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## The recognitive practices of declaring and constituting statehood

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Ever since the emergence of the modern state system there has been considerable disagreement as to which political entities should be recognized as states and on what grounds. In contemporary political and legal thought, this question has primarily preoccupied scholars of international

law (Oppenheim 1912; Kelsen 1941; Lauterpacht 1944; Raič 2002; Talmon 2005; Borgen 2010). But in recent years it has increasingly gained attention in international relations (IR) theory. Starting out from a different viewpoint, IR scholars commonly point to the limits of law in properly answering this complex question. Instead, being part of what we might call ‘the constructivist turn’ in IR theory, drawing on the recognition literature in political philosophy (e.g. Hegel 1967; Taylor 1994; Walzer 1994; Honneth 1996, 1997, 2003, 2011), it is argued that statehood is to a large extent dependent on multifaceted processes of recognition (Nardin 1992; Wendt 1994, 1999, 2004; Ringmar 1995, 1996, 2011; Lebow 2008; Murray 2010; Lindemann 2011; Ringmar and Lindemann 2011). In broad strokes, two theories of the international recognition of statehood dominate the debate: the declaratory theory defended mainly by international lawyers, and the constitutive theory defended and developed in the contemporary debate by constructivist IR theorists. While each camp of course consists of a variety of different theories, it is the main distinction between them that is of interest in the present paper, as well as their general differences and underlying philosophical and conceptual presumptions.

The driving force behind this choice of focal point is that the debate seems to have reached an impasse, in the absence of theoretical contributions innovative enough to take the debate forward. One reason for this, it will be argued, is that these two theories to some degree have focused their analyses on the wrong kinds of questions. This is unfortunate, since analyzing the criteria of statehood seems as pressing as ever in light of the contested and often conflicting claims of statehood that impregnate today’s political world, for example in the case of South Ossetia, Palestine, and Kosovo. Indeed, more often than not these claims involve struggles and conflicts affecting millions of people’s lives through civil war, military intervention, violations of basic human rights, the presence of foreign armed forces, and so on. The paper will defend two theses. First, the declaratory and constitutive theory both rely on a problematic distinction for the question at hand between empirical facts, on the one hand, and social facts and norms, on the other, which makes them conceptually fuzzy. Second, while both theories stress important aspects – in terms of conditions within the political entity of concern (declaratory theory) and conditions pertaining to the relationship between this entity and other entities (constitutive theory) – they are insufficient in their own terms to adequately explain statehood. Instead, it is argued that any coherent and plausible theory of statehood must at a minimum offer both appropriate ‘internal’ and ‘external’ criteria. The upshot of the argument is that once we have cleared the road of problematic philosophical assumptions, the way is open to approach the recognition

of statehood as a two-faced practice taking place within as well as outside the state, involving recognitive practices (i.e. practices of recognition) that serve both declarative and constitutive functions in order to meet these criteria.

Thus, the overall aim of the paper is not to elaborate a theory of the recognition of statehood. Rather, it is a *metatheoretical* contribution with the intent of taking the debate forward for explanatory theory, and a *metaethical* contribution with the intent of doing the same for normative theory. The structure of the argument is straightforward. First, I briefly sketch out these two predominant theories and the criticisms they raise against each other, as well as the different ways in which the concept of recognition is applied (I). The second section defends the first thesis by examining the distinction between empirical facts, on the one hand, and social facts and norms, on the other, to which the two theories are anchored. It is shown that both theories fail to make sense of this distinction and therefore become conceptually fuzzy (II). The subsequent two sections defend the second thesis. In a first step, it is argued that neither focusing on external conditions such as the 'recognition by the international community', in line with constitutive theory, nor on internal conditions such as 'defined territory', in line with declaratory theory, is sufficient for a full-fledged theory of the recognition of statehood. To show why this is the case, I take a closer look at the property that is supposed to be recognized, namely, the self-determining political entity. It is argued that collective self-determination (collective autonomy) is a practice that is dependent just as much on 'intrinsic' as on 'relational' aspects such that the fulfillment of both internal and external criteria is required (III). Finally, in light of the view of statehood as primarily a practice of collective self-determination, I try to show that the socio-psychological conception of recognition applied by proponents of constitutive theory is of limited use for a theory of statehood, and sketch out instead the contours of an alternative practice-based notion of recognition suitable for theorizing statehood, which is premised on recognitive practices internal and external to the state that fulfill both declarative and constitutive functions (IV).

### **Declaratory and constitutive theory and the role of recognition**

Recognition plays very different roles in declaratory and constitutive theories. According to declaratory theory, the criteria of statehood are factual and objective. To this extent, acts of recognition declare something that already exists, rather than contribute to its very existence. These criteria are expressed in several legal documents, the most famous of

which is perhaps the Montevideo Convention from 1933. This document states that the existence of states is *independent* of the recognition by other states, and that in order for a political entity to be recognized as a state it has to fulfill four criteria: a defined territory, a permanent population, a government, and a capacity to enter into relations with other states.<sup>4</sup> While a fulfillment of these criteria calls for acts of international recognition of statehood, recognition is not to be understood in normative terms, as it does not play a normative role in the very act of state recognition (Peterson 1997). The state obtains its legal status by virtue of its existence rather than by legal recognition as such (Crawford 2006, 4). In other words, the act of *declaring* a political entity a state is a formality, since it is claimed to have no legal effect as to the existence of it as a state (von Glahn 1992; Shaw 2003).

