REPLY TO CRITICS[♣]

Hans Lindahl[*]

I am extremely grateful to the contributors, Massimo La Torre, Emmanuel Melissaris, Panu Minkkinen and Scott Veitch, for their comments to *Fault Lines of Globalization* (FLG). In different ways and with different accents, they draw attention to some of the strengths and weaknesses of the book, and provide me with insights about how to carry forward the line of research it pursues. I respond hereinafter to each of the contributions separately, and in the sequence they have been published; while more would be required to do justice to each of the contributions, I have had to restrict myself, for reasons of space, to what I take to be the key issues they raise. I would also like to thank George Pavlakos and Verónica Rodríguez Blanco, respectively general and review editors of *Jurisprudence*, for graciously taking the initiative to host this symposium.

La Torre deploys a set of general critical comments about my approach to the topic of FLG and two specific critiques about how I treat the concepts of law and citizenship. I address his comments in this sequence.

While La Torre is happy with my attempt to explore how phenomenology could cast light on law and legal orders, he is less than enthusiastic about what he takes to be my debt to Luhmann's systems theory and Schmitt's *konkretes Ordnungsdenken*. I was surprised by the claim that I draw on systems theory. There are certainly some parallels between systems theory and my approach, which I explicitly spell out in FLG and elsewhere. In particular, both approaches share a keen interest in the internal relation between orders and boundaries, a topic to which systems theory has made extremely insightful contributions. But the differences are massive: the law of systems theory is structured around the binary code il/legality, whereas I work with the triad (il)legality and a-legality; systems theory works with communication as the minimal unit of order, whereas my approach is action-centred; spatial boundaries are not constitutive for all legal systems, whereas they most definitely are in my approach to legal order; the *autos* of *autopoeisis* and the self of collective self-identification and restraint speak to different forms of reflexivity and identity; systems theory, at least in its Luhmannian version, eschews a normative project, whereas I aspire to work out the normative implications of a politics of boundaries.[1]

I do draw on Schmitt's *konkretes Ordnungsdenken*, albeit mediated by phenomenology, collective action theory and Kelsen's pure theory of law. No simple reception, therefore, of Schmitt's political philosophy, even though I have no problem whatsoever in acknowledging that it contains a wealth of insights about law and politics which deserve critical re-appropriation. One such insight is the notion of *konkretes Ordnungsdenken*. While I think

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[1] See Hans Lindahl, 'We and Cyberlaw: The Spatial Unity of Legal Orders', in (2013) 20 *Indiana Journal of Global Legal Studies* 697-730. For a critical assessment of Teubner's account of societal constitutionalism, see Hans Lindahl, 'Societal constitutionalism as political constitutionalism: Reconsidering the relation between politics and global legal orders', in (2011) 20 *Social and Legal Studies* 230-237.

that Schmitt was on to something extremely important here, I have shown elsewhere that it is one of the ironies of his thinking that he never really explained in what sense a concrete order is an *order* and in what sense it is *concrete*.[2] This is precisely what I attempt to do in FLG. The outcome of my inquiry leads to results which *invert* Schmitt's key thesis about the distinction between normality and abnormality: normality, while a constitutive feature of concrete orders, is the outcome of a process of normalization that has its inception in the abnormal—a-legality. As a result, or so FLG argues, strangeness is folded into ownness, pluralisation into unification, differentiation into identification, disintegration into integration. No appeal whatsoever in FLG to Schmitt's talk of a homogeneous We as the subject of law-making! And while I have indeed stressed the first-person plural perspective of joint action with a view to making sense of legal order and its boundaries, there is no dearth of comments that underscore the merely *putative* character of collectivity. To borrow Gilbert's terminology, We together is thoroughly 'contaminated' by We each.[3]

A word on Castoriadis, to complete these general observations. My sole interest in his political philosophy for the purposes of FLG is to draw on the wonderful notion of social magma to highlight what is at stake in a-legality. I don't think it is coincidental, despite La Torre's claim to the contrary, that Castoriadis refers to the instituting moment of society in terms of a *formant informe,* which parallels, word for word, Schmitt's reference to constituent power as a *formlos Formende.* But to hold that there is a parallel is not to aver that Castoriadis is a crypto-Schmittian, nor does anything of substance turn on whether Castoriadis actually read Schmitt.

