

MEET ME IN THE MIDDLE?

NICOLE ROUGHAN*

	INTRODUCTION	423
I.	LINDAHL ON INCLUSION, EXCLUSION, AND AUTHORITY.....	428
II.	INTERACTION THAT IS NEITHER ON MY SIDE OR YOURS.....	430
III.	THE OVERLAPPING MIDDLE: PLURAL SUBJECTS	433
IV.	BEYOND THE FUNCTIONAL+ ACCOUNT	435

INTRODUCTION

Hans Lindahl’s new book *Authority and the Globalisation of Inclusion and Exclusion* offers much to interest theorists of authority, legality, and pluralism. Its core contribution builds an account of “asymmetrical recognition” into a theory of authority to explain the interfaces and interactions of emergent global legal orders. The concept of recognition, Lindahl argues, “offers the most promising way of effecting passage from a functional to a normative concept of authority”¹ by emphasizing the relation between assertions of authority on behalf of a collective, and the practices of recognition that include and exclude both participants and strangers to that collective. Lindahl’s work develops a model of authority in which ‘restrained collective self-assertion’² enables one represented collective to recognize another without the “constraints of reciprocity”³ that are typically favored by both universalist and particularist accounts of the authority claimed by global legal orders.

Lindahl’s work is carefully and persuasively argued, first setting up a functional account in which “authority is what authority does.”⁴ In this account, authority is (and does) “the articulation, monitoring and

Copyright © 2019 Nicole Roughan

* Associate Professor, University of Auckland; Rutherford Discovery Fellow, Royal Society Te Apārangi.

1. HANS LINDAHL, *AUTHORITY AND THE GLOBALISATION OF INCLUSION AND EXCLUSION* 229 (2018).

2. *Id.* at 287.

3. *Id.* at 344.

4. *Id.* at 327.

enforcement of the point of joint action”⁵ for a represented collective which posits a legal order as its own. Lindahl then shows how demands for recognition, both from those included in and those excluded by that ordering, reveals the inadequacy of a strictly functional account of authority. A functional account cannot answer the practical question about the limits of its own commonality, or justify the practices of inclusion and exclusion in which it engages. As the book progresses, Lindahl uses concrete examples including alt-globalization movements and their claims for recognition of alternative legal orders, to demonstrate that authoritative practices of setting boundaries—which both include and exclude persons and their valued activities—generate normative challenges to those orders’ claims to commonality and to expectations of reciprocity. The latter part of the book is then devoted to articulating Lindahl’s own theory in which the assertion of authority on behalf of a collective can itself be restrained through practices of deference, the suspension of claims to legal ordering, or other techniques of engaging in asymmetrical rather than reciprocal practices of recognition.

Lindahl’s novel placement of asymmetrical recognition inside an account of authority makes this book an original and important contribution to the ongoing reconfiguration of theories of authority in the global context. There is a great deal here with which I agree, but I will focus this comment on two (related) matters arising from the way in which Lindahl regards the ‘inter’ of interaction between authorities representing collectives, which I will term here the idea of ‘the middle’. This commentary then concludes with observations about the implications for Lindahl’s effort to offer a functional and normative account of authority that nevertheless stops short of full normativity because it rejects any imposition of conditions laying claim to the ‘the right or the good.’

The title of this commentary is not frivolous, despite being borrowed from the contemporary radio airwaves.⁶ It poses a specific question that one represented collective might ask of another, in the course of a legal ordering that generates their interaction outside of either’s boundaries. I argue that this question, ‘why don’t you just meet me in the middle?’ does not amount to a collective self-assertion as Lindahl explains it in his pivotal account of asymmetrical recognition set out in Chapter Six. In contrast, it is an invitation that does not set out to control the interaction it generates, nor does it suspend its own ordering in deference to the other.

5. *Id.* at 76.

6. The title, the formulation of ‘the middle,’ and its invitational question, are borrowed from my children’s favorite pop song of the month in which the review symposium was held. *See* ZEDD, MAREN MORRIS, GREY, *THE MIDDLE* (Interscope Records 2018).

