

Separation and Multivalence: Opposing or Compatible Notions?

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In his reply to Glenn's separation thesis Pierik convincingly argues that categorisation is a cognitive universal. Flooded with incoming 'data' which may be either noise or information, we need strategies to select what is relevant and in order to fluently cope with recurring situations we develop skills to implicitly classify, cluster or associate whatever happens in our environment as something that does or does not make a difference to our life.¹ This categorisation can be fluid or sharp, depending on the circumstances, and it seems obvious that in a specific context a mutually exclusive categorisation may be pertinent for survival. Such categorisation need not even be conceptual and is not restricted to human beings. One of the participants to the conference referred to the example of an insect that needs the capacity to discriminate between one type of organism and another on the basis of a seemingly trivial characteristic (apart from this the two types are look-alikes). If the insect does not manage to discriminate the organisms accordingly, it will not survive. It seems that the insect's capacity to *separate* the relevant category of enemies from all other organisms in its environment, especially from the look-alikes, is a quality rather than a liability. Doesn't this refute Glenn's separation thesis, which claims that separation is typical for Western traditions and at the root of problems with the intercultural?

When reading Glenn's separation thesis and Pierik's claim that categorisation is a cognitive universal, one may wonder whether they are talking about the same thing. Glenn seems to reject mutually exclusive categorisation (separation) as a default position, preferring sensitive, contextual categorisation that allows for overlap and change. Such fuzzy categorisation

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1 See F. Schauer, *Profiles Probabilities and Stereotypes* (Harvard University Press, Cambridge MA, 2003), who defends the legitimacy of the use of what he calls non-universal generalisation.

does not preclude that in specific situations exclusive binary categorisation is called for, but it does not take this for granted as the only or even most obvious type of categorisation.² Speaking at the level of insects, if categorisation should allow distinguishing between whatever does or does not make a difference with regard to a specific organism within a specific environment, this will often require complex contextual sensitivity and real time adaptation as environments have a way of changing. If the insect mentioned above sticks to its separation when this is no longer relevant, it may still perish. At the level of human concepts social scientists may for instance try to define privacy and autonomy as separate concepts to measure correlations between the level of privacy and the level of autonomy. If, however, these concepts overlap the correlation may be conceptual and it may be difficult to establish to what extent a correlation is also causal. In such a case fuzzy logic would imply a more precise, contextual refinement of the conceptual overlap.

In the interview, Glenn indicates that his separation thesis does not concern separation per se but 'the problems that result from isolating human groups from one another and enforcing arbitrary binary decisions upon people in a decision-making process'.³ It seems to me that here Glenn is not talking about classifying different traditions, but about the fact that even if a person adheres to one legal tradition this does not imply that he cannot also adhere to another. Inclusion in one tradition does not – as a default – presume exclusion from another, even if in specific situations adhering to both may be incompatible. The separation thesis would then refer to the way communities of adherents to tradition should be understood: not as mutually exclusive (separate) groups of people, but as potentially dynamic and overlapping communities. Groups can be dynamic because a person can change his loyalties and because a person (or a people) can change his (their) perception of what counts as a particular tradition. In fact people claiming to adhere to the same tradition will often disagree about what this means (the Islamic tradition is just one example). So, groups can overlap because a person can have mixed loyalties, adhering to more than one tradition. However, this in itself does not mean that this person cannot differentiate between one tradition and another, it rather means that he need not choose except in the case that the constraints imposed by different traditions are – in practice – incompatible. Whether and when this is the case is not given, but needs to be assessed in context. Dynamically overlapping adherence means that cat-

2 About the difference between Chinese and American types of categorisation (contextual or decontextualised), see psychologist R. Nisbett, *The Geography of Thought: How Asians and Westerners Think Differently and Why* (Free Press, New York, 2003).

3 In this issue at 353.

egorisation is a reiterative, dynamic process that requires continuous performative action both on the side of those that categorise themselves as adherents to a tradition and on the side of those that categorise others as adherents, without taking for granted that these processes of inscription and adscription are always congruent. Hirschi Ali may consider herself Dutch, while Rita Verdonk considers her non-Dutch.

In the last case a lawyer may profess that at least in this case the law demands a binary decision: she is either Dutch or not Dutch. This raises the problem of Glenn's objection against 'enforcing arbitrary binary decisions upon people in a decision-making process'. It seems to me that Glenn is suggesting that a person may legally be Dutch for certain purposes and non-Dutch for others (requiring different categorisation depending on the objective), or that a person may legally be both Dutch and French (requiring a choice only in the case of practical incompatibility). Glenn, coming from the field of international private law, can easily cope with a fuzzy standard for being Dutch or non-Dutch.⁴ It is not uncommon for people with more than one nationality to be treated as a non-citizen in the case that there is good reason for doing so. Often one of the nationalities is latent, meaning one cannot appeal to the legal consequences of holding it if one does not have close ties with the country it concerns. This can amount to a range of legally relevant circumstances that determine if and when one can appeal to one's nationality. Of course the outcome of the legal process will be binary: either one can or one cannot appeal to the nationality one is claiming. But this binary decision process is informed by a multivalent range of possible choices. Other than Glenn seems to claim multivalence thus does not deny that a final decision is always binary in this trivial sense.

Could it be that Glenn is referring to multivalence even beyond this? Beyond the acknowledgement of changing and overlapping categorisation⁵ and beyond the fuzzy standards to be used for binary decisions? In societies without a state, or in dispute settlements outside the jurisdiction of the state, it may be possible for a judge to decide in a non-binary fashion: if two people claim ownership of a cow, the judge could decide to give them shared ownership; he may decide to sell the cow and give each half of the price; he

4 Fuzzyness does not necessarily coincide with multivalence. Fuzzyness refers to a state of being underdetermined, while multivalence indicates a discrete set of more than two values that are not necessarily but possibly incompatible in a given situation.

5 About the crucial difference between categorisation as a verb and a noun (an action and the result of an action) see J.F. Glastra van Loon on exclusionary and choice negations in: J.F. Glastra van Loon, *Norm en Handeling: Bijdrage tot een kentheoretische fundering van de sociale wetenschappen* at 123-127 (Wolters-Noordhoff, Groningen, (1987/1956), referring to G. Mannoury, 'La question vital 'A ou B'', in: *Nieuw Archief voor wiskunde* 1943.

may stipulate that one can keep and milk the cow for two years, after which the other can slaughter it and sell the meat. In commercial international arbitration similar compromises may be established by the arbitral court, allowing a range of intermediate decisions:⁶ instead of the exclusionary negation of ownership, the court can allow one party to have its cake while the other party can eat it (half of it, for instance). Whoever wants to object that even this decision is binary, because it attributes shared ownership and does not attribute not-shared ownership, is right. But this is trivial and such bivalence of decision does not exclude multivalence of choice. It also does not mean that the standards used for such binary decisions cannot be fuzzy in the sense of being underdetermined.

6 About mediative adjudication cp. M.A. Loth, *Recht spreken, recht doen: Over de functies en het functioneren van burgerlijke rechtspraak* at 8-14 (Kluwer, Deventer, 1998); D. Salas, *Du procès pénal: Éléments pour une théorie interdisciplinaire du procès* at 36-45 (Presses Universitaires de France, Paris, 1992).