

States before relations: On misrecognition and the bifurcated regime of sovereignty

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(Received 1 December 2017; revised 27 August 2018; accepted 10 September 2018)

Abstract

The symbolic structure of the international system, organised around sovereignty, is sustained by an institutional infrastructure that shapes how states seek sovereign agency. We investigate how the modern legal category of the state is an institutional expression of the idea of the state as a liberal person, dependent on a one-off recognition in establishing the sovereign state. We then discuss how this institutional rule coexists with the ongoing frustrated search for recognition in terms of sociopolitical registers. While the first set of rules establishes a protective shield against others, regardless of behaviour, the second set of rules specify rules for behaviour of statehood, which produces a distinct form of misrecognition. States are, at one level, already recognised as sovereign and are granted rights akin to individuals in liberal thought, and yet they are continually misrecognised in their quest to actualise the sovereign agency they associate with statehood. We draw on examples from two contemporary phenomena – fragile states, and assertions of non-interference and sovereignty from the populist right and non-Western great powers, to discuss the misrecognition processes embedded in the bifurcated symbolic structure of sovereignty, and its implications for debates about hierarchy and sovereignty in world affairs.

Keywords: Misrecognition; Sovereignty; Liberalism; United Nations; Fragile States; Hierarchy

Introduction

If the social space of world politics is best understood as organised around a desire for sovereign agency – as the editors of this Special Issue argue – we should be able to capture important aspects of state behaviour that stem from how the institutional infrastructure of sovereignty structures such a quest for sovereign agency. This is so because any symbolic structure depends on institutional arrangements that sustain it, and through which actors can constitute themselves and act in ways that are meaningful for others. We focus on the more specific set of institutions through which recognition of the state as a subject is sought in the modern, post-1945 international system. We identify two layers of recognition, one reified, legalistic and one sociopolitical. The reified, legal regime entails a one-off recognition, which establishes the state as a permanent ‘person’ with equal, sovereign rights akin to individuals in liberal thought, and where statehood is near-independent of the behaviour of the government that acts in its name. The sociopolitical regime, by contrast, is ongoing, in flux, vested in relations of inequality and power, and specifies a register for state subjectivity that is marked by misrecognition. The ideal of sovereign agency is negated by the presence of others who seek the same, and also through the systemic hierarchy that emerge from how evaluative criteria for state subjectivity render some states subordinate. While the legalistic regime produces a mythical and non-social vision of ‘like units’ without an overarching governing authority, the latter negates the ideal of sovereignty

agency and produces a system of super- and subordination, where some states define the criteria against which other states are compelled to seek recognition. The result, we argue, is a systemic misrecognition embedded in the very modern concept of state subjectivity.

Attending to this institutional arrangement – where states are at once both recognised as sovereign and yet need to achieve such sovereignty in a substantive sense from others which similarly desire sovereign agency – helps us see how the international system is both anarchical and hierarchical at the same time. Our basic contention is thus that the international system is better understood as ‘two-dimensional’, where both hierarchy and anarchy are built into the symbolic structure of sovereignty itself, as expressed in the bifurcated regime of recognition through which sovereignty is established and must necessarily be performed.

We make two theoretical moves that should be specified at the outset. The first is that we see statehood and sovereignty as performed through a symbolic structure that is ontologically prior to the actors, in the sense that actors representing a state perform statehood and can achieve sovereignty only to the extent that they enact and operate within the register offered by this symbolic structure. In contrast to ‘performative’ and relational accounts in IR that argue that there is ‘no pre-given state’, we put the specificity of the state as a legal entity at the forefront: that is, states before relations.¹ As will become clear, we are sympathetic to relational and performative accounts. Our point with reversing Patrick J. Jackson and Daniel H. Nexon’s argument about ‘relations before states’ is the need to take the specificity of the state as a legal entity into account when speaking of the constitution of statehood and the international system.² The second is that this symbolic structure is characterised by misrecognition, as expressed in the institutionalisation of two registers of recognition, which undercut one another. There is misrecognition between the image of oneself as already sovereign, and the image offered for egoformation and subjectivity that is always generated elsewhere, outside the subject itself, which contradicts the idea of the sovereign state as a self-sufficient entity, already being given such recognition through formal-legal statehood.³

We start with a detailed analysis of the institutionalisation of international legal recognition of statehood as a one-off, establishing a permanent, reified entity, and how it relates to an ongoing desire for recognition between these established entities to have sovereign agency *vis-à-vis* one another. In the next section, we show how our conceptualisation offers new insights into debates about anarchical and hierarchical features of the system, and on transformations of sovereignty. It does so through a focus on the persistent struggle for sovereignty that can be found across a range of different types of states, and through the paradoxical case of so-called ‘fragile’ states. We conclude by spelling out the wider implications of this bifurcated regime of misrecognition for IR theorising, suggesting that attending to the institutional structures through which statehood is constituted and performed opens up new avenues for research.

¹Erik Ringmar, ‘How the world stage makes its subjects: an embodied critique of constructivist IR theory’, *Journal of International Relations and Development*, 19:1 (2016), pp. 101–25 (p. 101); similarly, Cynthia Weber, ‘Performative states’, *Millennium*, 27:1 (1998), pp. 77–95 (p. 78). Our reference is, of course, to the seminal text introducing social-theoretical work on relationalism into IR: Patrick J. Jackson and Daniel H. Nexon, ‘Relations before states: Substance, process and the study of world politics’, *European Journal of International Relations*, 5:3 (1999), pp. 291–332.

²This is also a direct response to Emirbayer and Mische’s account of relationalism, where they were explicit about their framework not accommodating corporate actors such as the state. Mustafa Emirbayer and Ann Mische, ‘What is agency?’, *American Journal of Sociology*, 103:4 (1998), pp. 962–1023 (p. 974).

³As such, we propose a different take on misrecognition than the one offered in a recent piece by Rebecca Adler-Nissen and Alexei Tsinovoi, where misrecognition is defined as ‘a gap between the dominant narrative of a national Self and the way in which this national Self is reflected in the “mirror” of the international Other’, that is, in continuation with the Self–Other literature in IR. Rebecca Adler-Nissen and Alexei Tsinovoi, ‘International misrecognition: the politics of humour and national identity in Israel’s public diplomacy’, *European Journal of International Relations*, Online First (January 2018), pp. 1–27.

Institutions and misrecognition

When we understand agency as something that actors seek to achieve, we are sensitised to the ongoing investment by state actors to somehow rise above and enjoy – however fleetingly – some degree of leverage or control over those very relations that are constitutive of statehood.⁴ Given that agency is only meaningful and can thus only be achieved when performed through rules or scripts that others recognise as meaningful, we focus on some of the key institutions that constitute, limit, and shape the sovereign agency that states seek.⁵ We thus draw attention to the specific institutional structures through which statehood must necessarily be performed as also discussed in the introduction to this Special Issue.⁶ We consequently adopt a narrower, historically specific focus on institutional arrangements in the post-1945 period and identify how they shape the manifestation of the desire for sovereign agency.

In focusing on this institutional set-up, we aim to capture the specific resources that form part of the performance or acting out of statehood and sovereignty. Patchen Markell makes a fundamentally important point when he argues that ‘The desire for sovereignty is impossible to fulfil, because it is itself rooted in a misrecognition of the basic conditions of human activity.’⁷ For Markell, the (impossible) pursuit of sovereign agency is lodged at the level of a misunderstanding of the ontology of the social world. While Markell’s argument is of crucial importance as it highlights the primacy of a quest for sovereign agency, it does not allow us to capture how socioeconomic and political institutions can shape how misrecognition may manifest itself. In his engagement with this argument, Antonio Vázquez-Arroyo insists that had Markell stayed closer to Hegel’s epistemological thrust, it would have been possible to specify the particular historical and political conditions – what we identify here as institutional configurations – that produce different manifestations of misrecognition. There are, Vázquez-Arroyo notes, ‘institutional constraints and imperatives’ that structure how misrecognition manifest itself, thus shaping how the desire for sovereign agency is expressed.⁸

In particular, the formal-legal register of recognition has a particular temporal and constitutive structure: it establishes statehood through a one-off recognition, and the state thereby produced is – as we discuss in more detail below – unitary, modelled on the liberal individual, and a near-permanent entity. This formal-legal aspect of recognition forms an integral part of the symbolic structure of the international system, and without understanding how it shapes and operates together and in conflict with the sociopolitical registers, it is difficult to capture the different forms of misrecognition that is built into the contemporary international system. This also means that our focus on the two registers of recognition moves beyond the misrecognition that inheres in the constitution of subjectivity and the desire for sovereign agency: The misrecognition where two subjects’ desire for recognition and sovereign agency are undercut by one another, is one that is unmediated and irrespective of any particular dominant ideology, field of practice, or historical period. Our focus is on how the specific institutional rules of the international system shapes how this misrecognition manifests itself between actors that are already recognised as having a particular quality, namely as near-permanent, unitary, and reified entities with full sovereignty over domestic issues embedded in their constitution as members of the

⁴See Charlotte Epstein, Thomas Lindemann, and Ole Jacob Sending, ‘Frustrated sovereigns: the agency that makes the world go around’, *Review of International Studies*, 44:5 (2018), introduction to the Special Issue. See also Marshall Sahlins, *Apologies to Thucydides* (Chicago, IL: University of Chicago Press, 2004), p. 156; Ole Jacob Sending, ‘Agency, order, and heteronomy’, *European Review of International Studies*, 3 (2016), pp. 63–75.

