such that the perceptual process appears increasingly inadequate; each perception achieves only partial givenness, what Husserl calls an *Abschattung*, a simple ad-umbration. If individual acts of consciousness can only deliver partial givenness, Husserl will turn to intersubjectivity to redress that lack of completion, and to set it in history, between 'retention' and 'protension', or more simply between the givenness of what is received as horizon in the *Heimwelt* and the promise of an (indefinite) progress of Reason.

It is in this context that we must place Lindahl's trenchant formulation about the manifestation of legal phenomena as 'reiterative anticipations'. Never outwith the horizon of iteration, or outwith the iter-ability of legal meanings, always *in medias res*, legal acts *re-iterate* and *re-interpret*, 'disclosing 'something as something *anew*'. Lindahl will invoke Husserl: 'Every experience refers to the possibility . . . not only of explicating, step by step, *the thing which has been given* in a first view . . . but also of obtaining, little by little, as experience continues, *new* determinations of the *same* thing.'⁶ The temporal modality of legal phenomenality (disclosure) is evident in all this in the specific forms of the operationalisation of legal pasts, that Niklas Luhmann, in his own grand phenomenological project, offered the terms 'variety' and 'redundancy' to describe.

But is this staggering of phenomenality, this postponement of what can only ever appear at any one moment as incomplete and partial, not now asking too much of phenomenology as *method*? As method, it must be added, whose stark novelty was to insist on the irreducibility of appearance as originary departure, and with it the givenness in presence of phenomena realised without prior condition.⁷ With the correlation now to an *open* intersubjectivity, one in which the givenness of phenomena is never underwritten by anything like the completeness of the receiving structure, Husserl is increasingly drawn to an argument about a progressive realisation; even, arguably, a self-correcting process. What to make now of this partial, incremental appearance, that never exhausts the phenomenon, that falls short of granting it signification, that merely postpones its truth? Why insist on intuition as condition of presence if intuition is partial? And does the correlation of appearance with a 'collective' or future – in both cases *incomplete* - intentionality not cancel out its promise? Why is Lindahl wedded to Husserl's correlation of disclosure and collective intentionality when it can only ever only partly deliver on its promise?

⁶ Husserl, 1973, 32. In Lindahl, 129.

⁷ To borrow Marion's definition (Marion, 2012, 1).

In the face of this problem there are two lines of argumentation that diverge radically. The first is to submit the unruly and incomplete category of intentionality to the category of givenness, and make the latter the notion that organises the phenomenological method. This is the route taken by Jean-Luc Marion. The other is to remain with intentionality as at least equally co-implicated in organising disclosure. That is the route taken by Lindahl. Neither, arguably, abandon Husserl's phenomenological project, although Marion might add that Husserl only '*a contrario* renders this path possible.'⁸ Let us look at them in turn with an emphasis on the respective dividends.

The first reading: the phenomenology of givenness

In Husserl's words, phenomenology re-orientes us to 'every originary giving intuition [as] a source of right for cognition - everything that offers itself originally to us in intuition ... must simply be received for what it gives itself.'⁹ Husserl says this with his sight fixed on metaphysics that would typically posit grounds or conditions for knowledge or (let us call it with the phenomenologists) 'world-disclosure'. Husserl wants to insist on the originary givenness of that which appears in consciousness; originary because lacking conditions or grounds. In Marion's words 'the givenness in presence of each thing is realised without any prior condition.'¹⁰ Marion quotes Husserl saying that 'the originary giving intuition is a source of right for cognition.' The German formulation refers to '*dem klar Gesehen sein Recht lassen*': a recognition of the right of what is seen clearly. In consciousness, in lived experience, and no other *a priori*, lies the 'legitimate source' of any appearance. Husserl will refer to this as the 'principle of principles.' For him '[p]henomenology frees presence from any condition or precondition for receiving what gives itself as it gives itself.'¹¹

And with this we come up against the problem of method. According to Marion, the phenomenological method after all, is committed to letting phenomena manifest *themselves*. And in this it is, on one reading at least, *a counter-method*. Why does Marion call phenomenology a counter-method? After all phenomenology, 'to be sure, like all rigorous science, decides its own project, its own terrain, and its own method, thus taking the initiative as originally as possible.' And yet, says Marion, 'counter to all metaphysics, [phenomenology] has no other ambition

⁸ Marion, 1998, 22.

