Successful Secession and the Value of International Recognition

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There is a strong positive correlation between secession movements that receive international recognition and those that successfully result in independent states. This chapter asks whether the seeming potency of recognition can be justified, or whether there can be nothing said for it, morally speaking. In so doing it critiques and dismisses putative justifications based on the values of democracy, distributive justice, and international stability, before advancing an alternative and more promising possibility: that formal recognition is conducive to the development of ethically valuable politics. This alternative is argued not only to justify the seeming influence that recognition enjoys over attempted secession, but also the liberty to refuse recognition enjoyed by established states under international law, as well as the duty of such states to engage in collective non-recognition under particular circumstances.

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Whatever else might have distinguished their emergence, political communities that at some point seceded from their respective 'parent' states characteristically shared one advantage: their successful attempts to separate coincided with, or were swiftly followed by, widespread international recognition of their status as newly emerged states.[1] This meant that, at the material time in each case, a sufficiently large number of already established states formally accepted these nascent entities as members of the international community in their own right, independent from their parent states. The means through which such formal acts of recognition took place included the issuing or exchange of diplomatic communications, an exchange of embassies, or the

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[1] For example, the People's Democratic Republic of Algeria was recognised by 29 established states prior to its granting of formal independence by the French Republic in 1962, whilst the Republic of Guinea-Bissau was recognised by more than eighty prior to its grant of independence by the Portuguese Republic in 1974. For details, see: James Crawford, *The Creation of States in International Law* (2nd edn, OUP 2007) 385-86.

signing and ratification of treaties. Widespread international recognition has, in some cases, also been accepted to exist where a nascent community has been admitted as a Member State of the United Nations (UN).[2] In some cases of successful secession, such as the separation of Singapore from Malaysia, recognition was first granted by the parent state itself (by Separation Agreement),[3] with the remainder of the international community following suit later on.[4] In other cases, for instance during the emergence of Bosnia-Herzegovina, international recognition preceded the recalcitrant parent state's eventual capitulation to independence.[5]

Conversely, the vast majority of unsuccessful secession attempts have been attended by the *absence* of recognition. Consider the attempted separation of Kantanga from the Democratic Republic of Congo,[6] of the Republic of Srpska from Bosnia-Herzegovina,[7] and of the Republic of Somaliland from the Federal Republic of Somalia,[8] where the emergence of independent statehood was universally denied, and no new state arose. Furthermore, in the handful of contemporary cases where the emergence of statehood remains unclear, the relative presence or absence of recognition acts as a focus for international activism, as well as for legal and political debate. Take the Republic of Kosovo or the State of Palestine, where attempts to garner broader international recognition are ongoing, on the apparent assumption that its conferral will solidify the international status of those entities.[9]

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[2] Crawford, *The Creation of States in International Law* 27

[3] Agreement Relating to the Separation of Singapore from Malaysia as an Independent and Sovereign State (Malaysia-Singapore) (7 August 1965) 563 UNTS 90

[4] SC Res. 213, 20 U.N. SCOR at 20, UN Doc. S/RES/213 (1965); GA Res. 2010 (XX), 20 GAOR at 2, UN Doc. A/RES/2010(XX) (1965)

[5] The Member States of the European Community recognised Bosnia-Herzegovina in April 1992 (Conference on Yugoslavia, Arbitration Commission, Opinion No 6, 11 January 1992: 92 ILR 182, 187), whilst the Federal Republic of Yugoslavia did not grant recognition until December 1995 (General Framework Agreement for Peace in Bosnia and Herzegovina (14 December 1995) (1996) 35 ILM 136).

[6] Recognised by no state (Crawford, *The Creation of States in International Law* 405); see also *Certain expenses of the United Nations (Article 17, paragraph 2, of the Charter), Advisory Opinion*, ICJ Rep. 1962 (20 July), p. 151

[7] Also recognised by no state (Crawford, *The Creation of States in International Law* 406); now existing as one of two constitutive Entities of Bosnia-Herzegovina (Art.1(3), Constitution of Bosnia and Herzegovina, 1995).

