

2001

Dedication for Justice Hans Linde: A Modest Relativism

Leslie C. Griffin

University of Nevada, Las Vegas -- William S. Boyd School of Law

Follow this and additional works at: <http://scholars.law.unlv.edu/facpub>

 Part of the [Legal History, Theory and Process Commons](#)

Recommended Citation

Griffin, Leslie C., "Dedication for Justice Hans Linde: A Modest Relativism" (2001). *Scholarly Works*. Paper 716.
<http://scholars.law.unlv.edu/facpub/716>

This Article is brought to you by Scholarly Commons @ UNLV Law, an institutional repository administered by the Wiener-Rogers Law Library at the William S. Boyd School of Law. For more information, please contact david.mcclure@unlv.edu.

A MODEST RELATIVISM

*Leslie Griffin**

*"[N]o ends can be better than the means of their achievement."*¹

This phrase, quoted from Professor Linde's 1975 Oliver Wendell Holmes Devise Lecture, is distinctive and restrained. It is distinctive in contrast to the usual "the end does not justify the means." It is restrained in its rejection of unattainable ends sought by ever-inadequate means. It expresses the professor's preference for "the morality of process" over the "perfection of unique principles of justice."² After 1975, Justice Linde demonstrated his distinctive and restrained jurisprudence on the Oregon Supreme Court.

When I met him in 1991, Justice Linde was again Professor Linde, teaching constitutional law at Stanford Law School. He knew of my pre-law school education in moral philosophy and religion, and recognized that I often looked at law from the perspective of moral theory. Occasionally he expressed skepticism about comprehensive theories of morality and their relevance for the law, and I worried about law without morals.

This journal celebrates Justice Linde's distinctive contributions to state constitutional commentary. I appreciate the corresponding insights on morality and law that arise from the specifics of the states. Justice Linde reminds us, for example, that "a state court has reason for caution in describing even strongly held values as moral or social absolutes . . . [A] *modest relativism* in such matters is forced upon us by the federal system itself"³ (in which fifty states disagree about their values). State courts learn much of their "modest relativism" from the detailed work of "ordinary law,"⁴ of

* Associate Professor, Santa Clara University School of Law.

¹ Hans A. Linde, *Due Process of Lawmaking*, 55 NEB. L. REV. 197, 255 (1976).

² *Id.* (quoting Alexander M. Bickel, *Watergate and the Legal Order*, COMMENTARY, Jan. 1974, at 25).

³ Hans A. Linde, *E Pluribus—Constitutional Theory and State Courts*, 18 GA. L. REV. 165, 192 (1984) (emphasis added).

⁴ *Id.* at 191.

marriage and death and debt. So may philosophers learn from this Justice the merits of a restrained inductive reasoning based on the details of ordinary life.

The moral relativism is modest and not absolute, a lesson that is reinforced by Justice Linde's analysis of state initiatives. Moral passions may drive majorities to impose their values on minorities through the initiative process. In such circumstances law—the guarantee of a republican form of government—restrains the popular emotions and mandates “processes that maximize[] careful deliberation and minimize[], even though [they] cannot eliminate, the influence of ‘passion’ and sectarian ‘factions.’”⁵ Law keeps morality modest.

Justice Linde taught at Stanford during the Persian Gulf War. While others debated the just war principles, he insisted that the effects of war on domestic law not be neglected. I learned from his research projects how good lawyers and good judges reason. A good judge knows that a case “if possible should remain [] a case of ordinary administrative and statutory law before becoming a constitutional case.”⁶ This good Justice reminded federal courts that a case if possible should remain a case of statutory or constitutional interpretation before becoming a moral case. This good Professor teaches students, philosophers, and citizens that every moral case should not become law.

⁵ Hans A. Linde, *When Initiative Lawmaking Is Not “Republican Government”*: *The Campaign Against Homosexuality*, 72 OR. L. REV. 19, 38 (1993).

⁶ *Cooper v. Eugene School Dist. No. 4J*, 723 P.2d 298, 301 (Or. 1986).