Recognition: A Short History

*Jens Bartelson**

During the past decade there has been a resurgence of interest in the concept of recognition in international theory. Once the narrow concern of social theorists, the concept of recognition is nowadays invoked in at least three different senses in order to explain three different things. First, it is commonly used to explain how states and their identities are shaped by interaction, and how the modern international system has emerged as a cumulated consequence of such patterns of interaction. In this context, the concept of recognition is used to explain how states are individuated and differentiated from each other, how the international system thereby becomes stratified along status lines, as well as why conflicts over status are possible or even inevitable.[1] Second, although the concept of recognition has long enjoyed wide currency within international legal theory, where it is used to account for what makes states legal persons and equal members of international society, recent scholarship has done much to complicate this view by pointing out how practices of inclusion often have gone hand in hand with practices of exclusion, and how this has led to an informal stratification of international society.[2] Third, the concept has most recently been invoked to suggest how the undesirable consequences of international anarchy can be mitigated or even avoided through mutual recognition between political communities.[3]

Judging from these usages, the concept of recognition carries the burden of explaining not only how the current international system came into being and how it became prone to status-driven conflict but also how an international society of nominally equal actors emerged, and, finally, how this international system eventually might be reformed or even transcended in favor of a genuinely inclusive international community based on mutual respect among its members. Indeed, some scholars are inclined to view these practices of recognition in a progressive

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sequence, taking us all the way from the violent beginnings of the international system via an ordered international society to its eventual future transformation into a world state.[4]

Yet despite the various meanings and functions attributed to recognition by the above theories, they all converge on the assumption that this concept can be defined and used with sufficient precision to be analytically useful in order to solve the perennial puzzles of international relations theory, as described above. Although these definitions vary greatly depending on the task at hand, they tend to presuppose some basic things about the sociopolitical world. First and foremost, recognition entails the implicit acknowledgement of oneself and others as actors by virtue of possessing a capacity to act autonomously. Thus, recognition presupposes that the sociopolitical world is composed of distinct and bounded actors right from the start. Second, should such acknowledgment become reciprocal between two or more parties, this is believed to transform both the identities of the actors as well as the terms of their interaction in significant ways. Third, and perhaps most importantly, all of the above presupposes access to some prior framework for classification that allows actors to identify things and to distinguish them from other things.[5] Thus, in order to get off the ground and claim analytical purchase, theories of recognition presuppose that the things to be recognized have *become recognizable* in the first place.[6]

Like all other political and legal concepts, however, the concept of recognition has a history of its own. The purpose of this essay is to sketch briefly the contours of that history by describing how this concept and its precursors were used in the context of international legal and political theory before the concept of recognition took on its multiple meanings and functions within contemporary international relations theory. Needless to say, such a conceptual history cannot take these contemporary meanings and functions for granted, but must instead inquire into how they came into being, and how the current and sometimes contradictory usages of this concept were established. To do this, I will focus on some of the works within which different conceptions of recognition have been explicitly articulated, and on the ideological and political functions these conceptions have performed in modern international law and the self-understandings of actors. What I hope to contribute is a brief sketch that might help us to contest some of the established truths about the concept of recognition and its history that can possibly inspire further and more detailed attempts at historization.

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One such truth is the idea that recognition is the offspring of legal positivism. This is the belief that before the advent of positivism in international law, there was no theory or practice of recognition for the simple reason that natural law theories granted inclusion to all political communities by default. With the advent of positivism came an understanding of international law as based on agreements between sovereign states, and with that came a need to define the legitimate parties to such agreements more precisely. Whether one considers recognition to be primarily a mechanism of inclusion or exclusion does not seem to matter on this historiographical issue. For example, as James Crawford argues in his seminal account of the constitution of statehood, recognition had "no separate place in the law of nations before the middle of the eighteenth century. The reason for this was clear: sovereignty, in its origin merely the location of supreme power within a particular territorial unit . . . necessarily came from within and did not require the recognition of other States or princes."[7] By the same token, although Antony Anghie takes recognition to be a means of excluding non-European peoples from the purview of international law, he holds that the modern doctrine of recognition "was fundamental, not only to the task of assimilating the non-European world, but to the very structure of the positivist legal system."[8] As he goes on to explain, the doctrine of recognition was "about affirming the power of the European states to claim sovereignty . . . and, consequently, to make sovereignty a possession that they then could proceed to dispense, deny, create or partially grant."[9]

But this seems to be a valid conclusion only if we project a modern understanding of recognition back onto the past. If we take the modern doctrine of recognition to mean that states are constituted as legal persons by virtue of having their existence recognized by other states, it is clear that this doctrine presupposes that international law is a result of agreement between sovereigns and that a recognizably modern notion of sovereignty already is present. But well before such a doctrine of recognition evolved within mid-nineteenth-century jurisprudence, naturalist lawyers had not only been struggling to articulate such a notion of sovereignty but they also, and perhaps more importantly, had been trying to explain to what extent those entities included within the scope of natural law formed a larger whole. Further, they struggled to explain how that larger whole should best be conceptualized in order for the law of nations to fulfill its purpose of regulating the intercourse between political communities stuck in a condition devoid of overarching political and legal authority.

