Tilburg, 17 May 2017

Cover letter to chapter 6

Dear colleagues,

The text I would like to discuss with you is Chapter 6 of a book forthcoming in 2018 with CUP. The chapter is the philosophical core of the book; it attempts to provide a general interpretation of the concept of authority at issue in an authoritative politics of boundaries. Chapter 7, which I am in the process of writing, concludes the book by illuminating the implications of this concept of authority for a politics of boundaries in a global context. Chapter 6 is long, admittedly, and I will tax your patience yet further by including, in this cover letter, some preliminary ideas which are of importance to understand its gist.

The central claim of the book, which carries the provisional title *Authority and the Globalization of Inclusion and Exclusion*, is that interpreting law as institutionalized and authoritatively mediated collective action (IACA) allows for a concept of law that is sufficiently capacious to make sense of a wide range of putative legal orders, including emergent global legal orders, while also sufficiently flexible to accommodate differences between those orders.

The point of departure of the IACA-model of law is that we do well to understand a legal order as a *first-person plural* concept: a species of "we together," to borrow Margaret Gilbert's felicitous formulation. Crucially, for my purposes, a first-person plural concept of law illuminates why emergent global legal orders necessarily include and exclude, which is of central empirical, conceptual and normative concern to the book.

Here are the main features of *collective action*, as interpreted by the IACA-model of law:

[1] *Directed obligations*: Legal obligations and sanctions are a species of the obligations and rebukes that emerge between participant agents in the course of collective action.

[2] *Point:* The nature and scope of legally relevant behavior, as well as the rights and obligations that accrue to participant agents, are internally related to the point of joint action: that which our joint act is/ought to be *about*, that which functions as the cynosure for a group.

[3] *Nesting:* Collective action can be nested in higher-order—hence more complex—forms of collective action.

[4] *Space, time, subjectivity, act-types:* Joint action deploys a four-dimensional order: spatial, temporal, subjective and material.

[5] *Inclusion and exclusion:* The point of joint action determines what is relevant and important to joint action and what is not, hence what kinds of places, times, subjectivities and act-types are included therein, such that other possible combinations of these four dimensions of behavior are marginalized as irrelevant and unimportant.

[6] *Transformability:* Collective action is transformable, which means that the rules that establish who ought to do what, where and when are a *default setting* of the point of joint action.

[7] *Background:* All collective action is conditioned by a background of everyday practices and capacities into which its participants are socialized, yet which are not themselves thematized in the course of joint action.

[8] *Representation*: The unity of a collective is perforce a represented unity, hence a putative unity.

So much for collective action. Additionally, I argue, law is *authoritatively mediated* collective action, where, in a first approach, I define authoritative mediation functionally, namely, as the articulation, monitoring and upholding of (the point of) joint action. Finally, law is *institutionalized* and authoritatively mediated collective action insofar as it enacts impersonal relations between the participants in collective action.

I argue, further, that legal orders have three dimensions: a legal collective, a legal system and a pragmatic order. In my usage of these expressions, (1) a *legal collective* denotes IACA from the first-person plural perspective of a group. This expression captures the idea that a legal order involves the presupposition of unity in the form of a manifold of participant agents that are deemed to refer to themselves as a unit in action. (2) A *legal system* refers to IACA in terms of the default setting of the point of joint action by a collective. Here, legal order is approached as a putative unity of rules (in a very broad sense). Finally, (3) a *pragmatic order*, in my gloss of the term, denotes IACA as a unity qua interrelated distribution of places, times, subjects and act-contents more or less correlative to a legal system.

Crucially, the representational structure of collective action yields three fundamental theses about legal order qua *ordo ordinans*, rather than *ordo ordinatus*:

[T1] *Putative unity*: The unity of a social group is always a putative unity.
[T2] *Unification*: There is no collective unity, strictly speaking; there is only a process of unification.
[T3] *Pluralization*: The representational process of collective unification is also a process of pluralization.

My claim is that, in light of these three theses, the functional concept of authority indicated above cannot stand on its own: the articulation, monitoring and upholding of collective action amounts to a politics of boundaries with a normative content, which I seek and find in the concept of *recognition*. I distinguish between two interpretations of recognition: reciprocal and asymmetrical recognition.

The former is the core of legal universalism. In terms of the three theses indicated about, reciprocal recognition is prepared to accept [T1] and [T2] as features of legal order, such that [T1] yields to [T2] by way of a dialectic of unity and plurality. Legal universalism views [T3] as a merely contingent feature of a politics of boundaries, one which, if accepted as constitutive, collapses authority into a defense of relativity. I rebut this approach to the authoritativeness of an authoritative politics of boundaries in Chapter 5.

Chapter 6, centered on the notion of asymmetrical recognition, seeks to outline a concept of authority in which [T1], [T2], and [T3] are constitutive for a politics of boundaries, albeit in a way which bids farewell both to universalism and to relativism. You will notice that I often refer in the chapter to the KRRS, an Indian farmers' movement that razed fields of GMOs owned by Monsanto, and which I introduce in the very first chapter of the book as a paradigm example of a strong form of (spatial) exteriority—a *xenotopia*--that is ensconced in every legal order, and which raises a demand for recognition of its identity/difference vis-à-vis the WTO and India, and to which the latter must respond through a politics of boundaries.

Hans Lindahl

Chapter 6. From reciprocal to asymmetrical recognition

Chapter 5 offers a first interpretation of an authoritative politics of boundaries in a global context, one that reconstructs the IACA-model of law along the lines of reciprocal recognition. Against legal universalism, which draws on reciprocal recognition to posit the possibility of realising an all-inclusive global legal order, the chapter concluded by arguing that demands for recognition are always, to a lesser or greater extent, in excess of what a collective can deal with by transforming the default setting of joint action. A collective frames demands in such a way that it can respond to them. Political plurality is, I submit, irreducible to the unity of one legal order—not even in the indeterminately long run.

The question raised at the outset of Chapter 5 returns in all its urgency. Doesn't this thesis amount to advocating relativism in global affairs, a relativism that entrenches exclusionary processes while also condemning emergent global legal orders to be instruments of imperial inclusion? How to avoid relativism unless one postulates one legal world in which all could be at home as the telos of an authoritative politics of global boundaries? Doesn't the critique of legal universalism I have sketched out at the end of Chapter 5 usher in resignation and political paralysis, perhaps even cynicism?

The reader will decide whether, at the end of the day, the alternative to be discussed in this chapter can parry this objurgation. In any case, my intention is very different. My critique of legal universalism is concerned about its assimilatory tendencies and the difficulties it encounters to acknowledge and embrace the ineradicable ambiguity of the logic of boundaries attendant on struggles for recognition. Whatever its travails, this is no reason to discard without further ado the normative thrust of legal universalism; my aim is to redirect it. The common root shared by legal universalism and the IACA-model of law is the insight that struggles for recognition are the locus of a normative account of boundary-setting. But whereas legal universalism interprets struggles for recognition, qua normative project, as progressively overcoming the contingency of boundaries, I will suggest that asymmetrical recognition offers a way of dealing with contingency, but not of overcoming it.

Here, in a nutshell, is what I have in mind: asymmetrical recognition is the core of a politics of boundary-setting that is authoritative by dint of recognising the other as one of us *and* as other than us. I call this *restrained collective self-assertion*. For the one, collective self-assertion addresses, without exhausting, a demand for recognition. Instead of understanding struggles about boundaries as oriented towards an ever greater inclusiveness based on reciprocal recognition between the parties in conflict, my reading of collective self-assertion allows for situational generalisations (in the plural) without universalisation or universalisability (in the singular). For the other, collective self-restraint, in the strong sense to be espoused hereinafter, suspends the (full) application of the law to protect the other as other than us.

In working through this idea, the chapter follows an incremental strategy. I will be exploring the same dynamic throughout, but doing so from different perspectives each time around, such that, with each step, previous ideas and formulations become more complex and over-layered. Here are the questions that will orient each step: (1) What is the nature of *boundary-setting*? (2) What does a *politics* of boundaries look like? (3) What renders it *authoritative*? Answers to these questions clear the way for sketching out an alternative to relativism and universalism that resists the temptation to portray the irreducible tension between unity and plurality either as a simple opposition or as an opposition to be overcome through a dialectic of the particular and the general. I reserve Chapter 7 for the final and decisive question, (4) What might be specific to an authoritative politics of boundaries in a *global context*?

A caveat before we get started. While I will do my best to present and illustrate the philosophical arguments that address these questions in as clear and accessible a manner as possible, I need to engage in some detail with an array of concepts germane to what I have called asymmetrical recognition. This requires the patience and slow thinking that are hallmarks of philosophical enquiry. Readers who find this way of thinking abstruse or rebarbative, or would otherwise prefer an abridged version of the argument, are encouraged to move directly to Subsection 6.3.4, which summarises the main insights of this argumentative process before introducing asymmetrical recognition proper.

6.1. Setting boundaries

The first step of our incremental strategy unpacks boundary-setting: what is the nature of the process by which legal boundaries are set? The question about boundary-setting is, admittedly, very general, one that concerns all legal orders rather than only global legal orders. But the IACA-model of law contends that boundaries are features of all legal orders, regardless of their 'scale'. It makes sense, therefore, to approach boundary-setting at this high level of generality, before delving into its implications for emergent global legal orders. This enquiry is all the more consequential because hitherto I have offered a very incomplete account of boundary-setting, limited as it was to the first act of boundary-setting, of which, to boot, only a partial analysis was forthcoming. So I begin by offering a more complete account of this initial taking, to then extend the scope of the analysis to all acts of boundary-setting.

6.1.1. Retaking

When introducing how boundaries are set, Chapters 4 and 5 have given its full weight to Schmitt's uncompromising insight that no legal order can emerge, global or otherwise, absent a primordial caesura that separates inside from outside. This move seemed all the more warranted because, when pressed about the genesis of a practical discourse, even Habermas, hardly Schmitt's philosophical pal, acknowledges that democratic collectives are bootstrapped into existence by a taking that includes and excludes without an ex ante authorisation to this effect.

But, *contra* Schmitt and Habermas, is there such a thing as a first act of setting boundaries?

This question leads directly to the problem of representation. The reader will remember that the unity of a collective is always and necessarily [8] a represented unity, even when the collective is composed of two individuals. Far from marking a moment of pure spontaneity or activity, in which a manifold of individuals constitute themselves as a group, there is a fundamental passivity at the heart of the unity of a collective: instead of initiating, the collective is initiated by a representational act that says 'we' on behalf of a 'we'. The inaugural taking signals the self-constitution of political community in the objective form of the genitive: the constitution *of* a collective self.

Yet, whoever seizes the initiative to act on behalf of a 'we' *pre*-supposes that there is a bounded 'we' that needs to be represented. More precisely, who occupies the 'we speaker' position claims to act on behalf of the broader group of participants—the 'we at stake'—that is already deemed to exist and for whose sake its representatives rule by articulating, monitoring and upholding the point of joint action. So even the first closure that includes and excludes claims that a closure has taken place (literally) in the past, hence that the first closure is no more than a restoration of an earlier closure, the boundaries of which may be nebulous but not effaced.

This finding is of capital importance for everything that follows. Schmitt's and Habermas' *nomos* is only a partial interpretation of how collectives emerge: the taking that

founds a collective must claim to operate a *re*-taking, the legal re-foundation of a bounded collective.

For example, as discussed in Section 3.1, the Basel Committee on Banking Supervision (BCBS), the International Accounting Standards Board (IASB) and the Clean Clothes Campaign (CCC) are regulatory networks that seize the 'we speaker' position with a view to regulating behaviour for the sake of a global community—the 'we at stake' position. In each case, the regulatory networks presuppose a community for the good of which they claim to regulate by articulating, monitoring and upholding the point of joint action. The same holds for the WTO, which claims to act for the sake of the extant global trading community that has a stake in that 'trade flow as freely as possible—so long as there are no undesirable side effects—because this is important for economic development and well-being'.[1] Or perpend the *lex mercatoria*. Here again, an appeal is made to an international, even global, community of merchants, who have a common stake in regulating their transactions in a way that does justice to their specific needs, needs that are met neither by the fragmentation that ensued with the nationalisation of commercial law by states nor by international private law, with its extraordinarily complex and uncertain jurisdictional rules. That they already exist as a bounded community, and are in need of regulation of their own, is taken for granted. Such is the upshot, for example, of the Introduction to the 1994 version of the UNIDROIT Principles, in which the Governing Council claims to act for the sake of 'the international legal and business communities', to whom it 'offers' 'general rules for international commercial contracts'.

In all of these cases, the representation of a collective unity, whereby the default setting of joint action is enacted for the sake of a 'we at stake', is embedded in a broader narrative about the emergence of the collective. Legal and political representation is enrooted in a narrative representation of origins. As discussed in Section 2.2.2, there is no legal order that can sustain itself only as a process of creating and applying rules: every legal order requires a narrative about its emergence and about its point. Narratives have the double function of identifying/differentiating a collective and evoking a co-given and pre-given world as the horizon in which it is situated and that ultimately gives its meaning to joint action by the collective. To acknowledge that identity is a represented identity is to acknowledge, with Ricœur, that identity is a 'narrative identity, that is, the sort of identity to which a human being has access thanks to the mediation of the narrative function'.[2]

Look at the narrative self-representation of the origins of the Basel Committee for Banking Supervision:

> The Basel Committee on Banking Supervision has its origins in the financial market turmoil that followed the breakdown of the Bretton Woods system of managed exchange rates in 1973 . . . In response to these and other disruptions in the international financial markets, the central bank governors of the G10 countries established a Committee on Banking Regulations and Supervisory Practices at the end of 1974. Later renamed the Basel Committee on Banking Supervision, the Committee was designed as a forum for regular cooperation between its member countries on banking supervisory matters.[3]

This narrative does a lot of work: it claims that a financial crisis in the past laid bare and threatened a global we at stake that was not simply the aggregation of the peoples of indi-

[1] WTO website, https://www.wto.org/english/thewto_e/whatis_e/who_we_are_e.htm (accessed on 8 November 2016).

[2] Paul Ricœur, 'Narrative Identity', in *Philosophy Today*, 35 (1991) 1, 73-81, 73.

[3] Basel Committee on Banking Supervision, 'A brief history of the Basel Committee', October 2015, Bank for International Settlements, available at: http://www.bis.org/bcbs/history.pdf (last accessed on 22 November 2016).

vidual countries but rather their systemic interconnectedness, in response to which a regulatory agency (a we speaker) needed to be put into place that, by regulating international banking, acts for the sake of the global we at stake.

No less importantly, narratives—counter-narratives—are ingredient features of the self-representation of alter-globalisation movements. So, for example, the KRRS portray their emergence as a movement as follows:

> The situation of Indian agriculture (and of the whole society) is deteriorating very rapidly due to the globalisation process . . . The Agreement on Agriculture of the WTO is at the root of these problems . . . The farmers movement that was to give birth to KRRS in 1980 was initiated by 5 people in 1965. They see the movement as part of a very long process of construction of a new society, which must be driven by people at the local level but must reach the global level, and which cannot take place without the active and direct involvement of society as a whole . . . The final objective of its work is the realisation of the 'Village Republic' . . .[4]

Here again, there is a narrative about a foundation (in 1980) that itself refers to yet an earlier foundation (1965). But even this earlier foundation is a re-foundation because the five persons took for granted that there was *already* a farmer movement endangered by globalisation when they seized the initiative to found it as a movement in 1965.