Let me now turn to La Torre's critical comments on the concept of legal order. I agree wholeheartedly with his observation that when acts of illegality pass a certain threshold, they cease to confirm legality, such that the difference between illegality and a-legality becomes blurred. My account of legal order accommodates this insight to the extent that I explicitly endorse Radbruch's (and Kelsen's) well-known thesis that legal norms are only valid *if* they are more or less effective but not *because* they are effective. If a legal norm in particular, and a legal order in general, ceases to be effective, then the legality/illegality distinction collapses and gives rise to a situation of indeterminacy, both factual and normative. But La Torre's comment also helps to explain why legal ordering tends to be conservative: too quickly accepting that behaviour is a-legal, and not merely illegal, erodes the very distinction between legality and illegality, thereby undermining the efficacy of the law. Conversely, La Torre's comment also shows that whether or not a politics of boundaries recognizes behavior as a-legal, and not merely as illegal, is not only related to the normative claim it raises but also to an assessment of the extent to which behaviour, and the legal response thereto, imperils the effectiveness of the distinction between legality and illegality. These are issues which FLG does not adequately discuss, and I am indebted to La Torre for pointing this out to me. But to the extent that this shows that normality is a constitutive feature of legal orders, I hope that Massimo will forgive me for pointing out that he thereby endorses a—perhaps the—key tenet of *konkretes Ordnungsdenken*!

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[2] See Hans Lindahl, 'Law as Concrete Order: Schmitt and the Problem of Collective Freedom', in David Dyzenhaus and Thomas Poole (eds.), *Law, Liberty and State: Oakeshott, Hayek and Schmitt on the Rule of Law* (Cambridge University Press, 2015).

[3] I am grateful to Ferdinando Menga for this formulation, which he coined in the course of a conversation about FLG.

La Torre is concerned, furthermore, that FLG barely has anything to say about justice as the *telos* of legal order, absent which it would not be possible to distinguish law from a host of other forms of collective action. The reason for this is quite straightforward: FLG is only part of a series of studies on the concept of legal order, by no means an exhaustive analysis thereof. I have been at pains in FLG to begin with a conceptual analysis of legal ordering as a process of boundary-setting because this analysis is the necessary prolegomenon to a normative account of legal ordering which grants pride of place to the irreducible contingency of how legal orders include and exclude. I can do no more here than indicate that the concept of legal order endorsed by FLG interprets justice as the *asymmetrical recognition* of the other, rather than as mutual recognition, which both particularism and universalism take for granted, albeit in different ways.[4]

The problem of justice spills over into the final and most incisive of La Torre's objections: my analysis of the problem of political membership as it plays out in the contestation of boundaries by immigrants. By rejecting the move to reconstruct the encounter between citizen and immigrant as a moral dialogue, I would foreswear the inner morality of the law and abandon immigrants to their fate. The thrust of my argument is, I submit, entirely different, although I readily acknowledge that it would have been better to flesh out my argument more fully in FLG. I cannot do so here either, but I can at least indicate the key insight I defend, referring the interested reader to the article in which the argument is developed at length.[5]

Indeed, immigration confronts contemporary theories of distributive justice with an intractable dilemma. On the one hand, there is a fundamental asymmetry between the positions inside and outside a polity: there can be no authoritative distribution of rights, resources or status, hence no *distributive* justice, in the absence of a bounded political community, the members of which determine among themselves what accrues to whom. On the other hand, the asymmetry of political reciprocity also continuously undercuts the possibility of distributive *justice*: the boundaries that distinguish inside from outside, and citizen from non-citizen, are not—and cannot be—the outcome of a decision taken by all interested parties. Simply subordinating the entry or exit of immigrants to decisions arising from the reciprocal relations between the citizens of a polity would collapse distributive justice into the sheer positivity of positive law.

My worry is that the move to overcome this dilemma by moralizing it in terms of an appeal to universal reciprocity fails to erase the asymmetry between inside and outside, thereby actually entrenching the political *status quo*, rather than contesting it. On the basis of a concrete analysis of the EU and how it sets its boundaries, I argue that immigrants are party to a form of political reciprocity, hence are already in some sense members of a collective, because no polity can close itself off from an outside without including itself and what it excludes in a more encompassing proto-political community. As political reciprocity is indissolubly linked to the first-person plural perspective of a We, what conditions the legal institutionalization of this perspective is not a moral dialogue between human beings as

[4] I discuss the notion of asymmetrical recognition at somewhat greater length in my reply to critics, contained in the Symposium on *Fault Lines of Globalization* published in (2014) XVI *Ethics & Politics*.

