

BOOK REVIEWS

Hans Lindahl, *Fault Lines of Globalization*

Raf Geenens

Hans Lindahl, Fault Lines of Globalization. Legal Order and the Politics of A-Legality (Oxford: Oxford University Press, 2013), 286 p.

In a time when many legal philosophers are bogged down in controversies over minor technical issues, while others are lured by the promises of more empirical approaches to the law, Hans Lindahl's book *Fault Lines of Globalization* offers a welcome counterbalance. Here is an author who firmly believes that the first task of legal philosophy is to contemplate the nature of a legal order. Moreover, Lindahl does so on the strong assumption that a legal order is nothing like an object or a set of rules that we simply find in front of us. Instead, he accepts that what we consider to be legal or illegal (and what we *can* consider to be legal or illegal) is a question that is always already answered for us. This is the starting point of the whole book: we always find ourselves in the midst of a legal order, and reflection on the law must therefore take into account that this is the perspective from where we apprehend it. This implies that Lindahl's book is emphatically an exercise in *continental* legal theory; not necessarily in the sense that it is a direct continuation of earlier continental theories (such as those by Schmitt or Kelsen), but in the sense that it attempts to make the insights of twentieth century continental philosophy, in particular those of existential phenomenology, productive for the philosophy of law. This is the principal strength of the book but, as is often the case, it might also explain some of its weaknesses.

Lindahl's story is structured around three key terms: boundaries, limits, and fault lines. Importantly, these are not three different elements that can be found within a legal order, but rather three aspects or properties in light of which we can understand the operations of a legal order. Legal norms regulate human behaviour because they set up *boundaries*: spatial boundaries (e.g. norms delineating certain spaces as spaces where we can buy things), but also temporal boundaries (e.g. norms specifying when doing business is permitted), qualitative boundaries (e.g. norms determining what goods can be sold), as well as subjective boundaries (e.g. norms identifying certain persons as sellers and others as buyers). At the same time, a legal order is limited. Certain actions are simply not (and cannot be) regulated within our current legal order; in this sense it can be said that there is a realm of possibilities beyond or outside the *limits* of the particular order in which we find ourselves. Usually, we are not aware of these limitations, but in fact every legal order does close itself off: certain forms of behaviour are given legal meaning (they are either legal or illegal), while other behaviour simply has no place in this grid.

In rare cases, forms of behaviour that cannot be categorized in our current set of legal/illegal distinctions, can nonetheless become very significant. According to Lindahl, certain sophisticated forms of civil disobedience, which completely upend 'normal' behavioural expectations, fit this bill. What such acts do, is make us aware of the limits of our legal order and, more than this, they challenge 'how a concrete legal collective draws the limit between legal (dis)order and the unordered' (p. 158). At such occasions, which Lindahl calls moments of 'a-legality', we become aware of the fact that our norms could be different and – more generally – that our legal order makes social life intelligible at the price of excluding other possible ways of ordering social life. In other words, a-legal behaviour creates privileged moments where the 'finitude' of our legal order reveals itself. Instead of a solid legal norm, we suddenly experience the contingency of this specific norm; it is as if a rift, a *fault line*, opens up in our legal order. We are confronted with the gap between 'what a collective can order – the orderable – and what it cannot order – the unordered' (p. 175).

Already from this very short summary, it can be gathered what is actually happening in Lindahl's book. Against those positivists who want to describe law as a set of rules, Lindahl claims that a legal order is first and foremost a *symbolic order*. Rather than lying visibly in front of us, legal norms make things visible for us; they make us understand the world and ourselves, as members of a legal community, in a specific manner. In Lindahl's words: 'they disclose something as something' (p. 122 ff.). For instance, if I see myself as a buyer making purchases (the example is Lindahl's), it is because the law has ordered social reality in this manner. Thus, by creating normative order, the law opens up a world of meaningful actions. Yet it can only do so by simultaneously closing off other possibilities (for instance: a world in which goods are distributed, not according to who can pay for them, but according to who needs them).