My core comment is that Lindahl's account of recognition between legal orders, and the 'restrained collective self-assertion' that is bound up in the exercise of authority directed both inwards and outwards, serves to illuminate only one (albeit broad and important) category of interactions that may occur between legal orders.⁷ Thus the inclusion and exclusion of Lindahl's title capture two key incidents of interaction between collectives (and their authorities), but do not exhaust the range of ways in which an authority representing a collective inwards might also represent that collective outwards into the abstract and concrete zones of interaction that make up 'the middle.'

It is important first to clarify that my questions for Lindahl are posed within the account of authority that he favors, which I will characterize as a 'functional+' account. Lindahl defends the interaction of functional and normative elements of authority, but steers away from fully normative conceptions of authority, or examinations of its legitimacy. Lindahl is concerned to examine authority not as the normative power to change reasons (e.g. by imposing obligations upon subjects) or to govern in a manner legitimated by subjects' participation, but as the representation of a collective that is *putatively* unified by the setting of default standards to be asserted over insiders and outsiders.⁸ Lindahl's work on the practices of inclusion and exclusion that accompany such authoritative setting of boundaries does not ask whether such practices would generate reasons for those subject to their claims, nor whether they are justified in some other way, nor indeed how any interactive practices among emergent authorities in global legal orders might affect such justifications. Yet at the same time, Lindahl carefully explains and argues that the representational claims involved in the setting of boundaries, and the practices of recognition they require, inevitably raise normative concerns (that are evidenced by the contestation of those very boundaries). Indeed the whole point of infusing the idea of recognition into the account of authority is to highlight the in-built normative implications of collective self-assertion. Lindahl argues, however, that rich normative theories of the right or the good cannot escape universalist tendencies which fail to recognize the other at all (either as included in or excluded from the collective). His functional+ account instead emphasizes that the key to understanding what authority does is the notion

7. Lindahl expressly limits the ambition of his own account and does not claim to offer a full-blown theory of authority amidst global legal orders. LINDAHL, *supra* note 1, at 30.

8. As Lindahl notes, he does not directly consider the implications of his thinking for a Razian model of a normative power to change the reasons applying to a subject, in which subjection of the individual as an individual is based on reasons between the authority and the individual subject (albeit in light of his or her social relations including relations in a collective). Compare JOSEPH RAZ, *THE MORALITY OF FREEDOM* (1986), with JOSEPH RAZ, *THE AUTHORITY OF LAW* (2d ed. 1999).

of order and ordering, involving (i) an assertion of the (revisable and contingent) limits of what a collective will accept and what it will reject, as well as (ii) the limits of what (and who) it will subject to legal ordering. At the core of Lindahl's functional+ notion, therefore, is not a normative claim to change reasons, or in other ways legitimately govern, but a claim to represent and then assert a putative collective's standards and values.

Given this focus upon ordering (rather than its evaluation against some standard of justification), the key to Lindahl's account is the collective's self-assertion, which harbors both representation and recognition.⁹ Assertion, however, is just one way of understanding the idea that authority must be somehow projected outwards. Normative theories of authority typically treat the outward projection of authority as a claim to an entitlement to govern, while functional accounts are concerned with assertions of effective governance. Lindahl's offering here falls into the latter category, but checks it against the evaluative considerations that are imported by the ideas of representation and recognition. This middle road thus invites the query whether his explanation of assertion captures enough of the nuanced and differently valuable ways in which authority may be projected, in light of different forms and values of recognition and representation.

There are at least three distinctive ways in which to conceive of the middle into which authorities project their forms of legal ordering. Two of these, I argue, are not well captured by the account of 'restrained collective self-assertion' that Lindahl offers.¹⁰ The first conceives of a space of activity that is genuinely in between collectives (and their legal orders). This imagines that there can be a space between what one collective recognizes as the outward-facing boundaries of another collective, and what that other collective asserts as its own boundaries. Lindahl's notion of asymmetrical recognition captures a difference between what each legal order projects as its boundaries, but the resulting account of restrained collective self-assertion does not explain the content of what may happen in light of that difference. Arguably, there may be a space or gap between the asserted limits of each legal order, which is not necessarily a no man's land where both sides fear to tread (but which may usefully buffer between them). It might have an altogether different atmosphere as an empty space of opportunity, which neither side claims or operates as its own. In Lindahl's terms, this may be a

9. See LINDAHL, *supra* note 1, at 195 ("[R]epresentation is the key to a concept of authority which both includes and supersedes its purely functional interpretation . . .").