[8] 'Special Report No 4/2000 on rehabilitation actions for ACP countries as an instrument to prepare for normal development aid, accompanied by the Commission's replies', (2000) OJ 113/01, para.82

[9] See, for instance: <www.kosovothanksyou.com/> last accessed 7 August 2019; and, generally, HC Deb 13 October 2014, vol 586, cols 124-138

Without detailed contextual analysis, it is often difficult to discern the precise impact that recognition has upon emergent statehood. Circumstances surrounding secession movements are invariably complex, such that sweeping causal inferences are hazardous. Nonetheless, the correlation is stark: nascent political communities that receive international recognition during their attempts to secede *seem* more likely to become independent states than those that do not.[10]

Typically, international lawyers have explained this correlation in one of two ways. The first is socio-political: successful secession, on this account, often coincides with international recognition because recognition really does have an important causal impact upon the emergence of new states. Inferences of this kind stop short of claiming that recognition has any *legal* salience. Instead, they restrict themselves to presenting it as 'politically' important.[11] To quote Vaughan Lowe:

> Recognition is undoubtedly a political instrument. When would-be States emerge in a non-consensual way from the territory of existing States, whether it be by attempted secession or by the break up of the former State, there is always a time during which it is unclear whether the attempt to establish the new State will succeed…During this period the attitude of third States is enormously important. If, say, the EU or the USA or Russia announces that it recognizes the new entity as a State and will give it economic or other assistance, it is much more likely to survive than if they all say that they will have nothing to do with it.[12]

By contrast, the second explanation for the correlation between successful secession and foreign recognition alleges that the latter *legally constitutes* the statehood of seceding communities. The classic argument to that effect, most famously advanced

[10] I discount one plausible possibility here: widespread international recognition might follow as an *effect* of whatever new status-quo attends successful secession, rather than act as one of its *causes*. I do not engage with that possibility for two reasons. First, insofar as uncertainty about the causal or legal potency of recognition remains, the normative issues that concern me (see the following section) remain important. Second, there have been cases, such as the emergence of Bosnia-Herzegovina, where recognition was clearly granted in the hope that a new status-quo would follow (which, at least in that case, it did), see: Roland Rich, 'Recognition of States: The Collapse of Yugoslavia and the Soviet Union' (1993) 4 EJIL 33, 56.

[11] Crawford, *The Creation of States in International Law* 27, 376

[12] Vaughan Lowe, *International Law* (OUP 2007) 163

by Hersch Lauterpacht, holds that 'prior to recognition the community in question possesses neither the rights nor the obligations which international law associates with full statehood'.[13] Recognition, on this account, is a necessary condition for the emergence of new states.

This version of the so-called 'constitutive theory of recognition' lacks support amongst contemporary authors. Many argue that recognition is merely 'declaratory' of statehood, which emerges as an independent fact upon the satisfaction of objective legal criteria.[14] Even those who accept the constitutive potency of recognition typically concede it to be only one means through which statehood can be created, such that even if it can sometimes be sufficient, it is not necessary.[15] Consequently, and despite some claims to the contrary,[16] the question of whether recognition has constitutive legal effect, or merely a causal or 'political' impact upon the emergence of statehood, remains controversial. I do not propose to engage further with that issue here.[17] Instead, this chapter will explore an underlying normative question: on the assumption that international recognition *in some way* enhances the likelihood of seceding communities becoming independent states, to what extent is this apparent potency morally defensible?

1. The Nature and Value of the Enquiry

Two points of clarification are in order. First, when asking whether the typical consequences of international recognition are 'morally defensible' I do not mean 'according to the beliefs or opinions of some individual or group', but *objectively*.[18] This assumes the existence of what some philosophers call 'genuine practical reasons': considerations that *actually* count for, or against, particular kinds of behaviour.[19] What is more, I presume that reasons of this kind, or at least some subset of them, apply to

[13] Hersch Lauterpacht, 'Recognition of States in International Law' (1944) 53 Yale LJ 385, 386
[14] Crawford, *The Creation of States in International Law* 19-28; Steven Ratner, *The Thin Justice of International Law: A Moral Reckoning of the Law of Nations* (OUP 2015) 185-186
[15] Jure Vidmar, *Democratic Statehood in International Law: The Emergence of New States in Post-Cold War Practice* (Hart Publishing 2013) 235-242
[16] Crawford, *The Creation of States in International Law* 25
[17] My views on this and other aspects of the law on emerging statehood are provided in: Alex Green, *A Moral Explanation of Emerging Statehood: Political Community and International Law* (forthcoming 2020).
[18] For more, see: Matthew Kramer, *Objectivity and the Rule of Law* (CUP 2007) 4.
[19] Derek Parfit, *On What Matters: Volume One* (OUP 2011) 31; Thomas Scanlon, *What We Owe to Each Other* (Belknap Press 1998) 17

the actions (and inactions) of established states.[20] For example, I take claims like 'aggressive war is unjust' or 'territorial integrity merits respect' to be aimed at describing normative truths, rather than simply relaying a particular point of view, be it personal or collective. Additionally, I presume that such reasons are ascertainable through ordinary moral reasoning.[21] As such, this chapter will examine the argumentative coherence and independent appeal of several putative justifications for the apparent potency of international recognition, critically examining the arguments that underpin them, rather than taking a more genealogical approach.