[5] Hans Lindahl, 'In Between: Immigration, Distributive Justice, and Political Dialogue' which appeared, unfortunately, in strongly truncated form in (2009) 8 *Contemporary Political Theory* 697-730. The full version is available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1726285.

human beings, but rather variations of proto-political reciprocity that shade out into more or less inchoate manifestations of a common interest. At stake then is not the 'moral' justification of political boundaries, nor a defence of a 'privilege' to immigrate on the basis of the humanity shared by those within and without, but rather the *political* contestation of boundaries, both civic and territorial, and a *political* response to such contestation.[6]

Melissaris presents two sets of objections to FLG, the first being my interpretation of illegality, legality and a-legality, the second what he views as my unfair depiction of legal pluralism. As far as I can see, both sets of objections significantly misconstrue the argument outlined in FLG.

Melissaris' objection to my account of (il)legality has two aspects. The first is that, contrary to what I would believe, illegality is actually part of joint action; otherwise, it could not be recognized as such. I am puzzled by this objection. I argue throughout FLG that illegality is part and parcel of what is intelligible and familiar to a collective in the form of action which manifests itself as what we ought *not* to do with a view to realizing the normative point of joint action. Accordingly, illegal acts remain within the cincture of what is important and relevant to joint action, in contrast to what is unimportant and irrelevant thereto, which is the bailiwick of the unordered. For this reason, FLG consistently contrasts legal (dis)order to the unordered, and (il)legality to a-legality. As a result, I nowhere argue, as Melissaris contends, that 'il-legality is situated *outside* the boundaries of the legal order' (my italics). To the contrary: FLG insists that illegal behaviour is *inside* the law as its negative manifestation: disorder. He is surely right to aver that 'illegality seems to lose its independence as a basic category of understanding law'. But this is what FLG claims, not an argument against it. Melissaris further argues that I would assume that illegal acts are 'radically subjective'. No! I claim that from the first-person plural perspective of a collective, illegal behaviour is behaviour which it disowns, i.e. does not authorize as a participant act, because illegality hinders the realization of the normative point of joint action. Illegality appears as 'subjective' in the sense of an act which is ascribed to an individual but not to the collective. By qualifying an act as illegal and establishing the consequences that follow from this qualification, the collective re-establishes the act's objective character—the 'pathway into legality' which Melissaris rightly points to, but wrongly assumes that I don't account for.

The second aspect of Melissaris' objection to my account of (il)legality turns on the problem of collective self-ascription and identification. As he sees it, no such ascription and identification would be possible unless the legal collective pre-exists such acts as a 'substratum' in the form of a shared understanding that already demarcates a We as a normative community. Moreover, he argues, acts of ascription and identification effectively narrow down the range of possibilities available to this normative community, rather than identifying the collective afresh. I agree and disagree with Melissaris on this. My agreement and disagreement with him turn on the representational structure of acts of collective self-attribution and self-identification. Whoever says 'we' on behalf of a We claims that there is

[6] I argue that Joseph Carens' strong moralization of immigration policy is ultimately self-defeating and profoundly conservative, in 'To Each Their Own Place? Immigration, Justice, and Political Reflexivity' in L. Foisneau, Ch. Hiebaum & J.C. Velasco (eds.) *Open Democracies* (Springer, 2013) 317-328.

already a normative community to which the legal order merely gives form. This is a *claim* which can only be substantiated *ex post*, in the perlocutionary uptake of the representational act. There would be no such uptake unless the act's addressees could identify themselves *a posteriori* as members of the collective, lending provisional credence to the representational claim of a prior normative community. Now, because the act represents a We as *this* We' or *that* We', attribution and identification not only differentiate a collective from other-than-We but *also from itself*, introducing difference into identity. This is exactly what it means that the representational disclosure of a manifold of individuals as a collective is also always a closure of normative possibilities: a self-inclusion and a self-exclusion. These are points of agreement with Melissaris, which simply reiterate what is explicitly stated in FLG. There is, however, a decisive disagreement between us: representation is not merely the representation of an original normative community given immediately of itself and prior to acts of representation. Paradoxically, representation *creates what is given* by cutting through an entangled web of social relations, demarcating a range of social interaction as a distinctive group and assigning to it a normative point, all the while claiming that the representation does no more than reflect what we already understand ourselves as doing together in the course of our everyday lives. The structure of representation gives the nay to anything like an original 'normative substrate' that could guarantee the correctness of legal identification and ascription. Representation ensures that identification is also always a *mis*identification; ascription, a *mis*ascription; recognition, a *mis*recognition.[7]