10. Lindahl suggests that "collective self-assertion covers the entire spectrum of responses to a summons to action . . ." *Id.* at 351. The core of my objection challenges this claim.

space in which there is strong ‘a-legality’ on both sides,¹¹ and yet still triggers an interaction. (For example, this may be a way of reading the highest-order relations of constitutional pluralism, or shared/deferred sovereignties between collectives). Alternatively, it might be a space that is rich in institutional forms belonging to neither order but able to adjudicate or arbitrate between them (as in the case of the rules and institutions of public international law). In either case, the space between belongs to neither nor is within either’s asserted limits.

The second sort of middle has a different character and is important for different reasons. It conceives of a space that is not vacant, belonging to neither, but is rather an overlap – belonging to both. More precisely, an overlap exists when persons are subject to more than authority,¹² or in Lindahl’s terms, are included in more than one representation of putative collective unity.¹³ On a functional model of authority, such overlap would arise whenever a person is in fact included by multiple authorities representing (and ordering) different putative collectives and their activities.¹⁴ For example, there may be functional boundary-settings that generate overlap of legal orders even when there are points of conflict between the authorities.

A third sense of the middle is the one powerfully captured in Lindahl’s work. It is the sense of a meeting point, pivot, or other boundary at which one collective’s self-assertion meets another’s. Lindahl carefully and persuasively explains that asymmetries of recognition between collectives (and their asserted limits) mean that these boundaries may not match in content (one’s asserted limits might draw a line that does not match that of its interlocutor). It is important to my argument here that the asymmetry is not represented (at least not expressly) in Lindahl’s work as a juridical gap

11. See also HANS LINDAHL, *FAULT LINES OF GLOBALIZATION: LEGAL ORDER AND THE POLITICS OF A-LEGALITY* (2013). Lindahl’s work on a-legality here draws on this earlier work.

12. In my earlier work, I have set out an explanation of the differences between interaction and overlap. That account however, like other points of comparison with Hans’ work, is differentiated by its emphasis on the existence of legitimate authority, and its normative account of authority as a reason-giving power. It offers a roughly Razian alternative to Lindahl’s functional account offered here. In places, this commentary will offer points of unity or conjecture between our work on authority, but a full consideration of how the two may complement or conflict with one another is beyond the scope of the present comment. Compare NICOLE ROUGHAN, *AUTHORITIES: CONFLICTS, COOPERATION, AND TRANSNATIONAL LEGAL THEORY* (2013).

13. See LINDAHL, *supra* note 2, at 109–10 (“A collective, i.e. the unity implied in we[] together, is always a *represented unity*, a unity that is only given indirectly The contestability of claims to unity entails that a collective is never fully a unity, hence never wholly identical to itself. In the process of including those who are to view themselves as a collective self and excluding the rest as other-than-self, representation brings other-than-self into the fold of collective selfhood: ‘not in our name.’”) (emphasis in original).

14. And not by the existence of multiple authorities that are legitimate for the subject.

or space in between legal ordering. It is instead two boundaries that are treated as different but not distant; without a gap that needs to be bridged.