⁵On state performativity, see David Campbell, *Writing Security: United States Foreign Policy and the Politics of Identity* (Minneapolis: University of Minnesota Press, 1992); Weber, ‘Performative states’; Ringmar, ‘How the world stage makes its subjects’.

⁶Epstein, Lindemann, and Sending, ‘Frustrated sovereigns’.

⁷Patchen Markell, *Bound by Recognition* (Princeton, NJ: Princeton University Press, 2003), p. 22.

⁸Antonio Y. Vázquez-Arroyo, ‘Re-cognizing recognition: a commentary on Patchen Markell’s *Bound by Recognition*’, *Polity*, 38:1 (2006), pp. 4–12.

international community. As a result of this, as we shall see, the symbolic structure of the international system has a peculiar duality, where sovereignty is both a (legal) fact and yet at the same time a (political) fiction because it contains an ideal of sovereign agency that is never realised, as it depends on a different (sociopolitical) recognition that is never forthcoming.

We should stress that our conceptualisation of ‘structure’ is distinct in that it is akin to a ‘symbolic order’ that always pre-exists any actor and on which they necessarily rely on in order to constitute themselves.⁹ It is constitutive rather than causal, and – importantly – draws our attention to agency by focusing, first, on the necessarily ‘performative’ aspect as agency is only meaningful and socially efficacious when performed in keeping with such structures. But this also means, secondly, that there is some distance between the self that desires or seeks to perform agency, on the one hand, and the reception and effects of such agency, which stem, precisely, from the fact that the ideals and rules for identification is, in Steinmetz’s formulation, ‘generated elsewhere’ and thus subject to misrecognition. This view of how structure relates to agency is important as it provides a different vantage point for assessing the structural properties of the international system: structure is here that which actors *necessarily* have to operate through to be meaningful social actors, and this structure is symbolic – invested with meaning – and outside of the actor.

We start with a detailed analysis of the formal-legal register of recognition, as it is a defining feature of the international system. Our stress on ‘states before relations’ aims to capture how the character of the state, once recognised as sovereign in the formal-legal register, shapes relations between states in fundamental ways, as it establishes the state as a (legal) fact, regardless of political practice.

The state as a person in international law

International law is a central institutional structure through which states relate to one another. While there is debate about precisely how legal norms shape state behaviour, most analysts agree that states argue about, and with, international law. As such, international law both enables and constrains what states do.¹⁰ Yet at an even more fundamental level, the institutions of international law give states their specific form of centralised agency at the international level: it is what creates their specific form and status as unified subjects across changes of governments and over time. Indeed, treating statehood as a product of enacted structures, as something performed, makes it particularly important to focus on international law, as it is one of the most concrete expressions of the structural features of the international system. Below, we detail the emergence and content of how statehood is defined in international law. In doing so, we zoom in on how international law defines states as a permanent legal person. The implication is that the recognition of states in international law locates statehood in a very particular temporal and institutional register that offers a protective shield. While states are misrecognised and never achieve the sovereign agency they desire, they nonetheless persist by virtue of the specifically formal-legal creation of the state under international law. As we shall see, this has significant implications, for

⁹See Judith Butler, *Subjects of Desire: Hegelian Reflections in Twentieth-Century France* (Columbia, NY: Columbia University Press, 2012 [orig. pub. 1987]); for a good overview and discussion, see Charlotte Epstein, ‘Who speaks? Discourse, the subject and the study of identity in international politics’, *European Journal of International Relations*, 17:2 (2010), pp. 327–50.

¹⁰See Ian Hurd, *How to Do Things with International Law* (Princeton, NJ: Princeton University Press, 2017). See also Tanja Aalberts, ‘Misrecognition in legal practice: the aporia of the Family of Nations’, *Review of International Studies*, 44:5 (2018), this Special Issue. For an overview, from within international law, see Martti Koskenniemi, ‘The politics of international law’, *European Journal of International Law*, 1:1 (1990), p. 4; Martti Koskenniemi, ‘The politics of international law – 20 years later’, *European Journal of International Law*, 20:1 (2009), pp. 7–19. For an analysis at the interstices of international law and international relations, see Nikolas M. Rajkovic, Tanja Aalberts, and Thomas Gammeltoft-Hansen (eds), *The Power of Legality: Practices of International Law and Their Politics* (Cambridge and New York: Cambridge University Press, 2016).

it means that while we can capture important aspects of the state through a relational, performative, or network-type of analysis, such accounts overlook the specificity of the actor in question, which cannot be reduced to properties of relations between actors. It is a constant and constitutive feature of the system that the state is defined as a permanent entity, and so whatever patterns of hierarchy we may identify, the character of these relations can never alone be constitutive of the actors, since this is, in one crucial respect, defined in the act of recognising the state in the first place. Moreover, and as we will turn to subsequently, this formal category of the state as a subject was with the establishment of the United Nations and its Charter in 1945 further enmeshed in a liberal, pluralist image of the rule of law, establishing the state's permanence as a subject in inner-connection with principles of state-centric sovereignty, non-interference, and tolerance of difference.

The state was described by early international legal scholars as a 'compound Moral person',¹¹ envisioned in the course of the seventeenth century as consisting of the tripartite constellation of government, territory, and population, 'but yet was reducible to none of them'. As the notable nineteenth-century legal scholar Edward Hall made clear, the explicit purpose for the conception of the State as a Person, was stability:

This dissociation of the identity of a state from the continued existence of the particular kind of government which it may happen to possess is not only a necessary consequence of the nature of the state person; it is also essential both to its independence and to the stability of all international relations.¹²

The juristic category of the state enables accountability, stability, cohesion, and centralised agency within the framework of international law. The reified state is both the physical and legal personae of the individual, facilitating continuity and permanence irrespective of which 'personality' – that is, form of government – prevails at a given moment. Whereas it is a widespread practice in Western domestic criminal law to not draw a necessary equivalent between human physical continuity (that is, the body) and guilt/responsibility (think 'insanity defence'), the state's external legal permanence is constant irrespective of manifestations of the 'social self'. Lacking the human body and any cohesive basis for psychological continuity, the personhood of the state in the legal sense is a permanent 'outer' construction, a legal shell, defining it as a distinct entity irrespective of its specific political manifestations. Thus, whereas individual formal (liberal) rights is given to the embodied individual as an entity, formal rights for the state is given to the juristic construction of such an entity. While this aspect of the legal definition of statehood is well established, it has far-reaching implications for how we think about sovereignty as something to achieve or as something that is desired. The reified legal definition and its implication are also, interestingly, largely overlooked in the debate in IR on whether the state is or is not a 'Person'.¹³

The idea that the State and its government are not concomitant conceptually ran parallel to the idea of the exterior and the interior of the state. It was in part on this basis that Lassa Oppenheim, central in the establishment of the modern discipline of international law, made the distinction between the permanence of the state as a person in a juristic sense, and the notion of 'Imperfect personality' in relation to not-full sovereign states. Despite their 'imperfect

¹¹Matthew Craven, 'Statehood, self-determination, and recognition', *International Law*, 3 (2010), pp. 203–51; Samuel Freiherr von Pufendorf, *Of the Law of Nature and Nations: Eight Books* (London: J. and J. Knapton, 1728), digital version available at: {<https://archive.org/details/oflawofnatureat00pufe>}.