Second, the defensibility (or otherwise) of international recognition's apparent influence over the success of secession movements forms a distinct issue from the related question of *under what conditions* one state should formally recognise another. The latter has already received significant scholarly attention: Alan Buchanan, for instance, argues that established states should only grant recognition to nascent communities that make credible commitments to protect the basic human rights of those they govern and that do not emerge through the violent or otherwise unlawful overthrow of an existing legitimate state.[22] Such arguments, which concern the standards that should govern recognition decisions, enable us to assess whether established states conduct themselves in a morally appropriate manner when they grant or refuse recognition to a particular entity. However, such claims do not address the separate issue of whether, notwithstanding any injustice that may attend a particular instance of recognition, the mere fact that it has taken place should affect the likelihood that a new state should emerge. Very little has been written on the latter subject, and, as I ultimately conclude, whatever injustices may exist within our current practices of recognition, these alone cannot entail that recognition *as such* thereby lacks *all* moral value.

It is important that we understand what, morally speaking, might be said in favour of the apparent potency of recognition when it comes to secession movements. In the first instance, if *nothing* can be said in its favour – if our current practices of

[20] For full argument, see: Charles Beitz, *Political Theory in International Relations* (Princeton University Press 1999) 15-63.
[21] Ronald Dworkin, *Justice for Hedgehogs* (Belknap Press 2011) 23-98
[22] Allen Buchanan, *Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law* (OUP 2004) 266-267, 271, 275

international recognition have no merit at all – then we will know that there is a pressing need for the law governing the emergence of new states to be reformed. Second, if there *is* something to be said for the potency of recognition, examining putative justifications will help to illuminate *which* reasons underpin whatever degree of defensibility it possesses. It matters what these reasons are because reasons differ in terms of their normative weight. For instance, if we discovered that reasons of justice or democracy backstop the support that recognition gives to emerging statehood, then we should arguably treat all such acts with considerable respect. Conversely, if recognition's moral weight consists 'merely' in its contingent capacity to secure relative international stability, then individual acts of recognition should only be accorded respect insofar as each act facilitates peace and friendly relations. In what follows I argue against both interpretations, contending instead that, when conducted in accordance with the requirements of international law, recognition fosters an intrinsically valuable type of political action within an emerging community. This provides its apparent potency with *presumptive* defensibility: not enough to conclude that all legally compliant recognition decisions will be 'all-things-considered' justified, but sufficient to hold that wherever such recognition is bestowed, it will always have *some* degree of moral value.

2. Implausible and Contingent Justifications

There are two desiderata for a successful justification of recognition's apparent ability to promote effective secession. First, that justification must 'fit' contemporary international practice surrounding recognition.[23] This means it must reflect, and certainly not contradict, how recognition is conducted, the legal standards that govern it, its typical geopolitical consequences, and so on. Any purported defence that fails in this regard cannot justify recognition *as it is currently practiced*, and so will amount to no justification at all. Second, any successful justification for the contemporary potency of recognition must have genuine normative appeal, even if its moral attractiveness is not unqualified.[24] Claims like those forwarded by so-called 'realists' about international relations – for instance that recognition is purely a matter of *realpolitik* – cannot justify international recognition because they offer no moral reasons of any kind.[25] If there is

[23] These terms are borrowed from Ronald Dworkin, *Law's Empire* (Hart Publishing 1986) 255-256.
[24] Ibid. at 230-231, 240-256
[25] Beitz, *Political Theory in International Relations* 15-26

no theory that can satisfy both desiderata for a successful justification then we must accept a sceptical conclusion: the apparent potency of international recognition cannot be justified and, therefore, its typical relationship with secession movements is most likely unjust. In this section I examine three putative justifications that, I ultimately contend, leave this sceptical conclusion more or less intact. The first two, which focus upon democracy and distributive justice, fail to fit the reality of international relations. The third, which turns upon the importance of international stability, fares better but provides, at best, a highly contingent and qualified defence for recognition's potency.

2.1 Democracy and Distributive Justice

Democracy is an essentially contested concept.[26] However, at least in Anglo-American analytical philosophy, most disagreements about its nature seemingly presume that states cannot be fully just without implementing *some* democratic principles.[27] On that basis, it would arguably be morally attractive for the apparent potency of international recognition to be justifiable by virtue of somehow giving effect to democratic governance. Unfortunately, the case for that is extremely weak.