The question is whether Lindahl's alternative model of authority—in which restrained collective self-assertion involves asymmetrical recognition of and by collectives—can include different kinds of projections of authority to account for the range of options for interactions in these alternative 'middle' zones. The alternative projection that I think is missing from Lindahl's account is not assertive but invitational; not deferential but cooperative. Its core acknowledges that there is something to be worked out, or something at stake between the collectives, which is not subject to the limits of either (a matter that is a-legal to both, in Lindahl's terms). Importantly, it cannot therefore be resolved through complete deference because of the need for meeting in the middle, where both sides contribute as their own polities require them to do, with each representing their collective as a partner to a process that neither can conclude alone. Accepting that such a practice may be somewhat unusual, and may be operated rarely, the key question is whether such a practice is or can be consistent with (or even part of) a claim to authority made by a collective's representatives. If so, it should be explicable within a model of authority in which the globalization of inclusion and exclusion is also alert to possibilities of generosity and a restraint *from* asserting oneself at all.

The question for Lindahl is: can legal ordering countenance these other kinds of middles where there is either overlap or interaction that takes the form of invitations issued and received, or overlaps negotiated so as to work out cooperation or coordination? Would these be sufficiently assertive to count as projections of authority at all, in his view? To bolster that question, the following sections explain the two notions of the middle on which Lindahl might be pressed to say more: first the space in between the collectives where neither asserts itself, even in restrained fashion, and second the space of overlap where the assertions are not only mutual, but shared or interdependent.

I. LINDAHL ON INCLUSION, EXCLUSION, AND AUTHORITY

One of the key insights of Lindahl's book is the complexity he adds to the binary of inclusion and exclusion. In the setting of legal limits, in the ordering of behaviors, and in the self-assertion of a putatively unified and emplaced collective as represented by an authority, Lindahl tells us that legal ordering—the 'default settings for joint action'—includes while it excludes. Yet the familiar binary of inclusion and exclusion, which is particularly striking in the examples of emergent global legal orders that Lindahl discusses (though is a feature of all legal ordering), is given special

complexity through his addition of relations between ‘self’ and ‘other.’ Drawing on theories of recognition to import not only cognitive but also normative insights about self, self-relations, and inter-subjectivity, Lindahl interlaces the inclusion/exclusion relation with the self/other relation, so that there can be inclusion of the other as one of us *or as* other than us. Inclusion thus does not necessarily assimilate and thereby collapse the otherness of those who are included. At the same time, exclusion can be applied to both the other *and* to parts of the collective self, its values, and activities, which are deemed (via the exclusion) to fall outside of what we (the included self, as represented by an authority) claim to stand for (see chapter six).

Lindahl interprets these practices of inclusion and exclusion as practices of collective self-assertion, which are at the core of his model of law as “institutionally and authoritatively mediated collective action” (IACA; chapter two). Lindahl argues that the inevitable and at times unjustified practices of both inclusion and exclusion—which accompany self-assertion—can be exercised with restraint, as in the examples of margins of appreciation, doctrines of complementarity in the ICC, autonomous legal regimes, and transnational recognition agreements. I agree with Lindahl that these can be read as fitting examples of restraint within his IACA model of law. They model, to varying degrees, precisely the kind of interaction that seeks to assert control *in* relational space but not to assert control *of* that space.

As with all institutional solutions, however, they meet their limits wherever they meet a counter-institution, or a peer institution doing the same thing. If there is to be any functional authority in that relational space, it seems that on Lindahl’s model it must either be that of one or other system asserting itself (albeit in restrained fashion); or that of an external collective’s own self-assertion, one whose functional authority extends precisely over the domain of ordering relations between the two (now subsidiary) orders, and so ruling out *by ruling over* their plurality. In the former, more straightforward scenario, the collective’s assertion is replaced by a form of subjection to another authority. In such a scenario, one collective’s restrained assertion is likely to have more functional, *de facto* power, than the other; and so come to dominate the practice of interaction in ways that make the restraint seem merely notional or even disingenuous. In such cases, the restraint pales into the assertion. This may be as Lindahl intends. As he has noted in our discussions of this work, his IACA model of law involves restrained self-assertion, not assertive self-restraint.

II. INTERACTION THAT IS NEITHER ON MY SIDE OR YOURS

Lindahl explains that, in setting the boundaries of joint action, authorities necessarily include and exclude. That may be so, but that is not all that they do. There is also a defensible ontology in which interaction involves authorities stepping into the inter-authority space to meet in the middle. That meeting may be indefinitely postponed (just as Lindahl says the unity of a collective may be indefinitely postponed), but the key lies in the reaching out, the invitation, the asking of this commentary's titular question, rather than any successful meeting being concluded.

