

Doing Justice to Recognition

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[See table of contents](#)

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Article abstract

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ABSTRACT

The traditional role of justice is to arbitrate where the good will of people is not enough, if even present, to settle a dispute between the concerned parties. It is a procedural approach that assumes a fractured relationship between those involved. Recognition, at first glance, would not seem to mirror these aspects of justice. Yet recognition is very much a subject of justice these days. The aim of this paper is to question the applicability of justice to the practice of recognition. The methodological orientation of this paper is a Kantian-style critique of the institution of justice, highlighting the limits of its reach and the dangers of overextension. The critique unfolds in the following three steps: 1) There is an immediate appeal to justice as a practice of recognition through its commitment to universality. This allure is shown to be deceptive in providing no prescription for the actual practice of this universality. 2) The interventionist character of justice is designed to address divided relationships. If recognition is only given expression through this channel, then we can only assume division as our starting ground. 3) The outcome of justice in respect to recognition is identification. This identification is left vulnerable to misrecognition itself, creating a cycle of injustice that demands recognition from anew. It seems to be well accepted that recognition is essential to justice, but less clear how to do justice to recognition. This paper is an effort in clarification.

RÉSUMÉ

Le rôle traditionnel de la justice est celui d'arbitrer des situations où la bonne volonté ne suffit pas à régler un différend entre les parties concernées. Il s'agit d'une approche procédurale qui suppose une relation brisée entre les personnes impliquées. La reconnaissance, à première vue, ne semble pas refléter ces caractéristiques de la justice. Pourtant, elle est souvent présentée comme rétablissant une justice entre les parties concernés. Le but de cet article est de s'interroger sur l'applicabilité de la justice à la pratique de la reconnaissance. L'orientation méthodologique de ce papier est inspirée d'une critique kantienne de l'institution de la justice : il s'agit surtout d'en souligner les limites, ainsi que les dangers d'une extension trop large de sa portée. Ma critique se déploie en trois étapes : 1) Certains comprennent la justice en tant que pratique de la reconnaissance, à travers son engagement à l'universalité. Cette perspective est cependant trompeuse car elle ne fournit aucune prescription pour la pratique effective de cette universalité. 2) Le caractère interventionniste de la justice est conçu pour s'appliquer aux rapports antagonistes. Si la reconnaissance est théorisée uniquement à travers ce prisme, le point de départ demeure celui d'une division antagonique. 3) Le but de la justice à l'égard de la reconnaissance est d'obtenir une visibilité. Cette visibilité demeure cependant vulnérable à l'égard du déni de reconnaissance, créant un nouveau cycle d'injustice. Il appert ainsi que si la reconnaissance est essentielle à la justice, il est moins facile de rendre justice à la reconnaissance. Cet article vise à éclairer la relation entre ces deux termes.

The aim of Rawls' political philosophy is plain and clearly stated: to establish principles for a just, well-ordered society in an age of reasonable and yet irreducible pluralism. In *Political Liberalism*, this is the task posed to political philosophy and he takes great pains not to exceed its bounds. It is readily apparent, however, that the impact of Rawls' work has taken certain elements previously outside of its scope along in its wake. While Rawls' main concern is redistribution, recognition is certainly a familiar addition to the justice paradigm that his work inaugurated. Many philosophers have rightly taken up this cause to see that liberalism more broadly can attend to the multifarious social injustices that a purely redistributive response cannot.²

This would only seem to be a positive step forward. That First Nations in Canada are given due respect for their distinct cultural heritage rather than merely sensationalized tax differentials may appear to some to be a logical extension of Rawls' *primary goods*, which are needed in order for citizens to maintain their status as such. Others, however, may argue that such recognition conflicts with the role of the state in establishing a neutral ground ripe for individual political adhesion. Either way the interpretation is sliced, there is little doubt that Rawls' aim for justice raises difficult questions that he himself had not explicitly asked. What is rather more debatable is whether or not the responses to these questions must themselves be posed within a justice framework. Although this framework does seem to carry the momentum of current discourse, "just recognition," the aim of this paper is to gain a critical foothold on the reach of justice into spheres for which it actually may not be entirely appropriate - and this is importantly to say that it might still be partially appropriate.

The success of this critique will depend in part on what is meant by recognition. Given the debatable character of recognition, this critique is made all the more precarious. I do not intend to work toward settling this disputable nature of the term. There are, however, some competing understandings of recognition that have gained more momentum in the literature and perhaps serve more plausibly as initial premises in the argument here, even if they aren't entirely firm premises. The view of recognition on which I will be relying runs back to the Hegelian and Fichtian origins of the term as a process of intersubjective, mutual affirmation, but has been significantly updated in Axel Honneth's work, and complemented by studies in developmental psychology. As much as I will rely on this view here,

I will not defend it here. As a result, the critique advanced here maintains an experimental character. Put this way, it asks what is the relationship between justice and recognition, were this view of recognition vindicated.