For present purposes I presume that democracy requires, at least as a minimum, the kind of national-level institutions present in political communities such as the United States of America or the French Republic. Generally, this implies a legislature and executive, the members of which are subject to relatively frequent and regular popular election, in which near universal suffrage is enjoyed.[28] As conceptions of democracy go, one might justifiably think, this is pretty 'thin'. Nonetheless, whilst some established states appear to make institutions of this sort a condition for granting recognition,[29]

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[26] W. B. Gallie, 'Essentially Contested Concepts', (1956) 56 *Proceedings of the Aristotelian Society* 167

[27] See generally: Jeremy Waldron, *Law and Disagreement* (OUP 1999); Ronald Dworkin, *Sovereign Virtue: The Theory and Practice of Equality* (Harvard University Press 2020); Henry Richardson, *Democratic Autonomy* (OUP 2002); Thomas Christiano, *The Constitution of Equality: Democratic Authority and Its Limits* (OUP 2008); Charles Beitz, *Political Equality* (Princeton University Press 1989).

[28] Such legislatures and executives may be formally separate (e.g. the United States of America) but need not be (e.g. the United Kingdom). I use 'near universal suffrage' to capture the disenfranchisement of children, resident non-citizens and incarcerated individuals, which remains widespread in many Western states.

[29] The most obvious example comprises the European Community Guidelines on the Recognition of New States in Eastern Europe and the Soviet Union (1991), which, *inter alia,* make recognition conditional upon evidence of 'respect for the provisions...in the Charter of Paris, especially with regard to…human rights', which includes the right to participate in democratic elections (European Community, Declaration on Yugoslavia and on the Guidelines on the Recognition of New States, 31 ILM 1485 (1992), 1487).

many political communities enjoy near universal recognition without having them in place.[30] For this reason, most scholars who favour making *lawful* recognition contingent upon the presence of democracy argue only that an international law to that effect is 'emerging', not that one currently exists.[31]

This sceptical conclusion finds support in the classic statement of the International Court of Justice in *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, which held that 'adherence by a State to any particular [political] doctrine does not constitute a violation of customary international law; to hold otherwise would make nonsense of the fundamental principle of State sovereignty on which the whole of international law rests, and the freedom of choice of the political, social, economic and cultural system of a State'.[32] Perhaps more importantly for present purposes, UN membership is not contingent upon the presence of democratic institutions in the applicant community. This means that, to the extent that UN membership is indicative of widespread recognition, the presence or absence of democracy in the applicant community is not determinative of recognition so established.[33] Based on the above considerations, it seems that any attempt to defend our current practices of international recognition with an appeal to democracy would be misguided: the putative justification simply does not fit.

Appeals to the equitable distribution of benefits and burdens within the international community (hereafter, 'distributive justice'), would, I contend, fare just as poorly.[34] It is easy to see why it would be beneficial if the apparent potency of recognition could be justified in distributive terms. Significant natural resources exist within the boundaries

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[30] Sean Murphy, 'Democratic Legitimacy and the Recognition of States and Governments', (1999) 48 ICLQ 545, 556; Gregory Fox and Bradley Roth, 'Democracy and International Law', (2001) 27 Rev Intl Studies 327, 337

[31] Thomas Franck, 'The Emerging Right to Democratic Governance', (1992) 86(1) AJIL 46, 50; Fox and Roth, 'Democracy and International Law', 337. Even this modest claim is undermined by the apparent halt of global democratisation: Susan Marks, 'What has Become of the Emerging Right to Democratic Governance?', (2011) 22(2) EJIL 507–524.

[32] *Judgement*, ICJ Rep. 1986 (27 June), p.14, para.263

[33] Whilst the UN Charter frequently uses the word 'state' in an idiosyncratic manner – and therefore sometimes may not entail much for the recognition of the 'states' it references – membership decisions pursuant to Article 4(1) broadly reflect the notion that members must be states under international law, see: Rosalyn Higgins, *The Development of International Law through the Political Organs of the United Nations* (OUP 1963) 11-57.