Some words, now, about Melissaris' depiction of a-legality. He attributes to me the claim that 'a-legality is not simply unordered by the legal order; it is entirely unorderable'. I nowhere say this nor want to say this. I do say, first, that the a-*legal* registers as legal or illegal, so in that sense as ordered or disordered. And I say, second, that the *a*-legal also manifests itself, qua normative challenge to (il)legality, as both orderable *and* unorderable for a collective. Likewise, I nowhere say that 'a-legal behaviour falls outside the field of vision of a legal order, beyond its *limits'*, nor that when an 'a-legal normative claim is raised . . . a *fault line* is revealed in the legal order'. What I do say is that a-legality reveals boundaries as limits *and* as fault lines, which means that a-legality confronts a legal order with practical possibilities of its own, which it can realize by transforming (il)legality, and practical possibilities which exceed the variable range of what is possible for it. *The a-legal is inside and outside a legal order*. In terms of responsiveness, this means that collectives frame the question raised by a-legality in terms of the question to which they can respond: what ought *our* joint action to be about? This is precisely what happens in the *Grogan* case. Far from undermining my argument, Melissaris' preferred interpretation of the case confirms it: the Irish Supreme Court frames the case in a way that allows it to reaffirm the Irish collective as a self and as the same, and so does the ECJ with respect to the EU. The moment of collective self-restraint involves positing the boundaries of (il)legality in a way that preserves the strange as strange, something both courts do in this case. In short, the inside/outside distinction, when construed as the distinction between the own and the strange, is an irreducible feature of human *experience*, not merely a 'philosophical possibility', as Melissaris puts it. Uni-

[7] I develop the relation between legal order and the magmatic character of society at greater length in my response to Fabio Ciaramelli's contribution to the symposium on FLG in *Etica & Politica*.

versalistic theories of law and politics have to come to terms with the fact that there is *no identification without differentiation*.

Finally, FLG expresses some misgivings about the concept of 'overlapping' legal orders; Melissaris draws the conclusion that I thereby unfairly critique legal pluralism. But I am not critiquing legal pluralism as such, nor am I claiming that pluralists are blind to the normative closure of legal orders: how could there at all be legal pluralism *unless* there is normative closure? The point I want to make is different, namely, that these theories embrace a reductionist understanding of the spatiality and temporality of legal orders when claiming that the 'overlap' of legal orders involves the 'co-existence' of legal orders in 'the same' space (e.g. Twining). This claim is reductive because legal pluralism deploys distinct first-person plural spaces, not only the geographical space implied in 'the same space'; distinct first-person plural temporalities, not only the calendar time implied in 'co-existence'.

Minkkinen's suggestive comments focus on the Schmittian and phenomenological sources of FLG, pointing to a variety of ways in which these sources could be further tapped. For reasons of space I have chosen to focus on only one of the key issues raised by Minkkinen, namely, the problem of globalization. As Minkkinen reminds us, globalization, for Schmitt, not only marks the culmination of imperialism but also of the neutralization and depoliticization of politics. In a well-known passage of the *Concept of the Political* he argues that

> [t]he political world is a pluriverse, not a universe. In this sense every theory of the state is pluralistic even though in a different way from the inner-state pluralistic theory discussed heretofore . . . The political unity cannot by its very nature be universal in the sense of a unity that embraces all of humanity and the entire earth.[8]

Like Schmitt, also FLG points to the imperialistic tendencies of attempts by universalistic theories of politics and law to interpret globalization as the emergence of one world under one legal order, regardless of how 'thinly' those theories define the content and scope of the latter. Indeed, while universalism acknowledges the existence of political differences, it subordinates such differences to the unity of humanity, taking for granted that it would be possible to give legal form to a common core which unites all human beings as humans. On this view, political differences are acceptable, and need not be repressed, but only if they are particularizations of what the universalist deems universal.[9]