The thrust of this critique is three-fold:

1. In the first instance, there is an immediate attraction to justice as a principle of recognition, but which is ultimately unfulfilling. Its commitment to equality - be it of opportunity, resources, welfare, etc. - offers an appealing site of recognition that would seem to skirt dangers of discrimination. But it offers no prescription for the actual practice of recognition. The fallacy in this argument derives from substituting the principle for the practice;
2. justice is an intervention of the state that assumes a fractured relationship between the parties involved. The responsibility for recognition is then shifted to governments as an intermediary when recognition is sought and needed inter-subjectively among citizens as well;
3. recognition in its justice form establishes a cycle of injustice for which it provides no adequate solution. In their response to recognize, institutions of justice must identify, and in doing so cultural images are reified, leaving them prone to perverted forms of discrimination, thus requiring recognition from anew.

To better conceptualize the intent and approach of this paper, it is perhaps best seen as a critique in a modestly Kantian sense of the term. That is, an *exposé* of the limits and pitfalls of justice, and perhaps more pointedly, of the dangers it presents to itself, if left unchecked to freely answer for all the social ills that might confront political philosophy. From this the hope is to be able to chart out a safer path for justice while provoking an awareness of the peril associated with deviation. While this paper will rest within the focused aim of bringing this critique to the fore, the ultimate purpose of this research more broadly is to ask *how we may better do justice to recognition*.

1. THE LURE OF JUSTICE

Before taking up our critical stance in the matter, it is helpful first to sketch out the notion of justice employed here. For this I do not wish to offer anything new, but simply to focus our attention on the subject of this critique, which is for Rawls the subject of justice or

the “basic structure” (and this remained constant throughout his work from *A Theory of Justice* to *Political Liberalism*).³ It is thus a fairly statist view of justice that is being targeted here; “social” as it was put in *Theory*, “political” in *PL*. This view goes back to Hobbes (there is no justice in the state of nature, but only once a sovereign is in place to adjudicate intersubjective differences) and applies equally to Rawls. The basic structure of society enables and encourages fair cooperation among its citizens. Just as a referee ensures a fair game of soccer, so too is a third party required in society to oversee the fair exchanges of its citizens, hence the state and its extended institutions. We are very much talking about the law, democratic institutions, but also about identifying race on university applications, state sponsored pride parades and mixed gender hockey leagues; all of which pose important questions that seek a response from such institutions and practices of the state.

The initial question to pose in this analysis is: *what is the point of justice?* It is of course an all-too-familiar thought that it would be nice if people could just get along. This initial reaction to conflict will even sometimes turn to a more fundamental reflection on how to coordinate this, expressed in the idea that it would be nice if people would do the right thing. Indeed, where this is the case, justice seems to be of little need.⁴ But alas we lie, cheat, fight and steal, and all of this even when sometimes we think we are doing the right thing, that is, even when we think we are justified. Of course, to leave justification subjective is to leave the concept entirely void. The *Leviathan* is a famous witness to this sort of problem, and it is of no small consequence that its resonance is felt even in the work of Rawls.⁵ Now it is precisely to this type of subjective dissonance - call it in contemporary terms, irreducible pluralism - that justice is intended to respond.

Here we may note a lexical ordering of action:

1. we aim to do the right thing⁶;
2. where this is disputed or not at all present, an impartial intervention will cut and choose our half of the cake for us. Despite the compelling simplicity of this ordering, it would seem rather abused, all too often lost in a theoretical sleight of hand that places institutional justice ahead of intersubjective exchange among citizens; recognition is taken along in with this reordering of the lexical hierarchy, remaking it into an object of the impartial adjudicator rather than the ethical practice of ordinary

citizens. For in the larger ideal of society, justice is something that we would have to resort to very little, but when we do, the ideal of justice itself is to be grounded in principles of fairness that respect the dignity that citizens are accorded as subjects of justice. We may even say that through the principle of fairness there is a certain recognition inherent in the very idea of justice.