By contrast, recognition is a normative concept for constitutive theory on the constructivist understanding, according to which it is a necessary condition for statehood. Drawing inspiration from the legal positivist emphasis on consent as the justified basis for validity, early proponents claimed that a political entity comes into existence as a state in international law only if it is recognized by other sovereign states in the international community (Oppenheim 1912; Lauterpacht 1944, 1947; Bahcheli *et al.* 2004). In other words, recognition is seen as indispensable for a political entity to obtain the legal status as sovereign state (Fabry 2010). But while these early proponents, mostly international lawyers, focused on legal aspects of recognition, constructivist IR theorists have brought our attention to the ways in which norms come into play in international law-making.

The weaknesses of declaratory and constitutive theory have been much debated in the literature on international law, and have generated several important questions that will not be addressed in the present paper. What is of interest in this section is the distinction made between the two theories with regard to their respective emphasis on factual and socio-political conditions, which will be examined in more detail by looking at the ways in which recognition comes into play in each of the theories, in particular how the concept is employed by the constitutive theory in order to problematize the declaratory focus on empirical facts. In short, while the declaratory theory is accused of holding an overly formalistic view of state sovereignty and international relations in presupposing that states attain their legal status by fulfilling certain purely empirical criteria, the

<sup>4</sup> Of course, a theory of recognition can be declaratory also on the basis of other conditions for the recognition of statehood. Alternative doctrines of recognition are surveyed in Fabry (2010). However, the argument pursued here is metatheoretical and would apply independent of which 'internal' conditions are specified as criteria.

constitutive theory is criticized for leaving too much room to the arbitrary power of existing states in light of the lack of such criteria (Kelsen 1941, 608; Crawford 2006, 28).

Few scholars in the contemporary debate would deny the central role that recognition plays in international relations. That said, in recent years it is primarily constructivist IR scholars who have developed the constitutive theory, previously theorized mainly by international lawyers. Constructivists study the emergence of statehood and the reproduction of the international order at large via an in-depth analysis of processes of recognition (see Bartelson 1998; Wendt 2004). Inspired by Hegel's idea of recognition as forms of *mutual* recognition, they commonly use the recognition literature found in social and political theory for theorizing statehood in terms of identity formation (Lindemann 2011; Ringmar 2011).

According to Erik Ringmar, one of main advocates of constitutive theory in the present debate, a key to understanding and theorizing the subjectivity and identity formation of states goes via thinking about the identity formation of individuals. Of course, in line with other constructivists supporting the constitutive theory, Ringmar is well aware that there are many ways in which we cannot fruitfully compare individuals and states. For example, states do not have consciousness, a single memory or a unified will. Still, it is argued that the analogy is useful for digging out some *essential* aspects of statehood. Making use of theories of recognition developed by Hegel, Honneth, and Mead, Ringmar develops a theoretical framework for analyzing the subjectivity and identity formation of states.

On Ringmar's account, individuals start out by telling stories about themselves. However, the problem with such self-descriptions is 'how to get the story right' (Ringmar 2011, 4). Since people from the outside have a different view of us, our identities are continuously revised and recreated through interaction with them, via processes of recognition. Insofar as our story is recognized, we have a preliminary version of an identity, which we use in further interaction with others. Following Honneth, Ringmar argues that these processes involve different kinds of recognition. For example, we acknowledge each other's existence, ask for respect, ask to be treated as human beings equal to others endowed with the same rights as others within our community (Ringmar 2011, 5–6; see also Mead 1934; Hegel 1967; Honneth 1996, 7–63).

The same processes apply when the identity and subjectivity of states are formed, according to Ringmar. Similar to other subjects, states hold stories about themselves. On a long-term historical outlook, this is in fact how states have been referred to at least for the last 500 years. In the Middle Ages, Ringmar argues, political relations were understood

through the metaphor of the *corpus*, the body; and in early modern Europe the sovereign state made use of this ‘body language’ for political purposes, for example talking about ‘body politic’ accompanied by a king or head of state dictating its movements. Together with the metaphor of the ‘stage’ for describing the international political domain, the metaphor of the ‘body’ was used to establish the subjectivity of the state in international politics and the emergence of the sovereign state actor constrained only by the actions of other states. Today, the subjectivity of the state is a well-established feature of international law. A state is the *persona* of international law in much the same way as an individual is the *persona* of civil law (cf. Oppenheim 1912). The state as a subject is endowed with rights and obligations independent of, for example, whether its territory is enlarged or its citizenry changes (Ringmar 2011, 8–9).