[34] For more on distributive justice in general, see: Aristotle, *Nichomachean Ethics* (Sarah Broadie and Christopher Rowe trs, OUP 2002) 1130b30-1131b20.

of established states, which makes the emergence of new political communities an important means through which resources are redistributed amongst the global population.[35] For example, as part of the United Kingdom, Scotland's territory and resources may rightfully be exploited for the benefit of that entire state, at least as far as international law is concerned.[36] However, were Scotland to secede, its territory and resources would, *prima facie*, be exploitable *only* by itself, effectively *redistributing* what is available to Scotland, England, Wales and Northern Ireland. The justice of such an alteration is manifestly apposite to its moral permissibility.

If recognition was only granted to seceding entities where that would render the global distribution of such resources *more* just, that would grant its apparent potency an extremely robust defence. Unfortunately, as even a brief survey of extant global distributions makes obvious, this is not so. For example, the Russian Federation covers around one ninth of the Earth's total land,[37] possessing the largest natural gas reserves[38] and the eighth largest crude oil reserves.[39] The Republic of Singapore, by contrast, has a mere 719 square kilometres of territory[40] and no natural gas or oil reserves. [41] Looking at these two (quite recently recognised) states in purely distributive terms, the former has too much and too good, whilst the latter has too little and too poor. No practice of recognition that licences such arrangements of resources can plausibly claim to be justified, even presumptively, by considerations of distributive justice: the proposition does not fit. Given the extreme variance in territory and

[35] For similar concerns, see: Simon Caney, *Justice Beyond Borders: A Global Political Theory* (OUP 2005) 123; Beitz, *Political Theory in International Relations* 138

[36] GA Res. 1803 (XVII), 16 GAOR at 15, UN Doc. A/RES/1720(XVI) (1962) [Permanent sovereignty over natural resources]

[37] United Nations Educational, Scientific and Cultural Organization, 'Commission of the Russian Federation for UNESCO: Panorama of Russia', <www.unesco.ru/en/?module=pages&action=view&id=1> last accessed 7 August 2019

[38] 'Country Comparison: Natural Gas - Proved Reserves' in the Central Intelligence Agency, The World Factbook (2017), <www.cia.gov/library/publications/the-world-factbook/rankorder/2253rank.html> last accessed 7 August 2019

[39] 'Country Comparison: Crude Oil - Proved Reserves' in the Central Intelligence Agency, The World Factbook (2017), <www.cia.gov/library/publications/the-world-factbook/rankorder/2244rank.html> last accessed 7 August 2019

[40] Department of Statistics Singapore, 'Population & Land Area', 2016, <www.singstat.gov.sg/statistics/latest-data#14> last accessed 7 August 2019

[41] 'Country Comparison: Natural Gas - Proved Reserves' and 'Country Comparison: Crude Oil - Proved Reserves' in the Central Intelligence Agency, The World Factbook (2017), <www.cia.gov/library/publications/the-world-factbook/fields/269rank.html> last accessed 7 August 2019

resources that characterise the contemporary international community, its recognition practices would need to *drastically* alter for any such argument to become viable.

2.2 The Stability Thesis

Given the importance of the United Nations system, it might be tempting to think that if our current practices of international recognition have any merit at all, this *must* somehow connect to the UN's most fundamental objective: the promotion of peace and friendly relations amongst states.[42] However, whilst the suggestion that the value of international law is contingent upon its capacity to secure peace is popular within legal theory,[43] relatively few scholars have explicitly connected this to the influence that recognition seems to exert over the success or failure of secession movements.[44]

What I call 'the stability thesis' asserts a connection of precisely this sort and has two elements, namely that: a) acts of recognition tend to promote peace and friendly relations; and b) this at least presumptively justifies the potency that recognition possesses in relation to secession. Amongst legal scholars, this view has been most clearly articulated by Lauterpacht, who located the 'stability-value' of recognition in its simplicity as a means for establishing the existence of new states. Lauterpacht believed that stable international relations require a straightforward means for identifying the subjects of international law and, since there is no central authority to perform that function, the burden must fall upon established states.[45] Official foreign recognition, formally expressed through, say, the exchange of embassies, picks out particular entities as accepted members of the international community, clearly signalling their statehood to all concerned. According to Lauterpacht, this straightforward mechanism helps to avoid the controversy that inevitably attaches to the interpretation and application of more substantive criteria for statehood.[46] Whilst the hope that recognition might *eliminate* controversy seems somewhat optimistic, there seems to be some truth to Lauterpacht's claims: even those scholars who totally