In short, narratives are the privileged vehicle for the representational (re)taking whereby individuals come to identify themselves as members of a collective. Narratives of origins serve to justify that the first act of setting legal boundaries comes second. *Boundary-setting has a representational structure in this twofold sense*.

6.1.2. The paradox of representation

It would seem, then, that *nomos* falls prey to a dilemma. On the one hand, a purely productive closure is, literally, incredible and unintelligible: it would emerge from a void that has no boundaries. If, on the other, an act of representation is viewed as such by its addressees, there is no unauthorised taking but rather an identity and a unity preceding the representation, and to which authorities give legal form through the default setting of joint action. Boundary-setting would be either a taking that constitutes boundaries *ex nihilo*, or a re-taking that enforces extant boundaries. The first horn of the dilemma renders boundary-setting unintelligible; the second, nugatory.

Yet this alleged dilemma elides the irreducible ambiguity of representation. Everything turns on the particle 're' of representation, which refers to the fact that something is rendered present *as* this or *as* that. Hence, collective unity is never given immediately or directly; there has to be a representational act absent which there can be no collective. In this sense, representation cannot but produce unity and boundaries.

The sceptical reader will chafe at this claim, retorting that representing something as this or as that is a reproductive act because what representation does is to pick out one of a pre-given range of interpretative possibilities: x can represent y as a (rather than as b) because a and b are held in abeyance by all parties concerned as possible interpretations of what y is. So, for example, the aims contained in the Preamble of the WTO Agreement would lay out, from the very beginning, the range of default settings of global trade that are available to the collective. The 'productive' dimension of representation would boil down to choosing one among this given range of possible interpretations.

But the objection misconstrues the productive dimension of representation. There is not a range of possible representations of y—a, b, c, d—given in advance to all concerned

[4] Website of the KRRS, 'General context: Indian agriculture and trade liberalisation', available at http://home.iae.nl/users/lightnet/world/indianfarmer.htm (last accessed on 5 December 2016).

parties, such that they already know *that* they are a collective and only await an authoritative determination, from this pre-given range of alternatives, of *what* it is that joins them together as a collective. The productivity of representation means that individuals come to identify themselves as a collective retroactively—*après coup*—and always provisionally.[5] Besides, as noted in Section 3.2.1, the point of collective action remains more or less opaque to participants and in need of articulation in ways that can surprise them as involving modalities of acting together of which they are or may be nescient. To assert that something is represented as this or as that is to say that unity is produced in the very move by which representation claims to reproduce a pre-given unity. Representation deploys a paradox: a foundational act of inclusion and exclusion can only *originate* collective unity to the extent that it succeeds in representing an *original* unity.[6]

This paradox gives the nay to the interpretation of the history of a collective as a linear temporal arc in which the present is preceded by the past and leads into the future. Certainly, assigning regulatory acts to a collective involves following a regressive strategy that takes us from the present to the past. But the 'end point' of attribution is not the initiating act of a collective existing in the present of an original 'now' and an original place that is 'here'. Instead, attribution leads back to a foundation that came about in 'a past which has never been a present'[7] and, I would add, in a place that was never 'here'. Taking these ideas yet a step further, there is no narrative attribution of a foundational closure to a collective as giving rise to its own space and its own history, other than as the retrojection of this closure into the past; but there is also no attribution of this closure to the collective without the narrative projection of collectivity into the future, such that what is held to have already taken place is what is yet to come. Also in this sense, collectivity is *pre*-supposed. And like legal and political representations, so also the narrative representations in which the former are embedded have the structure of a retrojective projection. To borrow a wonderful expression coined by my colleague, Bert van Roermund, the paradox of representation evokes 'a past that we can look forward to'.

6.1.3. Questionability and responsiveness

So much for the 'first' act of setting boundaries that marks the emergence of a collective. What is the dynamic of boundary-setting during the further career of a collective?[8]

Remember, to get started, the most general characterisation of boundary-setting, whether of the 'first' boundary or any other that may follow it: to set boundaries is to include in and exclude from the first-person plural perspective of a 'we'. Boundaries include (dis)order and (il)legality in this perspective. By setting the boundaries that determine who ought to do what, where and when, a collective lays down the default setting of order and disorder: behaviour is orderly—legal—when in conformity with those boundaries, disorderly—illegal—when in breach thereof. Disorder and illegality are privative manifestations of order and legality, hence derivative manifestations that presuppose and are already anticipated by the law. Legal orders expect that there will be disorder in the form of illegal behav-

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[5] On the *après coup*, see Jacques Derrida, *L'écriture et la difference* (Paris: Seuil, 1967), 314. For a discussion of precedence (*Vorgängichkeit*) and retroactivity (*Nachträglichkeit*) see Bernhard Waldenfels, *Antwortregister* (Frankfurt: Suhrkamp, 1994), 262-263. See also Bert van Roermund, *Law, Narrative and Reality: An Essay in Intercepting Politics* (Dordrecht: Kluwer Academic Publishers, 1997).

[6] For a more detailed analysis of collective temporality and the ontology of change, see Hans Lindahl, 'Possibility, Actuality, Rupture: Constituent Power and the Ontology of Change', in *Constellations* 22 (2015) 2, 163-174.

[7] Maurice Merleau-Ponty, *Phenomenology of Perception,* translated by Colin Smith (London: Routledge, 1989), 242.

[8] This and the following subsection borrow liberally from Lindahl, *Fault Lines of Globalization*, 201-203.

iour, and marshal a repertoire of mechanisms to deal with it, in particular sanctions. So, for example, the WTO determines the default setting of food safety, establishing the conditions under which restrictions can be placed on the global trade of GMOs, e.g. restrictions that flow from scientific risk analyses. The default setting of food safety, so construed, lays out what counts as orderly—legal—behaviour in the framework of global trade. The imposition of further restrictions on the trade of GMOs, such as restrictions that flow from the precautionary principle, may fall foul of the default setting of free global trade, appearing from the first-person perspective of the WTO as disorderly—illegal—behaviour.[9]

In contrast to (dis)order and (il)legality, what is excluded from joint action becomes the *unordered* for a collective, namely, what is irrelevant and unimportant for joint action. But the surfeit of possible ways of acting together that have been marginalised can irrupt into a legal order, challenging its putative unity by transgressing the boundaries of what counts as relevant and important to the collective. As happened with the barriers erected by the EU to block imports of GMOs, invoking the precautionary principle to justify its action. And, more radically, as when the KRRS forayed into the private property of Monsanto to raze its fields of GMOs with a view to preserving the traditional way of life of Indian farming communities. The KRRS' challenge is more radical because, whereas the EU wants to remain in a transformed WTO, the KRRS seek exit therefrom. In both cases, a-legal behaviour calls into question the terms of inclusion and exclusion: it questions *both* legality and illegality, *both* legal order and disorder, betokening another way of drawing legal boundaries to establish what counts as *joint* action.

In brief, boundary-setting is ultimately about responding to the question/challenge of a-legality by establishing anew the *limits* of a legal order, i.e. what is to be included in and excluded from what is relevant and important to joint action. How, then, are question and response related to each other in the course of boundary-setting?

A distinction needs to be drawn to this effect between two kinds of questions and responses. Firstly, acts of boundary-setting are responsive in that they must establish whether behaviour is legal or illegal—*derivative* questionability and responsiveness, as I would like to call it. The only way in which a legal order can respond to what questions its putative unity is by establishing what is to count as (il)legal behaviour, i.e. as legal (dis)order. But, secondly, boundary-setting is responsive in that it must establish whether and how behaviour is a-legal—*primary* questionability and responsiveness. Boundary-setting responds to both questions together. There are not some forms of behaviour that confront a collective with the question whether they are legal or illegal, and others with the question about their a-legality.

Because the limit between legal (dis)order and the unordered runs along each of the boundaries drawn by a legal collective, this limit only appears obliquely, in the form of situations that question how legal boundaries are drawn. In our paradigm example, the KRRS reveal the limit of the WTO by knocking down the fences that mark the boundary between a private property and public space. For this reason, the question posed by a-legality is an indirect question, a question that concerns the collective's unity. In the same way, boundary-setting can only respond obliquely to a-legal situations by reconfiguring (il)legality, i.e. by recalibrating the fourfold boundaries of a pragmatic order. And this means that, in the

[9] It has been argued that the GMO dispute in the WTO turns on two conflicting approaches to food safety: the permissive approach favoured by the US, in which restrictions on food products are only justified when these engender scientifically proven risks, and the precautionary approach championed by the EU, which justifies restrictions in situations of uncertainty and potentially serious risks. See Mark A. Pollack & Gregory C. Shaffer, *When Cooperation Fails: The International Law and Politics of Genetically Modified Foods* (Oxford: Oxford University Press, 2009). Unfortunately, the kind of resistance put up by the KRSS in particular and the Vía Campesina at large receives little or no attention in the cited work.

course of setting the boundaries of (il)legality, collectives indirectly set the *limit* between legal (dis)order and the unordered. Analogously to indirect speech, which expresses the content of utterances without quoting them explicitly, boundary-setting is indirect action with respect to a-legality.

This interpretation of boundary-setting is closely connected to the precedence of questions and the retroactivity of responses, referred to at the end of Chapter 5. A-legality does not precede legal order in the trivial sense that there is a chronological sequence whereby first comes a question and then follows a response. A-legality precedes a legal order in the form of situations that fall outside the range of what participant agents could anticipate as part of joint action. In this sense, precedence means that a-legality comes *too early*; it has already reached the participants in joint action before they can adjust to it, catching them unprepared and by surprise, and leaving them more or less at a loss as to how to act.

In this vein, I have already discussed at some length the KRRS' direct action against GMOs planted in fields owned by Monsanto. Other initiatives included

> the occupation by 1000 activists of the Cargill office in Bangalore (they threw all the equipment through the windows and made a big bonfire), the physical dismantlement with iron bars of a seed unit of Cargill that was being constructed in Karnataka, and the occupation of a Kentucky Fried Chicken outlet.[10]

These direct actions caught Cargill, Monsanto and Kentucky Fried Chicken flat-footed, in the elemental sense that they were not prepared for the direct actions and, therefore, had not taken measures to fend them off, e.g. by stationing police that would protect the fields or buildings from trespass. But at a deeper level, the surprise speaks to the precedence of a challenge for which these multinationals, India and the WTO were not and could not be prepared:

> KRRS is a Gandhian movement. This means that the final objective of its work is the realisation of the 'Village Republic', a form of social, political and economic organisation based on direct democracy, on economic and political autonomy and self-reliance, on the participation of all members of the community in decision-making about the common affairs that affect them, and on the creation of mechanisms of representation that ensure that affairs affecting several communities are decided upon through processes of consultation involving all communities affected by the decisions.[11]

There is, therefore, the asymmetry of a challenge that precedes the WTO, in the twofold sense of (a) coming too early in light of the normative expectations about who ought to do what, where and when projected into the future by the WTO Agreement and (b) being in excess of what the WTO can respond to in terms of the range of possibilities available to a collective oriented to creating a pragmatic order in which 'free global trade' can flourish: *Asymmetry 1*.

On the other hand, the responsiveness of boundary-setting never only 'follows' questionability in the twofold sense of coming 'after' and 'obeying'. Boundary-setting is retroactive in that the question to which it responds only becomes manifest in the response itself. By positing the fourfold boundaries of a pragmatic order (derivative questionability and responsiveness), the WTO indirectly takes a stand on the a-legality of the behaviour it must qualify as legal or illegal, that is, it establishes whether and to what extent what is at issue is a challenge that justifies a novel articulation of the default setting of free global trade (pri-

[10] Website of the KRRS, 'General context: Indian agriculture and trade liberalisation', available at http://home.iae.nl/users/lightnet/world/indianfarmer.htm (last accessed on 5 December 2016).

[11] *Ibid*.

mary questionability and responsiveness). As such, boundary-setting is asymmetrical with respect to the question to which it responds: *Asymmetry 2*.

6.1.4. The orderable and the unorderable

While the foregoing considerations explain why boundary-setting is related to the questionability and responsiveness of collectives, they do not, of themselves, explain why boundary-setting might illuminate the *finite* questionability and the *finite* responsiveness of collectives. As I argued at the end of Chapter 5, collectives are finite in that they frame the questions to which they respond in such a way that they can respond to them consistently with the continuation of joint action. To a lesser or greater extent, the questions to which collectives respond are in excess of the range of responses available to it. This feature of collective ontology must now be adumbrated in terms of the dynamic of boundary-setting.

To this effect, a distinction needs to be drawn between practical possibilities that could be actualised in a legal order as falling within the range of a collective's own possibilities, and practical possibilities that exceed the latter. This distinction has its correlate in the distinction between, respectively, behaviour that is unordered but *orderable* by the corresponding collective, and behaviour that is unordered and *unorderable* for it. I refer to weak and strong dimensions of a-legality because what challenges a collective manifests *both* dimensions, even though in a variable scale whereby one or the other can appear with greater intensity.

As to the former, and returning to our examples, the challenge of the KRRS could be responded to by, say, transforming the WTO's default setting of environmental protection and sustainable development. When adjudging the famous *Beef Hormones* case, the WTO Appellate Body could have sought to balance the permissive and precautionary approaches to GMOs (although it didn't do so) by, for instance, positing the primacy of the former while allowing a certain leeway for national regulations with regard to public health.[12] In both situations, new default settings of free global trade would attest to behaviour that, although initially unordered, is to a certain extent orderable for the WTO. The outcome of the new default setting of joint action would be that the WTO shifts, perhaps in ways that were unexpected for the protagonists, the limits of what counts as free global trade. So much for the 'weak' dimension of a-legality: the unordered but orderable for a collective.

Yet both examples suggest that there is also a 'strong' dimension of a-legality, namely, challenges insofar as they are unorderable for the respective collective. The KRRS's aim to create Village Republics organised on the basis of the principle of food sovereignty is inimical to the principle of free global trade. And any balance that could be achieved by the WTO Appellate Body in the controversy between the permissive and precautionary approaches that has pitted the US against the EU involves a normative loss for one or both approaches, regardless of whether this loss is 'acceptable' to the respective party or not. The domain of what is unorderable, ungovernable, for a collective is also the domain of constituent power, the fount whence other collectives can emerge, whether exiting from or, on occasion, overthrowing the constituted order. It is the domain of innovation, at times of radical innovation: not the tapping of a range of extant possibilities but rather the emergence of a new range of possibilities for joint action.