On the declaratory account, by contrast, what is decisive for whether a political unit is to be regarded as a state is not that it is recognized as such by other states in the international community, but that it fulfills the factual criteria of a defined territory, a government and so on. Instead of ascribing recognition a substantive role for statehood, declaratory proponents claim that international recognition is solely a logical consequence of following the dictates of international law (Brown 1942; Grant 1999; Crawford 2006, 28). Therefore, while recognition declares that a new state exists it does *not* contribute to its coming into existence. The contrast to the constitutive account is thus fundamental, the argument goes, since on the declaratory account the criteria of statehood are legal and objective, not politically and socially construed. Were we to recognize states solely on the basis of the social practice of language, as suggested by constitutive theory, declaratory theorists argue that we would downgrade this act to a mere expression of arbitrary political power among the recognizing states (Crawford 2006).

Thus, for the majority of international lawyers supporting the declaratory theory, recognition is about the recognition of empirical facts rather than identities. However, Ringmar insists, even if it is correct that a political unit can be a state without being recognized, in much the same way as a person can be a person without being recognized, its self-understanding must *in due course* be confirmed by others if it is to be credibly maintained. And this is in his view exactly what the constitutive theory aims to capture, which allegedly makes it more plausible on empirical grounds (Fabry 2010; Ringmar 2011, 11–12). While it might be objected from the standpoint of declaratory theory that this language is completely metaphorical and the subjectivity of the state therefore becomes a matter of language rather than of empirical fact, Ringmar argues, identities are social facts and as such created and sustained through

interaction between storytellers and audiences. In his view, what is true for identities of individuals is as true for the identities of states: 'we are not in the realm of reality, we are in the realm of interpretation' (Ringmar 2011, 10). Since states are not best seen as *a priori* given, constituted by 'a set of empirical attributes', Ringmar urges us to stop talking about what states *really are* and instead talk about what things they *resemble* (Ringmar 1996, 439).

In sum, constructivist theorists advocating constitutive theory stress that recognition is a key concept not only for diplomats but also for international lawyers. Since states are subjects of treaties, international lawyers need to know what makes a state a state, which cannot be understood by solely looking at factual conditions. Statehood has never been a purely factual phenomenon, but is a normative phenomenon impregnated by practices of recognition (Kreijen 2004; Fabry 2010; Roth 2011).

### **Facts and norms in international politics**

Now, it is clear that the declaratory and constitutive theories focus on different aspects of statehood and that it therefore would be possible to uphold a distinction between them. However, this is not convincingly done the way the theories are construed in the contemporary debate. In this section, the first thesis of the paper is defended, that is, that the difference between the two theories according to protagonists of both camps relies on a philosophically untenable distinction for the question at hand between empirical facts, on the one hand, and social facts and norms, on the other. To inquire into this is not merely a philosophical exercise. As I shall try to show below, this erroneous distinction has led theorists in the debate to focus on the wrong questions in exploring the recognition of statehood, which has prevented the development of the two theories and created an impasse between them. Instead of focusing on defensible criteria of statehood, either on an explanatory or a normative account, the debate has revolved around complex philosophical questions, such as the ontological relationship between language and the world, without sufficient awareness of the contemporary philosophical literature that has treated these questions in detail.

As we have seen, declaratory theorists claim that if we do not understand statehood as a matter of fulfilling certain empirical conditions, we leave the matter of the recognition of statehood to the arbitrariness of social and political power. By contrast, constitutive theorists claim that the declaratory theory wrongly construes statehood as something empirically given, thereby failing to acknowledge that statehood is a normative phenomenon, inseparable from acts of recognition. Let us begin

by asking in what sense the criterion of statehood on the constitutive account is not relying on empirical facts, similar to the declaratory theory. If recognition by the international community is not an empirical fact, what is it? According to Ringmar, statehood is not primarily a matter of factual conditions but about social facts and norms. But this begs the question of what is the difference alluded to here between empirical and social facts. For example, say that political entity X fulfilled the criterion of statehood by being recognized by the international community. In what sense is this recognition not an empirical fact about X similar to that of X having a permanent population, a defined territory, a government and so on?

One way to understand Ringmar's distinction between 'the realm of facts' and 'the realm of interpretation' has to do with verifiability. On a declaratory account, we can *see* a defined territory or a permanent population and verify its existence, so it is a visible fact (for some of us). But surely we can verify the recognition of a state by the international society of states too, if we look hard enough and in different places. Moreover, there are many facts out there, such as the existence of quarks, which we (at least most of us) cannot see and verify but still treat as knowledge and thus as facts. Hence, verifiability cannot be what constructivists have in mind as the condition that distinguishes the two theories.