To *this* extent FLG shares Schmitt's concerns about universalism, even though it does so from a different conceptual framework, namely, the phenomenological distinction between *Heimwelt* and *Fremdwelt*. But does this shared concern entail endorsing Schmitt's interpretation of the political world as a 'pluriverse'? If not, and so I argue, is it possible to

[8] Carl Schmitt, *The Concept of the Political: Expanded Edition*, translated by George Schwab (University of Chicago Press, 2007) 53 (translation altered).

[9] A case in point is Habermas' thesis that 'The First World constitutes the temporal meridian . . . by which the political simultaneity of economic and cultural nonsimultaneity is measured'. Having been anointed by Habermas as the political measure and representative for all of humanity, the 'First World' is justified, his view, in exercising 'gentle compulsion to globally coordinated action that starts with an undistorted perception of current global dangers'. Jürgen Habermas, 'Kant's Idea of Perpetual Peace, with the Benefit of Two Hundred Years' Hindsight', in James Bohman (ed.), *Perpetual Peace: Essays on Kant's Cosmopolitan Ideal* (The MIT Press, 1997) 132, 133. For a biting critique of these passages and of Habermas' universalistic approach to law and politics more generally, see William Rasch, *Sovereignty and its Discontents: On the Primacy of Conflict and the Structure of the Political* (Birkbeck Law Press, 2004) 49-63.

conceptualize globalization processes in a way that could resist contributing to imperialism?

My reservations about Schmitt's concept of a 'pluriverse' turn on the fact that it amounts to a form of monism. Notice that in the cited passage he endorses pluralism in the international sphere, while also disparaging what he calls 'inner-state pluralism'. It is this latter move which should put us on guard. Schmitt's strong defense of an international pluriverse is predicated on the assumption that the state is 'an organized political unity, internally peaceful, territorially enclosed, and impenetrable to aliens (*Fremde*)'.[10] The state, not the world, is the locus of unity so interpreted. Accordingly, the bitter feud between Schmitt and universalism takes place on the ground of a deeper commonality: both positions advocate monism, albeit at different levels. Moreover, in both cases unity is conceptualized in terms of a sphere of ownness (*Eigenheit*) from which the strange has either been excluded (Schmitt) or into which it has been integrated (universalism). In short, both accounts boil down to holistic theories of law and politics; the difference is whether the relevant whole is the state or humankind.[11] This is the common root of Schmitt's opposition to, and universalism's advocacy of, a normatively strong understanding of globalization.

FLG eschews both views on globalization because it takes issue with their common root. My objection turns on the following thesis: if the foreign need not be strange, so also the strange need not be foreign. This thesis entails that neither Schmitt nor universalism adequately account for how boundaries do their work of including and excluding. Boundaries don't merely include a collective self and exclude the alien, as presupposed by Schmitt (and communitarianism), such that the own and the strange are neatly separated from each other as inside and outside. Nor do boundaries simply include what they exclude, as presupposed by universalism, such that the strange is only provisionally strange and called on to be integrated into an ever more encompassing domain of ownness. Against these two reductive readings of the logic of boundaries, I argue that boundaries include what they exclude, and exclude what they include. This logic is the conceptual import of the thesis that if the foreign need not be strange, so also the strange need not be foreign.

This logic of boundaries is the core of what I take to be a defensible pluralistic theory of politics and law, both at the state level and globally. On the one hand, it avoids monism because the individual is not merely part of a whole, i.e. is not simply a particular instance of a general rule. On the other hand, it avoids collapsing plurality into radical incommensurability, such that there could be no sense of commonality other the mere aggregation of individuals into a single set. So interpreted, the logic of boundaries has the structure of an *intertwinement,* the intertwinement of the own and the strange. This characterization of the relation between the own and the strange is inspired by Merleau-Ponty's analysis, in his late work, of the *entrelacs* or chiasmus. As Waldenfels concisely puts it, a 'chiasmus means that A and B cross over into each other at C. What is decisive about a chiasmus is that the crosso-

[10] Schmitt, *Concept of the Political*, 47 (translation altered)