We are back at what Chapter 5 called the logic of boundaries. On the one hand, boundaries include by excluding because more is possible for a collective than the possibilities for acting together actualised in its extant default setting of joint action: the orderable. On the other, boundaries exclude by including because collectives frame the question to

[12] WTO Appellate Body, Report of 16 January 1998 WT/DS26/AB/R&WT/DS48/AB/R, *EC Measures Concerning Meat and Meat Products*. Available at: https://www.wto.org/english/tratop_e/dispu_e/hormab.pdf (accessed on 27 December 2016).

which they must respond as a question about their own possibilities, indirectly attesting to what is unorderable for it. The first face of the logic of boundaries speaks to the *limits* of a collective, the second, to its *fault lines*. The boundaries of a legal order mark the variable limit between legal (dis)order and the unordered as well as a fault line to the extent that a-legality raises a normative claim that adjures the actualisation of practical possibilities in excess of the possibilities available to a collective when responding to that claim.[13]

6.1.5. Inter-subjectivity

I conclude these reflections on the nature of boundary-setting with some remarks about the relation between collective self and other. These comments are called forth by a troubling objection that could be levelled against the IACA-model of law. The price to be paid for focusing so insistently—even obsessively—on the first-person plural perspective of a 'we' is that whatever might be said about the other and about the strange must be derived from collective selfhood. As a result, the IACA-model of law would be thoroughly Cartesian in thrust and style. More candidly: doesn't this Cartesian approach to emergent global legal orders effectively subtend and abet the legal imperialism that the IACA-model ostensibly opposes? Can this model of legal order be anything other than a celebration of imperial authority?

I leave it to the reader to judge, at the end of this chapter, whether the authoritativeness of the concept of authoritative politics of boundaries I am working through is imperial. The remarks of this subsection focus on the premise of the objection, namely, that the IACA-model of law derives the other from collective selfhood.

Let me begin by noting that the decision to grant pride of place to the first-person plural perspective aims to show that every imaginable legal order, global or otherwise, has an outside, hence that there is an 'other' in the strong sense of strangeness—the strong dimension of a-legality—that eludes inclusion therein. Instead of levelling down the other/strange to an appendage of a given collective, I have sought to develop a social ontology whereby a group's closure into an inside confronts it with an outside that, as unorderable, defies its control and mastery. The experience of the strange to which participants in legal orders are exposed is the experience of what is *not* derived from nor dependent on the group because it interferes with and resists assimilation into its joint action.

But the censure cuts deeper. Cartesian solipsism continues to reign triumphant, it will be said, because, even if the other/stranger is not derived from collective selfhood, the IACA-model of law conceptualises the emergence and existence of a collective independently of the other/stranger. Subjectivity, not intersubjectivity, is the *Leitmotiv* of the IACA-model of law, even when (and precisely when) it invokes the notion of a plural subject (Gilbert). Whatever meaning this model could bestow on intersubjectivity would have to be derived from the principle of subjectivity that governs its account of boundary-setting: collective self-assertion.

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[13] The temporal qualifier at the end of the sentence—'when responding to that claim'— is consequential. In *Fault Lines of Globalization*, I argued that the strong dimension of a-legality involved practical possibilities that were *definitively* beyond the range of a collective's own possibilities. As Ferdinando Menga has rightly pointed out to me, this characterisation of the strong dimension of a-legality is too strong: what may be normatively unorderable for a collective, when responding to a-legality, may come to be orderable for it in another context and another articulation of the default setting of joint action. My earlier reading of the strong dimension of a-legality risks hypostatising collective identity. I am grateful to Menga for this acute correction. It should be added, however, that the converse also holds: what may have been orderable for a collective can become unorderable for it in other circumstances. The career of a collective is subject to both kinds of transformations simultaneously, which precludes falling back on the dialectical reading of boundary-setting endorsed by legal universalism.

Yet this objection is blind to the responsiveness of representation. Furthermore, the significance of collective self-assertion must be read in terms of the responsiveness of representation.

Propend, to begin with, the narrative of origins of the BCBS. It emerges '[i]n response to . . . disruptions in the international financial markets' and as a way of dealing with those disruptions.[14] The foundation of this regulatory body is deemed to be an act of collective self-assertion in response to a situation that challenges joint action by the 'we at stake' the BCBS is held to represent. Look, now, at the new *lex mercatoria.* The standard narrative of legal scholarship on the topic evokes the need to create a distinct legal order to regulate the community of those who engage regularly in international trade. *Lex mercatoria*, goes the story, germinates as a response to the obstacles to international commerce raised by state law and international private law. Here again, the collective self-assertion of *lex mercatoria* is a response to a challenge to its existence.[15] Consider the ISO. The emergence of this regulatory body is represented as responding to the need for global standards in light of the cumulus of disparate standards scattered across the face of the earth. In this vein, a history of the origins of the ISO endorsed by the organisation itself describes Charles Le Maistre, who played a crucial role in the initiative to found the ISO, as a problem-solver. 'The problem Le Maistre had to solve at the end of the war was how to create a new global international standardizing body'.[16] Although depicted as a response to a problem, the enactment of ISO amounts to an act of self-assertion of a global 'we at stake' in the face of the looming inefficiencies for global trade arising from the fragmentation of standardisation.

It is not otherwise with alter-globalisation movements. Remember Subcomandante Marcos' opening words in the 'First Intercontinental Meeting for Humanity and Against Neoliberalism', held in the Lacandón jungle at the end of July 1996: 'Welcome to Zapatista reality. Welcome to this territory in struggle for humanity. Welcome to this territory in rebellion against neoliberalism'. By occupying San Cristobal de las Casas in 1993, the Zapatistas respond to the threat of neoliberalism through an act of collective self-assertion that reclaims what has been taken from them and many others by the globalisation of capitalism. Or think of the occupation of the main square of Cochabamba and of highways leading to the city, in response to the privatisation of the city's water service to the benefit of Aguas del Tunari, a Bechtel subsidiary. The rallying cry of the occupation—'The water is ours, damn it!'—is a cry of self-assertion that seeks to retake or re-appropriate the material conditions required for the collective's existence. And, returning to the narrative of foundations of the KRRS, they understand their resistance to the WTO as an act of self-assertion in the face of a mortal challenge to their existence as a collective.

In each of these cases, self-assertion has the form of a response to what *retroactively* appears as a threatened collective existence. So—and this is another aspect of the paradox of representation—collectives *emerge responsively*. The (re-)taking at the inception of collectives is responsive in nature. Accordingly, responses are not simply responses *by* an extant collective. The very idea of a 'we at stake' speaks to a challenge that precedes a collective, such that, paradoxically, the response constitutes the collective 'at stake' and presupposes that it already exists. Collective self-assertion should be read in the twofold sense of the subjective and objective modes of the genitive: assertion *of* and *by* a collective self.

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[14] Basel Committee on Banking Supervision, 'A brief history of the Basel Committee', October 2015.

[15] Stone Sweet, 'The New *Lex Mercatoria* and Transnational Governance', 632.

[16] Jack Latimer (ed.), *Friendship among Equals: Recollections from ISO's first 50 years* (Geneva: ISO Central Secretariat, 1997), 17, available at http://www.iso.org/iso/2012_friendship_among_equals.pdf.

Descartes cogitates: 'I am certain that I am a thinking thing. Do I not therefore also know what is required for my being certain about anything [else]?'[17] How different to this query the genealogy of collective selfhood and other described by responsive representation! The origin of a group and of its acts lies elsewhere than in itself: to become a subject of action a collective must first be the *object* of a summons to action, in the form of a challenge by the other. Now, 'us' is, grammatically speaking, the objective case of 'we'. Whereas Cartesianism begins with the self and then seeks to build a bridge towards the other, the responsiveness of representation betokens that, prior to a 'we' there is an '*us*'. This is no play on words. The priority of 'us' over 'we' explains why a collective subject is always already oriented to its other as conditioning its existence.[18] This precludes that the other is reducible to the 'we' as its malleable prolongation. The response that originates group agency while also presupposing it shows, *contra* the objection of Cartesianism, that collective subjectivity is only imaginable as *intersubjectivity*.

Yet this riposte still falls short of parrying the remonstration. For even if it is acknowledged that collective subjectivity is only possible as intersubjectivity, the objection could be raised that the two poles of the relation between collective self and the other are primitive, hence that the relation between them is derivative.

Here again, this objection misses out on the fundamental implication of the paradox of representation at work in boundary-setting. Indeed, the paradoxical responsiveness of boundary-setting ensures that there is neither a priority of the self over the other, such that the other would be derived from the self, nor of the other over self, whereby the self simply thanks its existence to the other's challenge. *What holds sway—what comes first—is the representation whereby boundaries are set and, by being set, attest to and constitute both self and other*. As a result, boundaries are inter-subjective, in-between, in a strong sense: they resist definitive appropriation by either collective self or its other.

A residual Cartesianism continues to corrode the IACA-model of law, runs a final variation on the objection: even if representation comes first, it includes self and excludes the other, making room for collective self-assertion in such a way that the collective self could become fully identical to itself: self-mastery. This is, of course, the interpretation of self-assertion defended by legal universalism, even if collective self-mastery must be postponed *sine die* in historical time. I reserve the rebuttal of this final objection for Subsection 6.3.2, when exploring in greater detail how representation does its work of including and excluding. Suffice it to anticipate that representation introduces non-identity into identity, precluding that a collective can ever become identical to itself.

6.2. The politics of a politics of boundary-setting

Section 6.1 has been dedicated to answering the first of the questions announced at the outset of this chapter: what is the nature of boundary-setting? Having addressed that issue, I'd now like to consider the second question: what is meant by the politics that goes into boundary-setting, or if you wish, what is the politics of a politics of legal boundaries?

6.2.1. Commonality

Let me note straightaway, to clarify how I will be proceeding, that by couching the question about boundary-setting as a question about *politics*, I reject the move to collapse politics into

[17] Descartes, *Meditations on First Philosophy*, in *The Philosophical Writings of Descartes*, translated by John Cottingham, Robert Stoothoff and Dugald Murdoch (Cambridge: Cambridge University Press, 1984), Vol. II, 1-62, 24.

[18] It is in this strong sense of the term 'us', one not contemplated by the author, that I would like to endorse the title of Raimo Tuomela's book, *The Importance of Us: A Philosophical Study of Basic Social Notions* (Palo Alto, CA: Stanford University Press, 1995).

applied morality or, in any case, to view politics as a province of moral action. Likewise, the reader will not be surprised that, in the wake of my earlier considerations about the right and the good, the forthcoming reflections refuse to frame politics in terms of the distinction between, respectively, morality and ethics, a distinction that has become common currency thanks to the considerable influence that Habermas has wielded in the contemporary philosophical debate about practical reason. This is not to say that a politics of legal boundaries is destitute of an ethical dimension or that we can afford to ignore it. But, as I will attempt to show later, the ethics in politics is a *responsive ethics*, which is neither the ethics nor the morality that Habermas and his compeers have in mind when subordinating the ethics of bounded communities to the universality of the moral domain.[19]

I begin by returning to Jullien's reflections on commonality. According to the French philosopher and sinologist, the common is an essentially political concept. Invoking Aristotle's patronage, Jullien notes that the common is political in its origins because 'what is shared is what causes us to belong to the same city, that is to the *polis*'.[20] To be sure, the common, as a political category, does not end with the *polis*, as witnessed by Rome's extension of the common to the purlieus of what it called the civilised world. In fact, there is nothing in the concept of the common, according to Jullien, which precludes its political extension to all of humanity.

What makes of commonality a political category? Jullien's answer is two-pronged: on the one hand, the common manifests itself as a political concept when 'I decide to assume the relations of belonging I identify with or invest in new ones (the political really being this place of concerted decision)'.[21] So, politics has its origins in the self-identification of individuals as members of a group that decides and acts in a concerted manner: we together. Politics is the process of articulating what is common to us, such that we can identify ourselves as a group and, in the same move, differentiate ourselves from others. In this most basic sense of the expression, there is already an incipient politics in the decision to get together to participate in a dorm cooking team, not least because 'if the common is what I share with others, it is also . . . that which excludes all others'. Commonality is originally a political concept, in a systematic and not merely historical sense, because politics is about setting the boundaries that include and exclude. In terms of the IACA-model of law, at issue is what is to count as the jointness of joint action.

As such, commonality allows for two ways of dealing with boundaries, Jullien animadverts. On the one hand, it can foster participation and greater inclusiveness: 'it ensures "communication" through differences and it continually unites within a single system. Such is the *open* common . . .' On the other, it can take on a defensive and excluding character, 'closing its frontiers, sharpen[ing] its borders into cutting edges and its outskirts into fortifications'.[22] This framing of inclusion and exclusion allows Jullien to backtrack on his initial, broad characterisation of the political as 'concerted decisions' about what is common to us as a group, to then contrast the political to the anti-political. Whereas the political is about greater inclusiveness, the anti-political is about securing exclusion. In a phrasing that resonates with Hardt and Negri's references to 'the extension of the common', and with legal universalism's progressive expansion of the limits of collectives, Jullien deplores the penchant to exclude, all too visible 'in the political—or rather (because they are opposed to sharing), anti-political—demonstrations in contemporary societies'.[23]

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[19] Habermas, *Between Facts and Norms*, 95-99.
[20] Jullien, *On the Universal*, 16.
[21] *Ibid*, 17.
[22] *Ibid*, 21.
[23] *Ibid*, 21.

This is the juncture at which Jullien, like many a political theorist, collapses politics into applied morality. I submit that both opening up *and* closing down, including *and* excluding, are political through and through. More pointedly: my claim is that the two cannot be separated, and that politics is *not* about preferring inclusion to exclusion as the general rule of boundary-setting. What I would now like to do is to elaborate more fully the concept of politics at work in a politics of boundaries that acknowledges that boundaries include what they exclude and exclude what they include.

6.2.2. Power

The point of departure has to be the notion of *power*, which is at the heart of a political understanding of commonality. The key question about power—a question Jullien neither poses nor answers—is this: what makes possible the self-identification of individuals with others as members of a group that decides and acts in a concerted manner? An answer to this question turns on the distinction between transcendence and immanence. Against Hardt and Negri *cum suis*, who were satisfied to simply oppose these two terms (see Section 4.4.1), a phenomenologically accurate account shows that if transcendence points to a domain that is 'outside' of social relations, then power opens up an immanent domain for social relations *by* transcending them. Commonality emerges through a twofold movement of transcending and rendering immanent. In Lefort's words,

> [t]he fact that [society] is organized as *one* despite (or because) of its multiple divisions and that it is organized as *the same* in all its multiple dimensions implies a place from that it can be seen, read and named. This symbolic pole proves to be power, even before we examine it in its empirical determinations . . . power makes a gesture towards an *outside* (*un dehors*) whence [society] defines itself. Whatever its form, [political power] always refers to the same enigma: that of an internal-external articulation, of a division that institutes a common space, of a break that simultaneously establishes relations (*mise en rapport*), of a movement of the externalization of the social that goes hand in hand with its internalization.[24]

Let me explain what Lefort means in a (hopefully) more mundane fashion: the IACA-model of law.

Remember point, feature [2] of collective action, as discussed in Section 2.1.2. Point spells out the nature and scope of practical possibilities available to joint action. The point of joint action empowers or capacitates by creating and assigning subject positions, times, places and act-contents that can be actualised by participant agents. This, the reader will recall, is feature [4] of collective action (Section 2.1.2). In other words, the point of collective action is the cynosure whence social relations appear as legible to participants in terms of how they ought to relate to each other if they are to successfully engage in collective action. This, concretely, is what Lefort means by a 'gesture towards an outside (*un dehors*) whence [society] defines itself': participant agents can interact with each other—or fail to do so—from the perspective of the point of joint action. In this specific sense, the point 'transcends' collective action; it is how the relations between those who participate in collective action become intelligible to them. And this orienting role of the point of collective action is what allows participants to understand themselves as 'one', in and through the collective's 'divisions', as Lefort puts it.