[42] UN Charter, art.1
[43] See, for instance: Prosper Weil, 'Towards Relative Normativity in International Law?' (1983) 77 AJIL 413.
[44] Ratner, *The Thin Justice of International Law*, 184-190; Patrick Capps, *Human Dignity and the Foundations of International Law* (Hart Publishing 2009) 258-264
[45] Hersch Lauterpacht, *Recognition in International Law* (CUP 1947) 55
[46] Ibid. at 2

reject his interpretation of the law on emerging statehood accept the epistemic value of recognition when it comes the eventual success, or otherwise, of secession.[47]

Building upon Lauterpacht's version of the stability thesis, we might add that widespread recognition can help established states to avoid unforeseen liability, thereby reducing the number of contentious international disputes. International disputes cost resources, whether conducted before adjudicative bodies or otherwise, and the price is ultimately paid by the populations of the states involved: all other things being equal, this means that it is preferable to have as few disputes as possible. On this basis, and granting the plausible assumption that some legal entitlements are fully possessed only by political communities that have successfully emerged as states (for instance, to territorial integrity and political independence), it becomes important for *established* states to effectively identify and navigate the state/non-state divide.[48]

Despite the apparent appeal of the stability thesis, recognition's capacity to promote peace by avoiding controversy is more contingent than the aforementioned arguments envisage. As Crawford points out, international law has relatively few state-subjects and the status of the vast majority is not in question.[49] As such, disagreement along the lines that Lauterpacht envisioned will typically arise only in hard cases – such as genuinely contentious cases of secession – where controversy would mostly likely exist anyway. Take the Republic of Kosovo, which as of the 15th of February 2018 has been recognised by 116 established states, raising a plausible but not uncontroversial claim to statehood.[50] In such cases, even modest faith in the capacity of widespread recognition to stabilise turbulent international relations risks putting the cart before the horse: by the time widespread recognition has been achieved – and secession can be more-or-less uncontroversially deemed successful – much of the relevant *political* conflict may well have abated. It should not be forgotten, for example, that Kosovo's

[47] Crawford, *The Creation of States in International Law* 27
[48] This is complicated by the existence of non-state 'self-determination units', which may have rights of this sort in nascent form. However, it is arguable that such units 'merely' possess the legal right to *become* an entity with entitlements of this kind: a state. See further: Antonio Cassese, *Self-Determination of Peoples: A Legal Reappraisal* (CUP 1995) 168-169; Malcolm Shaw, 'The International Status of National Liberation Movements', (1983) 5 *Liverpool Law Review* 19, 33-34.
[49] Ibid. at 21
[50] <http://www.kosovothanksyou.com/> last accessed 7 August 2019

current position has been influenced by decades of active international intervention, both military and otherwise.

What is more, as evidenced by contemporary Kosovo, obscurity in the status of a territorial unit does not preclude it from *stable* international relations: non-state entities are often treated as if they were states for certain purposes.[51] Finally, recognition does not imply that *peaceful and friendly* relations will always follow, whilst internationally abjured states may suffer from *internal* instability even though they are generally recognised. Even if Kosovo was universally recognised to have successfully seceded, it would probably still have friendly relations with those political communities well disposed towards it and either indifference or acrimony from others.

None of this is to imply that recognition as such does not matter, nor that nascent communities do not characteristically benefit in some manner from acceptance as full members of the international community. Instead, my point is that the contribution that recognition makes to peace and friendly relations will necessarily depend upon the context in which it is granted. This puts the stability thesis in a somewhat qualified position: recognition *may* have a positive impact upon peace and friendly relations, but it need not. As such, stability provides only a contingent justification for the apparent potency of international recognition.

3. The Instrumental Argument from Ethically Valuable Politics

To discover if our current practices of international recognition possess moral value *as such*, we must think beyond the more familiar justificatory narratives of democracy, justice, and peace. In what remains, I sketch out what I take to be one promising possibility: that the apparent influence of foreign recognition over the success or failure of secession movements is at least presumptively defensible because acts of recognition characteristically enable *ethically valuable politics*. My argument, which begins by considering the value of domestic politics before asking what international

[51] For example, Taiwan enjoys legally binding agreements with numerous states, despite not being a state itself, see: Agreement between the India Taipei Association in Taipei And The Taipei Economic and Cultural Center in New Delhi on The Promotion and Protection of Investments (signed 17 October 2002, entered into force 28 November 2002); Agreement between the Taipei Economic and Trade Office in Thailand and the Thailand Trade and Economic Office in Taipei for the Promotion and Protection of Investments (signed and entered into force 30 April 1996).

recognition might contribute, turns on a particular conception of the political, to which the first part of this section is dedicated.