To recapitulate, the fact that the declaratory theory does not require explicit recognition in terms of linguistic utterances of declarations, the ratification of treaties, participation in diplomatic meetings, and so on, does not establish that the criteria defended by the declaratory theory are located in the realm of facts while the criterion defended by the constitutive theory is located in the realm of interpretation.<sup>5</sup>

One way forward for constitutive theorists would be to more fully pursue the relational path, which is now taken only half-way, by appropriately applying the literature on recognition in political philosophy, such as the Hegelian inspired theory developed by Honneth. For as it presently stands, Ringmar misinterprets the intersubjective framework within which Honneth construes his theory of recognition. On Honneth's account, it is not the case that we 'start out by telling stories about ourselves' and then test these stories on others. Rather, this very practice of self-description goes through others and is thus itself premised on others' recognition. Indeed, it is for this reason that identity formation is not about 'getting the story right', as Ringmar suggests, but about getting

<sup>5</sup> By 'linguistic' I simply mean using language in the everyday sense of the term (written, spoken, or silent body language), leaving open for now the complex question of to what extent the linguistic and cognitive faculties of the brain are inseparable.



a story in the first place (Mead 1934; Honneth 1997, 28–30). Therefore, to the extent that we defend a constitutive view of statehood, according to which recognition is *essential*, we cannot coherently infer that states *exist* that are not recognized but must be recognized if they are to be *maintained* as such, as Ringmar does. Instead, statehood would be regarded as constituted through recognition. Ironically, there seem to be (at least) two different conceptions of 'statehood' at work in Ringmar's analysis, one referring to rightful statehood and another referring to empirical statehood.

As will be argued in the next section, there are other reasons why this socio-psychological and identity-laden notion of recognition developed by philosophers such as Honneth has limitations when theorizing statehood. However, if one still wishes to take the relational path inspired by Hegel, which places recognition at the center, while simultaneously avoiding the erroneous distinction between empirical and social facts upon which present theories of statehood rely, there are well-established alternative philosophical frameworks available to constitutive theorists, which could assist in developing the theory and take the debate forward. One such framework, briefly illustrated below, is offered by normative pragmatism developed by Robert Brandom.

It is commonly presumed in the debate that while both theories rely on certain kinds of action in international politics, which supposedly explain statehood, what distinguishes them is that on the declaratory view, the declarative acts pursued by relevant political actors are, as any other declarative acts, *truth-claims* about defined territory, permanent population, etc. (realm of facts). On the constitutive view, by contrast, the 'constitutive' acts are *ought-claims* pursued by relevant political actors by accepting certain norms (realm of norms). On Brandom's normative pragmatic account, the fact that the criteria of statehood are 'located' at different places and involve different claims does not mean that each theory is premised on different *kinds* of recognitive acts. All claims are made within the space of reasons, which is a concrete normative space constituted by a web of commitments and entitlements. One can only be a person or agent (individual or collective) with normative statuses if one is treated as such and act as such *in practice*, which requires that we participate in exchanges of mutual recognition (Brandom 1994).

According to any dictionary, the word 'statehood' is defined as having the *status* of an autonomous (self-determining) state. A basic Brandomian idea is that autonomy must be understood as an exercise of autonomous agency. Thus, the status as autonomous agent is not something to be distributed or ascribed but is something that must be achieved, that is, it is a concrete social achievement. Moreover, a social status is a *normative* status. While speech acts usually have multiple functions, a necessary

function is that they make normative claims upon particular others. In this sense, they are always *directed at* agents (individual or collective). In addition to whatever other functions they have, speech acts are ‘transactions’ between agents, as someone must be at the other end, as it were. By making normative claims, they strive toward changing the normative statuses – in terms of commitments and entitlements – of those whom they target (Brandom 1994, 8; Erman 2010, 40).<sup>6</sup>

In other words, to recognize always means to attribute specific normative responsibilities in terms of entitlements and commitments for other agents to uptake. In line with Hegel and against declaratory theorists, it is not enough for a collective agent to be *recognizable* as a state or having the potential of recognizability. Rather, it needs to be *recognized* as such by others in the one and only discursive community (community of justification), that is, in the space of reasons (Sellars 2007). To obtain the status of an autonomous agent requires recognitive structures, that is, structures established by continuous and relatively stable practices of recognition, which at the same time are normative structures established by reciprocal recognition (Brandom 1999, 168–69; Erman 2010, 41).

Let me elaborate this a bit further. Speech acts cover a multiplicity of discursive functions, which are connected to different *normative statuses* in the space of reasons. Using Rebecca Kukla and Mark Lance’s Brandomian framework, we can distinguish four such statuses based on the distinctions between input/output and agent-neutral/agent-relative. While input concerns normative statuses constitutive of entitlements to a given speech act, output concerns the normative change that the act strives to produce. Similarly, Kukla and Lance speak about agent-neutral and agent-relative normative statuses (entitlements and commitments), and look at whether a speech act in virtue of its *pragmatic structure* is indexed to specific people inhabiting specific normative positions (agent-relative) or whether it is ‘for everyone’, in which case the universality of the agent-neutral normative status is the regulative ideal (Kukla and Lance 2008, 15–17).<sup>7</sup>

So, for example, the declarative speech act ‘political entity A fulfills the four criteria and is [therefore] a state’ has both agent-neutral input and

<sup>6</sup> Habermas expresses similar thoughts about commitments and responsibilities in terms of the raising of validity claims in discourse. Speech acts have an illocutionary force that has the capacity to motivate the hearer to respond. When we use communicative action, we explicitly or implicitly raise validity claims and expect that these be met, that is, that the targets of those speech acts accept them as valid (or not) (Habermas 1996, 107–08; 1998).