Here, however, lies the crucial challenge. Can there be an invitation that is not to come over to my side of the boundary, and so is not a veiled involuntary inclusion? If so, it may be characterized not as a reaching out to include (as in the collective self-assertion model), nor even a "holding back to hold out" (as in the restrained variant of the model) (345, 348); it is instead a reaching out to invite a meeting in the middle. Such an invitation is importantly different from a full assertion of the self over the other, a full deferral to the other, or disinterest in the other's existence or operation. Starting with the latter, not only would such disinterest or disengagement amount to failure to recognize that other, but it would also be a failure on the part of the authority to represent outwards, indeed to self-assert at all. If authority is understood as an assertion of a putative unity of a collective and its joint action, then some degree of projection outwards is required. Nor must an invitation involve cooperation in a joint enterprise or joint endeavor, which would in some sense include the other as one of us – a partner in some project. An invitation also differs from what Lindahl describes as an inclusion that preserves the other as other (than us) in the manner of a cooperative but not assimilating project. Not all cooperation assimilates, just as not all conflict excludes. There may therefore be contestations over the question: 'what is our joint action to be about?' that reshape the 'default settings for collective action' not by authoritative responses that include or exclude anew, but by authorities realizing their own limitations and so inviting representations by others; not just asserting their own limits upon both those represented and those to whom representations are made.

There are of course plenty of ways in which an invitation could become an inclusion or an exclusion. For instance, if one party's material dominance means that it invites the other to an impossible meeting, there is no real invitation at all. An invitation that is couched in terms or with conditions that the other side cannot meet, is similarly exclusionary. On the other hand, an invitation to a turf that is already claimed, in order to assert that claim, is clearly an inclusion rather than an invitation.

Next to anticipate two potential replies. The first might suggest that, although a collective self-assertion might indeed interact in a space that it does not control through its own assertion, nor defer entirely to the other, these interactions are not part of the exercise of authority for or by that collective. They may be the exercise of some other function in which a representative works on behalf of a collective, but does not project authority. In my own work I have argued that normative claims to authority can be understood to be relative, interdependent, and thus to involve interaction between authorities that does not collapse the very existence of authority.¹⁵ In the functional+ account however, the concern becomes whether the activities entailed in such claims to relativity still involve authoritative action at all. I think they do, and that there is a practice of collaborative leadership and boundary-pushing or boundary-broaching open to an authority, which need not always project outwards through restrained assertion. I'm not sure the same response is available to Lindahl, given his commitment to the authority as assertion model, but anticipate he may have a better response up his sleeve.

A second reply may be still more powerful, holding that, in any effort to reach out (even one that is well-intentioned and made in a spirit of generosity), an authority inevitably misrecognizes the other and so asserts itself at least in some form. It cannot do anything else because in its institutional form it is limited in the way it sees itself, its activities, and the other. This is part of the logic of asymmetry, which Lindahl explains with such care and insight. One collective's reaching out to another is inevitably a projection of its own settings and standards for behavior (and its standards for recognition itself), which will determine whether and how that group sees the other and thus may count as assertion. While such settings may align with the way the other (recognized) collective sees itself, it cannot be the same as its self-representation and self-assertion. Thus what might appear as an invitation still operates as an inclusion of the other, *as other*, but an inclusion nonetheless.