Christian Lazerri, for example, pursues just that line of reasoning, pointing out that for Rawls himself “self-respect is the most important of all primary goods, that is, the primary of all primary goods...recognition is the first condition.”⁷ But to conflate self-respect with recognition just misses the point on two levels. *First*, it is true that claims of recognition are often aimed at a politics of inclusion, that is, a sincere commitment to the universal, which can very well be grounded in the idea of self-respect as a primary good to which all are entitled. But left in this abstraction, it provides no prescriptive programme to remedy the historically entrenched abuses of the universal that we still struggle with today. “If the theory is truly universal and independent, presupposing no particular social situations, institutions, or practices, then it is simply too abstract to be useful in evaluating actual institutions and practices.”⁸ It may seem silly to us now that a term as encompassing as ‘person’ was interpreted under the Constitution of Canada to apply exclusively to men until 1929. Yet today we are equally perplexed by the application of universal precepts that, in themselves, offer no such directions. The campaign for gay marriage in Canada followed precisely this line of reasoning and remains a contested issue.

This is not some surface-level platitude that history plays on loop-track. Rather, the objection raised here is that appealing to abstraction is a red herring. The universality of self-respect is relevant for Rawls only as a consequence of purely hypothetical negotiation that need not tarry with the complications of empirical context.⁹ It is a matter of philosophical thriftiness, far from a sufficient response to demands for recognition. We need only look to colonial history to see how blind adherence to compelling yet *necessarily* void abstractions engendered some of the most perverse consequences for so-called humanist or civilising agendas. A more contemporary example can be found in the undiscerning application of Structural Adjustment Programs that have resulted in disastrous economic fallout for many developing countries. Lazerri is right to point out that due consideration is given to the necessity of healthy social esteem

in working out a theory of justice, which is to attend to the conditions of modern pluralism. In order for individuals to be able meaningfully to set and pursue life goals and plans, they must possess a certain degree of self-respect and -confidence, without which such goals and plans would never attain any value in the first place.¹⁰ But none of this speaks to the actual manifestation of this as a principle of justice; it tells us nothing about how it is to come about, nor how it corresponds to actual demands for recognition in their own historicity. It deliberately skirts the technical questions of institutionalization or historical and cultural pertinence. It substitutes principles for practices, drawing on the former's allure of simplicity.¹¹

The second objection we can raise against leaving recognition in the abstract is that it quite simply offers no response to claims of difference. Historically, the politics of inclusion has been at the core of recognition where marginalised groups would seek to enfranchise the privileges of the dominant class. It was - and still is - very much an appeal to this kind of universalisation predicated on the basic principle of human dignity. Particularly present in multicultural societies, however, fears of overbearing, unjust or simply disrespectful assimilationalist agendas manifest themselves in a politics of difference. The response may be offered here that such a politics can only gain traction through the same appeal to universal respect for one's culturally given horizons, which are so integral to the fabric of one's existence that to neglect them is to commit a serious harm.¹² There is some logic here in that even in a politics of difference it is hard to conceive of how this could theoretically be acceded to on anything other than equal terms. Yet here we confront a similar problem to the first objection: it is another red herring that diverts our attention away from the real meat of the issue by reducing its categorical foundation to a matter of justice. On the one hand, this foundation is important to acknowledge. Justice is about fairness in a straightforward Rawlsian sense of the term and we should not wish to depart from this ideal. There is a large difference between 'recognize which day of the week I take my rest', and 'recognize the superiority of my religion'. On the other, slightly more substantive hand, there still remains the question of how to respect equally people's preferences for their day of rest, and not simply in a way that reduces them to a matter

of calculation and economics, nor saddles claimants with excessive difference baggage. For this, the undiscerning application of universal precepts of justice seems ill-equipped. As a result, we find greater traction in the process of recognition as an intersubjective phenomenon. We shall return to this idea later.

Let us now take a brief interlude to consider where all of this stands in relation to the Kantian critique that we are working through. (Recall that this critique is merely to rest within the spirit of Kant's critique of reason; its value is thus derived from conceptual analogy and not rigorous parallelism.) At the beginning of the *Transcendental Doctrine of Elements*, Kant famously lays out the two constitutive elements of knowledge: "Thoughts without content are empty, intuitions without concepts are blind."¹³ The Understanding has nothing to process without the material data of the Intuition, such is the composition of our grasp of the phenomenal world. Reason deludes itself when it bypasses this first step in claiming to speak of objects in themselves, to which we have no access, as all phenomena are given through the manifold of knowledge as described above. We may draw analogy here in juxtaposing ethics and justice in similar fashion to knowledge and reason.¹⁴

Think of the lexical order of action mentioned above: 1) we aim to do the right thing; 2) justice intervenes when we don't. Justice here applies to the first aim where it fails at the intersubjective level, and it makes little sense to proceed otherwise. The argument that we will develop in the following two sections is that where this condition is not met - that 1) should fail - justice does not obtain, and the consequences of thinking that it does will be shown to be problematic. Thus, as reasoned understanding of objects only obtains where the manifold of knowledge has been presented, so too does justice only obtain where a failed ethical relationship has presented itself. Rawls states, "one can say, in brief, that the circumstances of justice obtain whenever persons put forward conflicting claims to the division of social advantages under conditions of moderate scarcity."¹⁵ But why bother making the laborious appeal to an intervention of justice in this sort of situation when the conflict might very well be resolved by the parties concerned on their own?