¹²William Edward Hall, *A Treatise on International Law* (Oxford: Clarendon Press; London: H. Frowde, 1895), p. 22, digital version available at: {<https://archive.org/details/treatiseonintern00hallrich>}.

¹³With Alexander Wendt for example arguing for a psychological conception of state personhood for the purpose of accountability – the very reason personhood was construed in international law. Alexander Wendt, 'The State as Person in international theory', *Review of International Studies*, 30:2 (2004), pp. 289–31. A notable but dated exception is E. H. Carr, *The Twenty Years' Crisis: 1919–1939* (London: Palgrave Macmillan, 1939).

personality’, he noted, ‘these not-full Sovereign States are in some way or another International Persons and subjects of International Law’.¹⁴ For Oppenheim, the state as a person was the state’s main feature, the status existing irrespective of changes in the state’s ‘internal make-up’:

A State remains one and the same International Person in spite of changes in its headship, in its dynasty, in its rank and title, and in its territory. These changes cannot be said to be indifferent to International Law. ... But whatever may be the importance of such changes, they neither affect a State as an International Person, nor affect the personal identity of the States concerned.¹⁵

The integrity of the state as a person, Oppenheim held, remained also irrespective of its territorial cohesion – meaning, of course, that colonies, protectorates, and the like – ‘outlying parts of its territory’ could be envisioned as part of its juristic cohesion as a Person (and hence unit).

‘A State ceases to be an International Person when it ceases to exist’, Oppenheim wrote, of which he lists as examples: ‘Merger of one State into another, annexation after conquest in war, breaking up of a State into several States, and breaking up of a State into parts which are annexed by surrounding States.’¹⁶ It follows that without the international legal personality, entities are said to not *exist* in international law.¹⁷ Lacking the permanence of the physical body, the juristic category of a unified entity substitutes for it, yet this juridical permanence is both more mythical, and intrinsically more far-reaching than the human body. This mythical construction of the state as an entity distinct from its governing apparatus was forged because of a concern with accountability, but also, and more explicitly, international stability.

Note that this legal construction of the state is distinct from Hobbes’s conception of the majestic man (*magnus homo*): The Hobbesian theory of statehood, and the personification of the state, is explicitly tied to the domestic realm (with the state as a response to the threat of the state of nature). Hobbes’s embodied person was the Sovereign, the Ruler, himself. When the notion of state personhood was brought into international law, by contrast, the state was given a physical legal body akin to that of the individual within the state’s internal boundaries. Hobbes reference to how it is ‘the unity of the representer, not the unity of the represented, that maketh the person one’ is surely significant, but it is with reference to the idea of the body politic being represented in what Ernst Kantorowicz calls ‘The King’s Two Bodies’.¹⁸ In contrast, the modern legal conception of state personhood moved the unity of the collective from the sovereign representer, to the legal conception of the state itself.

As Carl Schmitt, and oft-used source in IR on state sovereignty, writes with reference to Hobbes’s Leviathan, ‘To the extent the new god is transcendent vis-a-vis all contractual partners of the covenant and vis-a-vis the sum total, [it is] obviously only in a *juristic and not in a metaphysical sense*.’¹⁹ Yet, what Schmitt partly misses in his discussion of the ‘image of the state’ is the outer representative purpose of the unified image. When Schmitt writes, in his reading of Hobbes, that ‘A state is not a state unless it can put an end to that kind of war [that is, civil war]. The state of the leviathan excludes the state of nature’, he is only considering the domestic image of the state as the unified protector against civil disunity.²⁰ When the state was personified in

¹⁴Lassa Oppenheim, *International Law: A Treatise* (London: Longmans, 1905), p. 110, digital version available at: {<https://archive.org/details/internationallaw01oppeuoft>}.

¹⁵*Ibid.*, p. 122.

¹⁶*Ibid.*, p. 124.

¹⁷Jan Klabbbers, ‘The concept of legal personality’, *Ius Gentium*, 11:35 (2005), p. 5.

¹⁸Ernst Kantorowicz, *The King’s Two Bodies: A Study in Medieval Political Theology*, Vol. 22 (Princeton, NJ: Princeton University Press).

¹⁹Carl Schmitt, *The Leviathan in the State Theory of Thomas Hobbes: Meaning and Failure of a Political Symbol* (Chicago, IL: University of Chicago Press, 2008), pp. 33–4, emphasis added.

²⁰*Ibid.*, p. 47.

international law, the image of the state went through a crucial transition: from a mythical image, to a fortified and legalised image, where anarchy – lack of domestic sovereignty – did not imply the death of its formal statehood. Hence, when a civil war breaks out – say, in Syria, and the state loses its ability to control the ‘state of nature’, it is no less a state as a legal entity, as statehood has become enshrined through formal recognition in international law as a stable entity.

In its very essence, then, the state here emerges as a mythical, permanent category that must both be embodied by those that claim to represent it, but which is at the same time independent of such embodiment given that it exists independent of government behaviour.²¹ This idea of the state as a permanent entity with rights – a result of formal-legal recognition – coexists with the sociopolitical recognition that continually negates and frustrates the ideal of sovereign agency. While we agree with Cynthia Weber and other performative and relational IR accounts in that ‘all subjects in process (be they individual or collective) are the ontological effects of practices which are performatively enacted’, we disagree with the preceding statement that ‘sovereign nation-states are not pre-given subjects’.²² Instead, we argue, the modern state is both, producing a fundamental and irresolvable tension in their quests for recognition as sovereign agents, a point we expand on later.

We can now see that this legal category of the state thereby also became wedded to a distinct liberal understanding of the subject. As with the liberal human subject, the individualisation of ‘Personhood’ also entails a concept of formal equality in relation to each other. Oppenheim was explicit on this:

The equality before International Law of all member-States of the Family of Nations is an invariable quality derived from their International Personality. Whatever inequality may exist between States as regards their size, population, power, degree of civilisation, wealth, and other qualities, they are nevertheless equals as International Persons ... Legal equality must not be confounded with political equality ... *The differences as regards rank are recognised by International Law, but the legal equality of States within the Family of Nations is thereby as little affected as the legal equality of the citizens is within a modern State.*²³

That the liberal understanding of the human subject is mirrored in the legal conception of state sovereignty is important, because it means that the existence of statehood and its place within the international community is, in legal terms, not dependent on behaviour, and yet it coexists – as we shall see – with a different register through which sovereign agency has to be performed, which is marked by misrecognition. As with the rights granted to liberal human legal subjects, the formal category of the state as an international legal subject with sovereign equality is superimposed on a reality of extensive sociopolitical and economic differences. The juristic category, the reification of the state as a sovereign equal subject, thus actively transgresses, but remains in continual tension with, both the real life of vast inequality in distribution of resources of power, and the often non-unitary character of state politics. Paraphrasing Steinmetz, we may say that the structure that is offered up for the performance of sovereignty and state subjectivity contains misrecognition in that the formal and constitutive register – international law – asserts state sovereignty as a fact, and yet the substantive, sociopolitical register through which sovereign

²¹See Roland Portmann, *Legal Personality in International Law*, Vol. 70 (Cambridge: Cambridge University Press, 2010), p. 250. This is the perspective of the state as a ‘fact’, whereby legal personality is defined through a set of criteria mirroring the development of sovereignty, codified through The Montevideo Convention on the Rights and Duties of States in 1933, which states that ‘a state exists when it possesses (a) a permanent population, (b) a defined territory, (c) government, and (d) capacity to enter into relations with other States’.

²²Weber, ‘Performative states’, p. 78; see also Ringmar, ‘How the world stage makes its subjects’, p. 101; Jackson and Nexon, ‘Relations before states’, p. 293.

²³Oppenheim, *International Law*, pp. 168, 170, 171, emphasis added.

agency can be achieved is denied because such agency depends on others, whose similar desire for sovereign agency makes it impossible to achieve.²⁴ As we discuss below, the formal-legal and the sociopolitical register for recognition has coexisted in the modern institutional infrastructure ever since the formation of the UN, suggesting that the symbolic structure of the international system is indeed organised around sovereignty, but in a way that points in opposite directions.