To synopsise, Lefort's 'enigma' of power, in line with the IACA-model of law, is the capacity to represent a collective, meaning by such the capacity to articulate the point of collective action (transcendence) in a way that can command the allegiance and structure the interaction of those to whom the articulation is addressed (immanence). It is the com-

[24] Lefort, *Democracy and Political Theory*, 225.

mon root of the two manifestations of power which political theory traditionally calls constituent and constituted power.

6.2.3. The politics of a-legality

A further step in sifting what is specifically political to a politics of legal boundaries turns on the two dimensions of commonality to which Jullien refers—inclusion and exclusion—, and that have been the object of extended attention in Section 6.1.3. In a nutshell, my thesis is that the politics of a politics of legal boundaries concerns conflict about the *limits/fault lines* of inclusion and exclusion. The direct action of the KRRS is exemplary for behaviour that is political by *asserting* itself in a way that *interferes* with and *resists* integration into the legal order that would include it: Against 'the Agreement on Agriculture of the WTO . . . at the root of the problems [confronting Indian farmers]', 'the final objective of [the KRRS's] work is the realisation of the "Village Republic"'. *A-legality is the central manifestation of the political in legal orders*.

Here, then, is a further determination of the politics of a politics of legal boundaries. Politics comes into play when *both* terms of the contrast between legal order and disorder, between legality and illegality, are challenged. A-legality is political, in this strong sense, by dint of bringing the contingency of collectives out into the open in a twofold sense: *that* we are a collective and *what* we are as a collective. If a-legality confronts a collective with its radical contingency in this twofold sense, the authorities of a collective respond *indirectly* to this challenge by establishing anew the boundaries of what counts as (dis)order and (il)legality, whether to change these boundaries, sometimes in ways that could not have been anticipated, to confirm them or to ignore the challenge. See here the political dimension of boundary-setting.

Importantly, the response of the collective to such challenges is, qua political response, strongly contextual, and includes, in addition to normative considerations, an appraisal of the *forcefulness* of the challenge, that is, its capacity to undermine the efficaciousness of legal orders. Remember Kelsen and Radbruch: although law is not valid *because* it is efficacious, nonetheless it is only valid *if* efficacious by and large (see Section 5.1). The more a-legality is in a position to sap a legal order's efficaciousness, the less authorities can afford to ignore it. For authority is never only oriented to articulating, monitoring and upholding a valid order; it is also always about securing the conditions for *order*. Likewise, an appraisal is required of the extent to which the response itself is capable of being efficacious, and not only valid. This involves the exercise of judgment about whether the members of the collective for the sake of which boundaries are posited will be prepared to identify with the new default setting of joint action, not merely in a normative sense but also in a factual sense of acting in conformity therewith.[25]

In brief, the politics of legal boundary-setting demands judgments that are *hybrid* because they involve insightful appraisals of efficaciousness as much as of validity. Politics is fundamentally misconstrued when its *prudential* dimension is written off as the 'contamination' that arises from the fact that discursive claims to validity are inevitably 'contextual'.[26] Against this untoward moralisation of politics, I have formulated the practical question confronting a politics of boundary-setting in a way that intertwines 'is' and 'ought'. A politics of boundary-setting must respond to the question—What is/ought our joint action to be about?—establishing anew what is to be included in and excluded from of a legal order.

But, as follows from this analysis, the question that governs the responses of a collective operates a reduction of the political domain opened up by a-legality. Indeed, whoever

[25] Here is where discussions about compliance come into the picture, an issue, however, which is beyond the scope of this book.

[26] Habermas, *The Philosophical Discourse of Modernity*, 323.

views this challenge as a question about the point of joint action, has already taken up the first-person plural perspective of the 'we at stake'. This reductive move is neither arbitrary nor happenstance: who speaks and acts for the sake of a collective cannot but approach a-legal behaviour as posing a question about the range of practical possibilities available to *us*, the legal collective (notice the objective case). As noted when critically evaluating the all-affected and all-subjected principles in Section 5.4, boundary-setting can certainly respond to challenges with a new default setting of inclusion/exclusion. But what is envisaged in authoritative boundary-setting is to respond in a way that *maintains*—even if in transformed fashion—the preferential difference between inside and outside.

This is, in substance, my bone of contention with Jullien's move to oppose inclusion and exclusion as, respectively, 'political' and 'anti-political' forms of action. Excluding from joint action is no less political, no less a dimension of the exercise of authority, than including, and precisely because the question concerning what our joint action is/ought to be about is the challenge to legal order as grasped from *within* the collective. As such, a politics of boundary-setting attests to the asymmetry of the preferential distinction between inside and outside, whereby challenges to unity are viewed as challenges calling for collective transformation to the extent that they can be accommodated and justified in terms of the point of joint action: *Asymmetry 2*.

But it is not necessarily the case that those who engage in a-legal behaviour *also* view themselves as participants in the collective, whether actual or potential, such that they have made that question their own. To a lesser or greater extent, their challenge may resist accommodation in the question about what 'our' joint action is/ought to be about. The KRRS' challenge to the WTO is apposite in this respect, and bears reiteration: against 'the Agreement on Agriculture of the WTO . . . at the root of the problems [confronting Indian farmers]', 'the final objective of [the KRRS's] work is the realisation of the "Village Republic"'. The aspiration to founding 'Village Republics' that could attain 'food sovereignty' bursts the constraints of the question to which the WTO incessantly returns when modulating the default setting of free global trade: What is/ought our joint action to be about? The irreducibility of a challenge to collective unity, to the collective's response thereto speaks to the irreducibility of constituent power to constituted power. Indeed, the emergence of another legal order proceeds from the wellspring of possibilities for joint action which resist domestication by the responsive potential of extant legal orders.[27] Challenges to a collective's unity reveal its boundaries as transformable limits *and* as fault lines that intimate an outside in excess of what a collective can respond to by redefining the terms of inclusion and exclusion: *Asymmetry 1*.

This double asymmetry has a far-reaching implication for how one should understand politics. Legal universalism is premised on the assumption that reaching agreement—consensus—is the *telos* intrinsic to political reasoning and action. This boils down to assuming that the end of politics is to end politics, even if its termination must be postponed *sine die*. By contrast, the double asymmetry between question and response ensures that *politics cannot end*, hence that it is radically open-ended in a way that is not captured by postulating all-inclusiveness as the 'regulative ideal' of a politics of boundaries. The hiatus between question and response stoutly resists the universalist move to conceptualise political struggles in terms of their immanent orientation towards consensus, absent which such struggles, we are told, irrevocably forfeit any claim they might have to being rational. The philosophical gambit to refuse the quality predicate of rationality to agents whose challenges to a col-

[27] Notice, however, that the paradox of representation is at work in constituent power, which can only found a collective by retroactively having shown to do no more than re-found it. See Lindahl, 'Possibility, Actuality, Rupture: Constituent Power and the Ontology of Change'.

lective don't aspire to reach consensus (which, for authorities, invariably means integration into the—transformed—unity of a legal order) justifies situations in which someone, claiming to be the representative of universality and rationality, disqualifies such challenges as either being in bad faith or not worthy of being taken seriously.[28]

6.3. Collective recognition

Section 6.2 has addressed the second of the questions to be dealt with in this chapter: What is the politics of a politics of boundaries? We can now turn to a third and decisive stage of our enquiry: what renders a politics of boundaries *authoritative*? My hypothesis is that recognition—asymmetrical recognition—is the royal gateway to understanding the authoritativeness of an authoritative politics of boundaries. Indeed, I have consistently referred in this book to legal orders as being exposed to 'challenges' to their putative unity, challenges that reveal their contingency. Although not all challenges to a collective are demands for recognition, the constellation of meanings that accrue to the transitive form of the verb 'challenge' are indicative of what is at stake in a demand for recognition:

> 1: to demand as due or deserved; 2. to order to halt and prove identity; 3. to dispute especially as being unjust, invalid, or outmoded; 4. to question formally the legality or legal qualifications of; 5. *a:* to confront or defy boldly; *b*: to call out to duel or combat; *c*: to invite into competition; 6: to arouse or stimulate especially by presenting with difficulties.[29]

What I have called a-legal behaviour has the form of a demand for what is due or deserved, which calls into question—disputes—the justness and validity of the limits of a legal order, thereby unleashing a struggle about the boundaries of (il)legality in which the collective's identity and the identity of who raises the demand are put to the proof.

This is the nature of the 'scream' that Holloway attributes to alter-globalisation movements, such as the KRRS. It is also the meaning of struggles that take place within emergent global legal orders, such as when the EU resists the exclusion of the precautionary principle from what is deemed important and relevant to food safety in the WTO's default setting of free global trade. In a word, demands for recognition arise when an individual or group is misrecognised by the terms of inclusion and exclusion that govern the joint action of the collective to which the demand is addressed. The demand for collective recognition is a demand that its addressee determine the legal boundaries of joint action in a way that respects the identity/difference of the misrecognised individual or group. Prelusive of the concept of authority to be worked out in Section 6.4, the present section lays out the essentials of asymmetrical recognition.

6.3.1. Collective self-cognition and self-recognition

Paul Ricœur's analyses of recognition offer a good point of departure for our enquiry. He secerns three senses of recognition, of which the first two are relevant at this stage of our enquiry. The first sense focuses on what he calls 'the initial quasi indistinguishableness of

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[28] Habermas makes no bones about this: the refusal to participate in a concrete practical discourse, i.e. a discourse oriented to reaching consensus about what *our* joint action ought to be about, amounts to the 'suicide' of reason or to 'mental illness'. Jürgen Habermas, *Moral Consciousness and Communicative Action*, translated by Christian Lenhardt and Shierry Weber Nicholsen (Cambridge, MA: The MIT Press, 1990), 100.

[29] Entry in the *Merriam Webster On-line Dictionary* (accessed on 30 December 2016). I omit the seventh meaning of the transitive verb, 'to administer a physiological and especially an immunologic challenge to (an organism or cell)'. But it would not be difficult to show the extent to which immunological metaphors are at work in the political discourse about the strange and collective self-assertion in 'reaction' to the strange.

recognizing (*reconnaître*) and cognizing' (*connaître*)'.[30] The sole difference concerns the particle 're', which speaks to repetition: to know or cognise something again. The problem of (re-)identification is at issue in this first and fundamental meaning of recognition. And because identifying something is to identify it as this or as that, identification goes hand in hand with differentiation. 'I propose taking as the first philosophical use of recognition the pair *identify/distinguish*. To recognize something as the same, as identical to itself and not other than itself, implies distinguishing it from everything else'.[31] What is crucial here, as Ricœur points out, is that this primordial use of the term is about the recognition of something as identical to itself, regardless of whether that something is a thing or a person. In this sense there is no difference between recognising an apple or a person. To recognise, in this first sense, means to pick out the distinctive traits of something, such that it can be re-identified as the same over time. '[T]his *principal* meaning will not be abolished in what follows . . . it will still be *identity* that will be at issue [in] self-recognition'.[32]

Indeed, the passage from recognition as the (re-)identification of *something* to recognition as *self*-recognition involves a passage from identity as sameness—*idem*-identity, as he elsewhere calls it—to a reflexive form of identity—self-identity or *ipse*-identity—, whereby a person recognises 'that he or she is in truth a person "capable" of different accomplishments'.[33] To recognise oneself is to assert oneself as an *agent* to whom beliefs, intentions, actions and some such can be attributed and imputed, and, consequently, who can be held responsible for certain acts as one's own.

Although Ricœur discusses these two forms of recognition with regard to individual persons, they are also, with some caveats, applicable to collectives. As pointed out above, the narratives of origins in which legal and political representation are embedded serve to identify and differentiate, picking out what is shared by the individuals that compose a group. Here, recognition is linked to the question '*what* are we?' Recognition, in this primordial sense, makes it possible to identify a group as the same, as identical to itself, hence as different from all others, and as identical to itself over time, such that it can be re-cognised by the members of the collective and others. Recognition, as cognising again, entails that even if the collective may change over time, it remains the same to the extent that it conserves the common traits that identify and distinguish it from all others: *idem*-identity.

The narrative and legal representations of origins go further than this, however. They fold the 'what' into a 'who', such that commonality becomes commonality from the first-person plural perspective of a 'we' in joint action. The representations of origins not only identify a collective and differentiate it from the rest, but also summon its addressees to identify themselves as participants in joint action, hence as *empowered* by the default setting of joint action to engage in certain kinds of interlocking actions over time. To the extent that it succeeds, the narrative and legal representation of origins allows individuals to recognise themselves as *capable* (Ricœur) of acting together with others with a view to realising the point of their joint action. When addressees of the representation recognise themselves as members of a group, the default setting of joint action can appear to them as their *own* system of rules, and its setting as their *own* joint act, i.e. an act of law-making *by* a collective self: *ipse*-identity.

In this vein, the elementary attestation of individual power that attaches to personal self-recognition—'I can' (*je peux*), as Ricœur puts it, in the footsteps of Husserl and Merleau-

[30] Ricœur, *The Course of Recognition*, 21 (translation altered).

[31] *Ibid*.

[32] *Ibid*.

[33] *Ibid*, 69. For *idem*- and *ipse*-identity see Paul Ricœur, *Oneself as Another*, translated by Kathleen Blamely (Chicago: Chicago University Press, 1992), 2-4; 115-125.

Ponty—has its counterpart in the attestation of collective power that accrues to collective self-recognition: 'we can'. The rousing 'Yes, we can' of Barack Obama's victory speech, delivered in Chicago on 4 November 2005, is a particularly facund example of the summons to a range of individuals to recognise themselves as a group, i.e. to understand themselves as capable, as empowered to act as unit: 'that, out of the many, we are one; that while we breathe, we hope. And where we are met with cynicism and doubts and those who tell us that we can't, we will respond with that timeless creed that sums up the spirit of a people: Yes, we can'.[34] Whatever differences may separate them, Donald Trump's electoral slogan, 'Make America great again', is a flatulent echo of the summons to collective self-assertion voiced by Obama's 'Yes we can!' Far more discretely, this 'we can' also resonates in the 'Yes, let's cook together!', whereby some students recognise themselves as the members of a cooking team that is capable of preparing a meal for the dorm. It is no less at work in the self-recognition of the WTO and the KRRS, the members of which *assert* themselves as a group, recognising themselves as members of collective agents capable of realising their objectives: free global trade and the Village Republic. Collective self-assertion, in the form of a 'we can', is the core of collective self-recognition.

Ricœur's analysis of these two levels of recognition is of considerable importance for our enquiry. His analysis of the cognitive dimension of recognition highlights the factual component of commonality, meaning by such that the representation of collective unity must be able to pick out traits that, retroactively, prove to be actually shared by individuals and that are not only relevant and consequential but also sufficiently stable to provide the basis for reidentification over time. In this sense, collective self-recognition involves recognition in the cognitive mode of a default setting of joint action that responds to the question: *what* are we?