<sup>7</sup> The *function* of a speech act should not be confused with either the intention of the speaker or the standard use of that string of words in the community in question. For sure, what a speech act *strives* to accomplish, as part of its normative function, is not the same as what it *does* accomplish (Kukla and Lance 2008, 15).

agent-neutral output. It has the former in the sense that the speech act finds grounding in the world in a way that is not specific to who asserts it (i.e. it is impersonally available, although, of course, not everyone will be in a position to take advantage of this, due to ignorance, and the like). It has the latter in the sense that the speech act seeks to impute the discursive community *in general* (Kukla and Lance 2008, 15–18). This is why declaratory protagonists argue that it does not matter who declares that A is a state and that the actual declaration is itself a formality (if it is true that A is a state). However, on closer examination, it seems as if the same is true for the speech act 'political entity B is recognized by the international community and is [therefore] a state' (if it is true that B is a state). Both utterances are *true statements* about the political world (if the criteria of statehood are fulfilled in each case).

Hence, on a Brandomian view, both theories are dependent on declaratives (viz. truth-claims) that rely on entitlements and commitments in the space of reasons, which are premised on relations of mutual recognition for their uptake. Thus, regardless of whether they concern the 'internal' criteria of a defined territory and a permanent population or the 'external' criterion of international recognition, all claims about states A and B are recognitive acts and as such to a large degree *constitutive* of A and B having the normative status of statehood. The upshot of this is that the distinction between declaratory and constitutive theory is flawed *in one important respect*, namely, that statehood on both accounts relies on acts of mutual recognition, which is a *normative* exercise, on the one hand, and on *truth-claims*, on the other. Therefore, the distinction between empirical facts and social facts (and norms), upon which present theories rely, is dissolved and reconceptualized such that facts *entail* norms.

Now, if declaratory and constitutive theorists were to insist on holding on to the distinction between empirical and social facts (and norms); for example, if constructivists would not want to explore the alternative relational path sketched out above, they face a big challenge. For then they would have to show in what sense the facts upon which both theories rely are socially dependent to such a different degree as to warrant this ontological distinction. This seems to be a tremendously difficult task.

To show why this is the case, let us look at the different ways in which facts might be socially dependent. An obvious starting point for such a discussion is the uncontroversial claim that statehood, which is what is under consideration in this debate, cannot be reduced to a natural concept. States are dependent on humans in a way that 'mountains' or 'water' are not. But, first of all, this does not mean that statehood must be a subjective (rather than an objective) concept, for example in the sense of being totally arbitrary within our linguistic practices, as declaratory

theorists complain about constitutive theory. Such a conclusion would neglect the large debate in philosophy concerning the status of the normative domain, in particular the moral sphere (McDowell 1978, 1979, 1981; Williams 1985; Dancy 1995, 2004). Moreover, while it is indeed the case that statehood is a descriptive concept in a way that normative concepts such as ‘justice’ and ‘freedom’ are not, it certainly seems as if it simultaneously has a normative quality that the concepts of mountains and water lack. At a minimum, an evaluative aspect is involved in the practice of using the concept of statehood that seems essential for its meaning. Thus, while all concepts can be used in normative contexts in which they could become evaluative, we need not understand the notion of drowning in order to grasp the meaning of the concept of water in the same way as we would need to know something about collective self-determination and political autonomy in order to grasp the meaning of the concept of statehood.

However, constructivist theorists defending constitutive theory seem to have something stronger in mind than mere normativity when claiming that states are essentially a social construction and that statehood is a normative phenomenon. So, we should ask, in what sense are facts about statehood socially dependent? Of course, most (if not all) philosophers of language would hold that any concept is socially constructed in the sense of having been developed in a social environment, for the simple reason that language in total is a social invention. It is a truism that the ability to express claimable content to others, to categorize objects and events in order to refer to them through language, is a social undertaking. Hence, this insight is not very instructive. What is interesting is the difference pertaining to the level of social exchange that is needed for different concepts (Möller 2012). For this reason, it looks more promising to distinguish between reference-dependence, interaction-dependence, and sense-dependence.<sup>8</sup>

A social construct is essentially *reference-dependent* if a social system is needed in order for such an entity to exist. The paradigmatic case here is *money*, which is a piece of paper that plays a specific role in a social system (Searle 1995). But an entity might also be socially constructed in a weaker *interactive-dependent* sense (Hacking 1999). Such an entity is not essentially dependent on any social system in which it is conceptualized, even if the social context affects the entity thus categorized. *Woman*, for example, is such an interactive category. While there existed women before we formed the concept of ‘woman’, in the sense that entities existed that (sufficiently) fitted the concept, the very introduction of the concept has changed the category. Finally, there also exist entities that are

<sup>8</sup> The distinction between sense-dependence and reference-dependence is borrowed from Brandom (2002, 194–95).

socially dependent such that they are *sense-dependent*. Most concepts applied in natural sciences are social constructions in this weakest sense. The concept of quark, for example, was developed independently by Murray Gell-Mann and George Zweig in 1964, but their being able to develop it was naturally made possible by social institutions, ideas, and established norms (Möller 2012).