One-off recognition vs continued performance of statehood

In his analysis of Two Liberalisms, Gerry Simpson argues that there is a tension between two different liberal conceptions of the international community in international law.²⁵ One is what he calls ‘charter liberalism’ in which non-interference prevails, as stipulated in the UN Charter, and in which states as recognised sovereigns enjoy classical liberal principles of autonomy: ‘International community was liberal, then, in the same way that some democracies are said to be liberal: it tolerated highly illiberal elements within its membership.’²⁶ The other is what he calls ‘liberal anti-pluralism’, where the status of the state to enjoy such autonomy is conditional on states being governed in keeping with liberal principles, thus opening up the possibility of various forms of interference to police state behaviour. Simpson shows that there was considerable debate at the San Francisco conference over these two liberalisms, but that the concept of charter liberalism ultimately prevailed. The UN Charter’s Article 2(7) is explicit on non-interference: ‘Nothing in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state.’ In Simpson’s formulation, charter liberalism implies that

states in the international system are in an analogous position to individuals in a domestic political order. Orthodox international law, then, is based on a classical liberalism transplanted onto the international relations between states. ... [T]his liberalism gives *ontological priority to the state*; it is states that are given rights and immunities not individual human beings.²⁷

The conclusion is thus that ‘any developments in the direction of conditioning the standing or legitimacy of governments by reference to democratic standards has not affected the underlying position of the State as an entity under international law’ and essentially that international law ‘assume the personality and continuity of the state’.²⁸ Referring to the *Admissions* case of the International Court of Justice from 1948, Simpson ties the dominance of charter liberalism to Article 2(7):

In the Court’s reasoning, this commitment to pluralism was tied to the scope of a state’s domestic jurisdiction under Article 2(7). Article 2(7) of course is fundamental to the Charter. *In some ways, it is the expression of pluralism. States are not to be judged by their internal practices. This zone of immunity can be breached only if the Security Council acts under*

²⁴The state as a person is based on an analogy, but it is also real, in the sense that the unified thinking of statehood as a Person/entity permeates how both scholars and political actors think, organise, and act in the international realm. In contrast to human embodiment, then, the juristic category is indeed an ‘as if’, but it is one that real consequences for how statehood is performed. The legal-historical background and thus implications of which are largely bypassed in the otherwise excellent discussion of ‘state as person’ in this journal; see Patrick T. Jackson, ‘Forum introduction: Is the state a person? Why should we care?’, *Review of International Studies*, 30:2 (2004).

²⁵Gerry Simpson, ‘Two Liberalisms’, *European Journal of International Law*, 12:3 (2001), pp. 537–72. See also Stephen C. Schlesinger, *Act of Creation: The Founding of the United Nations: A Story of Superpowers, Secret Agents, Wartime Allies and Enemies, and Their Quest for a Peaceful World* (Boulder, CO: Westview Press, 2004); Mark Mazower, *No Enchanted Palace: The End of Empire and the Ideological Origins of the United Nations* (Princeton, NJ: Princeton University Press, 2009).

²⁶Simpson, ‘Two Liberalisms’, p. 556.

²⁷*Ibid.*, pp. 540–1.

²⁸James Crawford, *The Creation of States in International Law* (Oxford: Oxford University Press, 2006), pp. 152, 155.

Chapter VII or in cases where matters previously thought to occupy this zone are transferred into the international sphere.²⁹

Simpson's reference to the 'zone of immunity' captures a central aspect of how this legal category structures the types of sovereign agency available. A ruler may run the state apparatus to the ground and thus completely negate the sociopolitical conditions of the state's status, and sovereign agency, and yet continue to have access to the agency afforded by the legal definition of statehood as a permanent unit, especially in terms of diplomacy.

It has nonetheless been the competing vision – that of liberal anti-pluralism – that has come to dominate the symbolic structures through which statehood is performed in the decades since 1945, in the form of norms of 'good governance'. The most notable expression of this register is found in the doctrine of responsibility to protect, and attendant shift from 'juridical' to 'empirical' sovereignty that took off in the late 1980s and early 1990s.³⁰ But it has been there since the formation of the UN, in the form, for example, of human rights norms being used as a reference and platform for critique of state behaviour, and of standards for behaviour and 'development' for newly formed during and after the process of decolonisation.³¹ What separates anti-pluralist liberalism from charter liberalism, is that the former is moving beyond the legal realm and provides a horizon of endless modification and adjustment of the symbolic structures through which to seek recognition. Charter liberalism is fixed and is characterised by a reified category of statehood. Not so with anti-pluralism: the state is here rendered dependent on recognition from others to have sovereign agency. Misrecognition is here expressed in the form of states constantly seeking recognition for what they already consider themselves to be, being compelled to do so through a symbolic structure that, on the one hand, asserts statehood independent of government behaviour, and on the other, towards an anti-pluralist liberalism that asserts the opposite.

The tension between charter liberalism and liberal anti-pluralism is a good illustration of how the institutional rules gives the symbolic structure of the international system a dual character, with two contradictory models for state subjectivity: one reified formal-legal register (expressed in charter liberalism) that establishes, through a one-off recognition, the state as an equal unit and as a permanent body with rights, and another, sociopolitical register (expressed in liberal anti-pluralism) which cuts in the opposite direction, as it defines a social space where the actual performance and exercise of seemingly sovereign rights are always frustrated and negated in a double sense. First by the fact that some actors are in a position to define subject-positions for others, and second, by the sheer dynamic of misrecognition whereby one actor's quest for sovereign agency is dependent on yet negated by another.

We are now in a position to spell out the implications of seeing the international system as defined by the duality of this symbolic structure of sovereignty. We focus, first, on debates about hierarchy that have emerged over the last few years, using the example of fragile states as an illustration. We then turn to debates about transformation of sovereignty through a discussion of contemporary expressions of the frustrated desire for sovereignty, in the form of populist right and non-Western Great Powers' arguments for autonomy.

²⁹Simpson, 'Two Liberalisms', pp. 554–5, emphasis added.

³⁰Michael Barnett, 'The new United Nations politics of peace: From juridical sovereignty to empirical sovereignty', *Global Governance*, 1:1 (1995), pp. 79–97; International Commission on Intervention, State Sovereignty, *The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty* (Ottawa: International Development Research Centre, 2001); Gareth Evans, *The Responsibility to Protect* (New York, NY: Palgrave Macmillan, 2009), pp. 15–29.

³¹See, for example, Anne Orford, *International Authority and the Responsibility to Protect* (Cambridge: Cambridge University Press, 2011); Jack Donnelly, 'Human rights: a new standard of civilization?', *International Affairs*, 74:1 (1998), pp. 1–23; Marti Koskeniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960*, Vol. 14 (Cambridge: Cambridge University Press, 2001).

Misrecognition and sovereignty as symbolic structure

Our central contention is that the international system is defined by a symbolic structure organised around sovereignty, and that this symbolic structure has a particular bifurcated character that defines two contradictory models for state subjectivity. Attending to the workings of this symbolic structure challenge some key tenets of contemporary debates over whether the international system is anarchical or hierarchical. We first discuss debates about the hierarchical features of the international system, focused on fragile states. We move on to discuss debates about the transformation of sovereignty.