⁹ Ibid.

¹⁰ Marion, 2012, 1.

¹¹ Ibid.

than to lose this initiative as quickly and completely as possible.' 'The methodological beginning establishes only the conditions for its own disappearance in the original manifestation of what shows *itself*.'¹²

Marion invites us to see all the steps and turns in Husserl's trajectory, the swerving and the 'zigzagging', as his attempts to deal with the paradox that the reductions, intuitions, intentions, fulfilments, appresentations, etc, that gave leverage to apparition cannot be conceived as conditions or grounds for it, but must instead be *undone* in the name of allowing the phenomenon to appear as itself. Note the paradox that attaches to the terms 'constitutes' and 'reduces' in the two extracts below, a paradox all the more alive as it is bound up with the *acts* of constituting and reducing: Marion says: 'The phenomenological method, even when it constitutes phenomena, is limited to letting them manifest *themselves*.'¹³ And later: 'the phenomenological reduction never reduces except to givenness.' Reduction 'leads' the phenomenon towards givenness; '[reduction] leads scattered, potential, confused and uncertain visibles (mere appearances, outlines, impressions, vague intuitions, supposed facts, opinions, etc, to givenness according to their degree of phenomenality.'¹⁴

The key to addressing the paradox, Marion tells us, is in the fact that the methodological acts of constituting or reducing do not mean constructing or synthesising but are instead harnessed to phenomenology's task of facilitating the appearance of things in themselves. Crucially 'the method does not run ahead of the phenomenon by *fore-seeing* it, *pre-dicting* it or *pro-duc*ing it' but instead 'travels in tandem with the phenomenon.' (Marion, 2012, 9) As a negative methodology perhaps, though one must be careful in using such a loaded term, it engages in the clearing exercise that suspends impurities (empirical psychologies, the blindspots of what is naturalised and taken for granted, etc) in a way that lends leverage to the manifestation of things themselves. Marion puts this beautifully: 'The reduction does nothing; it lets manifestation manifest itself.' (10) And 'the reduction must be done in order to undo it and let it become the apparition of what shows *itself* through it, though finally without it.' It is this double movement of performing and withdrawing – the essential phenomenological operation – that 'counter-method' attempts to capture.

That is why Marion calls his phenomenology a phenomenology of givenness; and it is why ultimately he will depart from Husserl's reduction to consciousness

¹² Ibid, 9.

¹³ Ibid.

¹⁴ Ibid, 15.

in the name of harnessing phenomenological reduction to givenness, turning it, in a fascinating way, self-referential and thus only true to itself. For our purposes what matters is his insistence that ‘givenness’, the givenness of phenomena, ‘is measured by its own standard, not that of intuition.’ (16) Because this, according to the other reading of phenomenology, that informs Lindahl’s position, gives up the constitutive connection to intentionality that, for them, is in fact what matters most.

The second reading: ineliminable intentionality

Lindahl’s reading of Husserl stays close to the text, at least in what regards the phenomenological reduction to consciousness. If being needs to be reduced to subjective intuition as condition of its manifestation as a phenomenon, the reduction cannot be bracketed. In fact, the moment of subjectivity, the intentional act that receives the given remains significant in the manifestation. If the appearance of something as something is given to or received by structures of collective intentionality, the receiving structure remains active in the manifestation. Furthermore, its active correlation with what appears to it, tied now in a *dynamic unity* of what is given and who receives it, can be thematised in the direction of how the reception might inaugurate reflection of and reconfiguration of the latter. Lindahl discusses the emergence of the ‘we’ as immanent to this process, which also accounts for why it cannot be thought of in advance of those processes, in any sense *a priori* to them. The *a posteriori* is however qualified in terms of co-implication. In Lindahl’s vocabulary, it emerges in the modalities of responsiveness and questionability,¹⁵ in forcing the question (of the return to things in question) anew.