Unlike many understandings of politics, or of the related ideas of 'publicity' and 'society', ethically valuable politics comprises neither a logical nor sociological category.[52] Instead, it demarcates politics solely with reference to particular arguments about its moral importance. As such, some phenomena that might be otherwise considered 'political' fall outside this characterisation. For instance, Carl von Clausewitz's famous claim that 'War is the continuation of politics by other means' falls well outside the scope of my conception of the political, to which large-scale organised violence and domination are anathema.[53]

Ethically valuable politics presumes three controversial moral premises.[54] One is that each of us – that is, each human individual – matters *objectively*, such that we are each responsible for living our own lives well.[55] Another is that our ability to live well turns, at least in part, upon the extent to which we comply with our moral obligations: those normative requirements that are genuinely binding upon us in virtue of the practical reasons that apply to us.[56] Finally, the complete set of any individual's moral obligations include obligations to participate in the common life of their political community, doing what they can to make it more just, legitimate, egalitarian, and so on. Taken together, these premises entail two equally controversial thesis. One is that the overall success or failure of our lives – our 'ethical success', if you will – is contingent upon us participating in morally valuable political activity within our respective communities. The other is that wherever such activity takes place – that is, wherever political actors ethically succeed – something of objective value has occurred.

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[52] Compare, for example: Arendt, *The Human Condition* (2nd ed, University of Chicago Press 1988) 22-78; with Jürgen Habermas, *The Structural Transformation of the Public Sphere: An Inquiry into a Category of Bourgeois Society*, (Thomas Burger tr, Polity Press 1989) 57-88; and Max Weber, *From Max Weber: Essays in Sociology*, (H.H. Gerth and C. Wright Mills eds, Routledge 1991) 77-128.
[53] Carl von Clausewitz, *On War*, (Michael Howard and Peter Paret eds, Princeton University Press 1984) 87
[54] I lack the scope to defend these claims here: my hope is that readers will find them intuitively appealing. Full argument is provided in: Green, *A Moral Explanation of Emerging Statehood*.
[55] Dworkin, *Justice for Hedgehogs* 197-198
[56] Ibid. at 104-111

This understanding of politics also presumes that certain background conditions must be met for individuals to have a realistic chance of achieving the relevant kind of success. Specifically, they must live and act within political communities that are conducive to ethically valuable activity. This does not necessarily require democracy, equality, or justice, however ethically valuable politics is greatly facilitated by the presence of governmental institutions that function as what I call 'focuses' and 'forums' for political action.

To count as a 'focus' for political action, governance institutions must be publicly identifiable points of reference around which political activity can be coordinated and at which it can be directed. Modern states tend to be very large and such large populations cannot organise themselves on a purely interpersonal, non-hierarchical basis.[57] There must be something to talk *about* and act *in relation to*. Actual and conceivable governance provides the substance of political discussion. Where governments act within publicly identifiable institutions, their subjects have a focus for political activity that they would otherwise lack. Communities with functioning governments and visible institutions are more likely to productively converge in agreement and disagreement than they would otherwise. They can discuss and take positions on what a particular institution should do, whilst even the structure of institutions themselves can provide focus for action and debate.[58]

To count as, or provide for, a 'forum' for political action, a governance institution must either constitute or help to establish some space in which individuals have a *de facto* and/or *de jure* capacity to act politically. Institutions themselves function as forums to the extent that they directly facilitate political participation: to that extent, democratic governance certainly lends support to ethically valuable politics. Nonetheless, even where popular participation is not afforded by governance institutions themselves, governments can support other political forums by facilitating a social environment

[57] Martin Loughlin, *The Idea of Public Law* (OUP 2004) 5

[58] This holds even in circumstances of relative autocracy. Dictators and dominant classes provide visible political targets for protestors, reformers and revolutionaries: consider the internal political opposition to apartheid South Africa or the government of President Zine El Abidine Ben Ali in Tunisia. The visibility of such regimes cannot make them just or democratic but it would be wrong to dismiss their value completely whilst they operate as effective political focuses. This value will be minimal where oppression is extreme or resources severely limited. However, relative civil peace and some degree of liberty will usually permit *some* valuable politics, even on the part of the oppressed and destitute.

within which political activity can take place. Perhaps the most important means through which this can be achieved is by maintaining civil peace. Even violent political movements, be they protests or revolutions, require relative stability within which to organise themselves, and they must quickly secure (or at least lapse into) peace if they are not to produce anarchy. By securing relative stability through the coordination of power and violence, governance makes politics possible. True, political activity does not automatically thrive in the absence of civil war: under extremely oppressive rulers it may be impossible. But however insufficient stability may be for ethically valuable politics, it is necessary. Indeed, with the exception of territories subject to particularly invasive tyrants or an endemic lack of necessary resources, any peaceful physical space provides the *potential* for valuable political acts.

