Which Justice, Whose Pathology?

Nys, T.

Published in:
Krisis

Citation for published version (APA):

General rights
It is not permitted to download or to forward/distribute the text or part of it without the consent of the author(s) and/or copyright holder(s), other than for strictly personal, individual use, unless the work is under an open content license (like Creative Commons).

Disclaimer/Complaints regulations
If you believe that digital publication of certain material infringes any of your rights or (privacy) interests, please let the Library know, stating your reasons. In case of a legitimate complaint, the Library will make the material inaccessible and/or remove it from the website. Please Ask the Library: https://uba.uva.nl/en/contact, or a letter to: Library of the University of Amsterdam, Secretariat, Singel 425, 1012 WP Amsterdam, The Netherlands. You will be contacted as soon as possible.

UvA-DARE is a service provided by the library of the University of Amsterdam (http://dare.uva.nl)
Axel Honneth’s *Das Recht der Freiheit* is an important book. It has tremendous depth and richness and therefore allows the reader to think about freedom and justice in a nuanced and stratified way. Although impossible to summarize in a nutshell, it explains that these notions are, as I would call it, ‘seriously social’. The realization of freedom or justice is based upon, and therefore requires, genuine intersubjective recognition, status-ascription, and a shared value orientation.

In this regard, Honneth offers an innovating critique of negative or ‘legal’ freedom and, for the purpose of this brief comment, I took it upon myself to provide some critical remarks concerning this part. This proved to be quite difficult because, for a long time, this seemed to me to be one of the most convincing claims of the book. In Honneth’s analysis, it is clear that negative freedom is ‘not enough’, that it is insufficient, that it is only about possible freedom and should therefore be compensated or even overcome by social freedom. Now, although there is very much in these claims that I find convincing, I want to tease out some potential worries by pitting them against a classical proponent of negative freedom. Isaiah Berlin, as is well-known, was not a big fan of Hegel and therefore seems to be the ideal candidate with which to confront a contemporary revival of the Hegelian approach.

Throughout his famous essay Berlin makes a variety of interrelated claims, some of which directly challenge the account given by Honneth. First, freedom, although extremely important, is not the supreme value. Secondly, as such, it can conflict with all kinds of other values, and should sometimes be sacrificed for the sake of these values. Thirdly, to deny this potential conflict is dangerous because it turns freedom into an exercise concept: to be free is then equated with some definitive conception of the good life. Fourthly, and more specifically, freedom – although it bears certain resemblances to these concepts – should not be equated with ‘recognition’, with a ‘sense of belonging’, or the obtaining of a certain identity.¹

The first claim challenges Honneth’s outlook which conceives of freedom as the supreme modern value, the second questions Honneth’s rather strong equivocation of freedom and justice. This raises very general worries: does an analysis of freedom really get to the bottom of issues about justice? Aren’t we talking about two, no doubt interrelated, but different concepts? Of course, the Hegelian assumption about the manifestation of freedom in ethical life makes it the ‘be all and end all’ of practical philosophy, but when re-reading Berlin one begins to wonder who has the burden of proof here.

This general worry also takes a more concrete form when we turn to the chapters about legal freedom for, again, the term ‘legal freedom’ seems to cover up a diversity of values. Shouldn’t we make a distinction between rights (and duties, of course) that have to do with freedom, and those that are about economic equality, or cultural recognition? Why insist that

‘Everything is what it is: liberty is liberty, not equality or fairness or justice or culture, or human happiness or a quiet conscience.’
— Isaiah Berlin (2002a: 172)
these matters are all about freedom? Now this may very well be a verbal quibble, but Berlin also suspects a certain danger.

This brings us to the third and fourth challenge. Most importantly, Berlin agrees with Honneth that negative freedom (or its positive alternative, for that matter) is indeed ‘not enough’, that is, not enough for any good or decent society. And he also agrees that the need for recognition is quintessential. What he rejects, however, is the idea of a monist package deal in which all that is good is subsumed under the banner of freedom (or justice). The danger is the following: ‘What is true of the confusion of the two freedoms, or of identifying freedom with its conditions, holds in even greater measure of the stretching of the word “freedom” to include an amalgam of other desirable things – equality, justice, happiness, love, creation and other ends that men seek for their own sakes. The confusion is not merely theoretical error. Those who are obsessed by the truth that negative freedom is worth little without sufficient conditions for its active exercise, or without the satisfaction of other human aspirations, are liable to minimise its importance, to deny it the very title of freedom, to transfer it to something that they regard as more precious, and finally to forget that without it human life, both social and individual, withers away.’ (Berlin 2002a: 50).