Hierarchy and fragile states

In an important new argument, Meghan McConaughey, Paul Musgrave, and Daniel Nexon suggest that we need to move beyond the states-under-anarchy model that has demarcated the study of international politics.³² They argue – correctly in our view – that there are anarchical features within states, and surely hierarchical features in the relations between states. To capture it, they suggest an analytical framework of ideal-typical configurations of hierarchy, anarchy, and heterarchy to account for the variation in both time and space that can be found both within and between the units of the system. There is a strong argument for moving beyond a view of the international system as anarchical, since there is ample evidence of hierarchy in the relations between states. But it also follows from their framework that it is the *relations between* the polities that define their character and identity. They note, for example, that ‘The kind of relational theory we deploy takes the transactions that constitute both agents and structures as the fundamental unit of analysis.’³³ This forms the basis for a key substantive argument, namely that

Relational approaches to social structure provide a way of tackling variation in hierarchical formations and of identifying political forms that operate across traditional levels of analysis. They therefore allow us to treat the distinction between ‘domestic’ and ‘international’ levels of analysis as *products of particular network configurations* rather than an *ex ante* analytical categories.³⁴

While the virtues of a relational view are clearly visible in this argument, it cannot capture what is a defining feature of the contemporary international system, in terms of how the units of that system (states) *resist the structural pressure* that follows – in a relational argument – logically from hierarchy. If we adopt a relational view, it is the relation between a super-ordinate and a subordinate actor that defines both actors: No characteristics of importance are allowed to define the actors that cannot be located in some relation to another actor. The implication is that the character of, say, Mali, is here assumed to inhere in the hierarchical relation that exist with their two most important providers of security assistance and development assistance, such as France/EU and the US. Moreover, the anarchical features that can be observed within Mali (and other so-called ‘fragile states’) must similarly be attributed to the relations between key actors. This, after all, is what ‘relationalism’ implies, as it holds that the relational is constitutive ‘all the way down’.³⁵

This analytical logic runs into trouble when we consider that ‘Mali’ would not exist as a polity if we followed the logic of relationalism: it would be swallowed by the anarchical features of its ‘domestic’ politics, and by the hierarchical relations that it has with other actors. Analysing states such as Mali through the bifurcated symbolic structure of sovereignty allows us to explain its

³²Meghan McConaughey, Paul Musgrave, and Daniel H. Nexon, ‘Beyond anarchy: Logics of political organization, hierarchy, and international structure’, *International Theory*, 10:2 (2018), pp. 181–218.

³³*Ibid.*, p. 187.

³⁴*Ibid.*, p. 189.

³⁵See Jackson and Nexon, ‘Relations before states’, p. 304; Emirbayer and Mische, ‘What is agency?’; and McConaughey, Musgrave, and Nexon, ‘Beyond anarchy’.

continued existence despite both domestic anarchy and international hierarchy: it exists as a state because the formal-legal register establishes a permanent yet nominal existence for statehood, independent of the relations it has with others, and independent of domestic governance structures. The symbolic structure of sovereignty can thus be said to define a legal register that offers a protective shield and permanence of existence, irrespective of the substantive relations and sociopolitical dynamic whereby the desire for sovereign agency is negated. This also has implications for how we think of claims about the sharing of sovereignty. Paul MacDonald has recently proposed a similar approach to hierarchy and the constitution of authority focused on social ties and networks. He notes that network and relational approaches more broadly stress that ‘entities do not have fixed boundaries, and that processes of interaction and exchange can refashion who actors are and when they can exercise agency’.³⁶ He quotes Hans Morgenthau who says that ‘Sovereignty over the same territory cannot reside simultaneously in two different authorities’, arguing that such a view ‘ignores the myriad ways in which authority is shared, even among actors in the otherwise anarchic structure of world politics’.³⁷

While we think MacDonald is right in asserting the fact of hierarchy, we side with Morgenthau’s assertion that sovereignty is indivisible in one key respect, which a relational view cannot fully capture. For us, the fact of hierarchy is not explained by specific relations or network positions, from which decisions or claims about shared sovereignty can be established. Rather, it is the result of the bifurcated character of the symbolic structure of the system, where one is both sovereign and not at the same time. One is sovereign by virtue of being a state, which is indivisible in the formal-legal register, and yet the sovereign agency associated with it is negated by the sociopolitical register.

Indeed, the very categorisation of some states as ‘fragile’ can be said to flow from the duality of the symbolic structure of sovereignty. These states are constituted *as* states through the formal-legal register, but they are simultaneously deemed ‘fragile’ by the sociopolitical register. There is a distinct form of misrecognition at work. To see why, consider an important argument put forth by Arjun Chowdhury and Raymond Duvall to the effect that we need to distinguish between sovereignty as unbridled agency capable of transgressing law and the existing order, on the one hand, and sovereign power as bounded by law and typically manifested in a state, on the other. They note that ‘to murder is to realize sovereignty, to be unencumbered by any limits on the exercise of power. Murder is thus very much within the logic of sovereignty, even as it contradicts the logic of sovereign power’.³⁸

For them, sovereignty is ‘not a possession or property but a contradictory relationship’. Our contention is that the reason for it being contradictory is that it is based on misrecognition. They allude to such misrecognition when they note that while sovereignty is based on recognition of social relations, it also implies the *denial* of that very relationship. They argue that sovereignty is a ‘social relation that can be realised only in a negation of the social’.³⁹ Chowdhury and Duvall focus primarily on the domestic dimension of sovereignty and apply the argument to fragile states. They argue that these states should be seen in terms of the proliferation of would-be sovereigns: fragile/failed states are for them characterised by a preponderance of sovereignty over sovereign power (statehood), as the former is logically prior to and willing to transgress the law that defines the latter.⁴⁰ Applying their argument to the relations between states and the international system, however, necessitate an appreciation of the duality of the symbolic structure

³⁶Paul K. MacDonald, ‘Embedded authority: a relational network approach to hierarchy in world politics’, *Review of International Studies*, 44:1 (2018), Online First, pp. 1–23 (p. 19), available at: doi:10.1017/S0260210517000213.

³⁷*Ibid.*, p. 21.

³⁸Arjun Chowdhury and Raymond D. Duvall, ‘Sovereignty and sovereign power’, *International Theory*, 6:2 (2014), pp. 191–223.

³⁹*Ibid.*, p. 206.

⁴⁰See also Benjamin de Carvalho, Niels Nagelhus Schia, and Xavier Guillaume, ‘Everyday sovereignty: International experts, brokers and local ownership in peacebuilding Liberia’, *European Journal of International Relations* (2018).

of sovereignty. While they are right in pointing to the desire for sovereign agency involving transgressing the legal category of statehood (what they call ‘sovereign power’) domestically, it is this very legal category that enables these states to survive in the first place. States are persons and (semi-)permanent units *because* of how that legal category is defined and applied under international law, and that legal category provides a protective shield against the structural pressure that flows from their subordinate position in the international system (a ‘fragile’ state is still a state). At the same time, it is only through the requirement of their sovereign agency acting through this reified legal form – the state – that they are defined as ‘failed’ in the first place, thus reproducing the inability of these polities to break free from their conceptual legal bonds.

Indeed, we can deploy the contents of the symbolic structure of sovereignty to appreciate the political strategy that often characterise such states, in terms of what Jean-François Bayart and others call ‘extraversion’. As a political strategy, extraversion might be understood as one where dependency and subordination are turned into possible sources of sovereign agency.⁴¹ This is only possible, first, because of the legal category of statehood acting as a protective shield and defining a formal vessel through which to channel such desire for sovereign agency. Second, the strategy of extraversion also demonstrates what the editors refer to as ‘misrecognition of the dominated’ where the ideal of sovereign agency emerge not in terms of a desire for substantive recognition beyond mere existence, but rather in terms of continued reliance on the formal-legal register for survival.

Transformation of sovereignty?

What, then, about claims concerning the transformation of sovereignty as found in the literature on the role of transnational actors, where new actors are said to emerge that challenges the state, on globalisation and interdependence, which details how global economic and political relations undercut the sovereignty of the state?⁴² At the heart of these debates is a particular concept of sovereignty as something fixed: it used to be one thing, and now it is something different.⁴³ In a recent intervention Jens Bartelson argues, contra his earlier work on the genealogy of sovereignty, that sovereignty should be understood as a symbolic *form*. Bartelson argues that ‘The main function of the symbolic form of sovereignty is not to represent objects more or less accurately, but rather to *constitute these objects in rough conformity to this form*.’⁴⁴ How does this come about? Bartelson here cites Cassirer, the originator of the concept of symbolic form, who argued that ‘we ourselves create the fundamental elements of form’. On this basis, Bartelson proceeds to stress that the effects of the symbolic form of sovereignty rests on different types of encodings and embodiments:

Claims to supreme authority have long been encoded in weaponry and coinage, and symbols of sovereign authority have been embodied in sceptres and crowns, ... Although those ways of encoding sovereignty have lost much of their ability to inspire awe and allegiance today, the formation of modern states would hardly have been possible without those symbolizations of sovereignty and their successful dissemination in society.⁴⁵

⁴¹Jean-François Bayart and Stephen Ellis, ‘Africa in the world: a history of extraversion’, *African Affairs*, 99:395 (2000), pp. 217–67.