Now, against the backdrop of these categories, the presumption made by declaratory theory that statehood is an interactive-dependent concept – such that entities that sufficiently fitted the description of the concept of statehood existed prior to it but that the introduction of the concept changed the category – cannot be right, since these basic ‘fitting’ features are themselves construed through relations, norms, and agreements established in international law. The moment everyone agreed that we get rid of international law, stop treating Germany as Germany and Australia as Australia and so on, and instead organized ourselves in small and isolated nomadic groups without government, we would not have any states. The same would not be true about women. Hence, declaratory and constitutive theorists alike would have to agree that states are not like women but more like money. States are reference-dependent entities. This means that whatever distinction theorists would wish to sustain between empirical and social facts in theorizing statehood, this very distinction must be located within the domain of reference-dependence rather than, say, merely within the domains of interactive-dependence or sense-dependence. On the one hand, it seems very unlikely that this could convincingly be done. For even if there might be a difference in degree pertaining to how socially dependent the different relevant facts that are supposed to fulfill the criteria of statehood are, this does not seem to warrant the deep-cutting ontological distinction that proponents of both theories wish to uphold. On the other hand, and this is what is most puzzling about this debate, it is difficult to see why even a successful distinction would matter, since it would not do any important work for a theory of statehood.

In fact, it seems as if the opposite is the case. The emphasis on questions about the ontological status of facts in theorizing the recognition of statehood has led it to an impasse in the sense that theorists have tended to focus on the wrong kinds of questions. We find ourselves within the domain of political theory, and any political theory is to some degree a social theory. Within this domain, the basic question of concern is which *criteria* could best explain the international recognition of statehood;<sup>9</sup> not whether some criteria are factual and others are socially construed.

<sup>9</sup> Or, on the side of normative theory, which criteria ought to be fulfilled in order to be recognized as a state.

As will be argued next, it seems as if focusing on *either* criteria located ‘inside’ the state, for example, a permanent population, or criteria located on the ‘outside’, for example, recognition by the international community, will be inadequate since both seem *necessary* for any plausible and coherent account of statehood. In fact, even though this will not be explored in the present paper, they might even turn out to be *jointly sufficient*.<sup>10</sup>

### Statehood as a practice of collective self-determination

So far, I have the first thesis of the paper. Let us now turn to the second thesis, that is, that each of the two theories is insufficient to explain (or normatively justify) statehood. This thesis is defended in two steps. First, this section examines which property of statehood is of primary importance for the question at hand and, in light of this, in what sense *both* internal and external aspects of statehood are equally fundamental for a theory of the recognition of statehood. In a second step, the subsequent section deals with the question of which notion of recognition would be fitting for theorizing this property, on both a declaratory and constitutive account, and shows why the socio-psychological notion of recognition defended by constructivist theorists has limited applicability.

If we return to the four criteria of statehood offered by the declaratory theory, how could they best be understood within the reference-dependent domain in which the concept of statehood is placed? Any sensible declaratory theory would have to submit that recognition is *not* redundant for statehood such that recognition declares something that already exists. Instead, what declaratory theorists reasonably must have in mind when claiming that the four criteria are factual and objective is that they are already premised on recognition in terms of an acknowledgment and acceptance of a legal system as a whole, in which these legal norms are expressed. By the same token, to the extent that the constitutive theorist insists on sticking to the recognition by the international community as the criterion of statehood, they would have to submit that not any political entity would be a candidate for such a recognition. Even if the conditions of statehood have changed in history, as shown by Fabry (2010), political entities that have been recognized as states have still had some characteristics that have instantiated one key property of statehood, namely, a particular kind of collective self-determination (collective autonomy), even if in some

<sup>10</sup> Whether they will be jointly sufficient is a complex matter since it will depend on whether some additional criterion concerning the very drawing of the boundary between inside and outside will turn out to be essential for a full-fledged theory of statehood.

cases only to a minimal degree; a property that most likely will be essential for the concept of statehood also in the future.<sup>11</sup>

To falsify the declaratory approach to statehood, constitutive theorists frequently bring up examples such as Bosnia and Herzegovina, which are meant to illustrate cases in which international recognition of statehood took place without their having a government with the capacity to enter into relations with other states or effectively control their territory; and examples such as Somaliland to show that even entities that have had such capacities have still not been fully recognized by the international community (Fabry 2010, Ch. 6). However, bringing up purported counterexamples does not suffice to falsify a theory.<sup>12</sup> Political entities could be wrongly categorized as states, for example, by not actually having some capacity of collective self-determination. As with concepts in general, for a definition to be problematic, an apparent counterexample must in fact be a true counterexample. If the only thing a constitutive theory did was to come up with a factual case in which a state X had been recognized as such, independently of how well X had functioned as a state-like entity, it would be question-begging as support for the constitutive theory, since there would be no independent reason why this would support it (as a genuine counterexample) rather than some other theory, say, which focused on internal conditions (as an erroneous categorization). But also constitutive theorists would presumably agree that this would be an untenable position to hold, since it would imply that every entity in the political world could qualify as a candidate for being recognized as a state. Hence, while the four criteria proposed by declaratory theory might be wrong or partly wrong, this does not entail that a theory of the recognition of statehood should rely on external criteria of statehood while neglecting internal criteria.