The advantage of drawing attention to this 'principal' form of recognition (Ricœur uses the expression *princeps*) is, amongst others, that expert accounts of social interaction are part and parcel of the representational processes required for self-recognition by individuals as members of a collective: What *is* (ought) our joint action (to be) about? I use the expression 'expert' in the broad sense of who has or displays special skills or knowledge derived from training or experience.[35] The reference to training or experience is particularly apposite. On the one hand, the expertise deployed in the representation of collectives involves an *objectifying* approach to a collective, disclosing it by way of methodological and conceptual tools that are, in principle, also applicable to the cognition of interactions between *things*. Disciplinary expertise from fields such as sociology, economics, medicine and biology is certainly part of this representational process, as attested, amongst others, by the ISO, Codex Alimentarius, the BCBS and the slew of bodies that populate the regulatory landscape. The articulation of facts is a representational process through and through, and therefore inherently contestable, as the production of and resistance to indicators, amongst others, has made abundantly clear.[36] But to vaunt a politics of 'alternative facts' is to indulge in braggadocio, not to exercise authority.

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[34] See 'The full text of Barack Obama's victory speech', at http://www.independent.co.uk/news/world/americas/the-full-text-of-barack-obamas-victory-speech-993008.html (accessed on 11 December 2016).

[35] Entry on 'expert', *Merriam-Webster On-line Dictionary*, https://www.merriam-webster.com/dictionary/expert (accessed on 9 December 2016).

[36] It is not exaggerated to say that the production of indicators begins with a *nomos*—a taking—that claims to (numerically) represent a given reality in the very process of creating it. 'The essence of quantification systems is commensuration and comparison . . . In a logically first step, an object of analysis and some equivalence has to be created across all the individual instances this object can adopt. This requires finding a commonality among individual instances, a shared trait, and ignoring difference'. Richard

On the other hand, and although it has become obsolete in contemporary English, the notion of an expert as someone experienced in the ways and peculiarities of a collective has lost none of its relevance for the representational processes required to answer the question 'what are we?' This 'experience' harks back, as Gadamer has argued, to the form of practical wisdom the Greeks called *phronesis*, a notion that was translated into Latin as *prudentia*, and that includes knowledge of commonalities that are relevant and important, while also sufficiently stable to allow joint action to survive temporal attrition.[37] In brief, expertise, in its disciplinary and experiential senses, belongs to the prudential dimension of political judgment about what renders law *efficacious*, and that functions as an ingredient feature of recognition. This will be an important corrective to approaches which sever theoretical and practical authority, as we shall see in due course. And, no less importantly, it suggests that institutionalised authority cannot make do without the exercise of *personal* authority. At any rate, it is in this broadly veridical mode of an answer to the question about what it is that *really* joins us together that I wish to gloss (and paraphrase) Ricœur's characterisation of collective self-recognition: the attestation 'that [we are] *in truth* a [group] "capable" of different accomplishments' (emphasis added).

A second reason for which Ricœur's analysis of recognition is illuminating for our purposes concerns his insistence on the importance of (collective) *self*-recognition, a dimension of recognition that tends to get passed over in silence by discussions that focus on recognition of the other. He perceptively points to the paucity of analyses in the domain of practical philosophy that directly address the concept of selfhood. In particular, Ricœur notes that Kant does not really elucidate the self or *autos*- of moral autonomy when discussing the categorical imperative.[38] He insists that, prior to its development as a moral or legal concept, recognition is central to a theory of action. In fact, he defends the strong thesis that there can be no theory of action absent a theory of recognition. Everything that has been said thus far about the emergence of collectives supports this strong thesis, albeit in the framework of a theory of *collective* action. The self-identification of individuals as members of a group that is capable of acting in a variety of ways is the collective version of what Ricœur dubs personal self-recognition.[39]

But I am moving too fast. For, as Ricœur cautions his readers, 'reflection on collective identities cannot elude a higher order of sophistication than the identity-ipseity of the individual subjects of action'.[40] At issue is the question about the *jointness* of joint action, a theme that we already encountered in Chapter 5. As he develops it, this higher order of so-

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Rottenburg and Sally Engle Merry, 'A World of Indicators', 12. As is clear, this logically (and epistemologically) 'first step' is also a *political* first step, a *nomos* in the form of an unauthorized seizing the initiative to include and exclude. Indicators are an excellent example of how theoretical and practical authority blend into each other. Reasons of space preclude discussing the forms of recognition and misrecognition that accrue to the process of conceptualizing, producing and using (global) indictors.

[37] Gadamer, *Truth and Method*, 310 ff.

[38] Ricœur, *The Course of Recognition*, 90.

[39] A further benefit of Ricœur's theory of recognition is that it would allow us to reconstruct how the concept of recognition plays a role in making sense of the putative unity of legal orders, of which Hart's famous 'rule of recognition' is but one of its possible ramifications. No less importantly, it would allow us to do so in a way that bridges the distinction between a functional and normative characterisation of authority. This reconstruction would, however, take us beyond the scope of this book. For a reconstruction of Hart's rule of recognition in a transnational context, see Keith Culver and Michael Giudice, *Legality's Borders: An Essay in General Jurisprudence* (Oxford: Oxford University Press, 2010), especially chapters 1 and 2. For the central role of recognition in Kelsen see Bert van Roermund, 'Kelsen and the Low Skies. Recognition theory revisited and revised', in Robert Walter, C Jabloner & K Zeleny, K. (eds.), *Hans Kelsen anderswo. Hans Kelsen abroad* (Vienna: Manz Verlag, 2010), 259-278.

[40] *Ibid*, 140.

phistication demands introducing a third form of recognition. No personal self-recognition is possible, he argues, absent recognition *by* the other. The activity implied in self-recognition goes hand in hand with a fundamental passivity in which I am, from the very beginning, dependent on the other's recognition of my identity. 'It is indeed our most authentic identity, the one that makes us who we are, that demands to be recognized'.[41] The possibility that the recognition of our own identity is gainsaid, or that I gainsay the identity of who demands it of me, lends recognition its properly ethical character. Misrecognition by or of the other unleashes struggles for recognition.

Ricœur situates the emergence of collective identities in these interpersonal struggles for recognition, in particular in what Honneth dubs legal recognition, i.e. the recognition of *rights*.[42] Indeed, the capabilities that are the object of personal self-recognition include socially mediated capabilities, in particular rights.[43] Not being able to recognise oneself as capable or empowered because one is deprived of certain rights has its correlate in misrecognition by the other, and gives rise to a demand for recognition as a member in full standing of the collective. Honouring that demand, in the course of struggles for recognition, gives rise to relations of reciprocal recognition between persons, that is, relations whereby valid legal norms stipulate rights and obligations that allow them to recognise each other as free and equal beings. In Ricœur's words, 'recognition intends two things: the other person and the norm. As regards the norm, it signifies, in the lexical sense of the word, to take as valid, to assert validity; as regards the person, recognition means identifying each person as free and equal to every other'.[44] Collective identities, in particular the identities of states, arise through the dialectic of the particular and the universal deployed by interpersonal struggles for recognition that, as Honneth puts it, drive 'an expansion—forced "from below"—of the meaning attached to the idea of [the rights pertaining to] "full-fledged" membership in a political community'.[45]

In brief, it is safe to read Ricœur's account of the passage from misrecognition to reciprocal recognition as the passage from a challenge to the reciprocity presupposed in the jointness of joint action to its restoration at a higher level of generality and inclusiveness. In the face of an interruption of joint action sparked by a demand for recognition, addressing the demand requires transforming the legal order through a dialectic of the particular and

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[41] *Ibid*, 21. In his defence of an authentic identity Ricœur stands shoulder to shoulder with Taylor, for whom a demand for recognition is a demand to allow me '[to be true to myself . . . [to realize] a potentiality that is properly my own'. See Charles Taylor, 'The Politics of Recognition', in Amy Gutmann (ed.), *Multiculturalism and "The Politics of Recognition"* (Princeton: Princeton University Press, 1992), 25-73, 31.

[42] Axel Honneth, *The Struggle for Recognition: The Moral Grammar of Social Conflicts*, translated by Joel Anderson (Cambridge: Polity Press, 1995), 107-121.

[43] This would the juncture at which to critically discuss the relation between capabilities and rights, an issue, however, that exceeds what I can discuss in this book. See e.g. Amartya Sen, *Development as Freedom* (Oxford: Oxford University Press, 1999) and Martha Nussbaum, *Women and human development: the capabilities approach* (Cambridge: Cambridge University Press, 2000).

[44] Ricœur, *The Course of Recognition*, 197. I read this passage as conclusively rebutting Fraser's attempt to oppose recognition and distribution in her acrimonious debate with Honneth.

[45] Honneth, *The Struggle for Recognition,* 116. Ricœur concurs: 'I accept the essence of this project. In my vocabulary, it is a question of seeking in the development of conflictual interactions the source for a parallel enlarging of the individual capacities discussed . . . under the heading of the capable human being out to conquer his ipseity. The course of self-recognition ends in mutual recognition'. Ricœur, *The Course of Recognition*, 187. Notice the unmistakable connotation of self-mastery in Ricœur's reference to 'conquering' ipseity, a reference that is extensive to collective ipseity in theories of reciprocal recognition. Markell refers to this as the quest for personal *sovereignty* proper to theories of reciprocal recognition. Unfortunately, reasons of space preclude tracing the similarities and differences between asymmetrical recognition and what he calls a 'politics of acknowledgment'. See Patchen Markell, *Bound by Recognition* (Princeton: Princeton University Press, 2003), 10-15.

the general, of self and other, such that the parties in conflict can come to whole-heartedly endorse the threefold putative unity of a legal order: referring to themselves as a 'we together'; recognising the legal system of rules as valid; orienting themselves according to the places, times, subjectivities and act-contents made available by a pragmatic order.

6.3.2. We can—and cannot

Ricœur's is a luculent interpretation of how legal universalism understands the relation between recognition and authority. In a nutshell, he and the strand of normative thinking he champions can be understood as arguing that the authoritativeness of legal orders turns on securing the jointness of joint action: action is joint action if and only if all those subject to its default setting can view themselves as free and equal persons. The task of an authoritative politics of boundaries is to transform the default setting of joint action, whereby an unjustified absence of reciprocity gives rise to a situation of reciprocal recognition between equal and free individuals. And this means that a politics of boundaries *can* be authoritative because it *can* progressively overcome [T1] the contingency of legal boundaries in [T2] the direction of an all-inclusive legal order. Here, then, is the elemental—in the sense of most fundamental—account of the relation between collective self-recognition and recognition of the other that drives legal universalism's view of authority: we are capable of recognising the other as one of us. By recognising—including—the other as one of us, a politics of boundaries reveals itself as authoritative; it obeys 'the injunction to complete inclusion'.[46]

It is by no means my intention to reject reciprocity out of hand. After all, as noted in Chapter 2, [1] directed or relational relations between participants in joint action articulate what are deemed to be reciprocal relations between them. Instead, my aim is to expose the ambiguity of claims to reciprocity deployed by IACA. Legal orders claim to be authoritative by dint of having instituted or being capable of instituting relations of reciprocity between the members of the collective; but this claim has a *blind spot* that cannot be suspended by reciprocity. To the contrary: this blind spot is the condition of possibility of reciprocity. As a result, acts of recognition that institute relations of reciprocity are also always exposed to being a form of domination *because* they bring about and enforce relations of reciprocity.[47]

This was precisely the problem that the KRRS encountered with respect to the WTO. What they demand—recognition of their identity/difference as a collective oriented to realising Village Republics that guarantee food sovereignty to their members—is inimical to the WTO, a collective oriented to promoting 'free global trade'. The distinction between the orderable and the unorderable, the governable and the ungovernable, reappears, in the framework of a theory of collective self-recognition, in terms of the contrast between collective empowerment and disempowerment, collective capacity and incapacity. The constitutive 'we can', at the heart of collective self-assertion, goes hand in hand with a no less constitutive 'we cannot': we cannot recognise the other as one of us. Notice that recognition here does not refer only to inclusion as declaring legal what used to be illegal (or simply unordered). One of the ways of recognising the other as one of us is to declare illegal what used to be legal (or unordered). Qualifying behaviour as illegal is an act of collective self-assertion whereby a collective declares that such behaviour is a privative manifestation of what it takes to be relevant and important to joint action. In short, declaring behaviour illegal, e.g. by putting someone into jail, is a form of *inclusion* and of legal recognition of the other as one of us. By contrast, 'we cannot recognise the other as one of us'—hence we cannot recognise

[46] Jürgen Habermas, translated by Max Pensky, *The Postnational Constellation* (Cambridge: Polity Press, 2001), 148.

[47] Hans Lindahl, 'Recognition as Domination: Constitutionalism, Reciprocity and the Problem of Singularity', in Neil Walker, Stephen Tierney and Jo Shaw (eds.), *Europe's Constitutional Mosaic* (Oxford: Hart Publishes, 2011), 205-230.

ourselves in the other—refers to demands for recognition to the extent that they are in excess of what we, the collective, can recognise as our own. In this vein, the KRRS's demand that they be recognised as who they really are, namely, as a collective oriented to realising Village Republics that secure food sovereignty for their members, bespeaks a 'we cannot' that accompanies, as its obverse, the WTO's collective self-assertion: 'we can' promote free global trade. There is an irreducible ambiguity in reciprocity that is either concealed or underestimated by theories of reciprocal recognition: recognition of the *other* as one of us is recognition of the other *as one of us*.

Accordingly, the exclusion that takes place through the inclusion of the other as one of us attests, indirectly, to the domain of what is unorderable for a collective, the domain whence constituent power can spring forth to found another collective. We can and we cannot: constituent power and constituent powerlessness are the two sides of a single coin.

Returning to legal universalism, if we are to preserve its strengths, while also hoping to parry its difficulties, we need to conceptualise the internal connection between recognition and authority in a different way. Such is the task of the coming pages. Instead of accompanying Ricœur any further along his *parcours*, I will set down a different path, one that returns to critically reconsider collective self-recognition by raising a question that Ricœur neither poses nor answers: what goes into the 're' of recognition, and how does this impinge on both collective self-recognition and recognition by/of the other?

6.3.3. Collective self-recognition and the paradox of representation

The question is legitimate because Ricœur thematises the particle 're' in recognition as uninterrupted identity, i.e. as permanence in time. Regarding *idem*-identity, recognition, for Ricœur, means that something is cognised *again*, that is, as the same. As concerns *ipse*-identity, we attest *again* to our existence as capable beings by living up to promises we have made, and holding ourselves responsible and being held responsible by others for our past acts. In Ricœur's view, while there may be difficulties in reidentifying someone or something as the same, and while promises may be broken, temporal identity as permanence in time is not problematic as such. Analogous considerations apply to collective self-recognition: we are the group who committed to φ in the past, and who now live up to that commitment by φ-ing. In terms of the IACA-model of law: we endeavour to realise the point of joint action and will continue doing so, despite the difficulties that we may encounter along the way. This is the basic structure of permanence in time that, according to Ricœur, characterises collective self-identity.