Both immanence (responsiveness) and renewal (questionability) are thus constitutive of all ‘we perspectives’. Lindahl focuses his analysis sometimes on normativity (the ‘creation of ought-places’ he calls them) sometimes on legality, sometimes indiscriminately. A distinction between the more general and more particular levels may make a difference even to the question of what is questionable, and therefore, in the way he has tied the two, to how a collective constitutes itself. In any case his object is to inquire into how law appears from a first-person perspective that is necessarily unitary; Legal pluralism becomes a conceptual absurdity on this account, because to ground legality as plural would undo the constitutive gesture with which a collective we and its ‘ought place’ are mutually

¹⁵ In earlier work in particular these were key terms.

constituted through a unitary act of closure. These are weighty conceptual claims and for this reason Lindahl takes us back to phenomenology, so that he can defend them in terms of the conditions of the possibility of appearance as such. In Husserl he finds intentionality as constitutive of appearance, though he will want to differentiate the non-discriminating 'we' of collective perception into 'we both' and 'we together'. This important differentiation of the first-plural invocation becomes key to the analysis of *Fault Lines*.

I will not explore these analyses further, analyses that I find highly convincing and highly original. Through them Lindahl offers us a way to conceptualise afresh the logic of co-disclosure, of the simultaneity of the emergence of a we-perspective and the world in which it emplaces itself, the unity of the field of normative reference.¹⁶ The emergence, too, of the context of reciprocity within which practical/normative discourse is meaningful.

I have instead focused this short contribution nearly singularly on the Husserlian connection that underlies Lindahl's legal theory, between disclosure and (collective) intentionality. The Husserlian inheritance re-inscribes the element of collective intentionality, as methodological presupposition, in the emergence of the phenomenon of legality. A virtuous circle installs itself here. The emergence of legality presupposes a collective intentionality in a relationship of mutual constitution: that is the phenomenological insight, and the reduction to the 'we'-perspective is the condition of disclosure. I would argue further that this mutual constitution also introduces a two-way 'questionability' between disclosure and intentionality. The disclosure of 'something as something *anew*' enables also a reflection of the 'we' in the process, and at this junction the temporal restlessness infects both sides. Disclosure and identity form a dynamic unity where what gives itself, as disclosure, to the structures of intentionality that receive it gives itself in the modality of a reflexivity that politicises collective identity as the latter 'rises' to receive it.

4. I will end my comment on Hans Lindahl's book with a query over the meaning of 'a-legality', with a special emphasis on its function. Lindahl explains that his 'enquiry into legality, illegality, and a-legality follows a trajectory tracing the passage from the articulation of the legal/illegal distinction in the ordinary course

¹⁶ Remember: 'Disclosure is also always the *co-disclosure* of the referential *unity* whence it is intelligible *who ought* to do what ... by way of legal acts we jointly disclose something as something* in a legal order.' (126)

of joint action under law to its interruption by a-legality.’ (264) Otherwise the restless, dynamic nature of disclosure remains part naturalised and to that extent invisible or ‘unthematic’ to us. He quotes Husserl:

[N]aturally normal [attitude] . . . is that of straightforwardly living toward whatever objects are given, thus toward the world-horizon, in normal, unbroken constancy, in a synthetic coherence running through all acts. This normal, straightforward living, toward whatever objects are given, indicates that all our interests have their goals in objects. . . All our theoretical and practical themes, we can also say, lie always within the normal coherence of the life-horizon ‘world’.¹⁷

Husserl draws a distinction between the intersubjective constitution of a shared world as a *familiar* world (*Heimwelt*), as for example in the quote above, and that of a *strange* world (*Fremdwelt*). Strangeness is pivotal. As Lindahl explains Husserl’s point, a world only manifests itself as a ‘familiar’ world, rather than as *the* world, when a collective encounters strangeness. The key argument about ‘a-legality’ in the book builds on the introduction of the ‘strange’, that interrupts in the context of ‘normal, unbroken constancy’, and is, crucially, an interruption that cannot be domesticated by the order that it puts to question.