Instead, the preliminary conclusion so far is that both internal and external conditions seem necessary (and perhaps even jointly sufficient) for statehood, and thus that a theory should offer both internal and external criteria. This conclusion is further supported if we take a closer look at two essential dimensions of collective self-determination. While states certainly have numerous properties of importance, a particular kind of collective self-determination is a key property.<sup>13</sup> Indeed, the meaning of the concept of statehood entails 'a status as a self-determining state',

<sup>11</sup> This is a truism about all concepts, since their contents change by their application.

<sup>12</sup> Even if it would do so in these particular examples.

<sup>13</sup> Note though that while collective self-determination is a key property of statehood, statehood is not a necessary condition for collective self-determination, since there might be other polities than states that have this property.

according to any dictionary. On the one hand, as we have seen, there is much to indicate that internal conditions must be fulfilled in order for a political entity to have sufficient *capacity* of 'statehood', since not any political entity would do. It is presumably this capacity that declaratory theory attempts to capture with their four criteria. Importantly though, this is true even if it turns out that some conditions, such as a permanent population, would become less and less important in the future, while a capacity of government to effectively control its territory might become increasingly vital. On the other hand, the capacity of 'statehood' is not the same thing as statehood. In order to have the *status* as a self-determining political entity, that is, to embody statehood, this capacity must be *exercised*.

Hence, there seems to be two dimensions of statehood at work here, *self-determination* and *self-determination*. Not only is the relationship between them undertheorized among declaratory and constructivist theorists, I submit that any plausible theory of the recognition of statehood, explanatory or normative, would have to make sense of each of them as well as of their relationship. The reason for this is that the element of 'self' would be missing from self-determination without a division between entities (let us call this the external *inter-state aspect*), just as much as the element of 'determination' would be missing without a division within entities (the internal *intra-state aspect*), the latter of which is constituted by a relationship between rule-makers and rule-takers (a government and a people) and their respective capacities and properties (Erman 2006, 2007). More specifically, no matter how perfectly the inter-state aspect would be satisfied, for example, in terms of a full-fledged recognition of statehood from all other existing states and for the right reasons, a political entity would not be *self-determining* without sufficient capacity of 'statehood' anymore than a baby would be a discursive agent in the giving and asking for reasons no matter how many social practices she took part in (Erman 2010, 39).<sup>14</sup> This is an essential '*intrinsic*' aspect of self-determination. Similarly, no matter how perfectly the intra-state aspect would be satisfied, for example, in terms of a government ruling effectively over its members and its territory and having the capacity to

<sup>14</sup> Indeed, becoming a discursive agent is a gradual affair. When we speak to infants or small children, we are certainly using communication through which we 'recognize' them as if they were possible targets of these speech acts, that is, as if they were discursive agents located within the space of reasons. Indeed, this helps them develop the capacity to recognize themselves as recognizable agents bound by norms. But it does not consist of speech acts in the strict sense, as speech acts strive to change the normative statuses of others by making normative claims on them with the expectation that they are taken up. Only a person who can be bound by commitments and entitlements has a proper location in the space of reasons (Erman 2010, 43). The same 'logic' applies for the exercise of statehood.



enter into relations with other states, a political entity would not be *self-determining* without the inter-state dimension since such a 'self' is premised on others' recognition (even if this recognition solely took place and was expressed through international law). This is an essential *relational* aspect of self-determination, without which statehood would not be a *status*, since a status is a relational and intersubjective property.

If this is correct, the upshot is that statehood as a status as a self-determining state is best understood as a particular *practice* of autonomous agency (external inter-state aspect) premised on certain capacities to take part in this practice (internal intra-state aspect). Furthermore, and against what is assumed by declaratory and constitutive theorists alike, one aspect cannot be viewed as more fundamental than the other since they are inextricably interdependent (Hurley 1989, 317; Erman 2010, 39–40, 2012).

### **The recognitive practices of statehood**

Let me conclude by saying a few words about recognition in the context of theorizing and explaining statehood. As we have seen, constructivists supporting the constitutive theory place the concept of recognition in the center of their analyses, borrowing conceptual tools from the recognition literature in social and political theory. What I argue below, however, is that this notion has limited applicability for the question at hand but that there are alternative paths to take.

As we saw in first section, recognition on the constitutive account focuses on identity and as such relies to a large degree on an analogy between individual and state subjectivity and identity formation. A key to understanding statehood, the argument goes, goes via thinking about individual identity formation (Ringmar 1996, 2011; Lindemann 2010, 2011). As discussed earlier, the problems of this analogy are well known and much discussed among constructivists in IR theory (Wendt 1994, 2004). However, even if we did manage to use the analogy carefully enough such that its proper applicability were defined, the problem remains that the kind of recognition that is involved in identity and subjectivity formation is not the kind of recognition that is of *primary* importance for statehood. Again, statehood is a status as a self-determining political entity. It is *through* this very status that autonomous collective agency is exercised. But to recognize collective self-determination is something quite different from recognizing collective identity and subjectivity. While the former is primarily a *political* category, the latter is not.