⁴²For an overview, see James N. Rosenau, ‘Governance in a new global order’, in Anthony McGrew and David Held (eds), *Governing Globalization: Power, Authority and Global Governance* (Cambridge: Polity Press, 2002), pp. 70–86; Saskia Sassen, *Territory, Authority, Rights: From Medieval to Global Assemblages* (Princeton, NJ: Princeton University Press, 2008).

⁴³For a recent discussion on this, see Minda Holm, ‘What, when, and where, then, is the concept of sovereignty?’, in Julia Costa Lopez, Benjamin De Carvalho, Andrew A. Latham, Ayşe Zarakol, Jens Bartelson, and Minda Holm, ‘Forum: In the beginning there was no word (for it): Terms, concepts, and early sovereignty’, *International Studies Review*, 20:3 (2018).

⁴⁴Jens Bartelson, *Sovereignty as Symbolic Form* (London: Routledge, 2014), kindle loc. 405–18, emphasis added.

⁴⁵*Ibid.*

Two things are worth attention. First, if sovereignty imposes itself as that which symbolically orders political activity, as a symbolic form, one would expect there to be more to sovereignty than it being expressed in symbols and rituals of such sovereignty. Second, Bartelson notes that much of this ‘encoding of sovereignty’ has in the present ‘lost much of their ability to inspire awe and allegiance’ and that sovereignty itself has now become ‘governmentalised’ by a variety of international norms, such as the ‘responsibility to protect’ and other norms about proper modes for enacting sovereign statehood. Speaking of the increased governmentalisation of sovereignty, Bartelson argues that the ‘emphasis on good governance ... indicates that concerns with security and stability have *overruled the traditional regard for the right of non-intervention in the United Nations, and replaced it with contractalism and benchmarking of socioeconomic progress as the methods of choice for meddling in the domestic affairs of economically or politically unstable states*’.⁴⁶ Deducing from this and other evolving governmentalised criteria of state sovereignty, Bartelson concludes:

[S]overeignty is no longer a constitutive attribute of states, or an inalienable right whose ultimate source is to be found within the state. Sovereignty is ... rather a grant contingent upon its responsible exercise in accordance with the principles of international law under the supervision of a host of global governance institutions and non-governmental actors.⁴⁷

Bartelson’s move beyond some of the pitfalls of the poststructural conception of sovereignty, as also discussed in the introduction to this Special Issue, thus comes at a price of fixing the meaning of sovereignty in a symbolic form, which orders the world for us and yet is now being transformed, where ‘the defining mark of sovereignty has shifted from territorial control’ to ways of correctly governing one’s polities.⁴⁸ Our account need not, as in Bartelson and others’ work, to attribute changes in performance of statehood to a transformation in the meaning of sovereignty, in the form, for example, of its international ‘governmentalisation’. Claims about its governmentalisation or its emergence as conditional and granted, presumes that sovereignty is now something very different from before.⁴⁹ But just as with the relational arguments about hierarchy discussed earlier, this view of the transformation of sovereignty are hard pressed to account for the permanence of the state as the central unit of the system, and not least of sovereignty as somehow structuring political dynamics even in areas deemed to be lacking it, as in fragile states. This is why we propose to treat sovereignty as integral to the symbolic structure of the system, but one which defines two forms of state subjectivity; one in terms of rights and permanence (as fact), and one in terms of a fiction of sovereign agency connected to other registers of recognition.

What Bartelson sees in the evolving international quest for ‘good governance’ is what we see as the sociopolitical markers of misrecognition. Yet, instead of viewing them as replacing the old markers – implying broad acceptance, as in relation to non-intervention and the UN – we see them as continuously coexisting and indeed contradicting each other.⁵⁰ As with fragile states, the formal recognition framework of one-off and formal equality is both a source of agency, enabling sovereigns to act on behalf of the state, yet also a never-ending frustration and misrecognition, in

⁴⁶Ibid., p. 81.

⁴⁷Ibid., p. 87.

⁴⁸Ibid.

⁴⁹Tanja Aalberts, ‘Rethinking the principle of (sovereign) equality as a standard of civilisation’, *Millennium*, 42:3 (2014), pp. 767–89; Stephen D. Krasner, *Sovereignty: Organized Hypocrisy* (Princeton, NJ: Princeton University Press, 1999); Stephen D. Krasner, ‘Sharing sovereignty: New institutions for collapsed and failing states’, *International Security*, 29:2 (2004), pp. 85–120; Thomas J. Biersteker and Cynthia Weber, ‘The social construction of state sovereignty’, in Thomas J. Biersteker and Cynthia Weber (eds), *State Sovereignty as Social Construct* (Cambridge: Cambridge University Press, 1996), pp. 1–2; Saskia Sassen, *Losing Control? Sovereignty in the Age of Globalization* (Columbia, NY: Columbia University Press, 1996).

⁵⁰See also Daniel Nexon and Paul Musgrave, ‘American liberalism and the imperial temptation’, in Noel Parker (ed.), *Empire and International Order* (London and New York: Routledge, 2016), pp. 131–49. Nexon and Musgrave speak of the ‘two extremes’ of liberal ideas of governance – liberal enlargement, and liberal intergovernmentalism – but stop short of discussing how these are also institutionalised within the very concept of state subjectivity in the international system, and thus what consequences they have for broader ideas of sovereignty.

that the formal layer is not reflected in the sociopolitical register through which the desire for sovereign agency must necessarily be sought. Thus, rather than seeing the current international system and the role of sovereignty as marked by one form of recognition basis (good governance) replacing another (territorial 'old' conceptions of sovereignty), we posit that the *central dynamic* hails from the fact that sovereignty is a bifurcated regime of misrecognition. The regime offers up two contradictory registers for the performance of state subjectivity, where the formal-legal register offers not only a zone of immunity and resistance to structural pressure, but also, as we discuss below, a source of misrecognition in terms of a fundamental mismatch between having a desire to be recognised as that which one already hold oneself to be (a sovereign state), and the sociopolitical register through which such agency has to be performed and which negates it.

We can extend the analysis also to the contemporary rise of explicit, political challenges to dominant liberal norms in the form of 'new right' and far-right politics. This particular form of anti-liberalism is organised around the centrality of 'sovereignty', expressed in the ideological alliances of the populist and far right in states including Russia, Germany, Austria, France, Italy, the US, Hungary, and Poland, where traditional, non-liberal social values, anti-immigration, and a strong resentment towards the EU are at the centre of the debate.⁵¹ 'True diversity' and sovereignty – echoing the liberal principles of Charter liberalism – are used to express their visions of a world where cultural and ideological differences between states are accepted. In a speech on migration in 2017, for example, the Hungarian Prime Minister Victor Orban characteristically noted that 'No nation may be given orders on who it should live alongside in its own country, as that can only be a nation's sovereign decision. On this question national and community sovereignty must take priority over the interests and arguments of the global elite.'⁵² We can see this as an attempt to mobilise the formal-legal register of sovereignty against the sociopolitical register, which makes us appreciate how the formal-legal register is a potent source of a particular type of agency, one which is framed in opposition to the sociopolitical register, and only effective as a subordinated critique of it.

We can see the same trend in how both Russia and China are seeking to develop and spread specific 'counter-norms' aimed at undermining the dominance of a sociopolitical register organised around human rights and liberal domestic governance.⁵³ For China the key counter-norm is 'respect for civilizational diversity, which aims to link the sociopolitical register closer to the formal-legal register of recognition, so that such sovereignty trumps human rights. For Russia, the same effort takes the form of promoting the idea that 'traditional values' should be applied to and serve to sensitise human rights work, which they succeeded in getting through the UN Human Rights Council in 2012. In Russia's and China's regional security organisation the Shanghai Cooperation Organisation, 'non-interference' in domestic affairs is the central premise, also echoing the sentiment of pluralism between states.⁵⁴ Vladimir Putin's response to the 2011 UNSC resolution and intervention in Libya, is instructive in this regard: 'The Libyan regime does not meet any of the criteria of a democratic state, but that does not mean that someone is allowed to interfere in internal political conflicts to defend one of the sides.'⁵⁵ In a speech given to the UN

⁵¹Marlene Laruelle (ed.), *Eurasianism and the European Far Right: Reshaping the Europe-Russia Relationship* (Lanham, MD: Lexington Books, 2015); Anton Shekhovtsov, *Russia and the Western Far Right: Tango Noir* (London: Routledge, 2017).