To bring this home to the idea of recognition, consider just one example that appears in the exchanges of recognition between legal orders of settler states and Indigenous peoples colonized by that settlement. Some of these feature both historical and contemporary examples of the association of legal orders, such as that involved in the relationships between the state and Indigenous legal orders of Aotearoa New Zealand.¹⁶ Work on such

15. See ROUGHAN, *supra* note 12.

16. See e.g., Joseph Williams, *Lex Aotearoa: An Heroic Attempt to Map the Maori Dimension in Modern New Zealand Law*, 21 WAIKATO L. REV. 1 (2013); Natalie Coates, *The Recognition of Tikanga*

associations speaks to a difference between an interaction driven by assertion, and an association involving invitation. There are of course shades of interpretation as to how any particular example may be read to fit within either category, and any fit must be revisable in light of ongoing practices of (mis)recognition between collectives (and their authorities). These don't always entail invitations and, even when they do, they are difficult and problematic, yet the example shows the possibility of at least the invitation to, if not the successful fulfilment of, a meeting in the middle.¹⁷

There is a subtext here that it is possible for collectives, as represented, to interact in good faith, with generosity, with respect for plurality of values, cultures, conceptions of the good, ways of being, and even forms of personhood. That may be overly optimistic or simply unrealistic in many contexts of interaction, and it is not my case here that such willingness is either often evident or easily realizable. The point remains, however, that those who represent collectives may be burdened with the pursuit of such efforts, not only to represent inwards, but to model invitational representations outwards that are not assertive even in the most restrained sense.

It may be that, to get around the tendency of institutional legal orders towards closure around pre-set limits, invitations to the middle require a degree of openness on the part of the actual agents – the persons in the roles of authorities - and not the institutions of authority. This places an enormous resource constraint on the actualization of such meetings, as do other factors such as distance, communication failures, cultural or linguistic misunderstanding (all of which can contribute to failures of recognition). It is not my claim that such meetings will always (or even often) be practical or possible, but the issuing of invitations is not precluded by such constraints.

To see how all this is possible is to look beyond bare institutional tools for ordering the interaction of legal regimes. I leave it for others here (and elsewhere) to evaluate the potential and potency of institutional or inter-institutional forms, rules, and institutions designed to regulate interactions,

in the Common Law of New Zealand, N.Z. L. REV. 1 (2015); Nicole Roughan, *The Association of State and Indigenous Law: A Case Study in 'Legal Association'*, 9 U. TORONTO L.J. 135 (2009).

17. Contemporary developments in the example of the association in Aotearoa New Zealand include statutory recognition of the personhood of a river and national park, to match their recognition as persons in Indigenous law. For analysis see e.g., Katherine Sanders, *'Beyond Human Ownership'? Property, Power and Legal Personality for Nature in Aotearoa New Zealand*, 30 J. ENVTL. L. 207 (2018). Others may take more critical assessments of these contemporary practices that I regard as invitational. For example, there is an argument that any kind of statutory form that gives effect to a relationship of recognition, or any form of common law reasoning that embraces Indigenous law, is inevitably an assertion of the state's legal order and not an invitation to the middle. I would respond that in substance, contemporary examples of such practices are more invitational than assertive.

and instead look at the first-person singular perspective of those who are doing the ordering: in whose hands the institutions are being operated and applied, in whose practices the collectives are being represented to have putative unity of both identity and action, and in whose names the invitations outwards are most plausibly issued.

Both of these points show the crucial role to be played by the persons who fill the roles of authorities, something which Lindahl's first-person plural perspective of represented collectives does not directly address.

III. THE OVERLAPPING MIDDLE: PLURAL SUBJECTS

The second kind of middle from which to challenge the restrained collective self-assertion model is perhaps more important. It is also easier to conceptualize as it does not turn upon an admittedly fine distinction between restrained assertion and invitation (as above). This middle turns attention away from represented collectives, and their invitations to meetings and forms of exchange/interaction that neither controls, to the persons subject to the representations (the persons who are included in the putative unities of a collective, willingly or otherwise).