Two points need to be stressed here. First, this does not suggest that the recognition of identity cannot play a role for the recognition of statehood, only that it does not play a decisive role in the same way as the recognition

of collective self-determination. It might, for example, be useful as a second-order conception of recognition for understanding processes underpinning the recognition of self-determination. Second, neither does it suggest that struggles for the recognition of identity and subjectivity cannot be political. Indeed, as stressed by Honneth, struggles for recognition by marginalized and oppressed groups are often political struggles (cf. Tully 2000; Honneth 2003, 110–12; Markell 2003). The point made here is only that this is something different from claiming that collective identity is *premised* on the legal-political kind of recognition that is involved in the recognition of self-determination.

A similar worry about the use of the analogy of individual/group identity to theorize statehood is recently expressed by Honneth himself.<sup>15</sup> In his view, the switch from the individual and group levels to the relationship between states leads to conceptual problems since it is no longer appropriate to speak about collective identity. The state is not an ‘executive organ of collective identity’ but carries out numerous different tasks that are regulated by their own rules, for example, providing for security, ensuring economic coordination, and redistribution. But even beyond the differences pertaining to the form of organization, the state’s foreign-political function cannot foremost be viewed as a compliant agency that articulates a collective identity, according to Honneth. Since the state is charged with carrying out politically determined tasks and is subject to imperatives that stem from them, we cannot simply transfer the concept of recognition, presuming that where there are collective identities, there must also be struggles for recognition. For these reasons, psychological concepts such as needs, feelings, and strivings are not appropriate for describing the relationship between states, Honneth concludes (2011, 31).

Even if we need not draw as strong conclusions as Honneth about the applicability of socio-psychological theories of recognition for international relations in general, we should ask how we could more profitably conceptualize the primary forms of recognition involved in the recognition of statehood. If we return to the previous discussion of the ways in which facts might be socially dependent, it was argued that all facts immediately involved for grasping the meaning of statehood are found in the reference-dependent category. Needless to say, this would be the case for the ‘physical’ properties stressed by declaratory theorists too, since not any piece of the earth would count as a territory in the relevant sense, and not any person within this territory would count as part of the permanent

<sup>15</sup> Of course, the status of Honneth’s argument comes from the fact that it seems correct, not that he necessarily should be the final arbiter of how to best use his own theories of recognition. To me, the latter is an open question.

population. Add to this the assumption made above that statehood is best understood as a particular legal-political practice of collective self-determination premised on certain capabilities to take part in this practice. From these two proposals about statehood, we cannot coherently infer that the constitutive theory *relies* on recognition while the declaratory does not. Rather, both rely on recognitive practices, which serve *declarative* functions such that we consent to international law that specifies the internal conditions for collective self-determination (the intra-state aspect emphasizing 'intrinsic' qualities), and *constitutive* functions such that the international community recognizes a political entity as a state in order for it to be self-determining (the inter-state aspect emphasizing relational qualities). Hence, whichever internal and external criteria a theory defines as essential for statehood, they are both premised on recognitive practices for the exercise of autonomous agency.

The conclusion drawn from this is that the notion of recognition of primary importance for theorizing statehood is not of a socio-psychological kind focusing on identity and subjectivity, but rather of a legal-political kind focusing on collective self-determination as an exercise of autonomous agency. While this is not the place to develop such a notion, its basic structure would be of a dual nature, involving recognitive practices of a primarily legal-political kind that are directed 'inwards' and 'outwards' of the state, addressing the intra-state and inter-state aspects of self-determination, respectively. On such a dual conception, we cannot compensate with one of these recognitive practices in the absence of the other since they are viewed as intimately interdependent.

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Winding up, constructivist theorists have made an important contribution to the scholarly discussion of statehood, previously discussed mainly by international lawyers, by bringing up the different ways in which norms are involved in international law and law-making. The problem with the contemporary debate, however, has been that some philosophical distinctions made in theorizing statehood have stood in the way for developing the theories further. While most problems pertaining to the question of statehood are indeed problems to which philosophy and political theory cannot offer much guidance, this paper was meant as a metatheoretical and metaethical contribution to the question of on what grounds political entities should be recognized as states in the international community. It has aimed to address two weaknesses in the present debate in order to shed some new light on this question, one pertaining to the conceptual fuzziness that characterizes the two dominant theories of international recognition as well as the difference between them, the other

pertaining to the ways in which each theory has focused too one-sidedly on either internal or external conditions of statehood. In connection to the latter question, finally, I have also tried to show that recognition is neither redundant for a proper theory of statehood, nor primarily about socio-psychological aspects of collective identity.

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## The case for an empirical and social-psychological study of recognition in international relations

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