⁵²Website of the Hungarian Government, 'Prime Minister Viktor Orbán's Speech at the Closing Event for the National Consultation' (29 June 2017), available at: {<http://www.kormany.hu/en/the-prime-minister/the-prime-minister-s-speeches/prime-minister-viktor-orban-s-speech-at-the-closing-event-for-the-national-consultation>}, our highlight.

⁵³Rebecca Adler-Nissen, 'Stigma management in international relations: Transgressive identities, norms, and order in international society', *International Organization*, 68:1 (2014), pp. 143–76; Ayşe Zarakol, 'What made the modern world hang together: Socialisation or stigmatisation?', *International Theory*, 6:2 (2014), pp. 311–32.

⁵⁴Stephen Aris, 'The Shanghai Cooperation Organisation: "Tackling the Three Evils": a regional response to non-traditional security challenges or an anti-Western bloc?', *Europe-Asia Studies*, 61:3 (2009), pp. 457–82.

⁵⁵Gleb Bryanski, 'Putin likens UN Libya resolution to crusades', *Reuters* (21 March 2011), available at: {<https://www.reuters.com/article/us-libya-russia-idUSTRE72K3JR20110321>}.

General Assembly marking the UN's 70th anniversary, the rhetoric echoing 'Charter liberalism' was even more to the point, underlying the extent to which the formal-legal form is also an avenue for asserting ones sovereignty:

Russia is ready to work together with its partners to develop the UN further on the basis of a broad consensus, but we consider any attempts to undermine the legitimacy of the United Nations as extremely dangerous. They may result in the collapse of the entire architecture of international relations, and then indeed there will be no rules left except for the rule of force. *The world will be dominated by selfishness rather than collective effort, by dictate rather than equality and liberty, and instead of truly independent states we will have protectorates controlled from outside.*

What is the meaning of state sovereignty, the term which has been mentioned by our colleagues here? *It basically means freedom, every person and every state being free to choose their future.*⁵⁶

What these statements have in common is that they all seek to tie sociopolitical recognition closer to formal-legal recognition, subsuming, if you like, liberal anti-pluralism under charter liberalism. This suggests that the international system is a political space defined by two registers that stand in tension with one another. Indeed, it is internal to sovereignty itself, as a marker of permanent existence in the formal-legal register, and as a marker of failure and frustrated desire in the sociopolitical register. We are not denying the significance of the trend towards a 'governmentalisation' of sovereignty, which reflects the dominant sociopolitical register, as the emergence of global benchmarks and best practice for the performance of statehood demonstrate quite clearly.⁵⁷ But it operates in parallel to another and equally important feature, which is that of the formal-legal register, which is expressed, for example, in nationalist and sovereignty claims in Europe and in China and Russia's efforts to develop counter-norms based on how state subjectivity and the principles of international community were defined in the first place in the UN Charter of 1945.

Our point is thus that debates about the transformation of sovereignty, as in debates over globalisation, or the absence or fragility of sovereign statehood, are partly misplaced. Sovereignty is a constant, not as a symbolic form that may change over time, but as both fact and fiction – as a legal and political fact expressed in the existence of any one state, and as an ideal for sovereign agency that is constantly being misrecognised. In this sense, the claims to sovereignty marshalled by anti-liberal nationalist groups and by Russia and China do not concern sovereignty in some abstract, 'Westphalian' form, as some have argued in relation to Russia's rhetoric on sovereignty over the last decade.⁵⁸ Nor do we see it as merely an expression of nationalism. These political tendencies are about the specific iteration of the post-1945 formal-legal register within the context of a sociopolitical register where the fact of sovereign statehood holds no purchase.⁵⁹

⁵⁶Official Internet Resources of the President of Russia, '70th Session of the UN General Assembly' (28 September 2015), available at: {<http://en.kremlin.ru/events/president/news/50385>}, emphasis added. The paradox, of course, is that this vision also coexists with an idea of Russia having a particular 'right' of influence in its 'Near Abroad', echoing geopolitical ideas of Schmitt and others.

⁵⁷See André Broome and Joel Quirk, 'Governing the world at a distance: the practice of global benchmarking', *Review of International Studies*, 41:5 (2015), pp. 819–41; Alexander Cooley and Jack Snyder (eds), *Ranking the World* (Cambridge: Cambridge University Press, 2015); Iver B. Neumann and Ole Jacob Sending, *Governing the Global Polity: Practice, Rationality, Mentality* (Ann Arbor, MI: Michigan University Press, 2010).

⁵⁸Roland Paris, 'Competing Conceptions of World Order: The Ideational Dimensions of Power Transition', paper presented to the ISA Conference, San Francisco (5 April 2018). While 'Westphalia' and its principles are debated (cf. Stéphane Beaulac, *The Power of Language in the Making of International Law: The Word Sovereignty in Bodin and Vattel and the Myth of Westphalia* (Leiden: Martinus Nijhoff Publishers, 2004), the UN Charter has a unquestionable role in laying down the principles discussed here.

⁵⁹On this, see Iver B. Neumann and Vincent Pouliot, 'Untimely Russia: Hysteresis in Russian-Western relations over the past millennium', *Security Studies*, 20:1 (2011), pp. 105–37.

The contestation around ‘sovereignty’ and ‘internal affairs’ takes different forms, but are also intrinsically related – be it in opposition to liberal externally induced regime change, restricting access to Western liberal NGOs, or in the increasingly consequential international political alliances where illiberal values – such as anti-LGBT sentiments – are enmeshed in anti-EU expressions and calls for pluralism in world affairs. This is not to say anything of the intentions or ‘real’ beliefs of the politicians and ideologues employing this register, but that the existence of the register and its empowering potential provides an important ground for contested politics aimed at the very idea of the ‘international’ and the ‘state’.

Conclusion

In this article we have aimed to capture the specific institutional levers through which statehood is enacted and the type of misrecognition that may be embedded in them. This is why the legal definition of statehood is so important, as it distorts the master–servant relation by offering the latter with a protective shield and giving it a permanence, more or less independently of the masters’ actions. The existing literature on misrecognition largely deals with human subjects.⁶⁰ Similarly, the literature on social constitution in IR borrow directly from theories developed for understanding human subjects’ relation to the social order. It is tempting to draw a direct parallel between the human subject and the state and simply assume that the commonality of individuals and states being actors holds for the explanatory purpose in question.⁶¹ We have argued that in understanding misrecognition dynamics, this move is not warranted, as it stops short at exploring what implications the specific categorisation of the state as a unit in modern-day international law and diplomacy has on these dynamics. It also means that we must recognise the real-life effects of a bifurcated misrecognition regime, where the locus of sovereign agency is found both and in contradiction in an ahistorical, formal and inclusive, liberal regime and in non-inclusive, sociopolitical ones (often liberal in a non-tolerant way). Using either anarchy or hierarchy in relation the international sphere, or either ‘substantial’ or ‘relational’ approaches in studying the state, does not fully capture the effects of this bifurcated misrecognition regime, where the very constitution of the state as a ‘subject’ has had wide-reaching and near-permanent consequences for how politics across and beyond specific regimes play out, and how certain grievances, as Christian Reus-Smit also has alluded to, are ‘rooted in unequal recognition’.⁶²

At one level, there is the state as a bounded unit that receives formal recognition in international law for the purpose of simplification, stability, and accountability. In lieu of the body, the ‘state’ is constructed as a more or less permanent entity-like-construction, irrespective of the politics of the sovereign in power. Since this formal category is also the highest locus of directly accessible state agency (that is, actors, or governments, acting on behalf of the unit), our examples of extraversion and failed states and claims to ‘sovereignty’ and ‘non-interference’ illustrate how sovereigns must operate within, but are also enabled by this formalistic conception. Russia and China through seeking to shed international life of the morality that judges them by internal standards instead of their formal sovereign equality, and failed or weak states through channelling resources for the purpose of fitting into that category. For the fragile and weak states, recognition is a futile process: not being able fully to live up to the ‘image of the state’ as conceptualised in international law and diplomacy, yet dependent on it for political agency, these states – such as Afghanistan, South Sudan – are seemingly stuck in a perpetual misrecognition between sovereign practices and formal sovereign agency.