This brings me to contest a second truth about international recognition, namely, that its primary function has been either to include or to exclude political communities from the purview of international law. As I would like to suggest, before such practices of inclusion and exclusion emerged, natural lawyers were busy conceptualizing the totality of relations between political communities in Europe so as to make them amenable to legal understanding and regulation. So although it is well known that international lawyers developed criteria of membership that served to exclude non-European peoples, or assimilate them into a position of lasting inferiority, they did so against the backdrop of a pre-constituted normative framework that assumed that relations between political communities constituted a totality that was something more than the sum of its parts, and that these relations in turn were based on what we would be tempted to call primitive practices of recognition. I say "primitive" here because war and hostility were often invoked in order to make states recognizable as legal persons.

As I shall argue in the next section, early attempts to conceptualize relations between European political communities presupposed mechanisms of differentiation that, with a minimum of anachronism, could be described as precursors of the modern practice of recognition. These mechanisms were based on the notion that relations of enmity and friendship were constitutive of states *and* the international society of which they formed a part. Only at a later stage, when international lawyers were faced with challenges to the principles of dynastic legitimacy posed by pleas for popular sovereignty and claims of national self-determination, were they compelled to modify the criteria of membership so as to accommodate democratic and newborn states into the international order. Hence the standard account of the history of recognition ought to be slightly revised. First, before the advent of the modern doctrine of recognition, naturalist lawyers provided the conceptual foundations of an international society based on the relations between states rather than on their inner attributes, and assumed that these relations are marked by violence and hostility from the start. By doing this, they implied that the international whole was ontologically prior to its component parts. This is why a recognizably modern doctrine of recognition would have failed to make sense to naturalists, since the modern doctrine assumes that international society is built from the bottom up rather than given. Second, since a recognizably modern doctrine of recognition first evolved during the transition from naturalism to positivism, and arguably was instrumental in bringing this transition to completion, it makes more sense to explain its emergence as a response to the

declarations of independence and pleas for popular sovereignty that fueled the dismantling of colonial empires in the Americas and elsewhere. In this regard, late nineteenth-century positivist lawyers were relative latecomers who could draw on a violent prehistory of recognition when using this concept to justify the exclusion of non-European societies from the purview of international law on the grounds that they lacked the institutional features of sovereign statehood or did not conform to Western standards of civilization, or both.

A Prehistory of Recognition

While it is true that early modern international lawyers faced few conceptual difficulties when classifying legal subjects as long as they remained on familiar ground, their encounters with non-European peoples greatly complicated this task. From the late sixteenth century onward, naturalist lawyers had been able to rely on nascent conceptions of sovereignty to provide rough criteria of statehood. But these were less helpful when it came to understanding political institutions that had evolved in blissful ignorance of those of Rome. As Anthony Pagden has recounted in vivid detail, when confronted with the New World, the Europeans lacked the classificatory schemes and categories necessary to make sense of its inhabitants and their way of life. The European newcomer "was not equipped with an adequate descriptive vocabulary for his task and was beset by an uncertainty about how to use his conceptual tools in an unfamiliar terrain."[10] This problem of epistemic recognition was even more acute when the newcomer was confronted with unfamiliar forms of human association and questions about their legal status. One could argue—like Oviedo (1478–1557)—that non-European peoples were not fully human and that they therefore were wholly beyond the scope of natural law; or one could argue—like Las Casas (1484–1566)—that however weird and repulsive some of their customs, these peoples were rational and sociable enough to qualify as members of the great family of humanity, and were therefore entitled to the same political and civil rights as their conquerors.[11] As Francisco de Vitoria (1492–1546) famously argued, although apparently barbarous, this did not disqualify the American Indians from ownership (*dominium*) since they "have some order in their affairs; they have properly organized cities, proper marriages, magistrates and overlords, laws, industries, and commerce, all of which require the use of reason."[12]

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Although these rights did not entail anything close to full sovereignty, and in fact allowed the Spaniards unrestricted access to the Indies and ample pretexts for waging war against its inhabitants, granting them was nevertheless tantamount to recognizing the latter as members—albeit of an inferior kind—of the great community of mankind.[13] Much has been made of the scholastic responses to the discovery of the American Indians, and some historians of international law have seen their assimilation into the European legal order as a precursor to the nineteenth-century practice of excluding non-European states from international society, as well as a potent recipe for the subsequent exclusion of indigenous populations from the scope of international law after decolonization.[14] But in their endeavor to escape Eurocentrism, such arguments tend to be forgetful of what happened *within* Europe during the same period. It turns out that the Europeans were equally innovative when it came to finding legal grounds for mistreating each other; and it is here, rather than in the encounter with the American Indian, that we find the seed values of the modern doctrine of recognition.

Legal historians have had much to say about the transition from war as law enforcement or the punishment of evildoers to war as an armed contest between legal and moral equals.[15] Yet the latter conception presupposes that the combatants are recognizable as equals—if not to each other, then at least from the vantage point of legal theory. During the first part of the seventeenth century, humanist lawyers were busy conceptualizing states as legal persons with the aim of regulating, and to some extent also legitimizing, the use of force between them. These lawyers were generally less concerned with the exclusion or assimilation of strangers, and more so with the possibility of international legal order among European states.[16] In order to make coherent sense of such an order, it was not sufficient to focus on the attributes of individual states and define them as legal subjects only with reference to the marks of sovereignty. To authors like the Italian jurist Alberico Gentili (1552–1608) and the English judge and parliamentarian Richard Zouche (1590–1661), what makes a state a state in a legal sense is not primarily whether it displays the characteristics of sovereignty, but rather the *relations* it entertains or is capable of entertaining with other entities of a similar kind. For Gentili, these relations are tainted by enmity from the beginning; for Zouche, they contain the possibility of friendship. Thus, in his *De Jure Belli Libri Tres* (1598), Gentili stipulates that