2. MISRECOGNIZING JUSTICE: AN UNJUST INTERVENTION

The definition of justice offered above is precisely one of intervention. It would then seem quite paradoxical to speak of justice being an unjust intervention. Though here I refer simply to the abuse of the institutional application of justice, where it has failed to meet the conditions described above. The opposition is not between the just and unjust in ideal form, but the just and unjust uses of institutional justice. To add one more caveat, this opposition does not apply to particular laws, that is, the material manifestation of justice.¹⁶ With these restrictions in place, we may set the discussion in motion by asking the following question: *in principle, can justice recognize?* My answer is a qualified no.

No, because justice is not the appropriate site where recognition takes place; qualified for reasons that we will deal with later. Recall that its role is to intervene where social cooperation and cohesion are absent or have been undermined. To this end, it is an objective stance towards conflict, one that must abstract itself from the situation to assess it impartially. The parties in turn shift their gaze from each other, in deference, to the disinterested observer. Now if this were the primary site through which citizens come to understand one another - through governmental decrees, such as the recognition of the Québécois nation; or court rulings, such as the carrying of kirpans in schools - then there is left little room to assume anything but the fractured relationships to which justice is meant to respond. Recognition, it will be argued, occurs on the level of contextualized intersubjectivity, that is, where ethics becomes possible. An over-consuming justice discourse calls on us to look elsewhere, away from one another, conferring responsibility for recognition to that which is deliberately alien to the very site where it is supposed to take place.

I now want to move to a discussion of the distinction that these two domains bear in relation to one another with respect to recognition, and in doing so, we must add one more condition to justice obtaining. In the last section we said that ethics must fail in order for justice to be applied. To this we add that in order for justice to be applied, *it must also be possible for it to provide a solution to the problem.* The argument I will now turn to shows the impossibility for this condition to be met in our current problem, that is, the impossibility for justice to recognize, and the consequences that follow when we think it can.

Kant concludes in the first *Critique* that he had to limit reason to make room for faith. In turn our aim is to make clear the limits of justice and make room for the practice of ethics. We will do so in making use of some of Axel Honneth's work, while bracketing a good portion of the rest.

In his 2005 Tanner Lectures, Honneth attempts to resurrect the term of reification from the dated iterations of Marxist ideology in the work of Georg Lukács and apply it to the field of recognition. The lecture is a thorough examination of the social ontology that follows from Lukács' analysis of commodification and its objectifying consequences for human relations. Further credence is given to the relevance of this term as Honneth works through various invocations (with albeit different vocabularies) found in Heidegger, Dewey and Cavell, all of whom speak to the rudiments of human exchange as involving some kind of emotive or emotional interaction. The aim of the lecture is not simply to breathe new life into reification by noting its appearances in admittedly quite different philosophers. There is a more crucial drive to theoretically fasten down the way in which it may speak to a politics of recognition, which it is not fit to do its un-tempered Marxist form. In its original form, reification is a false frame of social reference that precludes the possibility of meaningful human engagement. Presented as such, "Lukács thus conceives of his project not as unveiling an already present possibility of human existence but instead as a sketch of a future possibility."¹⁷ From this Lukács is able to weave the analysis of reification into the larger struggle of the proletariat, making it a wholly political issue that would take the discussion of (a form of) recognition down a path it has arguably slugged over in years past. Thus in order for the term to be saved, the more appropriate conclusion to draw is that reification is rather a concealment of an already-existing form of social praxis, as opposed to one which has been obliterated by other, more destructive ones.¹⁸

Ultimately, Honneth is working toward a theory of intersubjectivity as primary, that is, of recognition over cognition, and he does so with a rich discussion of both theoretically conceptual challenges and empirical examples from developmental psychology. Recognition is thus that which is concealed by an overzealous desire for cognition, which is necessarily objectifying, and possibly reifying. Here I only wish to echo his ordering that he refers to when discussing the epis-

temological debate on whether or not we can have cognitive access to other people's mental states:

The attempt to describe our access to another subject's mental states on the model of a cognitive relation does not do justice to the fact that mental states simply are not objects of knowledge. Even the mere assertion that I "know" about my own pain or my own envy belies the fact that I am far too caught up in or "impaled upon" these mental states to be able to claim that I have detached cognition or knowledge of them. In my relations to others, I am not an object about which I impart information through descriptive statements...According to Sartre, this asymmetry can only be overcome by conceiving of a subject's relation to another person in the same way in which we conceive of the relation between a second subject and *its own* mental states. Just as we do not in this case speak of knowledge, but of affect-*edness* or involvement, we should not conceive of a communicative agent as an epistemic subject but instead as an existentially engaged subject who does not merely neutrally take notice of other persons' emotional states but is rather affected by them in its own self-conception.¹⁹

The argument is further supported by the value association that must precede any incentive to cognition. By this Honneth refers to the process of abstracting from the original context of encounter - be it with objects or other people - to comprehend the object in question free from any non-knowledge interferences, that is the contextual blinders. There must ultimately be an attachment of value to an object to be understood, which cannot itself be a process of cognition.

This seems right and I have no desire to challenge it. Rather I would like to mobilize it and take it in another direction to make use of its analytical force. Up till now, I have been attacking the amorphous division between ethics and justice and the subsequent free range that recognition is given to move in, out and between them. In light of Honneth's analysis, we now have the appropriate justification to raise our red flag and call foul.

The first thing that must be made clear on our part, and recalled for Honneth's part, is that ethics and justice do not stand in opposition to one another, and nor do recognition and cognition. As noted above, Honneth runs through a number of different interpretations of reification in how it is occasioned and what its result is. Returning to Lukács, it was suggested that reification comes about when we are forced to adopt neutralizing stances toward our relations with one

another. But now Honneth raises further challenges in navigating through the relationship between recognition and cognition, as we would be insufficiently attentive to equate the latter (which may indeed be categorized as a neutralizing stance) with the reprehensible state of reification. He rightly points to the integral role cognition plays in advanced and ordinary social development. The issue therefore, in Honneth's nuanced reading of recognition, is not with the use of cognition *per se*, but the abuse of the relationship between recognition and cognition. Indeed, the former was shown above to constitute the very possibility for cognition to come about in the way it reveals objects to us that we desire cognize. This leads Honneth to offer recapture reification in the following fashion: "I thereby mean to indicate the process by which we lose the consciousness of the degree to which we owe our knowledge and cognition of other persons to an antecedent stance of empathetic engagement and recognition...[through which] we cross the threshold to pathology."²⁰

From this we may sketch out our parallels in the relationship between justice and ethics, and will do so advancing the idea that the former inherently adopts a cognitive stance, the latter a stance of recognition. The first connection we may note is, as shown in the previous section, a relationship of dependency between justice and ethics. Certain conditions must be in place for justice to apply, and ethics - or the failure thereof - factors in on this list. We may make the connection between cognition and justice fuller by noting that there are likely other factors aside from recognition we would want to include in giving rise to cognition, just as there are multiple necessary conditions to give rise to justice. Honneth's discussion says nothing of the process of how we move from recognition to cognition, but only the ontogenetic relationship they bear to one another. Our earlier discussion mentioned not only the lexical ordering of ethics and justice, but also the full conditions to be met for the latter. There is thus a complimentary relationship in that the insufficiency of ethics in certain circumstances brings to our attention an appeal to justice.

The second connection to draw is the abuse of justice to which we alluded earlier in this section. Now this connection will require a little more work to flush out as we need to show, 1) how it is that justice is cognitive and ethics is of recognition (not just analogically), and 2) how the relationship between the two is abused, resulting in an unjust intervention, which ultimately bears the marks of reifi-

cation as well. To the first point, cognition is a practice of distanced observation, a detachment from one's more embodied influences to gain a rational comprehension of the object in question. Justice likewise is a cognitive stance in that its virtue or purpose is based on an abstraction from context to arrive at impartial evaluation. This is no better expressed than in Rawls' original position where the principles are developed deploying this very strategy. Individuals there are deprived of any information that may lead them to support principles that favour their particular situations. "The veil of ignorance prevents us from shaping our moral view to accord with our own particular attachments and interests. In this sense we look at our society and our place in it objectively."²¹ Thus at its highest order, justice is founded on such procedures, its material expression is simply meant to accord with what has already been laid out in a theory of justice.

Recognition and ethics on the other hand is a bit more of difficult match. From Honneth we understand well in what recognition consists, but a clear definition of ethics is a much less settled terrain in the broader landscape of political philosophy. The concern here, however, is not to lay final claim to the meaning of ethics, but to locate a term that speaks to the intersubjective process that we already have in mind, and for this ethics would seem to be appropriate, despite its multiple uses. I hesitate, however, to offer any hints of possible philosophies that may correspond to the idea used here so as not to charge the term with excessive baggage that the length of this paper would not permit us to shoulder. This conceptual hurdle can be overcome, however, by considering recognition as part of the package that makes up an ethical relationship. Indeed, we need not offer a robust explanation of the practice of ethics, but only signal recognition as one of its composite parts. In order for me to take up a sense of obligation, compassion or responsibility toward another individual, there must be acknowledgment of the situational circumstances that call on me to do so. In this sense both cognition and recognition may be subsumed under the larger set of practices that are justice and ethics respectively, each adopting the appropriate stance to their practice.