This is a serious accusation and it is of course absurd to claim that Honneth would support the Totalitarian Menace that Berlin was so worried about. Nevertheless, the danger that is indicated here resonates with a problem that Honneth himself is keen to avoid. That problem is the following: if there is a struggle for (or a realization of) freedom, then this would lift the existing institutions beyond the pale of criticism and leave us the job of merely tracing or observing the transition or ‘becoming’ of freedom through historical struggles.2

But this is not Honneth’s tack. More precisely, in order to retain a critical potential (and revive Critical Theory’s objective), Honneth refers to the notion of a ‘social pathology’. He defines this phenomenon as follows: ‘We can speak of a “social pathology” in the context of social theory whenever we are dealing with societal developments that lead to a significant impairment of the rational capacities of the members of that society that enable them to participate in essential forms of social cooperation. Whenever, due to societal causes, some or all members of society are no longer in a position to properly understand the meaning of these practices and norms, we can speak of a “social pathology”.’ (Honneth 2011: 157). In the realm of legal freedom, for example, the pathology consists in this kind freedom becoming the sole reference point, thereby usurping or penetrating the other spheres of justice/freedom. Honneth refers to this phenomenon as a process of ‘juridification’ (Verrechtlichung; Honneth 2011: 162).

Now, although I understand this critique, I have a distinct and eerie feeling that a certain Berlinian danger lurks beneath the surface. Because whose pathology are we talking about? Is it the individual that suffers the disease? Or is the pathology diagnosed by a more competent physician who somehow infers the illness from certain ‘symptoms’, maybe even without the ‘sick’ individual being aware that something is amiss? Is it indeed society that suffers, on behalf and in lieu of its members that claim to be doing okay? Take, for instance, Honneth’s example of Kramer vs. Kramer that serves to illustrate a particular pathology. In his discussion, Honneth observes how a right to divorce has led to the phenomenon of ‘juridification’, a situation in which members of society (i.e., the Kramers) come to see themselves solely as rights-bearers, i.e., as opponents making juridical claims against each other.

Although I understand that such situations are regrettable, and although I acknowledge the phenomenon of juridification, I fail to see how this could be criticized from the perspective of liberty. For one thing, the ‘penetration’ of the legal sphere into family life is not necessarily to be deplored from Honneth’s own perspective on freedom. In Kampf um Anerkennung, he mentions the dynamics of expansion, inclusion and universalization within the legal sphere and interprets it as moral progress, as an increase of freedom and a way to emancipation (Honneth
Honneth’s theory. I wonder how both these accounts, the one from Kampf um Anerkennung and the other from Das Recht der Freiheit, are related, but more importantly, I wonder how the latter account would answer a fundamental question which I’d like to raise in closing. That fundamental question is: who is the judge of one’s (lack of) freedom? Where do we look to answer this question? This is a question, of course, that is central to Critical Theory in the left-Hegelian tradition: it is the question of ‘transcendence in immanence’, the ‘normative surplus’, the identification of the ‘pre-political source of social conflict’, and so on. It is a difficult, yet central, question that relates directly to the methodology of the book (see Celikates 2012). My concern here, however, is focused on the ‘pathology’ in terms of legal freedom. I sometimes have the impression that, whereas in Kampf um Anerkennung there is still a link to individual ‘suffering’, the felt experience of unfreedom and injustice, in the new book this link – with the later Hegel as a source of inspiration – is either severed or severely loosened and the question of freedom/justice is being lifted to the super-individual sphere where the level of oxygen is so low that it becomes difficult for ‘real’ people to discern either freedom or justice.

Thomas Nys is assistant professor of ethics in the Department of Philosophy at the University of Amsterdam. His publications include ‘Virtual Ethics’, in *Ethical Perspectives* (2010) and ‘Autonomy Under Threat: A Revised Frankfurtian Account’, in *Philosophical Explorations* (2009).

References


The notion of ‘social pathology’ seems to give a further critical hook to...
1 See Berlin 2002: 204: ‘[I]t is not with individual liberty, in either the “negative” or the “positive” sense of the word, that this desire for status and recognition can easily be identified. It is something no less profoundly needed and passionately fought for by human beings — it is something akin to, but not itself, freedom; although it entails negative freedom for the entire group, it is more closely related to solidarity, fraternity, mutual understanding, need for association on equal terms, all of which are sometimes — but misleadingly — called social freedom.’

2 Think also of Nancy Fraser’s criticism that there is no way to distinguish between ‘justified’ and ‘unjustified’ struggles for recognition (Fraser in Fraser/Honneth 2003: 227). Or is it just up to history to decide?