> the arms on both sides should be public, for *bellum*, "war," derives its name from the fact there is a contest for victory between equal parties, and for that reason it was first called *duellum*, a contest of two .... The term *hostis* was applied to a foreigner who had equal rights with the Romans. In fact *hostire* means "to make equal" .... Therefore *hostis* is a person with whom war is made and who is the equal of his opponent.[17]

Hence, to Gentili, if enmity is what makes states legal equals, it is also that, and nothing else, which makes a state a state. As Gentili goes on to explain with some help from Cicero, "he is an enemy who has a state, a senate, a treasury, united and harmonious citizens, and some basis for a treaty of peace, should matters so shape themselves."[18] To his successor Zouche, states do not automatically find themselves in a state of war. Rather, they are either friends or enemies depending on the presence or absence of contractual agreements between them. Friends are simply those with whom we have made agreements; enemies are those with whom we have decided not to agree at all, or have agreed to disagree. Peace might be obtained between states to the extent that they recognize each other as friends and allies by virtue of having entered into such contractual agreements.[19] As we learn from *Juris et Judicii Fecialis, sive, Juris inter Gentes* (1650), war is that "condition of princes or peoples who are at strife or contention with others" and "is that which causes some to be regarded as unfriendly persons and others as enemies."[20] Zouche goes on to argue that "those are unfriendly with whom there is no friendship or legal intercourse, as aliens and adversaries. Aliens were called by the Greeks *barbarians*, and by the Romans *peregrini*, and if injury or damage was done them they had no legal remedy; so that, as regards some of the effects of war, they appeared to be in the position of enemies."[21] Hence, to Zouche, war is what makes it possible to recognize friends and enemies on the one hand, and to distinguish the latter from mere strangers on the other. Thus, even if it would be historically misleading to saddle Gentili and Zouche with anything like the modern concept of recognition, the fact that they were both struggling to make sense of an emergent international order in terms of the relations between states compelled them to focus on the intersubjective acknowledgement of enmity and friendship as the basis of the legal existence of states and the possibility of an international order amenable to legal regulation.

Moving beyond Gentili and Zouche, there is further evidence suggesting that the modern concept of recognition was in fact built on naturalist foundations. For example, while it is indisputable that the Swiss lawyer Emer de Vattel (1714–1767) saw domestic sovereignty as emanating from deep within political

societies, and that he took states' external sovereignty as the very basis of their equality, he also held that something akin to diplomatic recognition was integral to the existence of a system of states in Europe. This is evident in *Le Droit de Gens* (1758), where he begins by stating that

> every nation that governs itself, under what form soever, without dependence on any foreign power, is a *sovereign state*. Its rights are naturally the same as those of any other state. Such are the persons who live together in a natural society, subject to the law of nations. To give a nation a right to make an immediate figure in this grand society, it is sufficient that it be really sovereign and independent, that is, that it govern itself by its own authority and laws.[22]

Yet Vattel also had to explain how and why such states now formed an international society constituted by a blend of natural and voluntary law. As he went on to argue, European states no longer formed "a confused heap of detached pieces, each of which thought herself very little concerned in the fate of the others, and seldom regarded things which did not immediately concern her." According to him, this transition had occurred thanks to what looks quite like modern practices of international recognition: "The continual attention of sovereigns to every occurrence, the constant residence of ministers, and the perpetual negotiations, make of modern Europe a kind of republic, of which the members—each independent, but all linked together by the ties of common interest—unite for the maintenance of order and liberty."[23] So although Vattel could certainly not be said to have made statehood dependent on recognition by other states, he, unlike many of his naturalist predecessors, took actual practices of recognition *between* states to be necessary for the existence of a *society* of states.

One challenge that writers in the generation after Vattel had to confront concerned the international legal status of elective monarchies, especially during interregna. While succession in hereditary monarchies did not normally give rise to any need for legal action by other states, such a need could indeed arise if a ruler was elected and derived his rank or title from his people rather than from his predecessor, or if that rank or title had been conferred on him by a foreign power. This became even more pertinent in those cases when foreign rulers opposed the election of a prince in another state on grounds that he would be unlikely to honor treaties. An example is Poland, where since the beginning of the eighteenth century foreign powers had been involved in endless disputes about the election of kings. As the German political economist and jurist Johann

Heinrich Gottlob von Justi (1717–1771) argued, in such cases foreign powers had a duty to recognize such states as legal persons on the same grounds as they recognized hereditary monarchies, and were also under a strict obligation not to intervene in their affairs.[24]

