Erratum

In between: Immigration, distributive justice, and political dialogue

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In the version originally published, a significant section of text from the section headed ‘From Proto-political to Political Reciprocity’ was inadvertently omitted by the typesetter. The text, which should have appeared after the citation of Lindahl, 2008 and before the text that begins ‘But boundary crossings *precede* legal qualifications as well, and not merely because someone has to cross a boundary before this crossings can be deemed legal or illegal. ...’, follows below. A post-print version of the full article text can be found online at (http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1726285).

While a legal order is a necessary condition for distributive justice, the foundational act without which no legal order – and *a fortiori* no immigration policy – can get going undercuts the possibility of distributive *justice*.

The distinction and relation between a first- and second-order preferential differentiation provides a way to deal with this dilemma. For there can indeed be no *distributive* justice without a first-order preferential differentiation: a manifold of individuals view themselves as the bounded group, both civically and territorially, that, acting in its own interest, determines what accrues to whom. Political reciprocity and *suum cuique tribuere* are the two sides of the same coin. At the same time, the second-order preferential differentiation implies that the acts of a collective subject that separate inside from outside, and member from non-member, *eo ipse* posit a more encompassing common interest as *intersubjectively* constituted. In this way, the spatial and civic boundaries of a polity are not merely the expression of subjectivity, in the sense of arbitrariness, but also involve the claim to a standard of objectivity – of justice – with respect to which the polity is not the sole custodian. Although distributive acts take place from the first-person plural perspective of a spatially bounded ‘we’, acts that decide on the legality or illegality of boundary crossings by immigrants can only claim to being just, in a self-consistent way, if they posit the first-order preferential distinction between inside and outside

in a way that safeguards the extended 'we' of a second-order preferential differentiation. The inclusive exclusiveness of boundaries renders possible distributive acts that can claim to being *just* to the extent that the first-order asymmetry they must posit affirms and remains consistent with the second-order symmetry they must presuppose.

In Between

Although the foregoing discussion of the logic of boundaries suggests a way of moving beyond the conceptual and normative impasse facing the attempt to mediate between political particularity and moral universality, doesn't it in fact provide a strong defense of Benhabib's larger philosophical project, namely the theory of cosmopolitan justice she characterizes as 'dialogical universalism'? Doesn't the foregoing analysis boil down to the thesis that we can do without morality in a theory of distributive justice because the logic of boundaries allows politics on its own to do the work of connecting the particular to the universal? It seems as though the logic of boundaries is the true guarantor of the philosophical and practical viability of 'another cosmopolitanism'. It would be the guarantor of *cosmopolitanism*, on the one hand, because the inclusive exclusiveness of boundaries suggests that they are first and foremost *bridges* that enable forays of the self into the other, and of the other into the self, such that the separation between a self and its others can be overcome, in principle if not necessarily in fact, in a higher-order unity. Isn't cosmopolitanism at bottom the thesis that the separation that boundaries introduce is *subordinate* to the unification they facilitate? And it would be the guarantor of *another* cosmopolitanism, on the other hand, because it suggests that *politics*, not morality, articulates the particular and the universal.

Yet, as I have been at pains to argue, the logic of boundaries entails that boundaries are *general*, not universal. This crucial restriction acknowledges that while boundaries cannot exclude without including, they cannot include without excluding. To repeat a point I made earlier, the proto-political reciprocity presupposed by the EU gives rise to a new form of political asymmetry between a second-order inside and outside, 'we' and 'them'. Indeed, 'we', the interested parties in realizing a global market, is contrasted, albeit implicitly, to an indeterminate 'them'. This 'them' becomes determinate when individuals contest allegiance to how the EU interprets the commonality of a global market. In the same way, an indeterminate 'outside' becomes determinate in the form of boundary crossings that intimate ways of delineating space that have no place in the distribution of places made available in the global market, even though they in some way ought to. Accordingly, the logic of boundaries outlined heretofore recognizes that

boundaries join by separating, and that this renders them permeable in the face of contestation. But it also insists that boundaries separate by joining, such that the exclusion of an indeterminate ‘them – outside’ is the shadow side of a greater inclusiveness. Moreover, the logic of boundaries also intimates that rather than subordinating exclusion to inclusion, or inclusion to exclusion, both aspects are *equiprimordial*. This insight gives the lie to the assumption of cosmopolitan theories of justice that political asymmetry can ultimately be reduced to a symmetrical relation, whether between individuals or between ‘we’ and ‘them’. That the boundaries of political communities cannot include without excluding is to acknowledge that asymmetry is constitutive for politics. There is no bedrock boundless reciprocity that sustains and animates bounded reciprocity.

In short, the logic of boundaries entails that distributive justice does not and cannot unfold in the form of ‘dialogical universalism’. For the kind of dialogue that ensues between those who would enter a polity and those who are called on to qualify boundary crossings as legal or illegal is irreducibly asymmetrical.

But if the positions inside and outside are irreducibly asymmetrical, why call this a political *dialogue*? Why not call it a *monologue*? Isn’t the second-order preferential differentiation introduced by the EU, and the proto-political reciprocity it anticipates, a particularly insidious form of a political monologue, to the extent that the EU advocates openness towards others insofar as they are like *us*? Isn’t a political monologue, whereby one of the parties determines in advance the rules under which claims by others can be heard, contested, and accepted, the necessary implication of the exclusive inclusiveness of the logic of boundaries? On the face of it, the inaugural dilemma of a theory of distributive justice returns with a vengeance. It would seem that if a second-order asymmetry between ‘we’ and ‘them’, inside and outside, is constitutive for politics, the inclusiveness of proto-political reciprocity can do nothing more than *postpone* the moment at which justice is sacrificed to the political and legal distribution of membership and place. So, even if Benhabib’s appeal to moral universalism fails, it would seem that she is right in asserting that there can be no justice without the *symmetry* of a dialogue. Can the reference to a ‘political dialogue’ between those without and those within be anything other than an oxymoron?

‘Political dialogue’ would be indeed oxymoronic if a dialogue required symmetrical relations between the parties in dialogue. But is it not rather the case that what renders possible a political dialogue is that the ‘dia’ of dialogue speaks to a *double asymmetry*, rather than to symmetry? An answer to this question is intimately related to a question I have kept in reserve until now: how are boundary crossings by immigrants related to the acts by which authorities qualify those crossings as legal or illegal? In the foregoing

discussion, I have focused exclusively on qualifying acts. Their asymmetric relation to immigration consists, as I have noted, in that such qualifications, when allowing entry and granting membership to immigrants, *anticipate* the political meaning of their boundary crossing – as, for example, a claim concerning the commonality of the global market. The legal qualification of boundary crossings is asymmetrical because it determines in advance what it means for immigrants to *cross* a boundary, hence whence they are coming from and what ‘we’ they invoke by entering. In this sense, legal qualifications *precede* boundary crossing by *retrospectively* deciding on their political meaning.