This description of the law as a form of symbolic order is arguably the book's most important merit; it shows us a perspective that is almost entirely absent in contemporary legal theory. But it also elicits a host of questions. For instance, one can wonder why the author is not more open about this and does not engage more systematically with the philosophical tradition that one constantly feels in the background. Yes, there are references to Husserl, Heidegger, Gadamer, Merleau-Ponty, and Ricoeur, but a more sustained and more explicit dialogue might have made it easier for the reader to understand where, for instance, a notion such as 'a-legality' has its roots. The quasi-absence of Foucault is similarly surprising, as Lindahl's description of legal order bears more than a passing resemblance to Foucault's idea of a 'truth regime'. For Foucault, an order of truth lays down what kind of statements can be considered true or false, and thus makes meaningful speech possible; yet it does so by creating a certain blindness for the limits of the order in which one finds oneself. (In this regard, there is an 'alliance' of thought between Foucault and the phenomenological tradition, as Rudi Visker among others has demonstrated.) What Lindahl basically does, is transposing this type of reflection to the field of law. According to Lindahl, 'each

boundary drawn by a legal collective establishes what it deems to be important and relevant, partitioning it from what is unimportant and irrelevant' (p. 95). 'A-legality', then, is 'the objection that cannot be heard', or 'an opinion that falls outside the scope of the reasonable' (p. 183-184).

Lindahl's description of legal order as a species of symbolic order is so convincing, that one sometimes wonders what is specific about *legal* norms. Lindahl stresses that a legal order, and in particular its moment of closure and exclusion, 'gives rise to a collective self, whereby a manifold of individuals are to view themselves as a group agent' (p. 156), that is, it serves 'the identification of a legal collective as a self' (p. 191). But could the same not be said about politics? Indeed, Lindahl himself, in his previous work, has extensively described this 'symbolic' working of political power.

Although the book's argument is primarily philosophical, Lindahl manages to show its practical bite. If a legal order is inevitably constituted by *excluding* certain things, what should we do when confronted with a-legal claims that cannot be included within the grid of our current legal order? One possible answer would be to affirm that the law is, and cannot but be, expression of a collective identity, and hence simply continue to exclude. Another, rather kinder answer, would be an appeal to get beyond our current limitations: legal orders should become ever more inclusive and might eventually synthesize all possible normative claims.

Lindahl associates this latter answer with Habermas, but considers it to be profoundly flawed. The mistake lies in that our legal order's finitude is treated here, not so much as an existential condition, but rather as a factual, temporary shortcoming that we will eventually be able to overcome. This is the error made in much of today's cosmopolitan theory (a topic which, contrary to what the title suggests, is not central to the book's argument). In much of the literature on this topic, a global legal regime – as foreshadowed by the universalism of human rights law or the new *lex mercatoria* – is supposed to be boundless or universal because it has no geographic boundaries. But that would be to forget that the finitude of law is a more fundamental condition. Every legal order, even one that stretches the entire globe, is still a particular order: it structures our social world in a specific way, it makes certain forms of behaviour appear as meaningful (legal or illegal), while other behaviour remains excluded as irrelevant.

This moment of closure is constitutive for any legal order and cannot be undone. Like a 'birthmark', Lindahl writes, it 'accompanies a legal order throughout its career' (p. 7). The correct answer then, according to Lindahl, lies in a politics of what he calls 'collective self-restraint'. Although we should be open towards 'strange' claims and try to set up dialogical relations of reciprocity, we should be aware that this reciprocity starts from an 'initial situation of non-reciprocity' (what Lindahl also calls 'the non-reciprocal origin of reciprocity' (p. 234, 236)), that is, a 'closedness' we will never completely overcome.

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This practical message is important and timely, but the reader remains somewhat hungry as to what it would imply in actual legal or political practice. Admittedly, the book's purpose is not to jump from phenomenological questions to concrete institutional answers. But it does make one fear as to how this message will be digested by the broader community of legal theorists. Lindahl's approach is highly sophisticated and even 'path-breaking' (as Neil Walker recently described it in *Etica&Politica*), yet Lindahl writes in a rather idiosyncratic language, does not really engage in dialogue with other contemporary legal philosophers and mostly stays clear from the dominant discourses in the discipline. In this regard, Hans Lindahl's book might itself operate as a fault line: coming in from the outside it might put legal philosophy, as it is currently practiced, in touch with its own limitations and its own *finitude*.