During that period, the principle of dynastic legitimacy was increasingly challenged by nascent claims to popular sovereignty and emergent ideas of democratic legitimacy.[25] The next and more difficult issue faced by writers of this era concerned the legal consequences of claims to national self-determination. In this context, the dissemination and appropriation of Vattel's definition of sovereignty in terms of independence made it easier to legitimize such claims to self-determination, and also made it more difficult for European states to resist or contest these claims on legal grounds alone.[26] Although not without precedent, the most challenging case in this regard was posed by the American Declaration of Independence in 1776. Although its purpose was to perform the independence it declared, its uptake was far from immediate and took considerable legal deliberation.[27] While discussions of recognition hitherto had focused on dynastic rights of succession, the German law professor Johann Christoph Wilhelm von Steck (1730–1797) now focused on the rights of newborn states. While a mere declaration was not itself sufficient grounds for granting a state legal independence, Steck maintained that once Britain had renounced its sovereignty over its colonies and thereby implicitly recognized their independence, other states were obliged to treat the United States as a free and equal sovereign people, and had no rights to intervene in its domestic affairs even if they did not formally recognize its right to independence. Thus, other states had to reckon with the *de facto* independence of the new entity and adjust their diplomatic practices accordingly.[28]

This point was made even more forcefully by German jurist and diplomat Georg Friedrich von Martens (1756–1821) in his *Precis du Droit des Gens Modernes de l'Europe* (1789). In those cases "that a province, or territory, subjected to another state, refuses obedience to it, and endeavours to render itself independent . . . a foreign nation does not appear to violate its perfect obligations nor to deviate from the principles of neutrality" if it "treats as sovereign him who is actually on the throne, and as an independent nation, people who have declared, and still maintain themselves independent."[29] From this Martens concluded that "when a nation acknowledges, expressly or tacitly, the independence of the revolted state . . . foreign powers have no more right to oppose the revolution, nor is even their acknowledgement of its validity necessary."[30]

But the Declaration of Independence was only a first step toward attaining full international recognition for the United States. As David Golove and Daniel Hulsebosch have recently shown, the purpose of the American Constitution was to create a federal republic that European powers would recognize as a member of the family of civilized nations, thus facilitating its integration into what was in the process of becoming an Atlantic world of commerce and civilization.[31] As C. H. Alexandrowicz concluded his historical account of the doctrine of recognition, "the problem of recognition was formulated in a manner to show that the disturbance of the static legal order, which had prevailed in the past during the period of dynastic legitimism, was not allowed to prevent the reconciliation of new political changes with the tentative principles of a flexible and potentially progressive law."[32] Thus, the emergence of a recognizably modern concept of recognition was prompted by the quests for popular sovereignty and international legitimacy in the Americas and elsewhere, and as such facilitated the transition from a world of empires to a world of states.[33]

During the Age of Revolutions (1774–1848) it also became increasingly obvious that however formally equal sovereign states had been made to appear from a legal point of view, the European system of states was profoundly unequal in terms of power and standing. What had been a source of diplomatic friction at least since Münster and Osnabruck was now an object of legal inquiry in its own right. As Martens admitted, "policy may induce certain states to give precedence, and other marks of distinction, to states whose power may be dangerous or useful to them; whose friendship they ought to cultivate, and whose displeasure they ought to avoid."[34] In this situation, "Every Prince has a right to require, or obtain from his own subjects whatever title or dignity he may think proper, but foreign powers do not look upon themselves as obliged to acknowledge it, as long as they have not consented to do so."[35] Hence, the cohesiveness of the European system came to be dependent on the acknowledgement of the informal *inequality* of states. Such inequality of standing and power produced endless disputes over precedence and protocol, which sometimes issued in "disagreeable animosities" that could be settled only by mutual recognition of these differences, or by one of the parties opting out of diplomatic intercourse.[36] So by the end of the eighteenth century, we see the contours of a recognizable modern doctrine of international legal recognition. As I have argued, the development of this doctrine occurred as a consequence of attempts to reconcile what was left of a naturalist legal framework with the mounting practical pressures posed by declarations of independence

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and pleas for popular sovereignty. Largely simultaneously, proto-positivist lawyers like Martens were sensitized to the informal inequalities between European states as these were reflected in treaties and diplomatic practice, as well as in the conflicts over status that these inequalities inevitably generated.

Modern Recognition

The next step was to argue that such recognition was *constitutive* of statehood rather than merely a polite way of reluctantly acknowledging facts already established on the ground. The philosophical underpinnings of this view were furnished by Hegel's *Grundlinien der Philosophie des Rechts* (1820), in which he held that the "state is the absolute power on *earth*; each state is consequently a sovereign and independent entity in relation to others. The state has a primary and absolute entitlement to be a sovereign and independent power *in the eyes of others*, i.e., *to be recognized* by them." This being so, since "without relations to other states, the state can no more be an actual individual than an individual can be an actual person without a relationship with other persons." While the legitimacy of the state and its authority is wholly an internal matter, "it is equally essential that this legitimacy should be *supplemented* by recognition on the part of other states. But this recognition requires a guarantee that the state will likewise recognize those other states which are supposed to recognize it."[37] But although Hegel held recognition to be constitutive of statehood, he did not envisage that this would bring any higher unity into existence.[38] While Hegel did not preclude the possibility that world history would ultimately transcend the historical limitations posed by the international system of states, the notion of recognition outlined in his *Philosophie des Rechts* helped him to explain how such a system could emerge as a consequence of the individuation of states through recognition, but not how this system could turn into anything like an international society. In this, Hegel departed from his naturalist predecessors, who had taken practices of recognition to be constitutive of an international society based on the principles of natural law *before* such practices were formalized into criteria of membership of that very society.