This second challenge to Lindahl is that there are people who are not straightforwardly just included or excluded, rather they may be doubly included by being subjected to (and not merely affected by) the inclusive claims of more than one collective. In that context, the worry is not a separation or gap between the assertions of authority creating a space for invitations, rather the opposite: there is an overlap. That overlap renders plural subjects - not in Gilbert's sense of the collective subjects of a single authority - but rather persons who are plurally or multiply subject to authorities. Furthermore, and importantly, such plurality of subjection may have value for the subject, such that a failure on the part of one authority to recognize the plurality is a failure to recognize a matter of value for the subject - and arguably in turn a failure to recognize the subject herself.¹⁸

One way of understanding the point, in Lindahl's own terminology, is to suggest that the restraint in restrained collective self-assertion needs to operate inwards as well as outwards - so that the boundary-setting that includes does so with sensitivity to the likelihood and implications of shared subjects. Lindahl argues that the representation of a collective - the inevitable incident of authority - is to represent it as a unity. Arguably, even if that is

18. The connection between recognition of the person, recognition of values the person holds, and recognition of the value of the person, is controversial. See, for example, the analyses offered in JOSEPH RAZ, *VALUE, RESPECT, AND ATTACHMENT* (2001); Arto Laitinen, *Interpersonal Recognition: A Response to Value or a Precondition of Personhood?*, 45 *INQUIRY* 463 (2002); Leslie Green, *Two Worries about Respect for Persons*, 120 *ETHICS* 212 (2010).

the case (and I am not sure that it needs to be), a collective need not be represented as an exclusive or sole unity *for and to* its own subjects.

Overlap can (but need not) create difficult practical conflicts for subjects. For instance, conflict is created for an Indigenous person who is functionally subject both to the authority that an Indigenous collective asserts internally, and the authority that the state asserts when it includes that person as a subject of its general jurisdiction. These conflicts often arise in circumstances where the law of one order is being asserted in ways that conflict with the other (e.g. in relation to criminal law, family law, or the regulation of property or resources), but can equally arise when the law of one order generates an opportunity that may conflict with the assertion of the other (e.g. in holding the state to account under its own standards of public or private law).¹⁹

More generally, this emphasis upon the person who is plurally subject to authorities turns attention to the persons being recognized within collectives and across collectives. For such persons, and concentrating on the first-person singular for a minute, the invitation suggested in the title of this commentary might be read as an appeal from that person to ‘her’ plural authorities to sort themselves out, to meet in the middle, so as not to misrecognize her by including her in their assertions of collective and putative unity *without regard for her inclusion in the other*. The subject herself asks, and perhaps may rightfully demand, to be met by her multiple authorities, together, in the middle ground where each asserts their authority conscious that they are within the asserted limits of the other.²⁰

This lens also, and importantly, opens up a worry about what this all means for the recognition of and between those persons who are not so easily represented as collectives, because of the absence of putatively effective default settings for joint action. It seems that the very forms of recognition and representation that Lindahl examines, and even asymmetrical exchanges of recognition between them, only capture those who are plausibly represented as members of collectives (and thus as being collective subjects of authorities). Consider, for instance, the significance of such representational and recognitive practices for women, which as a category appears to fall outside of Lindahl’s own examples of emplaced and bounded

19. For instance, claims made by indigenous groups against the state but using the state’s public or private law are sometimes thought to undermine claims to the assertion of indigenous legal ordering that would reject the state’s ordering altogether. *But see e.g.*, Seth Davis, *American Colonialism and Constitutional Redemption*, 105 CALIF. L. REV. 1751 (2017); Seth Davis, *The False Promise of Fiduciary Government*, 89 NOTRE DAME L. REV. 1145 (2014); Moana Jackson, *Changing Realities: Unchanging Truths*, 10 AUSTL. J. OF L. & SOC’Y 115 (1994).

20. *See* Nicole Roughan, *Politics and Relative Authorities*, 16 INT’L. J. OF CONST. L. 1215, 1215–22 (2018) (capturing what I have elsewhere explained as ‘relative authority.’).

collectives. Any effort to represent women as a putative collective, and to authoritatively set limits or default settings for joint action, runs up against the diversity of ‘things that ‘we’ care about’, as well as practical and functional difficulties caused by the overlap of competing representative claims whose plurality detracts from their efficacy. Such tentative (and not even putatively unified) representations fall outside of Lindahl’s direct interest in collectives that are represented effectively, and authoritative boundaries that are in fact emplaced and operated. It may be a strength of Lindahl’s view that it explains not only how claims and responses to recognition play out in the authoritative politics of boundaries, but also why claims for recognition (of value and of persons) outside of any apparently effective (and not merely putative) collective unity are so easily dismissed by those in authority who already have the comfortable backing of an effective collective. In that case, however, it would be instructive to see how Lindahl’s modelling tracks the difficulties surrounding representation, collectivity, and assertion that are so prominent in much of feminist legal theory and theories of recognition.²¹