To the second point, the abusive relationship between ethics and justice, there is some divergence with the reification resulting from an overzealous quest for cognition. In the final version of reification in Honneth's piece "individuals are moved away from empathetic interactivity and towards a distanced, calculating view of each other."²² But now the abuse of justice is flagged precisely when it prevents

any type of view between anyone, it intervenes preemptively. To invoke the visual used earlier, the parties of justice literally shift their (ethical) view from one another to a (justice) view of the disinterested observer. Thus we cannot really say that individuals do in fact calculate against one another through a justice framework. The very point is that they are removed from any robust contact with one another, and this includes relations of calculated exchange. Reification comes into play through the disinterested third party that calculates on behalf of the individuals concerned. Thus unlike Lukács' lament of intersubjective reification through one-to-one economic exchanges that entail a masking of genuinely sincere interaction, justice reification cancels the possibility for any exchange at all. The parties involved are assumed to be suspicious and too self-interested from the start for us to permit that they have any contact with one another whatsoever. This is the essence of *de-moralizing* human behaviour. Lukács abstains from assigning moral culpability in reified sociality as it "lacks the subjective intent necessary to bring moral terminology into play."²³ The rationale of cost-benefit analysis becomes so 'consuming' that it simply establishes itself as the *modus operandi* of quotidian life. Justice reification goes one step further in getting in between the possibility for a greater sincerity to be masked. A Kantian reading of this arrangement could even go so far to say that such is the ultimate de-humanization, to deny the possibility of ethical interaction, for him, disinterested action.²⁴

In addition to the de-moralizing (possibly even de-humanizing) consequences carried by an overzealous justice approach to recognition, there is the obvious and unfortunate irony for the program of justice generally. For it is no small achievement for liberals that justice be precisely the institution that recognizes the universal humanity of its subjects through the unbiased and equal application of the laws of a given jurisdiction. Yet the venture to secure liberal equality in the sacrosanctity of justice is doomed to fail in its misrecognition and distrust of the individual capacity to act ethically, the mark of which being the root of deontological liberal thought. It is as if the charge against the formalism of Kant was skirted by relocating the un-human demands of his moral philosophy in the hands of the impersonal institution of justice, the tragic result of which is the negation of the foundation on which the entire project of equality rests in the first place, leaving the possibility for *justice to be an unjust intervention*.

There is perhaps one more presentation note that should have been mentioned at the beginning of this critique, which is that it is offered here as a dramatic caution. I do not believe that we have actually arrived at the point of a de-humanizing practice of justice, but the theoretical sketches suggested above serve to point to the dangers of such an abuse. Kant's critique of reason was a reactive treatise to its delusional uses; our critique is proactive to the omen of a justice that claims to recognize, while eclipsing the very ethical possibility to do so. And although as much as it may appear to be the case, I do not wish to portray justice as some silent ethical killer that roams fiendishly in between our intersubjective relationships. We may be more nuanced in our understanding here. The concern raised rather points to the dangers of allowing recognition to be mediated through exchanges that fail to meet the demands for the conditions of justice. But the concern goes even deeper than theoretical speculation on the conditions of justice and the resultant damages to ethical responsibility. In the next section I will show reproduction of misrecognition that follows from a purely justice approach.

3. IDENTIFY THE CYCLE OF INJUSTICE

Up to this point, our critique of justice has rested on the level of recognition as a process as opposed to an outcome. The last section shows that, by the very function of justice, it cannot offer a sound process to meet the demands of recognition. But the outcomes of struggles for recognition matter too. The argument may be made against our critique that despite this seeming impossibility of justice to recognize, government and the judiciary certainly play important roles when it comes to the advancement of particular groups' agendas, such as recognition. Gay marriage could only be institutionalized through the appropriate institution, and this would very much seem to be a question about recognition. This, however, I believe to be a dilution of the conceptual utility of recognition. It is true that claims are vetted through government channels to seek recognition for a *particular* aspect that has been thus far neglected, discriminated against or misrepresented in some fashion. Same sex couples lobbied for their recognition as equals under the state institution of marriage because they believed to be arbitrarily discriminated against for a *particular part* of who they are and how they wish to identify themselves. This should not be confused, however, with a claim to essen-

tializing someone as gay. This particular feature becomes pertinent after it has already been identified and discriminated against - justice can only respond to that which has been identified, in this case, sexual orientation.