The Hegelian view of recognition was echoed by Henry Wheaton in his *Elements of International Law* (1836), but with a significant addition that made it possible to connect *ius naturalist* conceptions of international society with emergent positivist ones based on a sense of shared civilization among European states. Sovereignty,

he argued, "is acquired by a State either at the origin of the civil Society of which it consists or when it separates itself lawfully from the community of which it previously formed a part and on which it was dependent."[39] But although internal sovereignty does not stand in need of recognition by other actors, its external sovereignty "may require recognition by other States in order to render it perfect and complete." But, as Wheaton added, should a state desire "to enter into that great society of nations . . . such recognition becomes essentially necessary to the complete participation of the new State in all the advantages of this society."[40] Thus, to Wheaton, international recognition was not only essential to complete and perfect statehood but also to membership in international society. This notion of an international society constituted by agreement among civilized states and their active participation would continue to resonate among international lawyers for the rest of the nineteenth century.

Yet the positivist focus on sovereignty created another problem for those who wanted to justify European imperialism and colonialism. Many states in Asia and Africa indeed displayed some of the defining characteristics of sovereign statehood, such as centralized authority structures and control over their territories, and yet were deemed unqualified for membership in international society. In response, some positivist lawyers shifted focus away from formal requirements of sovereignty to the question of whether their *societies* were civilized or not. By doing so, they created a sharp distinction between civilized and uncivilized societies, a distinction that was sometimes used to justify the idea that the relations between the former and the latter were outside the realm of law altogether.[41]

It was the Scottish advocate and law professor James Lorimer—hardly himself a positivist—who most clearly articulated these requirements on the basis of insights from contemporary ethnology, or the "science of races" as he called it. Having defined the law of nations as the "realization of the freedom of separate nations by the reciprocal assertion and recognition of their real powers," Lorimer went on to elaborate the grounds of possible recognition and membership in international society.[42] Drawing on findings from the "science of races," he raised the question of whether "in the presence of ethnical differences which for jural purposes we must regard as indelible, we are entitled to confine recognition to those branches of alien races which consent to separate themselves from the rest, and . . . to accept our political conceptions."[43] To answer this question, Lorimer divided humanity into three distinct spheres—the civilized, the barbarous, and the savage—to which corresponded three distinct forms of recognition. Full recognition extended to all

European states and their colonies insofar as they were populated with people of European birth or descent; partial recognition extended to Turkey and those Asian states that retained their independence; while the "sphere of natural, or mere human recognition extends to the residue of mankind; though here we ought, perhaps, to distinguish between the progressive and the non-progressive races." Thus the international lawyer is "not bound to apply the positive law of nations to savages, or even to barbarians . . . but he is bound to ascertain the points at which . . . barbarians and savages come within the scope of partial recognition."[44] By the end of the nineteenth century such gradations of recognition and membership had become widely accepted. As English law scholar John Westlake expressed this idea: "Our international society exercises the right of admitting outside states to parts of its international law without necessarily admitting them to the whole of it."[45]

Among "civilized" states it was gradually accepted that the legal personality of the state derived from being recognized as a bearer of rights and duties by other states. Thus, by the beginning of the twentieth century, the German jurist Lassa Oppenheim (1858–1919) could confidently claim that "international law does not say that a State is not in existence as long as it is not recognized, but it takes no notice of it before its recognition. Through recognition only and exclusively a State becomes an International Person and a subject of International Law."[46] Yet it was also clear that in the absence of shared criteria of when recognition was to be granted to an aspiring community, the constitutive view ran the risk of reducing recognition to a mere manifestation of national interests among recognizing states, rather than a matter of the correct interpretation and application of legal principles. In the hope of averting the imminent danger of reducing recognition to a mere expression of naked power, the Austrian jurists Hans Kelsen (1881–1973) and Hersch Lauterpacht (1897–1960) developed more sophisticated versions of the constitutive theory, according to which recognition should be granted only on the basis of shared interpretations of legal criteria of statehood.[47] Thus, Lauterpacht argued that "although recognition is thus declaratory of an existing fact, such declaration . . . is constitutive, as between the recognizing State and the new community, of international rights and duties associated with full statehood."[48] As he later concluded, "to recognize a political community as a State is to declare that it fulfils the conditions of statehood as required by international law. If these conditions are present, then existing States are under the duty to grant recognition."[49] Even if the constitutive view has long since grown out of fashion among international lawyers, the practice of international recognition still

presupposes "that there exist in international law and practice workable criteria for statehood. If there are no such criteria, or if they are so imprecise as to be practically useless, then the constitutive position will have returned, as it were, by the back door."[50] But as we have seen, before such notions of recognition could take hold, international lawyers had struggled to conceptualize an international society into which states could be admitted by virtue of being recognized as states and nothing else. And when trying to make sense of this larger whole in terms of the relations between its parts, early modern lawyers had invoked modes of intercourse between states—some of them violent, some of them pacific—that with only slight anachronism could be described as precursors of modern practices of recognition. So before states could become recognizable as states, the totality of which they would become part by virtue of being recognized had already been envisaged with reference to more primitive forms of recognition.