[11] While I am sympathetic to Chantal Mouffe's theory of political agonism, I wonder whether her defense of a 'multipolar' world order, in response to cosmopolitanism, doesn't fall prey to this very problem. See Chantal Mouffe, *On the Political* (Routledge, 2005) 90-118; Chantal Mouffe, *Agonistics: Thinking the World Politically* (Verso, 2013) 19-41.

ver place does not belong either to the one or the other line'.[12] My twofold conjecture is that the structure of a chiasmus—which has nothing to do, politically speaking, with Rawls's 'overlapping consensus'—offers the key to an interpretation of globalization that can resist monism, both in its Schmittian and universalistic manifestations, while also rejecting the normative skepticism that arises from endorsing the simple incommensurability of legal orders in a global setting. These crossover places between home and strange worlds are what is most fundamentally at stake in a politics of a-legality, and which a theory of legal ordering in a global setting needs to account for, both conceptually and normatively.

Scott Veitch focuses on two important issues that remain unaddressed by FLG. The first concerns whether the tragic status of the injunction of collective self-restraint associated to the strong dimension of a-legality is bearable, or whether it would be necessary to respond to it by looking for radically new ways of ordering that move beyond modernity and its exhausted paradigm.

I can do no more here than offer some tentative remarks about how to address this difficult and wide-ranging question. Let me begin by noting that the paradigm of modern rationality is self-preservation, which has its accomplished metaphysical expression in Spinoza's notion of *conatus:* 'each thing, as far as it lies in itself, strives to persevere in its being'.[13] In response to the radical challenge of contingency posed by late Scholaticism, self-preservation speaks to the capacity of human being to preserve itself in existence against that which would threaten its continued existence. As such, self-preservation inaugurates a new concept of power which is determined in a two-fold way by the *agere* of *actus purus*: negatively, as non-creative, as conditioned in its activity by a pre-given world; positively, as productive, as supplying the form (order) of the realized. As a result, human activity depends on a world that human beings do not create from nothing, and which concretely conditions their activity. In contrast with the unconditioned production that defines divine omnipotence, the ontological productivity of human power is conceptualized as a *conditioned productivity.* As human being finds itself in a world given to it as the condition for its action, its productive relation to the world is necessarily *immanent* rather than transcendent. We are always already in-the-world, a world that, having forfeited its binding character for us to the extent that it is self-contradictory, is also the world we can act upon, *ordering it in a new way*. Accordingly, the concept of self-preservation gives rise to a new concept of freedom: autonomy. Both Kant's account of moral freedom and Marx's interpretation of revolutionary emancipation depart from a situation in which human being is given over to a world that opposes its free activity. In both cases, the extant world manifests itself as alien or strange. Kant refers to 'alien (*fremden*) causes'[14] that restrict freedom; Marx speaks of an

[12] Bernhard Waldenfels, *Das leibliche Selbst: Vorlesungen zur Phänomenologie des Leibes* (Suhrkamp, 2000) 286. See also Maurice Merleau-Ponty, *Le visible et le invisible* (Gallimard, 1964) 172-204, as well as the appended *Notes du travail*.

[13] Spinoza, *Ethics*, Part III, Prop. 6. 'At the beginning of modernity, political philosophy (*Staatsphilosophie*) and anthropology, as well as ontology and ethics, were grounded in the single concept of self-preservation'. Dieter Henrich, *Selbstverhältnisse* (Reclam Verlag, 1982) 88-89. See also Hans Blumenberg, *The Legitimacy of the Modern Age*, trans. Robert Wallace (MIT Press, 1985).

[14] Immanuel Kant, *Groundwork of the Metaphysics of Morals*, trans. H.J. Paton (Routledge, 1991) BA 97.

initial situation of alienation (*Entfremdung*), in particular the alienation of labour within the capitalist mode of production.[15] In both cases, the negative moment of freedom consists in levelling down the strange to the factuality of what merely exists, such that, deprived of its binding character, the real becomes the point of departure for the positive moment of freedom, namely, the enactment of a universal order. Accordingly, the strange or alien, for self-preservation, manifests itself as the ultimate danger that human being could lose itself; that, no longer recognizing itself in the made of its making, the subject forfeits its primordial ontological productivity and its capacity to assert itself against what opposes its continued existence.