The concern is that the practice of recognition, left to the identifying role of justice, runs up against its own limits in ways that lead to a vicious circle of injustice. It can do no more than offer an essentialized view of its claimants, something that may be pertinent to the particular claim being made, but rapidly slides down the slope from insufficient to offensive and degrading once removed from the context of justice. But it is precisely the offensive and degrading, among other things, that lie at the base of misrecognition and all the discriminatory baggage that comes with it. In responding to one claim for recognition, new demands are spawned from the externalities of the original claim. This downfall from judicial recognition to hurtful discrimination, while not a necessary regression, merits some consideration.

In the introduction of Patchen Markell's influential book, *Bound by Recognition*, he sketches out similar problems to those that I am confronting here. While his larger aim to explain recognition as a struggle for personal sovereignty parts ways with the objectives of the present paper, there is an initial common ground.

[T]here is a profound irony involved in the ideal of recognition: the very desire that makes that ideal so compelling...may itself help to sustain some of the forms of injustice that many proponents of recognition rightly aim to overcome. This irony makes the pursuit of recognition at best an equivocal instrument of emancipation, replete with double binds. Movements organized around demands for recognition may indeed produce concrete gains for members of subordinated groups. [Yet] in some cases, even apparently successful exchanges of recognition may reinforce existing injustices, or help to create new ones.²⁵

The irony of this all may be viewed generally as the inevitable excess our language bears, and for which we hold no control. While Canadian Prime Minister Stephen Harper may be perceived as offering an honourable gesture in recognizing the Québécois nation, Albertans or First Nations, for example, may perceive this same act as undue favouritism; Quebeckers themselves may even see it as disrespectful coddling or inappropriate interference with their own self-identity. There is thus

an insufficiency of our language to live up to the full intents of its use. But there is a more fundamental insufficiency that even the intents of our language cannot meet.

The politics of recognition seems inevitably intertwined with a struggle about identity, and Markell's sovereignty thesis is quite telling on this point. Without embarking on the burdensome metaphysical quest to reveal what identity is, we may at least indicate towards its ambiguity to suggest what it is not, or rather what it cannot be reduced to. Herein lies the greatest dupe of justice recognition: even when we win, we lose. Just as in the case with Honneth's discussion of our emotional states, identity poses similar problems of disclosure, and in turn greater problems for appropriate recognition of that identity. It may be objected that introducing the theme of identity is an unnecessary complication in otherwise plain and simple claims against plain and simple discrimination. However, the wrench being thrown here is not aimed at the existential status of claimants seeking compensation for the Chinese Head Tax. It is aimed at the idea that we have done justice to their identity by recognizing the injustices they suffered as bearers of it. Such an idea would seem to underappreciate the interactive and dialogical character of identity as a constructive activity. This is not to say that identity is but an ongoing process, a game that can never be halted to regroup and reflect on strategy. The danger arises once we think that the game is over and we can declare a winner.

But is justice not precisely about making declarations? Reaching a decision where none was to be found otherwise? Indeed it is difficult to imagine it proceeding any other way. Although I doubt many would see justice as making decisions on people's identity, nor would many lawmakers or jurists feel themselves to be performing such tasks. We do, on the other hand, seem to feel as though they are capable of meeting the demands for recognition. Yet if recognition is rooted in the ongoing struggle of identity relations, then what can justice do but offer a piecemeal portrait of only those features of one's identity that have already been - and will likely continue to be in some way - the object of discrimination? Of course we cannot expect the institutions of justice to uproot the deep-seated sources of discrimination, but nor should we expect them to forge into the "vital human need" of recognition.

CONCLUSION

The question was posed earlier on, *can justice recognize?*, to which we responded no. The answer originally given, however, was not a straightforward no, but a qualified no. The qualification that I would like to offer is the conclusion that remains after the above observations. For no matter the number of arguments that may be provided against the idea of justice recognition (and there are indeed many more that are far more sophisticated than the ones above), there persists the idea that the greatest injustices of misrecognition require the strong arm of the law; that just as justice recognition may be insufficient to meet the full complexity of identity politics behind recognition, so too is intersubjective exchange insufficient to produce the necessary change required in institutionalized structures of prejudice and privilege. After all, is this not what recognition claims are about? I am largely sympathetic to this view and the last misinterpretation I would like this paper to give rise to is a thesis against the role of justice in combating widespread, social discrimination. Justice quite obviously plays a critical role is this combat, that is to say, it does do something, even if it is not recognition. I am not prepared to offer any neologisms for this something, nor did this something serve as our main topic of discussion - it was epiphenomenal, if anything, to our greater concern with what justice does *not* or cannot do in relation to recognition. The arguments made in the paper were directed at the injustices that result when its role is not properly adhered to, and this was contended to result from ambiguities and misunderstandings of what we mean by recognition, in how it works and what it is intended to achieve.