Recognition as Transcendence

As we have seen, some of the current senses of recognition were already present during the early modern period. The notion that international society is constituted through practices of recognition paved the way for the idea that states are constituted as legal persons by virtue of being recognized by other states. Yet behind the idea that recognition is a great equalizer of nations, there has been an awareness that it leads to an informal stratification of international society along status lines. So when the concept of recognition is invoked in order to explain how the modern international system was formed as a consequence of interaction between states and how it became stratified, contemporary international theorists are in fact invoking connotations that long have informed international legal theory and the self-descriptions of actors. And when international lawyers today use the concept of recognition in order to explain how an international society of formally equal states once emerged, they are plugging into a long tradition of thought that arguably has been constitutive of the very practices of recognition to which they refer. Finally, when their postcolonial critics point out that all of the above went hand in hand with practices of exclusion that eventually brought an informal stratification of modern international society, they are reminding us of the fact that practices of recognition have been closely connected with different forms of violence and hostility, but tend to forget that this connection originated *within*

the European context well before it was projected outward onto non-European peoples.

This last point helps us to make some sense of the more recent idea according to which mutual recognition of cultural and other differences between political communities can help solve international conflicts by removing recurrent threats to self-esteem and reputation. This could be seen as an attempt to transcend the violent origins and exclusionary effects of traditional forms of legal and political recognition described in the previous sections. Those in search of a pedigree here often turn to Hegel's dialectic of master and slave in his *Phänomenologie des Geistes* (1807). Here the concept of recognition is invoked to explain the emergence of self-consciousness as a result of mutual recognition between actors. As Hegel states, "self-consciousness exists in and of itself when, and by the fact that, it so exists for another; that is, it exists only in being acknowledged."[51] The quest for self-consciousness must issue in a struggle for recognition, since the "relation of . . . two self-conscious individuals is such that they prove themselves and each other through a life and death struggle."[52] This trial by death will produce a difference between the lord and the bondsman, so that the "lord achieves his recognition through another consciousness," while "that other consciousness is expressly something unessential."[53] This one-sided recognition between the lord and the bondsman will last only as long as the bondsman remains unaware of his own role. Should he rediscover himself and become aware that he is capable of existing in his own right, the bond of subservience is dissolved and the struggle for recognition brought to completion.[54]

Many modern social theorists have taken such a struggle for recognition to be constitutive of *collective* identities. Thus, Alexandre Kojève holds that "individuality can be fully realized, the desire for Recognition can be completely satisfied, only in and by the universal and homogeneous State." Such a state "completes History, since Man, satisfied in and by his State, will not be tempted to negate it and thus to create something new in its place."[55] In the context of international relations, this notion of recognition would compel actors to recognize social and cultural differences, thereby providing possibilities to create more encompassing identities out of such encounters and thus escape identity-based discord in world politics. As Axel Honneth has stated, "The path for civilizing international relations primarily lies in sustained efforts at conveying respect and esteem for the collective identity of other countries."[56] And as Reinhard Wolf has argued, "mutual respect is a *sine qua non* for an open exchange of ideas required for jointly

identifying the most efficient solution for a common problem."[57] Such views have recently attracted considerable interest within international theory, since if such reciprocal respect and esteem can be attained among actors otherwise stuck in a perpetual struggle for standing and esteem, then the international system might even be transcended in favor of a less bellicose world order.

According to the most radical version of this view, practices of recognition will eventually issue in the formation of a world state. To Alexander Wendt, "Recognition is a social act that invests difference with a particular meaning—another actor . . . is constituted as a subject with a legitimate social standing in relation to the Self." This further implies that "insofar as people want to be subjects, therefore, they will desire recognition of their difference."[58] When transposed to the international system, the struggle for recognition among states in a condition of anarchy gradually will enable "states to develop supranational We-feeling and thereby overcome . . . the fundamentally tragic character of their struggle for recognition."[59] Propelled by a logic of mutual recognition, the international system will first take on distinctive societal traits, then turn into a world society "which expands positive freedom for both individuals and states" and lead to the formation of a collective security community, until finally culminating in a world state in which recognition has been universalized.[60]

To the critics of this view, the struggle for recognition could equally lead to an entrenchment of existing differences between Self and Other, thus aggravating their sense of separateness without giving rise to any shared identity in the process. As Patchen Markell has argued, since the desire for sovereignty that propels the struggle for recognition can only find its fulfillment in the subjugation of the Other, the practice of recognition cannot but reinforce the patterns of injustice resulting from that desire.[61] Thus, it can be argued that the struggle for recognition might be equally likely to fail to yield more encompassing identities in international politics. Rather, once generalized, recognition would merely perpetuate the tragic predicament of a mankind divided into bounded groups, which, as Brian Greenhill has pointed out, will "remain locked in their cycles of identity-based conflict."[62] Since many of these conflicts arguably are nothing but unintended consequences of prior practices of legal and political recognition, another round of recognition is unlikely to solve them.

This brings the historical analysis full circle. As I have tried to make clear in this essay, the concept of recognition is best understood in the context of international political and legal thought, and then as a means of legitimizing an international

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society of sovereign states stratified along status lines, while delegitimizing other forms of political association and other possible world orders in the process. In this regard, the concept of recognition fulfills an inherently conservative function. It presupposes a particularistic social ontology and a world populated by distinct and bounded political communities; and although it offers promises of inclusion, order, and even transcendence, recognition is also a permissive cause of many of the violent practices that it promises to mitigate or avoid. Whatever their precise relationship to the principle of sovereignty, the ensuing quests for political, legal, and moral recognition all seem to be grounded in aspirations to autonomy and identity that invariably must lead to conflict in a world devoid of overarching authority. Therefore, when seen in the context of late modern international thought, recognition appears to be both poison and antidote.