This means that freedom, in the form of self-preservation, demands *overcoming the strange* by way of an activity that gives rise to a social and legal order in which we have ceased to be self-estranged or self-alienated and have become fully ourselves. The *telos* of freedom, as self-preservation, is (collective) self-identity in the form of what might be called a *synthetic tautology*: indirectly, by way of a detour through nature and society, human beings come to recognize themselves fully in their products, namely, as its (formal) producers. The universal social and legal order is the fully humanized order, an order which, having overcome all forms of strangeness, is fully and properly *ours*, the order we, as humans, can call our *own*: humankind ≡ humankind.

It is at this point, I think, where Heidegger's critique of modern subjectivity acquires its full force. In the Appendices to 'The Age of the World-Picture', he interprets the modern re-appropriation of Protagoras' famous aphorism—'man is the measure of all things'—in terms of the secularization of the Scholastic *causa sui*.[16] While I have elsewhere taken issue with Heidegger's interpretation of modern subjectivity as a secularized *causa sui*, and while I am definitely not prepared to simply jettison self-preservation lock, stock and barrel, I do share Heidegger's concern about the modern assumption that the *telos* of rationality is (collective) self-identity as a synthetic tautology mentioned above.[17] As concerns social and legal orders, my plea for the preservation of the strange amounts to the insight that all emancipation is a *specific* response to domination that calls forth *a* domain of freedom rather than freedom *tout court:* there are emancipations in the plural, rather than emancipation in the singular. The enactment of a novel collective cannot empower, enabling a domain of freedom as a realm of practical possibilities, without also disempowering, thereby marginalizing other ways in which joint action might be the expression of freedom. By exercising self-restraint in the face of strong manifestations of a-legality, legal collectives acknowledge in this indirect way that they exist in the mode of a finite questionability and a finite responsiveness.[18]

These ideas are also germane, I think, to Veitch's second comment. As he points out, the ecological disaster brought forth by human activity suggests that we now confront a 'global catastrophic society' that escapes our control. The human relation to nature, by way

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[15] See, amongst others, Karl Marx, *Economic and Philosophical Manuscripts of 1844*, https://www.marxists.org/archive/marx/works/1844/manuscripts/preface.htm.

[16] Martin Heidegger, *Off The Beaten Path*, trans. Julian Young and Kenneth Haynes (Cambridge University Press, 2002) 73 ff.

[17] See Hans Lindahl, 'Collective self-legislation as an *actus impurus*: a response to Heidegger's critique of European nihilism', (2008) 41 *Continental Philosophy Review* 323-342.

[18] For an extended development of these ideas, see Hans Lindahl, 'Possibility, Actuality, Rupture: Constituent Power and the Ontology of Change, forthcoming in *Constellations* (2015).

of a productive activity that knows no limits, frontiers or boundaries, turns back on human being itself, such that the conditions of life, human life included, are imperilled, perhaps irreversibly. While FLG explores the notion of collective self-restraint with respect to social forms of the strange, I submit that it also holds for the human relation to nature. It seems to me that Heidegger's discussion of techno-science as an 'enframing' (*Ge-stell*), and of nature as a 'standing-reserve' (*Bestand*) for human ordering, ably captures the dangers of interpreting modern rationality only in terms of (collective) self-preservation and its *telos* of (collective) self-identity. When interpreted in this way, techno-science becomes the privileged vehicle for progress towards a synthetic tautology in which nature would finally have become humanized. In Heidegger's words, 'the illusion comes to prevail that everything man encounters exists only insofar as it is his construct. This illusion gives rise in turn to one final delusion: it seems as though man everywhere and always encounters only himself'.[19]

Under these circumstances, I would argue that the injunction of collective self-restraint is not necessarily tragic; it appears as such, I would argue, if one accepts that rationality should be interpreted as the injunction to 'complete inclusion' (Habermas). This amounts to understanding rationality as the progressive overcoming of what is strange, and its ultimate reduction to a sphere of ownness in which the (collective) self is fully transparent to itself. The plea for self-restraint is, by contrast, the injunction to resist the totalizing tendencies of the concept of modern rationality when it is interpreted exclusively in terms of the principle of self-preservation.

[19] Martin Heidegger, *Basic Writings*, trans. David Farrell Krell (Harper & Row, 1977) *308*.