I take it, not incidentally, that the challenges detailed here need not derail the notion of asymmetrical recognition that Lindahl so persuasively offers. They do, however, suggest the need to re-examine ways in which asymmetries might include invitations to meet in the middle, and not merely inclusions and exclusions.

IV. BEYOND THE FUNCTIONAL+ ACCOUNT

One way in which a more analytic inquisition might tackle that task is to ask Lindahl for more clarity over the differences and relationships between different ways of conceiving what happens between legal orders (whether in the middle or in their own regulatory and representative spaces). There is a difference between the ideas of symmetry and reciprocity. Reciprocity entails that some things of value are exchanged between two parties. Though the content of what is exchanged need not be identical nor even symmetrical, there is at least some sense that, to be valuable, reciprocity requires that the value of what is exchanged be comparable, vis-à-vis those who give and those who receive. Symmetry, in contrast, need not involve an exchange but can entail practices in parallel. Both parties doing the same thing generates a kind of symmetry. Alternatively, symmetry might entail one party doing the exact reverse of the other (if there is a directional practice

21. See, e.g., Nancy Fraser, *Feminist Politics in the Age of Recognition: A Two-Dimensional Approach to Gender Justice*, 1 *STUD. IN SOC. JUST.* 23 (2007). This is to be read in light of Fraser’s broader critiques of recognition. See, e.g., NANCY FRASER & AXEL HONNETH, *REDISTRIBUTION OR RECOGNITION? A POLITICAL-PHILOSOPHICAL EXCHANGE* (2003) (debating with Honneth).

involved, then to be truly symmetrical one must proceed in the opposite direction to the other, creating mirror-image symmetry).

There may be relations and relational practices where the two come apart, so that to highlight asymmetry (as Lindahl does) does not undermine accounts of reciprocity (as he suggests). There could be, in a sense, a reciprocal exchange of asymmetrical recognition; indeed that might be the best way to conceive of the relationships between states and Indigenous peoples that I have used as an example here and elsewhere. The asymmetry of their recognition of each other is inevitable, but if recognition is also of value for either (or both) of the orders, then it can be sought in exchange for something of value in a reciprocal interaction.

All this talk about value, however, hints at the creeping normativism entailed in the functional+ account, for as soon as Lindahl invites the idea of recognition into the account of authority, it necessarily imports an evaluation of what and whom is to be recognized. A bare functional account of recognition might be satisfied with endorsing the various self-understandings of those who make claims for recognition, and a functional authoritative response might be satisfied with setting boundaries, in light of such claims, without having to adjudicate their value. Lindahl deliberately stops short of testing the limits of such an account, so as to avoid the universalizing tendencies that he associates with theories of the 'right and the good,' and what he deems to be the inclusionary impulses that accompany theories of reciprocal recognition (Chapter 4). Yet the invocation of recognition, so central to his own account, means that the questions of whether (and how) recognition is responsive to value cannot be avoided. Instead the familiar challenge is the need to justify, without imperially or universally dictating, which recognitions are to count as such.

Lindahl considers that his account of authority enriched by asymmetrical recognition may seem disappointingly thin to a normative theorist. Here I disagree most firmly – the account is anything but thin or disappointing—but it raises the question of how much of the normative and evaluative content of the idea of recognition is to be imported. The crucial questions surrounding the richer normative notions of recognition, which evaluate peoples' self-understandings to see whether their recognition is valuable or justified, will be directly relevant to the robustness of the authoritative boundary-setting, with its exclusions and inclusions, examined in Lindahl's book. His work should be taken as a clear provocation to rework the implications of such full-blown ideas of recognition into richly normative theories of authority.