The methodological inspiration to clear up these puzzles came in the form of a Kantian critique, for the very purpose of circumscribing the proper application of justice so as to avoid the pernicious consequences of its abuse. In this spirit we opposed ethics and justice against one another to determine which one can lay legitimate claim to the practice of recognition, though the bulk of the argument was rather to keep it out of the reach of justice. The silent premise behind all of this being that it can't be both ways. Ethics and justice are two different practices, involving different actors, proceeding in different ways, to the service of different ends. When recognition is

left ungrounded, vulnerable to the sway of sensationalized politics and the quest for justice, it can as well be caught up with practices, actors, methods and purposes alien to its own. It seems almost second nature now to see recognition as instrumental to the end of a just society. But should we not ask whether justice is the right instrument for recognition? The hope of this paper was to at least provoke some deeper reflection on this issue, to ask what it means to *do justice to recognition*.

ARTICLES

13

ARTICLES

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14

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NOTES

- 1 This paper has benefited greatly from comments and suggestions by Martin Blanchard and Daniel Weinstock. I thank them both wholeheartedly.
- 2 See for example, Nancy Fraser and Axel Honneth, *Recognition or Redistribution? A Philosophical Exchange* (Verso, 2003). A prior concise iteration of Fraser's contribution can be found in "Rethinking Recognition," *New Left Review* 3 (2000): 107-120.
- 3 John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), 11.
- 4 One could make a long list here of political philosophers who pursue such an ideal, spanning from Plato to Thomas More to J.S. Mill, not to mention the whole anarchist tradition.
- 5 John Rawls, *Justice comme équité: Une reformulation de Théorie de la justice*, Bertrand Guillarme, trans. (Montreal: Boréale, 2003), 18.
- 6 The 'right thing' here refers to that which a perfectly sound ethical system would prescribe so that no two actions that follow such a system would ever come into conflict with one another.
- 7 Christian Lazzeri, "Le problème de la reconnaissance dans le libéralisme déontologique de Rawls." *M.A.U.S.S.* 23 (2004): 172. My translation.
- 8 Iris Young, *Justice and the Politics of Difference* (Princeton: Princeton University Press, 1990), 4.
- 9 John Rawls, *A Theory of Justice*, revised ed. (Cambridge Mass.: Belknap, Harvard University Press, 1999), 11, 19, 104, 145.
- 10 Rawls, *Theory*, §81.
- 11 Kant was even keen to this point in a brief passage in the *Critique of Pure Reason* (New York: Palgrave, 2003), B 358.
- 12 See Taylor, "Recognition," 26.
- 13 Kant, *CPR* A 51/B 75.
- 14 We part with the analogy to the first Critique at its climax, that is, to show the proper use of pure reason (or the possibility of synthetic *a priori* knowledge). I am not concerned here to make any arguments analogizing the idea of a pure form of justice. The aim is rather to demonstrate the proper applicability of justice, otherwise put, to bring to light its conditions to obtain.
- 15 Rawls, *Theory*, 110. The position is more thoroughly flushed out in §22.
- 16 This consideration is beyond the scope of this paper and rather departs with our preoccupation over the 'basic structure'. The only short shrift I can offer is a deferral to H.L.A. Hart's *Concept of Law* (Oxford: Clarendon, 1961) and his exchange with Lon Fuller in the *Harvard Law Review* 71 (1958), where Hart argues against the morality of law. We may think of this in the sense that a law can only be just if it accords with our principles of justice, which is to say that the law cannot be just on its own.
- 17 Axel Honneth, *Reification: A Recognition-theoretical View*, 2005 Tanner Lectures, University of California, Berkeley, 105.
- 18 Honneth, *Reification*, 107.
- 19 Honneth, *Reification*, 120-1.
- 20 Honneth, *Reification*, 128.
- 21 Rawls, *Theory*, 453.
- 22 Honneth, *Reification*, 105.
- 23 Honneth, *Reification*, 100.
- 24 On this point as the defining feature of Kantian humanity, see Luc Ferry, *Kant: une lecture des trois critiques* (Paris: Grasset, 2006), 101 ff; as well as Immanuel Kant, *Groundwork of the Metaphysics of Morals*, Mary Gregor ed., and trans. (Cambridge: Cambridge University Press, 2005), 55.
- 25 Patchen Markell, *Bound by Recognition* (Princeton: Princeton University Press, 2003), 5.