But the 're' of recognition means more than simply 'again'. To begin with, and as a result of the dynamic of representation, to recognise is to recognise something *as* this or *as* that. In Thomas Bedorf's words, recognition involves a triadic structure: 'the two-part relation, "*x recognises y*", describes the relation only partially. Instead, it is a triadic relation in which *x recognises y as z*".[48]

The 're' of recognition entails that a collective identity is never given immediately or directly to recognition; strictly speaking, recognition is a process of identification: whoever recognises *posits* an identity between what is recognised and how it is recognised. As a result, what is identified in recognition is always *more and other* than how it is identified (e.g. as *z* rather than as *w*). Ricœur's simple contrast between self-identification and other-differentiation is, therefore, reductive. Paraphrasing Bedorf, collective self-identification does not have the form, 'we recognise ourselves'; it deploys a triadic relation: 'we recognise

[48] Bedorf, *Verkennende Anerkennung*, 118. He draws here on Waldenfels: 'The other is recognised as *someone*: as mortal, as a rational being, as a person or subject, in the specific role of a family member, a citizen, the representative of a profession, as an official or a have-not, a stateless person, and all of this in a variable cultural hue'. See Bernhard Waldenfels, *Schattenrisse der Moral* (Frankfurt: Suhrkamp, 2006), 76.

ourselves as *z* (rather than as *w*)'. The self-identification—hence self-inclusion—that takes place in self-recognition is also always a self-differentiation—hence a self-exclusion—. Recognition differentiates a collective with respect to *itself* in the very move by which it posits its identity (in time). As a result, collective self-recognition is always also collective self-*mis*recognition. So, for example, the WTO recognises itself as a collective capable of ensuring food safety by relying on scientific risk analyses. But this self-recognition introduces a difference into the WTO's identity—a non-identity in identity—because participants in the WTO, e.g. the EU, will complain that the default setting of food safety gives insufficient weight to the precautionary principle. 'Not in our name! We are misrecognised because what we view as relevant and important has been excluded from joint action'.

So much for the reductionism accruing to a reading in which recognition is interpreted solely as a self-identification. Analogous problems concern the contrasting term of collective self-identification, namely, differentiation with respect to the other. Indeed, the 're' of recognition ensures that other-differentiation goes hand in hand with other-identification, in that the other is recognised as one of us. For instance, the KRRS' direct action challenges their identification as subject to—hence as included in—the WTO. 'Not in our name! We are misrecognised because, having been included in joint action, we can no longer act in accordance with what we view as relevant and important to us'. The dynamic of representation ensures that collective self-recognition involves not only collective *self*-misrecognition but also misrecognition of the *other*, giving rise to demands for inclusion in and exclusion from the collective.

See here the root manifestation of struggles for recognition. In contrast to Ricœur, Honneth, Taylor and others, who view legal recognition and misrecognition as different operations, respectively as the operations of inclusion and exclusion, I hold that recognition and misrecognition are the two faces of a single operation—representation—that includes by excluding and excludes by including. And whereas the aforementioned authors conceptualise struggles for recognition as the passage from misrecognition to reciprocal recognition, even if the latter must be postponed indefinitely, interpreting representation as a Janus-faced operation entails that struggles for collective recognition *cannot end*, and not simply because reciprocal recognition is a regulative ideal the realisation of which must be forever postponed.[49] This is a restatement of my earlier thesis that politics cannot end. Acts of collective recognition are irreducibly ambiguous achievements.

These considerations have two important implications that merit further attention.

The first turns on the paradoxical nature of responsiveness in collective self-recognition. As discussed earlier in this chapter, a collective recognises itself when asserting that it is a group capable of acting in a variety of ways in response to what is perceived as a challenge to collective unity: we can. Here again, the KRRS's manifesto is a good example of the paradoxical responsiveness of collective self-recognition:

> For KRRS . . . rejecting chemical agriculture and biotechnology necessarily implies promoting traditional agriculture . . . The fact that traditional technologies and knowledge plays a key role in the alternatives proposed by the KRRS does not mean that they reject new technologies. For instance, the electric fence that will surround the centre for sustainable development (needed given the presence of wild elephants in the area) will be powered by solar energy. The criteria for the acceptance or rejection of technologies in KRRS are not related to their age; they are related to factors such as whether the technology can be directly operated

[49] This is the sense in which Honneth acknowledges that struggles for recognition are 'permanent'. See Honneth, *Struggles for recognition*, 127.

> and managed by the people who use it, whether it is labour-intensive or capital-intensive, and other political criteria.[50]

The passage indicates that the KRRS view chemical agriculture and biotechnology as a menace to traditional agriculture, which they seek to assert as part of their collective identity. Their collective self-assertion takes for granted that traditional agriculture is already an integral dimension of their collective identity. Yet, that traditional agriculture belongs to their identity manifests itself to them ex post, in the face of the challenge of novel food technologies. A collective that is not exposed to novel technologies or to the rise of global capitalism would not thematise its farming practices, if at all, in terms of *traditional* agriculture. Besides, and crucially, while rebuffing chemical agriculture and biotechnology, their response does not resile from other new technologies, whereby what counts for them as *traditional* agriculture is interpreted in a new way.

So, the paradox of representation is at work in collective self-recognition. On the one hand, an identity is posited as given when a collective recognises itself as capable of acting in certain ways in response to a challenge to its existence. On the other, collective self-recognition creates an identity, in response to a challenge. In García Düttmann's words, 'recognising is . . . a creating of the given'.[51]

The corollary to this paradox is that collective self-assertion by alter- and anti-globalisation movements, in response to the threats posed by globalisation processes, can be neither the return to an original identity nor the uninterrupted continuation of an unproblematic self-identity. Eslava's study of illegal neighbourhoods in Bogotá that resist globalisation processes likewise illustrates that a return to the status quo ex ante is bootless. '*Aquí nos quedamos*!—Here we stay!' The motto is a cry of self-assertion that seeks to reclaim the place from which they would be evicted by decentralised development strategies. Yet, as Eslava shows, when resisting eviction from their emplacement as a city neighbourhood, the illegal communities participate in an alternative globalisation, claiming a novel place for themselves in cross-border configurations of places. Returning to where they had been leads them to another place; 'here' is elsewhere. (See Section 4.1.1) It is not otherwise with Marine Le Pen's Front National. In the first of, and arguably the most comprehensive among, her 144 presidential commitments, Le Pen promised to '*remettre la France en ordre*' (put France back into order).[52] The 're' of *remettre* ensures that, were the Front National to reach power at some point, it would originate a France in returning to the original France. So also the 're' of representation is at work in the 'back' of the Brexiteer slogan: 'taking back control'.

This brings us to a second implication that follows from the ambiguous status of the 're' of recognition. It concerns collective identity as permanence in time. By asserting their traditional forms of farming against the threats posed by the tandem between the globalisation of capitalism and the emergence of chemical agriculture and biotechnology, the KRRS endeavour to continue identifying themselves as traditional farming communities. From the perspective of Ricœur's theory of identity, their demand for recognition as a collective dif-

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[50] Website of the KRRS, http://home.iae.nl/users/lightnet/world/indianfarmer.htm (accessed on 18 December 2016).

[51] Alexander García Düttmann, *Between cultures: tensions in the struggle for recognition*, translated by Kenneth B Woodgate (London: Verso, 2000), 4 (translation altered). And he adds: '[t]he one who recognises is both a witness *and* a producer. He belongs to a presupposed community or society which must first be formed by recognition . . . If act and statement, foundation and confirmation were to coincide without remainder, then the foundation would be mere confirmation and not really a foundation, or the confirmation would ultimately prove to be nothing but a foundation'. *Ibid*, 4-5. (translation altered)

[52] Available on the website of the Front National, at: https://www.marine2017.fr/wp-content/uploads/2017/02/projet-presidentiel-marine-le-pen.pdf (accessed on 25 April 2017).

ferent to the WTO asserts their continued commitment to realising Village Republics that secure, amongst others, food sovereignty for their members.

I take this interpretation of identity as permanence in time to be correct as far as it goes. But the problem is that it does not go far enough: it elides the temporal rupture, however discrete, that has taken place in the KRRS' response to the challenge of novel technologies. To repeat the crucial point, what counts as traditional agriculture is created retroactively in the KRRS' response to the arrival of new technologies. What their farming practices are 'really' about is the outcome of a *décalage* whereby what is yet to come is retrojected into the past as what, having already come to pass, only needs continuation. What looks, with the benefit of hindsight, like the permanence in time of collective self-identity is laced with temporal ruptures that have the form of retroactive projections. It 'looks like' temporal permanence, and no more than that, because can the KRRS be sure that their practices will remain recognisable to all their members as traditional agriculture, once the new technologies they have accepted are woven into their daily life? Thus, against the reading of the 're' of re-cognition as a mere attestation of identity's permanence in time, we can now hold that no 're' can be intended as a simple repetition of identity because identity is altered by the question to which its re-enactment would respond.

Returning to the outset of this subsection, the promise is, for Ricœur, the paradigm of self-identity in time: I promise that I will φ, come what may: *je maintiendrai*.[53] The self perseveres—remains identical to itself—in the temporal interval that goes from making a promise to keeping it. It is not otherwise with collective selfhood. The permanence in time of a collective self is manifested in the continued commitment by group members to realising the point of joint action, despite the mishaps and tribulations that may come their way. By persevering in our commitment to carry through with the point of joint action, we remain faithful to ourselves, i.e. to what we really have in common and for which we stand together: *nous maintiendrons*.

The paradox of representation does not directly dispute this interpretation of collective self-identity. Instead, it shows that, during the career of a legal order, breaking promises is necessary to keep them, without there being any conclusive criterion to establish whether a promise is being kept when broken, or whether it is merely that: a broken promise. Honouring and betraying collective self-identity are yoked together: if, in a novel context, breaking promises to keep them is, for some participants, the condition for being able to continue recognising the collective as their own, for others, promises are simply broken, such that, becoming alienated from the collective, they feel compelled to disown it: I no longer recognise this collective as my own. Thus it is never fully clear whether the demand that a collective be recognised as this or as that expresses the commitment of a group to continue engaging in joint action or whether it is the retroactive inauguration of another collective. The 're' of recognition is the 're' of *anew*, which hovers uncertainly between 'again' and 'new', between constituted and constituent power.

6.3.4. Restrained collective self-assertion

In brief, while it joins forces with legal universalism in acknowledging that the problem of collective recognition is at the core of an authoritative politics of boundaries, the IACA-model of law stands by a different reading of recognition and its associated concept of collective self-assertion. For legal universalism, and given an initial situation of [T1] misrecog-

[53] Ricœur refers to the '*maintien de soi*' in *Oneself as Another*, 123. This is his interpretation of the principle of self-preservation at the heart of modern rationality. *Je maintiendrai* is, incidentally, the motto on the royal coat of arms of the Netherlands: https://en.wikipedia.org/wiki/Coat_of_arms_of_the_Netherlands#/media/File:Royal_coat_of_arms_of_the_Netherlands.svg (accessed on 19 December 2016).

nition perpetrated by unjustified exclusion from the collective, the normativity of an authoritative politics of boundaries turns on [T2] an inclusive transformation of joint action, the outcome of which is reciprocal recognition between the parties in struggle as equal and free participants in joint action.

The IACA-model of law exposes three main difficulties with this approach. The first is that legal universalism focuses only on unjustified *exclusion*, thereby losing sight of cases where inclusion is the problem, rather than the solution thereto. The second turns on the condition that recognition requires *unjustified* exclusion (and inclusion). This condition points to what I called the blind spot of reciprocity. By placing all of its normative bets on instituting relations of reciprocal recognition between the parties in struggles for recognition, legal universalism passes over in silence the dimension of domination ever present in collective recognition, namely, the assimilation of the other to one of us. This blind spot is related to a third difficulty, which turns on the dynamic of representation: *a* represents collective *b* as *x*. In identifying a collective as (*x*), *a*'s act of representation introduces a non-identity (rather than *y*) into identity. As a result, the self-inclusion brought about by representation (the gathering together of a range of individuals under the banner of *x*) is paired to a *self-exclusion* (alienating those who would range themselves under the pennon of *y*). 'Not in our name, because what we take to be essential to our identity is threatened by dint of having been excluded from joint action!' The ambiguity of representation does not end here, however: a range of individuals are included in a collective who may not want to be part of the collective at all, rather than simply challenging what constitutes the jointness of joint action. Other-exclusion effected by representation (we, as *x*, are different from the rest) goes hand in hand with *other-inclusion*. 'Not in our name: what we take to be essential to our identity is threatened by our inclusion in joint action!'

Thus, and *contra* legal universalism, the IACA-model of law holds that recognition is an irreducibly ambiguous achievement: collective recognition is always, to a lesser or greater extent, collective misrecognition. This insight distils the three theses that have been our constant companions since their introduction in Chapter 3: in the face of challenges to [T1] the putative unity of a collective, responses thereto deploy a process of [T2] unification and [T3] pluralisation. This does not mean, however, that we can no longer rely on recognition to make sense of the authoritativeness of an authoritative politics of boundaries. Instead, it suggests that collective recognition, if it is to be authoritative, must be asymmetrical recognition.

In its basic contours, the concept of asymmetrical recognition follows fairly straightforwardly from everything that has been written heretofore. It consists in a radicalisation of the tension between collective self-recognition and recognition of the other. As I have insisted heretofore, the other's demand for recognition is asymmetrical because it is not merely a claim to inclusion in relations of legal reciprocity as a way of redressing the violation of its identity/difference. To a lesser or greater extent, demands for recognition are in excess of the possibilities available to a collective when it responds to the demand. In turn, the response of the polity is asymmetrical because it frames the demand of the other in ways that render it amenable to a response in the terms of (transformed) relations of reciprocity available to joint action. Under these circumstances, and most generally, an authoritative politics of boundaries takes shape through responses that recognise the other as one of us *and* as other than us. The former aspect of asymmetrical recognition speaks to collective *self-assertion*; the latter, to collective *self-restraint*. A theory of asymmetrical recognition interprets an authoritative politics of boundary-setting as *restrained collective self-assertion*. We can now turn to flesh out this idea more fully.

6.4. Authority

Chapter 2 offered a functional interpretation of authority: authority is what authority does. And this means, concretely, that authority is about articulating, monitoring and upholding joint action. This preliminary characterisation sufficed at that stage of the argument, which sought to show how this barebones account of the IACA-model of law revealed significant continuities and discontinuities across a wide range of legal orders, global and otherwise. But as was indicated at the outset of Chapter 5, a functional account of authority can only stand on its own as long as the jointness of joint action is taken for granted, that is, as long as the claim to reciprocity implicit in articulating, monitoring and upholding joint action is not challenged by participants or by others. Here is where a richer concept of authority must take its point of departure, focusing on demands for recognition and the responses thereto by a collective. Two questions now demand our attention: What reading of collective self-assertion flows from the notion of asymmetrical recognition? How would the notion of collective self-restraint colour its approach to authority?

6.4.1. Intransitive power

We do well to revisit the concept of *power*, the point of departure for thinking about authority. In effect, practical authority is usually characterised in terms of normative power. Whatever the merits and benefits of this characterisation, it tends to neglect the deep structures of power absent which the capacity to change the normative status of agents would not be intelligible. To these we must now turn.

The reader will remember, as a first step in this direction, that John Holloway, when critiquing representation, introduced the distinction between 'power over' and 'power to' (see Section 4.2.1). Representational power is, in his reading, power of the rulers over the ruled: heteronomy. 'Power to' regards power exercised directly by the multitude: autonomy or collective self-rule. His critique of representation can be understood as showing that representation involves an unauthorised taking, whereby certain individuals come to rule over others: transitive power, as I called it. While his critique is correct as far as it goes, it misses out on what is essential: representation is the vehicle by which we exercise power over *ourselves:* collective self-rule. The transitive structure of power that arises when someone seizes the initiative to represent a collective, hence the cleavage between those who rule and those who are ruled, presupposes this intransitive or reflexive structure of 'power-over' ourselves. As I argued, the reflexivity of power, hence the claim to obedience it implies, is built into the thesis that representation is necessary because someone must say 'we' on behalf of '*we*'—not of they. Representation, to the extent that it succeeds, has the form of a collective *self*-representation.