⁶⁰Patchen Markell, ‘Tragic recognition: Action and identity in Antigone and Aristotle’, *Political Theory*, 31:1 (2003), pp. 6–38; Axel Honneth, ‘Integrity and disrespect: Principles of a conception of morality based on the theory of recognition’, *Political Theory*, 20:2 (1992), pp. 187–201; Charles Taylor, *The Ethics of Authenticity* (Boston, MA: Harvard University Press, 1992).

⁶¹See Jackson, ‘Forum introduction’.

⁶²Christian Reus-Smit, ‘Cultural diversity and international order’, *International Organization*, 71:4 (2017), p. 879.

Our conceptualisation also offers a different explanation for the behaviour of states than that found, for example, in accounts that stress the anarchical or hierarchical features of the international system. In Kenneth Waltz's hugely influential *Theory of International Politics* the central premise of the anarchy assumption is the 'mental image' of states as 'like units', where '[f]ormally, each is the equal of all the others.'⁶³ This is for Waltz an ahistorical ideal-type-like construction, his 'mental image' modelled on the natural sciences rather than Weber, that in fact runs parallel to the very specific *historic* iteration of 'sovereign equality' in modern international law.⁶⁴ As we have argued, this legal construction is a 'myth' in the sense of not reflecting the real-life distribution of power between states, or the non-unitary character of the state. But it is also the legal reified *form* through which the international community was organised in 1945 through the UN Charter, and thus through which states had their formal sovereign agency defined.

Anarchy is said to help explain or condition state behaviour because of the institution of self-help. For Alexander Wendt, for example, anarchy itself does not explain anything, since it is the social meaning that the actors in the system invest in its constituent institutions (self-help) that matter.⁶⁵ Our point is that it is unnecessary to locate an account of the logic of the international system, and of the behaviour of states, in a structure of anarchy, since anarchy is derived from the fact that the actors in that system are defined as sovereign and 'formally equal'. Thus, since anarchy is derived from sovereignty rather than vice versa, we are better served with seeking explanations for state behaviour in the symbolic structure of sovereignty itself, and in the particular institutional configuration of (mis-)recognition through which it is constituted and enacted. Our conceptualisation is thus different from Wendt's in that 'sovereignty' is not an institution in the way Wendt defines it. Wendt notes that 'sovereignty is an institution, and so it exists only in virtue of certain inter-subjective understandings and expectations; there is no sovereignty without an other ... The essence of this community is a mutual recognition of one another's right to exercise exclusive political authority within territorial limits.'⁶⁶ It follows from this that sovereignty, for Wendt, is an inter-subjective 'social fact' defined by norms, so that 'if states stopped acting on those norms, their identity as "sovereigns" (if not necessarily as "states") would disappear. The sovereign state is an on-going accomplishment of practice, not a once-and-for-all creation of norms that somehow exist apart from practice.'⁶⁷

We note, first, that while legal sovereignty is indeed produced by mutual recognition, the ideal of sovereign agency that is embedded in it is based on a factual misrecognition of the inter-dependent character of world politics, so that the phrase 'exclusive political authority within territorial limits' has more to do with the idea of the state as a person with rights in international law than with the actual conditions under which state sovereignty can ever be achieved. Second – and here we follow Bartelson – sovereignty does not depend on it being acted out through norm-conformity in the way Wendt suggests. Rather, sovereignty is a symbolic structure that states are dependent upon to perform statehood: Sovereignty may be an 'on-going accomplishment of practice', but then in the sense of never-fully-realised ideal of sovereign agency that takes place within a framework of international law

Our focus on sovereignty as an ideal of sovereign agency also differs from accounts of hierarchy: The hierarchy literature insists that there is a distinct 'logic' in hierarchy. This has been marshalled to account for the behaviour of non-Western states *vis-à-vis* Western states, for

⁶³Kenneth Waltz, *Theory of International Politics* (New York, NY: McGraw-Hill, 1979), p. 88.

⁶⁴As such, we disagree with Wæver in seeing it as a Weberian ideal-type; for Weber, ideal-types had to be explicitly historical, while Waltz is here trying to make a transhistorical claim. Ole Wæver, 'Waltz's theory of a theory', *International Relations*, 23:2 (2009), pp. 201–22.

⁶⁵Alexander Wendt, 'Anarchy is what states make of it: the social construction of power politics', *International Organization*, 46:2 (1992), p. 400.

⁶⁶Ibid., p. 412.

⁶⁷Ibid., p. 413.

example.⁶⁸ As a description of patterns of super- and sub-ordination, it works to describe the importance of such structures. But as an account of state behaviour, we submit that it overlooks the extent to which both super- and subordinate states are structured in their operations that hail from the same desire for sovereign agency. Moreover, the emphasis on hierarchy – that some states are superordinate and some subordinate – tend to overlook the extent to which the legal regime of sovereignty resists the full implication of relations of hierarchy and of imperial logics of rule: just as with Hegel’s master–servant relationship, the master is never as superordinate as the formal relation of hierarchy would suggest, since that position is dependent on the subordinate actor, and both actors super- and subordination are caught in a cycle of misrecognition in their quest for (sovereign) agency.

The upshot of this is that the international system is defined not so much by an anarchy or hierarchy, nor ‘just’ by the distribution of power between states, but by the relationship between two regimes of recognition that all actors are compelled to operate through to be recognised as states. It is to the particular relation between these two regimes of recognition and to different states’ relation to them, that we should look to unpack how political agency is achieved. For some states, misrecognition comes in the form of how other states reject the validity of the political side of legal recognition, in the form of sovereign equality. For other states, misrecognition comes in the form of deploying legal recognition within the purview of substantive, sociopolitical recognition, resulting in efforts to undermine the latter through references to principles of non-interference, or through increased emphasis on ‘sovereignty’ as such. Finally, for so-called ‘fragile’ states, there is misrecognition of a different kind, as the quest for agency on the part of political leaders can here flourish behind the protective shield of legal recognition. Their status as weak or fragile is an asset to be used to extract resources from the state, and from the international community which seeks to assist it in becoming less fragile. At the same time, without the protective shield of the legal status, they wouldn’t be defined as ‘fragile’ in the first place.

An irony of sorts, as we argued with reference to Simpson, is that both these dominant recognition forms are inherently *liberal*: one liberal pluralist, rights-based, and institutionalised through the UN, based on liberal ideals of tolerance, diversity, and non-interference, the other liberal anti-pluralist, with the desire to transfer certain liberal values defined as universal to all other subjects. Whereas the former is based on liberal, egalitarian principles, it is also a decidedly naive, individualising kind that does not consider the myriad of social forces limiting some states’ agency and enabling others. Waltz’s ‘mental image’, while presented as transhistorical, is similarly based on the same basic principles as the UN 1945 Charter – formally like units, where interaction between states as ‘units’ creates the dynamics of the international system – thereby perpetuating the idea that the locus of state agency lies in their *formal* organising principle. This is the presocial, substantialist state that ‘processual’, performative, or relational approaches in IR criticise. Yet, it is also the locus of state subjectivity in our modern age, and the principles to which countries such as Russia and China refer to when judged according to the ‘substantial’ ideas of the right kind of state subjectivity. When these governments and political movements invoke ‘sovereignty’, it is the UN Charter Liberalism one, with a liberal, pluralist acceptance of different domestic forms coupled with the idea of the state as a near-permanent sovereign entity. Yet this formal constitution of sovereign subjectivity in the modern, liberal era has always existed in transgression of how relations between polities actually play out, full of inequalities constituted not only through their interactions with each other – where hierarchies are everywhere – but also through vast differences in distribution of resources. Thus, we have argued, the bifurcated regime of the formal-legal and the sociopolitical in the definition of sovereign state subjectivity generates constant misrecognition, making the desire for sovereign agency in the international arena a forever frustrated quest.

⁶⁸Zarakol, ‘What made the modern world hang together’; Ayşe Zarakol and Janice Bially Mattern, ‘Hierarchies in world politics’, *International Organization*, 70:3 (2016), pp. 623–54.

Acknowledgements. In addition to the reviewers and the editors, we would like to thank Arjun Chowdhury and Iver B. Neumann for their instructive comments on earlier drafts. Minda Holm would like to acknowledge the financial support of Velux through the project 'World of the Right'. Ole Jacob Sending would like to acknowledge financial support of the Research Council of Norway through the project 'Evaluating Power Political Repertoires', project number 250419.

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