In an important passage Lindahl says:

[E]ach boundary drawn by a legal collective establishes what it deems to be important and relevant, partitioning it from what is unimportant and irrelevant. But because the unordered is a residual category, and as such *opaque* to joint action by a given legal collective, *the divide* between legal (dis)order and what is left unordered *functions* differently than boundaries within a legal order. On the one hand, boundaries join and separate elements *within a unity*. [But] the divide between a legal order and its unordered is a *limit*. A limit *marks* the discontinuity and asymmetry between legal (dis)order and its correlative domain of the unordered. *Limits are neither legal nor illegal* because the distinction between the legal and the illegal presupposes spatial, temporal, subjective, and material boundaries which join and separate dimensions of behaviour within the unity of a legal order. Everything that has been said earlier about limits and about frontiers, as the spatial limits of legal orders, finds its conceptual justification in the distinction that a collective *must draw* between legal (dis)order and the unordered. (95, my emphases)

¹⁷ Ibid, 144.

So much hangs on these formulations: the 'opaque', the 'divide' that must be 'drawn', what limits 'mark', all of them indices of visibility or actions that make appear.

The stake of intervention, the domain to be thematised, tapped and activated, is what normally lies 'beyond the pale of practical interest':

The distinction between legality and illegality, as behaviour that is in and out of bounds, is a specification of this general feature of a home-world. On the other hand, the home-world has an external horizon which separates it from what Husserl calls an 'irrelevant outside' ... As concerns law, this irrelevant outside, which lies beyond the pale of practical interest because it has been excluded from what is germane to joint action by a legal collective, is the domain of non-law. (93)

In the topology of fault lines, a-legality is 'out of bounds' but also attaches itself ('is not posited separately') to the boundaries of normative ordering.

If the boundary can only be thematised from the inside, it is that operation's accompanying reference.

'Yet, although empty from the perspective of joint action by a collective, the domain of the unordered makes room for *other* legal orders, *other* collectives which organize themselves as legal orders. Returning to our earlier observation, if the unordered is the 'other' of a collective self, then the other of a legal collective includes its *others*, that is, other legal collectives. ... In effect, this divide is not posited *separately* from the boundaries that determine who ought to do what, where, and when. To the contrary, the divide between legal (dis)order and the unordered runs along *each* of the boundaries whereby a collective establishes who ought to do what, where, and when. (94-95)

Couched in this language of intense liminality, Lindahl invites us to consider a breach in the ordering (and recurrent reaffirmation) of the familiar world in virtue of that which carries a normative claim that cuts across and brings to question legality's normal, quotidian, distributions of entitlement and right. To put my query, I need to take more gradually the processes of drawing and contesting distinctions. Let us look back at how the argument unfolds, with the help of some very elementary systems-theory, conscious all the time that it is not the language that Lindahl deploys. The operationalisation of the distinction between legality and illegality reproduces the legal system by ascribing these values to acts in the world. The distinction between the positive and negative value opens up the *con-*

tingency space for law that emplaces all possible states, acts and events within that space; not only is everything legal or illegal, *tertium non datur*, but something is legal in that it is not illegal: the negative value is also the ‘reflection value’ in a system that vests meaning in events by closing off its domain self-referentially. It follows from this that ‘illegality’ is as internal, and as productive, to the legal system as is the ascription of legality. The illegal is not the index of any outside: it is instead the negative value of the legal and thus a ‘duplication value’ that allows an event to register as meaningful because it could be otherwise: it could be illegal (and vice versa). Of course the law needs to break its symmetry and relate to the world; but reach to the domain of the ‘outside’ is mediated by the founding distinction - the code - of legality. None of this is very far off from Lindahl’s own analysis.

Now of course this closed ‘duality’ of the operation of coding needs to be both unfolded (it must refer to something outside it, events in the world, states of intention of actors, the pragmatics of social interchange, etc) *and* interrupted. The latter, the field of interruption, discontinuity and irruption, is what Lindahl invites us to think with the help of the concept of a-legality. But before we get there, let us stay a little longer with the notion of interruption. The operation of legality is interrupted when the normal reproduction of the system is ‘surprised’ in some way: either because classifications are challenged (e.g. indeterminacy) or because contradictions appear (e.g. conflict of laws, gaps) or because innovative interpretations are suggested and tested at the system’s entry points – typically court decisions. Legal interpretation here introduces a level of scrutiny over the proper distribution of legality and illegality to new events. But, as Lindahl says, at this level the interruption occurs and is handled *within the referential unity* of the legal system.