NOTES

[1] See, for example, Erik Ringmar, *Identity, Interest and Action: A Cultural Explanation of Sweden's Intervention in the Thirty Years War* (Cambridge: Cambridge University Press, 1996); Alexander Wendt, *Social Theory of International Politics* (Cambridge: Cambridge University Press, 1999); Christian Reus-Smit, *Individual Rights and the Making of the International System* (New York: Cambridge University Press, 2013); Richard Ned Lebow, *A Cultural Theory of International Relations* (New York: Cambridge University Press, 2008); Richard Ned Lebow, *Why Nations Fight* (New York: Cambridge University Press, 2010); and Thomas Lindemann, *Causes of War: The Struggle for Recognition* (Colchester: ECPR Press, 2010).

[2] See, for example, Gerry Simpson, *Great Powers and Outlaw States: Unequal Sovereigns in the International Legal Order* (New York: Cambridge University Press, 2004); Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (New York: Cambridge University Press, 2007); Mikulas Fabry, *Recognizing States: International Society and the Establishment of New States Since 1776* (Oxford: Oxford University Press, 2010); Erik Ringmar, "Recognition and the Origins of International Society," *Global Discourse* 4, no. 4 (2014), pp. 446–58.

[3] See, for example, Axel Honneth, "Recognition between States: On the Moral Substrate of International Relations," in Erik Ringmar and Thomas Lindemann, eds., *The International Politics of Recognition* (Boulder: Paradigm Publishers, 2014), pp. 25–38; Reinhard Wolf, "Respect and Disrespect in International Politics: The Significance of Status Recognition," *International Theory* 3, no. 1 (2011), pp. 105–142; and Jörg Friedrichs, "An Intercultural Theory of International Relations: How Self-Worth Underlies Politics Among Nations," *International Theory* 8, no. 1 (2016), pp. 1–34.

[4] Alexander Wendt, "Why a World State is Inevitable," *European Journal of International Relations* 9, no. 4 (2003), pp. 491–542.

[5] Paul Ricoeur, *The Course of Recognition* (Cambridge, Mass.: Harvard University Press, 2005), pp. 149–169, 150–218, and 25.

[6] For this point, see Maria Birnbaum, *Becoming Recognizable: Postcolonial Independence and the Reification of Religion*, doctoral dissertation, European University Institute, Florence, 2015.

[7] James Crawford, *The Creation of States in International Law* (Oxford: Oxford University Press, 2007), p. 12.

[8] Anghie, *Imperialism, Sovereignty and the Making of International Law*, p. 98.

[9] Ibid., p. 100.

[10] Anthony Pagden, *The Fall of Natural Man: The American Indian and the Origins of Comparative Ethnology* (Cambridge: Cambridge University Press, 1982), p. 11.

[11] Anthony Pagden, *European Encounters with the New World: From Renaissance to Romanticism* (New Haven: Yale University Press, 1993), pp. 51–87.

[12] Francisco De Vitoria, *De Indis*, in Jeremy Lawrance and Anthony Pagden, eds., *Vitoria: Political Writings* (Cambridge: Cambridge University Press, 1991), p. 250.