In the process, 'power over' becomes 'power to' in the sense indicated by Ricœur in his account of personal self-recognition, and which I have extended to collective self-recognition: individuals who come to view themselves as *capable* of acting (jointly) in response to what questions their existence and mode of existence. Here, then, is a first run at formulating the relation between authority and recognition: *authority is the capacity to articulate a representation—a vision—of who 'we' really are/ought to be that, in hindsight and for the time being, gains the allegiance of its addressees and motivates them to act as a group that can deal with challenges to its contingent existence.* This first-person plural conception of authority is internally linked to the recognition of a legal system and of a pragmatic order as our own, empowering what thereby *become* certain agents to act in certain ways in certain times and places: the summons to a 'we can' is also the summons to an 'I can'. Far from being simply transitive power, power over others, as Holloway and Negri & Hardt would have it, authority manifests itself as such precisely when those over whom power is exercised recognise themselves as exercising power *over themselves*—through their representatives—by setting the limits of inclusion in and exclusion from joint action. This is the deep

structure of power animating the relation between authority and recognition deployed in collective self-assertion, and which is already presupposed by and is prior to the ubiquitous definition of practical authority as power to change the normative status of agents. As such, it is the common root of constituent and constituted power.

Returning to Chapter 4, the passage from transitive to intransitive power at work in collective self-assertion is beautifully captured by the concept of authority as articulated in the motto of the Zapatistas: *mandar obedeciendo*—to lead/command (by) obeying. There is, firstly, the ambiguity of the verb *mandar.* It means, as noted earlier, both to lead and to command, reminding us that authority manifests itself most visibly in acts that *take* by seizing the initiative to include and exclude. In fact, *mandar* marvellously captures what is at stake in *nomos* as seizing the initiative. On the one hand, authority leads the way by seizing the *initiative*, that is, by commencing, innovating, opening up a novel domain of possibilities for acting together; on the other, authority commands by *seizing* the initiative. In effect, *mandar* denotes a forceful leading the way in which force is never entirely effaced to the benefit of leadership. And there is, secondly, obedience. Authority never only leads/commands; the motto indicates that authority can only lead by obeying, hence heeding to what precedes it in the form of a summons to action, such that to lead/command is to respond. Authority has a responsive structure. The richness of the motto does not end here, however. Its gerundial formulation—*obedeciendo*—suggests that the precedence of the summons to the response does not come to an end; leading/commanding remains incomplete and ever in need of renewal and modulation. Pressing the motto's meaning somewhat, perhaps the summons to which authority responds never ends because leading is also always a commanding that forces itself onto what it should obey. And this seems to be the case because no leading would be necessary if it were known in advance that obedience is required and what it is that must be obeyed; leading/commanding is never fully absorbed by obedience.

See here the double asymmetry of question and response: even if authoritative obedience presupposes a summons that precedes a response that includes and excludes, the summons to which authority responds manifests itself retroactively in how the response frames this summons when setting the limits of (il)legality. Authority, to be such, must hearken to a summons; but an ineradicable positivity animates its response, in which commanding and leading the way are inextricably intertwined. The congruence *and* incongruence of question and response, of other and self, goes to the heart of what authority is about, and manifests itself, textually speaking, in the empty space that joins and separates the two words of the Zapatista injunction: *mandar obedeciendo*. This in-between is the 'inter' of intersubjectivity.

6.4.2. To obey

Let us look more closely at the obedience of authority.[54] As noted, obedience concerns a heeding attunement to a summons to collective self-assertion, a summons that calls for a response in the form of an act of boundary-setting. This summons is situational and multidimensional.

It is situational not only by dint of emerging in a concrete context which calls for a response but also because [7] it emerges against a background which is pre- and co-given with joint action, and that contributes to determining what counts as relevant and important

[54] Reasons of space preclude contrasting the notion of obedience I espouse to that of 'service' that Raz has in mind when propounding 'the *service conception* of the function of authorities, that is, the view that their role and primary normal function is to serve the governed'. Joseph Raz, *The Morality of Freedom* (Oxford: Clarendon Press, 1986), 55-56. See also Joseph Raz, *The Authority of Law: Essays on Law and Morality* (Oxford: Clarendon Press, 1979), 3-27.

to the collective. In this respect, phenomenological philosophy distinguishes two correlative dimensions of experience, namely, the foreground or theme and the background. The theme is what appears as *this* or as *that*; and it can only do so against the background of a web of meanings, practices, presuppositions and some such: a world. As long as experience follows its ordinary course, the background remains unobtrusive and taken for granted. One acts more or less blindly. Heidegger refers to this practical orientation in the world, organised in terms of the distinction between foreground and background, as 'circumspection' (*Umsicht*): a 'looking around' when disclosing something or someone as this or as that.[55] In the ordinary course of experience, circumspection and action are seamless; when its ordinary course is interrupted, action ceases, giving way to circumspection as a care-ful 'looking around' oriented to establishing what one ought to do next in the situation in which the transpicuousness of action has become clouded. This basic structure of care-ful circumspection is at work in authority, interpreted as a leading/commanding (by) obeying. On the one hand, obeying as a heeding attunement involves a 'looking around' that seeks to size up the whole situation, prior to any move to distinguish the factual from the normative, in the face of disorientation about what our joint action is/ought to be about; on the other, the circumspection of authority is also a leading the way/commanding in the form of a reorientation of the nexus between foreground and background by establishing anew what is and what isn't relevant and important to joint action.

The summons to action which an authority is called on to obey is multidimensional in two different senses. The first has to do with the multeity of ways in which collective unity can be *challenged* by the other. As we have noted, some of these challenges are predominantly viewed as threats to the identity/difference of a collective *self* and ultimately to its existence. When read thus, the summons to action is a summons to respond to the other in a way that could parry or otherwise deal with the other's misrecognition of the collective's identity/difference, ultimately its existence. Such is the nature of calls to collective self-assertion by a host of alter-globalisation movements, and for which the KRRS is exemplary. At the other extreme of the spectrum, which is in fact the inverted mirror image of the former, the summons to action concerns a claim by the other that joint action by the collective misrecognises the *other's* identity/difference, ultimately its existence, as is arguably the case with the WTO's default setting of free global trade with respect to the KRRS. If the former, the summons to action concerns the collective self's vulnerability; if the latter, the vulnerability of the other. Obviously, intermediate situations are legion, in which the encounter between collective self and other reveals mutual vulnerability. Accordingly, collective self-assertion, interpreted as dealing with challenges to the putative unity of the collective, comprises the entire spectrum of a summons to action: it is as much about being able to resist the misrecognition of our identity/difference as to reconfiguring what we call joint action in the face of demands that the other's identity/difference be recognised. In each case, authoritative obedience is a hearkening attunement to a summons to action.

There is a second sense in which the summons to collective self-assertion is multidimensional, namely, that 'the other' encompasses all other *beings*. In this expansive sense, the other includes not only individual human beings and groups of human beings, as anthropocentric theories of recognition take for granted, but other beings as well, which can either threaten the existence of a collective or be threatened by the collective. As to the latter, I submit that demands for recognition can arise from *all* beings, not only from individuals or collectives of human beings. So, for example, the enactment of 'animal rights' signals that non-human animals can summon us to protect their vulnerable existence: theirs is also a demand for recognition of an identity/difference threatened by joint action, even if it mani-

[55] Heidegger, *Being and Time*, 98.

fests itself in a fleeting gaze of pain, fear or hunger, and to which we respond, in one way or another.[56] Notice that these very terms reveal that we can recognise ourselves in their vulnerability: we also suffer pain, fear and hunger. So also, and more generally, the notion of environmental degradation indicates that the environment can summon us to action, not simply because it is a 'condition' for the continuation of human life but because it reaches us in the form of a wordless, more or less inchoate, appeal to care for an identity/difference that is threatened by our joint action, as when it is asserted that we imperil the integrity of a certain habitat. Environmental law cannot be explained only in terms of securing the conditions for human survival; it is also, and constitutively, a response to a demand for recognition by the non-human domain, or more precisely, the non-human domain that we also are.

In short, I strongly resist moves to carve up the notion of a summons to collective self-assertion into the normativity proper of demands for recognition raised by individual human beings and/or groups of human beings, on the one hand, and the domain of non-human beings as the merely 'factual' constraints that need to be taken into consideration when dealing with demands for recognition, on the other. The summons that proceeds from the vulnerability of the non-human domain is no less normative—*no less a demand for recognition*—than the summons which arises from a demand for recognition raised by an individual or a group. Human behaviour has no monopoly on a-legality.

The authoritativeness of obedience deployed by a leading/commanding is not only a heeding attunement to the other's summons to action; it is also a *self*-heeding attunement. Indeed, the summons to action confronts us (notice, once again, the objective case), a collective, with the question about who 'we' *really* are. Authorities are to be obedient to collective identity, seeking to articulate, retroactively, what is *truly* relevant and important to us, both factually and normatively, such that we can recognise ourselves as members of a group capable of dealing with a challenge to its continued existence in a way that is both valid and efficacious: the taking of *mandar* has its counterpart in a re-taking of *obedecer*. This characterisation suggests, once again, that the situational and multidimensional obedience displayed by authority is *hybrid* or prudential, as I earlier called it, because obedience to what summons us to collective self-assertion cuts across the distinction between theoretical and practical authority, where the former concerns reliably knowing what is the case and the latter as validly determining how one ought to act. It is perhaps more than a felicitous coincidence that care-ful circumspection or *Umsicht* also means prudence. In this way, the reflections in Section 3.2.1 about the hybrid rationality of collective action, as being both means- and ends-oriented, make their way into a theory of authority. As attested by the summons to action confronting the ISO, if, on the one hand, a purely normative approach to authority misses out on the contribution of expertise to securing the authoritativeness of global governance, a strictly cognitive approach thereto cannot deal with the normative problem of the commonality of the ends of action proper to the process of articulating, monitoring and upholding joint action.

6.4.3. To lead/command

So much for the obedience of an authoritative politics of boundaries; let's now look at the leading/commanding that responds to a summons to collective self-assertion by setting the limits of collective unity. The key question confronting authorities is this: how *ought* they to posit the limits of collective unity, in response to a demand for recognition? It is tempting to

[56] As Buber puts it in his essay 'Dialogue' (*Zwiesprache*), '[g]enuine responsibility exists only where there is real responding. Responding to what? To what happens to one, to what is to be seen and heard and felt . . . A dog has looked at you, you answer for its glance . . .' Martin Buber, *Between Man and Man*, translated by Roger Gregor Smith, *Between Man and Man* (New York: Collier Books, 1965). 16-17. I am grateful to Ferdinando Menga for calling my attention to this passage.

seek the authoritativeness of a collective response in a criterion that is both independent of and prior to all conflict about unity, such that it provides an unambiguous answer to this question. This criterion would be what, strictly speaking, 'leads the way'. And because it would be both independent of and prior to the response, it would 'lead the way' without 'commanding'.

The two hoary candidates of the philosophical tradition for such a criterion are the good and the right, which we have discussed at some length in Chapters 4 and 5. Indeed, and regardless of their differences, the good and the right are taken to yield independent and pre-given normative criteria of the jointness of joint action, hence of the normative content of authority. If particularism (communitarianism) appeals to the good, universalism (cosmopolitanism), to the right when making sense of authority. The good is the key to the former because the prior and independent criterion by which the exercise of authority should be assessed is its fidelity to an authentic collective identity. The right is key to the latter in the form of submission to the 'regulative ideal' (Kant) of a collective that is identical to itself because all individuals affected by or subjected to its legal system can recognise themselves as its authors, hence as free and equal beings. The former would restore collective identity in the face of conflict; the latter, construct it. So whether one is communitarian or cosmopolitan, particularist or universalist, the normative content of authority remains the same, namely, to realise collective identity, the meaning of which is taken to be given in advance and independently of authority, and which the latter is called on to obey.

Ultimately, then, the good and the right, particularism and universalism, assume that authority ought to include and exclude in a way that is faithful to collective identity. In both cases, collective identity is what 'leads the way'. And in both cases, all parties are to obey the adamantine call of collective identity if conflict resolution is to be a rational process, that is, a process leading to collective unity. 'Since the whole and the supreme are the vanishing point of ordering, ordering really means primarily inserting and subordinating, with the consequence that order tends toward a *closed form*'.[57] Each of these two interpretations of collective self-assertion privileges a form of closure: particularism, the exclusion of the other as other than us; universalism, the inclusion of the other as one of us. Both approaches to the authoritativeness of a politics of boundaries turn on the enclosure of plurality into a unity in which everyone and everything would have its proper place: whether a plurality of monisms, as in communitarianism, or the single, all-encompassing monism of a *Weltinnenpolitik* in cosmopolitanism, to repeat von Weizsäcker's formulation that Habermas has made his own. In this sense, both particularism and universalism are forms of political and legal *totalisation*. What lies beyond—outside—this totality is the domain of the strange as the irrational, populated by those who are of no normative concern to authorities other than in the form of boundary enforcement: illegality.

The discussion about the good and the right, launched in Chapter 4 and carried forward in Chapter 5, shows that neither of the two categories yields an independent and prior criterion for the authoritativeness of an authoritative politics of boundaries. What is *good for us* cannot do the trick because the structure of representation ensures that there is no direct access to an original unity and identity of a collective. There is a residual opacity to joint action that cannot be removed, as a result of which what it is that we do/ought to do together, and whether we are at all a collective, is irreducibly questionable and contingent. Nor can the *right for all* yield an independent and prior criterion because, as shown in the critique of the all-affected and all-subjected principle outlined in Chapter 5, an authoritative response to a summons to collective self-assertion must take up the first-person plural per-

[57] Bernhard Waldenfels, *Order in the Twilight*, translated by David J. Parent (Athens, OH: Ohio University Press, 1996), 15.

spective of a 'we' in a way that maintains the distinction between inside and outside, even when transforming the default setting of what our joint action is/ought to be about.

If collective identity does not work as an independent and prior criterion of what counts as an authoritative politics of boundaries, one may be inclined to resolutely turn in the opposite direction, collapsing authority into a political decision. If the good and the right were taken to provide competing objective standards of authority, yet objective standards nonetheless, their crisis is the crisis of rationality and authority as such. What remains is the irrationality of a political decision in which the contrast between contingent and arbitrary boundary-setting has lost all traction. *Mandar* forfeits its ambiguity, becoming an irrational command constrained only—if at all—by obedience to the democratic rules of the game. However bitterly they oppose each other, a consensus-oriented model of rationality and political decisionism are in fundamental agreement about the essential. Both align the distinction between rationality and irrationality with the distinction between consensus and decision. Their disagreement turns on which side of the divide they wish to situate their interpretation of a (democratic) politics of boundaries.[58]

Like the positions I have critiqued, I assign a central role to collective self-assertion, hence to collective identity, in making sense of the authoritativeness of an authoritative politics of boundaries. And this means that setting the limits of the putative unity of legal orders in response to challenges thereto is at the heart of authority. This holds for situations in which the identity/difference of the collective is viewed as misrecognised by the other and for situations in which joint action misrecognises the identity/difference of the other. To simply jettison the paired concepts of collective identity and collective self-assertion is senseless, not least because, as alter-globalisation movements have shown us, demands for recognition addressed to emergent global legal orders such as the WTO are themselves demands that a group identity/difference not be violated. To insist, with the IACA-model of law, on the contingency of the collective identity presupposed by the first-person plural perspective of a 'we' is not to deny that a claim to collective identity is a constitutive feature of legal orders, absent which we could neither make sense of their putative unity nor of challenges and responses thereto. In this sense, collective *self*-assertion is the ineluctable—the *unhintergehbare*, as the German so nicely phrases it—presupposition of authority.