How much of this opportunity for systemic renewal draws from the ‘strange’? On one reading, none of it, if the robust claims of a-legality are to be taken seriously. The system’s ascriptions of legality and illegality, however imaginatively reconfigured, are always resistant to those chomeurs at Lafayette who, through their actions, disrupt *this - our* - normative order with *its* distribution of entitlements to invoke instead a more just one that is attentive to need. But then, if one focuses on ‘habituality’ maybe one is overstating the level of challenge. Lindahl says:

The habituality of legal practices, whereby the joint action becomes ‘second nature’ to actors, is a constitutive feature of legal intentionality in the mode of legal understanding. The point of a legal practice becomes the object of explicit attention when the theoretical attitude sets in, when that which

agents understand themselves and their fellow participants as doing together is *interrupted*. This is the moment at which *legal understanding yields to legal interpretation* ... (85, my emph.)

To be sure legal interpretation here introduces another level of scrutiny over the proper distribution of legality and illegality to new events. But the 'interruption' occurs and is still handled *within the referential unity* of the legal system even if the mobilisation of resources as far as the legal system is concerned, is thematised through the distinction between legal understanding and legal interpretation. The 'ordering achievement of legal acts' (119) across the various axes (material, social, temporal) of legal meaning operate within the boundary of that unity, according to Lindahl's trenchant formulation, as 'reiterative anticipations'. Never outwith the horizon of iteration, or outwith the iter-ability of legal meanings, legal acts *re-iterate* and *re-interpret*, 'disclosing 'something as something *anew*'.

But a-legality's ambivalence now stretches across to a second type of interruption, this time of the second-order; it is one that *must* be understood as non-productive to the ordering because, to perform the function that Lindahl attributes to it, it must force a challenge to the very unity of reference of the system. This involves an 'impossible' act because it stands incongruent to the act of interpretation that may have integrated it productively within that unity. A-legality taps a limit. In this world of intense liminality, what is forced into appearance gets its traction from the impossibility, the impossibility of containment however reconfigured the ordering. But to remain impossible, resistant and ruptural it needs to be insisted on and acted on *against* the order it challenges.

The following extract by Lindahl captures the richness of this ambivalence beautifully:

In an important passage of his posthumously published notes on the phenomenology of intersubjectivity, [Husserl] formulates this contrast in the form of a question: 'Does not the world as an envioning life-world, hence as a practical envioning world, have an unpractical horizon, a [domain of the] unexperienced and unexperienceable, which is not merely "out of bounds" (*ausser Spiel*) practically (which would already be practical), but rather a horizon that is not at all in question for praxis?' (93)

The task of a-legality as I understand it relates to what 'is not at all in question for praxis.' The irruption that it invites is to merge that other horizon with ours, in order to bring another world into view. Praxis philosophy had, at one

point in its history at least, attached itself to that task too departing from a material premise. But that would take our discussion in yet another direction. Let us stay with this one and attempt to formulate the dilemma concisely.

Maybe one way to put it, as Lindahl himself often reminds us, is that whatever boundary is in question can only be thematised from the inside. The a-legal only ever runs alongside legality, and it is legality that marks a-legality's intrusions in its own lexicon and within the ambit of the referential unity that only legality (*vis-à-vis* illegality) can furnish. And what in the end remains problematic in the distinction of levels is that a-legality hovers uncomfortably between them. It professes a radical discontinuity. But to mark a limit, to mark anything, its reception must be in terms that precede its newness. One might put the question in this context in this way: On what register is a-legality going to state its claim? How are we to understand its *semiosis*? I would suggest, against Lindahl here, that its claim is in the field of being-against, that its demand is irreducibly political, irreducibly, that is, to the semantic field of legality, conceivable only on a register that, if one might put it teasingly in a way that Hans is surely going to object to, as constituent yields nothing at all to the order of the 'constituted'.

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