[13] See, for example, Anthony Pagden, "Dispossessing the Barbarian: The Language of Spanish Thomism and the Debate over the Property Rights of the American Indians," in Anthony Pagden, ed., *The Languages of Political Theory in Early-Modern Europe* (Cambridge: Cambridge University Press, 1987), pp. 79–98.
[14] Anghie, *Imperialism, Sovereignty and the Making of International Law*, pp. 13–32; S. James Anaya, *Indigenous Peoples in International Law* (New York: Oxford University Press, 2004), pp. 15–48.
[15] See, for example, Carl Schmitt, *The Nomos of the Earth in the International Law of the Jus Publicum Europaeum* (New York: Telos Press Publishing, 2006), p. 110; and Stephen C. Neff, *War and the Law of Nations: A General History* (Cambridge: Cambridge University Press, 2005).
[16] See Richard Tuck, *The Rights of War and Peace: Political Thought and the International Order from Grotius to Kant* (New York: Oxford University Press, 1999); and Martti Koskenniemi, "International Law and *Raison d'État*: Rethinking the Prehistory of International Law," in Benedict Kingsbury and Benjamin Straumann, eds., *The Roman Foundations of the Law of Nations: Alberico Gentili and the Justice of Empire* (New York: Oxford University Press, 2010), pp. 297–339.
[17] Alberico Gentili, *De Jure Belli Libri Tres*, trans. by John C. Rolfe (Oxford: Carnegie Endowment for International Peace, 1933), I.II.12.
[18] Ibid., I.IV.25.
[19] Richard Zouche, *An Exposition of Fecial Law and Procedure, or of Law between Nations, and Questions concerning the Same*, trans. by J. L. Brierly, (Washington DC: Carnegie Endowment for International Peace, 1911), I.I.3–4.
[20] Ibid., I.VI.37.
[21] Ibid.
[22] Emer de Vattel, *The Law of Nations, Or, Principles of the Law of Nature, Applied to the Conduct and Affairs of Nations and Sovereigns, with Three Early Essays on the Origin and Nature of Natural Law and on Luxury*, edited and with an introduction by Béla Kapossy and Richard Whatmore (Indianapolis: Liberty Fund, 2008), I.I.§4, p. 83
[23] Vattel, *Law of Nations*, III.III.§47, p. 496.
[24] Johann Heinrich Gottlob von Justi, *Historische und juristische Schriften*, Vol. 1 (Frankfurt & Leipzig: Garbe, 1760), p. 185ff. For an analysis, see C. H. Alexandrowicz, "The Theory of Recognition *In Fieri*," *British Yearbook of International Law* 34 (1958), pp. 176–98.
[25] See, for example, J. Samuel Barkin and Bruce Cronin, "The State and the Nation: Changing Norms and the Rules of Sovereignty in International Relations," *International Organization* 48, no. 1 (1994), pp. 107–130.
[26] See Peter S. Onuf and Nicholas Greenwood Onuf, *Federal Union, Modern World: The Law of Nations in an Age of Revolutions, 1776–1814* (Madison: Madison House, 1993); and Arnulf Becker Lorca, "Universal International Law: Nineteenth-Century Histories of Imposition and Appropriation," *Harvard International Law Journal* 51, no. 2 (2010), pp. 475–552.
[27] See David Armitage, *Foundations of Modern International Thought* (New York: Cambridge University Press, 2013), pp. 191–214.
[28] Johann Christoph Wilhelm von Steck, "Versuch von Erkennung der Unabhängikeit einer Nation, und eienes Staates," in Steck, *Versuche über Verschiedene Materien Politischen und Rechtlicher Kenntnisse* (Berlin & Stralsund: Gottlieb August Lange, 1783), pp. 49–56.
[29] *A Compendium of the Law of Nations Founded on the Treatises and Customs of the Modern Nations of Europe*, trans. by William Cobbett (London: Cobbett and Morgan, 1802), p. 81.
[30] Martens, *Compendium*, p. 82.
[31] David M. Golove, and Daniel J. Hulsebosch, "Civilized Nation: The Early American Constitution, the Law of Nations, and the Pursuit of International Recognition," *New York University Law Review* 85 (2010), pp. 932–1066.
[32] Alexandrowicz, "Theory of Recognition *In Fieri*," p. 191.
[33] Armitage, *Foundations*, p. 212; David Armitage, *The Declaration of Independence: A Global History* (Cambridge, Mass.: Harvard University Press, 2007), p. 84ff.
[34] Martens, *Compendium*, p. 132.
[35] Ibid., p. 135.
[36] Ibid., p. 146.
[37] Georg Wilhelm Friedrich Hegel, *Elements of the Philosophy of Right* (Cambridge: Cambridge University Press, 1991), pp. 366–67.
[38] See Robert R. Williams, *Hegel's Ethics of Recognition* (Berkeley: University of California Press, 1997), p. 335.
[39] Henry Wheaton, *Elements of International Law* (Boston: Little, Brown, & Co., 1866), I.II.§21.
[40] Wheaton, *Elements of International Law*, I.II.§21.

[41] Brett Bowden, "The Colonial Origins of International Law. European Expansion and the Classical Standard of Civilization," *Journal of the History of International Law* 7, no. 1 (2005), pp. 1–23; and Gerrit W. Gong, *The Standard of 'Civilization' in International Society* (Oxford: Oxford University Press, 1984).
[42] James Lorimer, *The Institutes of the Law of Nations: A Treatise of the Jural Relations of Separate Political Communities*, Vol. I, (Edinburgh: William Blackwood and Sons, 1883), p. 3.
[43] Lorimer, *Institutes*, p. 98.
[44] Ibid., p. 102.
[45] John Westlake, *Chapters on the Principles of International Law* (Cambridge: Cambridge University Press, 1894), p. 82.
[46] Quoted in Crawford, *Creation of States in International Law*, p. 15.
[47] Martti Koskenniemi, *The Gentle Civilizer of Nations* (Cambridge: Cambridge University Press, 2002), pp. 384–86.
[48] Hersch Lauterpacht, "Recognition of States in International Law," *Yale Law Journal* 53, no. 3 (1944), pp. 385–458.
[49] Hersch Lauterpacht, *Recognition in International Law* (Cambridge: Cambridge University Press, 1947), p. 6.
[50] Crawford, *Creation of States in International Law*, p. 28.
[51] Georg Wilhelm Friedrich Hegel, *Phenomenology of Spirit*, trans. by A. V. Miller (Oxford: Clarendon, 1977), section 178, p. 111.
[52] Ibid., section 187, p. 114.
[53] Ibid., section 191, p. 116.
[54] Ibid., sections 196–97, pp. 118–19.
[55] Alexandre Kojève, *Lectures on the Phenomenology of Spirit* (Ithaca: Cornell University Press, 1969), p. 237.
[56] Honneth, "Recognition between States: On the Moral Substrate of International Relations."
[57] Wolf, "Respect and Disrespect in International Politics," p. 125.
[58] Wendt, "Why a World State is Inevitable," p. 511.
[59] Ibid., p. 517.
[60] Ibid., p. 520.
[61] Patchen Markell, *Bound by Recognition* (Princeton, N.J.: Princeton University Press, 2003), pp. 103–113; and Patchen Markell, "The Potential and the Actual: Mead, Honneth, and the 'I'," in B. van den Brink and D. Owen, eds., *Recognition and Power: Axel Honneth and the Tradition of Critical Social Theory* (Cambridge: Cambridge University Press, 2007), pp. 100–132.
[62] Brian Greenhill, "Recognition and Collective Identity Formation in International Politics," *European Journal of International Relations* 14, no. 2 (2008), pp. 343–68 at 361.