Yet, against the positions I have critiqued, I propose to read collective self-assertion in a way that stubbornly insists on the irreducible contingency of collectives because there can be [T2] no inclusion, no unification, no identification, without [T3] exclusion, pluralisation and differentiation. This means, on the one hand, that there is no independent and pre-given criterion of collective identity to which authorities can appeal and which allows of establishing whether acts of boundary-setting are authoritative. And it means, on the other hand, that defending the irreducible contingency of collectives does not amount to collapsing authority into arbitrariness. Such is the thrust of what I call asymmetrical recognition. Navigating between the Charybdis of universalism and the Scylla of relativism, I propound a *situational* interpretation of authority, one which acknowledges its irreducible ambiguity while also avoiding the assumption that authority has no normative meaning of its own. For the absence of a pre-given and independent criterion for authority does not entail that a demand for recognition must be ignored. Nor does it entail that the acts of recognition are

[58] I take the controversy between Habermas and Mouffe to be exemplary for this impasse. See Chantal Mouffe, *On the Political* (Abingdon: Routledge, 2005), 69-72, 83-89; Chantal Mouffe, *Agonistics: Thinking the World Politically* (London: Verso, 2013), 137-139. For a perceptive critique of Mouffe's reading of political agonism, see Ferdinando Menga, 'How Much and What Kind of Radical Democracy can a Community Withstand?', in Elisabeth Gräb-Schmidt & Ferdinando Menga (eds.), *Grenzgänge der Gemeinschaft* (Tübingen: Mohr-Siebeck, 2016), 79-94.

condemned to failure and might just as well be obviated. It is not the same for the WTO to ignore the KRRS altogether or to recalibrate the default setting of free global trade in a way that deals with concerns about environmental protection and sustainable development. Likewise, it is not the same for the Appellate Body of the WTO to ignore the EU's demand for recognition of its identity by entrenching the precautionary principle in the default setting of food safety, or to posit a default setting that gives it a certain weight vis-à-vis the permissive approach. I want to call this situational criterion of authority its *fittingness*. Boundary-setting is authoritative when it yields a fitting, rather than matching, response to a summons to collective self-assertion.

So here is a second run at a characterisation of the authoritativeness of an authoritative politics of boundaries: it consists in *the capacity to posit, in a concrete situation, a default setting of joint action which, in hindsight and for the time being, enables members of a collective to recognise themselves as who they really are in a way that addresses—without exhausting—a demand for recognition*. So, for example, the WTO can address the KRRS' demand for recognition by a novel default setting of what counts, according to the Preamble of the WTO Agreement, as 'protect[ing] and preserv[ing] the environment and . . . enhanc[ing] the means for doing so in a manner consistent with [the Parties'] respective needs and concerns at different levels of economic development'. It is in this restricted sense that collective self-assertion—the core of collective self-recognition—involves the inclusion of the other as one of us: to a variable extent, but never entirely, the collective recognises itself in the other and the other in itself. Hence, collective self-assertion deploys an asymmetrical form of recognition when positing what are deemed to be relations of reciprocity between participants in joint action. Crucially, this understanding of collective self-assertion allows for situational generalisations, but not for universalisation. For, as we have seen, representation ensures that inclusion is also always, to a lesser or greater extent, the other's exclusion *because* the other is included as one of us.

Waldenfels' reflections on what he calls a responsive rationality may help to clarify what I have in mind when defending a reading of collective self-assertion that avoids the disjunction between universalism and relativism. He distinguishes between a *synthetic* model of rationality, oriented to creating unity from plurality (*Verknüpfung*), and a model in which the response to a question has the structure of an *open linkage* (*Anknüpfung*), which plays into—without being able to exhaust—the situational possibilities made available by the question.[59] The linkage is open in a twofold sense: the question remains open because the response does not exhaust it; the response remains open because another response was possible. Here, once again, we encounter the hiatus between question and response, the in-between that is the condition for intersubjectivity in the form of a dialogue that doesn't collapse into a monologue. For this reason, and drawing on Merleau-Ponty, Waldenfels speaks of a 'lateral' rather than a 'vertical' form of generality that emerges in the response to a question. 'This form of generality comes about because the linkages multiply, branch out, and interweave'.[60]

So also, I argue, with authority as the articulation, monitoring and upholding of joint action in response to a challenge to collective unity. An act of collective self-assertion that addresses, without exhausting, a demand for recognition by a novel default setting of the jointness of joint action allows for generalisations in the plural, rather than a generalising process in the singular; for globalisations in the plural, rather than a globalising process in the singular. Returning to the contrast between constituent power and constituent power: the reading of collective self-assertion I defend welcomes *emancipations in the plural*, not

[59] Waldenfels, *Order in the Twilight*, 18 (translation altered).
[60] *Ibid* (translation altered).

emancipation in the singular. The shibboleth of the World Social Forum—another world is possible—only holds when pluralised: other worlds are possible, none of which is all-encompassing.

6.4.4. Collective self-restraint

The foregoing three subsections attempt to illuminate the authoritativeness of an authoritative politics of boundaries by way of a reading of collective self-assertion that privileges the asymmetrical recognition of the other. It is asymmetrical in light of the finite questionability and the finite responsiveness of a collective: the response of a collective to a demand for recognition is a response to the question 'What is/ought *our* joint action to be about?' Collective *self*-recognition is both the condition and the price to be paid for the legal recognition of the other: to a lesser or greater extent, the other is misrecognised by virtue of being recognised as one of us. Unless we hold fast to this insight, unless the authoritativeness of a politics of boundary-setting is *not* interpreted as 'conquering ipseity' (Ricœur),[61] collective self-assertion ends up conquering alterity, falling prey to legal imperialism as a project of expansive domination.

In this vein, the collective recognition of the other as one of us cannot be the last word on the authoritativeness of an authoritative politics of boundaries. For the question about recognition has a second form which tends to get erased by universalist theories of collective self-assertion: is there a way of recognising the other as *other than us*? In other words, can a collective address a demand for recognition in a way that acknowledges that there is something in that demand which remains legally *unorderable* for the collective, even when (and because) it includes as one of us the individual or group who raises the demand? In short, how *ought* a collective to respond to what I have called the strong dimension of a-legality, i.e. a demand for recognition insofar as it exceeds the variable but finite possibilities of collective self-assertion available to a collective?

My proposal is to understand collective self-restraint as the content of this ought. By this I mean a certain forbearance in the process of setting the boundaries of (il)legality, hence the limits of collective unity, such that the first-person plural perspective of the collective confronted with a demand for recognition is not rendered absolute. If collective self-assertion speaks to a 'we can include the other as one of us', collective self-restraint is the way in which a collective obliquely acknowledges its powerlessness to fully recognise the other in the latter's own terms, hence that it has a normative blind spot such that 'we cannot include the other as one of us' without violating its claim to identity/difference and, in the extreme case, threatening its existence. Obviously, collective self-restraint need not take place in the very same act or acts by which a collective asserts its unity; typically, a response to a challenge to collective unity takes on the form of a range of measures.

Collective self-restraint has the form of what I will call indirect recognition. Direct recognition through collective self-assertion takes place to the extent that a challenge to collective unity is addressed by *legally* recognising the other as one of us, that is, by recalibrating the default setting of (il)legality in a way that includes what has been excluded, qualifying behaviour as either legal or illegal. By contrast, only indirectly can a collective recognise the other as other than us, hence as what cannot be integrated into a legal order as (dis)order or (il)legality, other than by violating its claim to identity/difference and, in the extreme case, imperilling its continued existence.

Conceived in this way, there are at least three ways in which a collective can exercise self-restraint. The first consists in the *deferral* of collective self-assertion. By this I mean the postponement of acts that posit the limits of what is to count as the unity of a collective. Pro-

[61] See the citation in footnote 42 to this chapter.

roguing collective self-assertion is not only about allowing for interventions that aim to secure a more inclusive articulation of joint action: 'Not in our name! What we view as important and relevant to joint action has been excluded therefrom'. It is also, and no less importantly, allowing for interventions that aim to show that a demand for recognition is a demand by an individual or a group to be treated as other than us: 'Not in our name! What we view as important and relevant to our identity is threatened or violated by our inclusion in joint action'. In both cases, the struggle for recognition is a *struggle for representation* that brings into play not only the 'what' of the 'we' but also the 'we' that would be represented. Staying collective self-assertion amounts to allowing both dimensions of struggles for recognition and representation to come out into the open prior to positing the limits of collective unity, creating a space for the emergence of *another* collective. Linking Arendt's account of natality to the generative powers of representation, Ferdinando Menga argues that 'the possible degeneration of representation into an overconcentration of power is absolutely secondary to its genealogical trait, according to which a constitution of any historical and contingent plural order is always a result of a singular representative enactment or irruption'.[62] This resonates with my earlier considerations about breaking and keeping promises, and about constituent and constituted power. Such is, as I see it, the defensible core of the 'all-affected' or 'all-subjected' principle, even if it neither suspends the preferential distinction between inside and outside nor provides an independent and pre-given criterion of collective identity which authority must obey.

The second form of collective self-restraint involves excluding what has been included in the domain of legal (dis)order, that is, by declaring legally *off bounds* a range of behaviour as the domain that, in hindsight, ought to remain unordered from the first-person plural perspective of the legal collective. Collective self-restraint relinquishes behaviour that had fallen or could fall under the scope of joint action to what is, from its perspective, a law-free domain. What had previously belonged to the bailiwick of legal (dis)order under joint action is surrendered to the domain of the *unordered* for a given collective. So, for example, the WTO could establish that certain kinds of activities henceforth fall beyond the scope of what counts as 'free global trade', seeking to liberate the KRRS and other peasant collectives around the world from directed obligations pursuant to the global trade of seeds. Instead of including the other as one of us, by qualifying as relevant and important to joint action what had earlier been deemed irrelevant and unimportant, a collective exercises self-restraint by excluding the other as other than us, declaring unimportant and irrelevant what hitherto had been germane to the jointness of joint action. Instead of incorporating a demand for recognition into relations of reciprocity, collective self-restraint releases certain forms of action from the constraints of reciprocity.

The third form of collective self-restraint involves the *suspension* of the default setting of joint action, that is, the non-application of rules that are not only applicable but ought in principle to be applied to the situation at hand. The suspension is therefore also the *violation* of a legal rule and, in that sense, an act of non-application that is in breach of the law, in light of the exceptional nature of a demand for recognition. What I have in mind is an inversion of the significance of what Carl Schmitt calls an exception (*Ausnahme*) and, in response thereto, an exceptional measure (*Maßnahme*). Schmitt refers to an exception as 'that which cannot be subsumed; [as what] defies the general codification'.[63] Yet the expression 'that

[62] Ferdinando Menga, 'The Seduction of Radical Democracy. Deconstructing Hannah Arendt's Political Discourse', in *Constellations* 21 (2014) 3, 313-326, 320

[63] Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty*, translated by George Schwab (Cambridge, MA: The MIT Press, 1985), 13 (translation altered). For a more extended treatment of this interpretation of collective self-restraint see Lindahl, *Fault Lines of Globalization*, 251-254.

which cannot be subsumed' is a feeble and reductive translation of the German expression *sich entzieht*, which connotes what defies, eludes and exceeds a rule, all at once. An exception, in this strong sense, is precisely what *doesn't* confirm a rule, the hackneyed adage notwithstanding. The exception radically questions a rule by raising a normative claim that registers as legal or illegal within the order, yet resists inclusion whether as legal or illegal. In a word, the exception is what manifests itself as *strange* to a legal order: the strong dimension of a-legality.[64] As is well-known, the exceptional, for Schmitt, is the enemy which calls for an exceptional measure that, suspending the law, aims to neutralise an existential threat to a collective. In short, Schmitt equates the strange to the enemy, such that the suspension of the law is not an act of collective self-restraint but rather the opposite: an act of collective self-assertion oriented to negating the other in an existential sense.

While the strange can appear in the guise of the enemy, as that which would annihilate us, it is not reducible to the latter. It speaks, in its strong dimension, to a fault line of collective action, not to a variable limit thereof: to something that resists inclusion as one of us because it is the other of us. In a word, the exception speaks to *singularity*, to that which eludes a dialectic between the general and the particular. When confronted with such situations, a collective exercises self-restraint by suspending the application of what not only is applicable law but law that in principle ought to be applied to the situation at hand. Instead of being an act of direct recognition—*we can* include the other as one of us—it is an indirect form of recognition, one that holds back to hold out insofar as *we cannot* include the other as one of us without destroying the other's identity/difference. But this form of self-restraint has its own limitations: it may not go so far as to imperil collective self-assertion, i.e. to imperil what we are deemed to be really about as a collective. For in such a case, preserving the other as other than us amounts to collective self-denial or even self-destruction.

I see in collective self-restraint a way to counter—but never to ban—the danger of imperialism latent in universalist readings of collective self-assertion. In effect, self-restraint is precisely the opposite of universalisation. It is the way in which a collective acknowledges that it has an outside—a domain of the strange—that eludes the collective's self-assertion and which *ought* to be preserved as its outside if collective recognition of the other is not to collapse into a process of totalisation and therewith of domination. On this reading, asymmetrical recognition not only reaches out to bring in but also holds back to hold out, a formulation I introduced elsewhere. More pointedly and perhaps paradoxically, lawlessness, when it takes on the form of collective self-restraint in the face of a-legality, is an integral part of the *authority* of law, not its negation. Indeed, collective self-restraint, in the form of the (partial) suspension of legal norms, is the kind of respons-a-bility by which a collective can take respons-i-bility, albeit indirectly, for the non-reciprocal origins of reciprocity under institutionalised and authoritatively mediated collective action. Legal collectives acknowledge in this indirect way that they cannot overcome their contingency, not even in the indefinitely long run, because they exist in the mode of a finite questionability and a finite responsiveness. Consequently, the responsive ethics at work in asymmetrical recognition suggests that the authoritativeness of an authoritative politics of boundaries turns on asserting the other as included in the collective self in a way that also makes room for preserving the other as other than us. Restrained collective self-assertion shows why the irreducible tension between unity and plurality is neither a simple opposition nor an opposition to be overcome through a dialectic of the particular and the general.

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[64] Although I cannot amplify on this point here, Schmitt's interpretation of the exception is, in fact, the legal mode of what Husserl calls strangeness: 'accessibility in its genuine inaccessibility, in the mode of incomprehensibility'. Edmund Husserl, *Zur Phänomenologie der Intersubjektivität,* edited by Iso Kern (The Hague: Martinus Nijhoff, 1973), 631.