3.1 The Moral Contribution of Recognition

The foregoing sketch of ethically valuable politics focused on the conditions *within* contemporary states. However, not all politics is domestic in scope. In addition to being facilitated by governance institutions that regulate domestic affairs, valuable politics can be conducted in relation to governmental activity that establishes relations *between* communities. Treaty membership falls within this sphere of activity, as does membership in international organisations, cooperation through international trade, and transnational coordination for purposes such as collective security. One archetypal example, which currently functions as an almost complete cynosure of politics within the United Kingdom, is that state's membership in, and relations with, the European Union, the Council of Europe, and the constitutive treaties of both.[59]

Within states privy to them, international relations of this kind can form a 'focus' for individual political action of the ethically valuable sort just contemplated, which may include behaviours such as voting, petitioning, demonstrating or debating (either orally or in writing). However, political communities can only to develop such valuable

[59] The sheer scale of the political activity responding to such focuses can be gleaned from even a very brief survey of public protests alone. See, for example: Martha Buckley, 'Thousands at 'March for Europe' Brexit protest', *BBC News*, 2 July 2016 <www.bbc.co.uk/news/uk-36692990> last accessed 7 August 2019; 'Brexit protest: March for Europe rallies held across UK', *BBC News*, 3 September 2016 <www.bbc.co.uk/news/uk-politics-uk-leaves-the-eu-37265840> last accessed 7 August 2019; 'Brexit: Marchers demand final Brexit deal vote', *BBC News*, 23 June 2018 <www.bbc.co.uk/news/uk-politics-44586638> last accessed 7 August 2019; Katie Wright, 'Brexit march: Million joined Brexit protest, organisers say', *BBC News*, 23 March 2019 <www.bbc.co.uk/news/uk-politics-47678763> last accessed 7 August 2019.

governance traditions when there are other communities willing to enter into such relations with them. Mutual recognition of statehood is the most explicit and often the most straightforward means of initiating such complex relationships between political communities. Where recognition is offered or exchanged, the political value of inter-governmental activity has begun to accrue, even if only in nascent form.[60]

Admittedly, international relations of the relevant sort are *possible* without formal recognition. Consider Taiwan, which maintains informal ties (and a number of bilateral treaty arrangements) with many established states. It is also a non-state member of some international organisations, such as the World Trade Organisation (as an independent customs territory) and Commission for the Conservation of Southern Bluefin Tuna (CCSBT) (as a 'Fishing Entity' member of its Extended Commission and Extended Scientific Committee).[61]

However, notwithstanding this potential for more informal international relations, unrecognised entities characteristically find it much more difficult to develop ethically valuable focuses of the relevant kind. Taiwan's membership in the CCSBT is a case in point: between the 1993 Convention for the Conservation of Southern Bluefin Tuna, and the CCSBT's adoption of the Resolution to Establish an Extended Commission and an Extended Scientific Committee in 2001,[62] Taiwanese representatives were limited to observer status within the CCSBT and had to push for the voting rights they currently possess within the Extended Commission.[63]

Even assuming that unrecognised entities may nonetheless emerge as states, or otherwise might be treated *as* states for particular purposes, a recognised political community has formal assurances that it will be afforded the presumptive benefits that typically attach to established statehood. The commitment of the recognising state

[60] Recognition tends to be followed by other diplomatic activity, albeit not always amicable or inclusive, which will (whatever its tone and implications) strengthen the degree to which this conclusion holds in particular cases (Lowe, *International Law* 163).
[61] Although notably not the United Nations, from which it was effectively displaced by the Peoples' Republic of China in 1971, see: GA Res. 2758 (XXVI), at 26 GAOR 2, UN Doc. A/RES/2758(XXVI) (1971)
[62] CCSBT 'Reports of the Meetings for the Seventh and Eighth Year of the Commission (including Financial Statements)' (2002) 54
[63] Andrew Serdy, 'Bringing Taiwan into the International Fisheries Fold: the Legal Personality of a Fishing Entity', (2005) 75 BYIL 183, 186-191

gives the political community in receipt of recognition a greater assurance upon which to engage in international relations.[64] Such assurances enable these relations to become more complex, enhancing their ability to act as a focus for domestic politics. By way of negative example, consider the Turkish Republic of Northern Cyprus, the near-universal non-recognition of which has excluded it from international relations within the institutional framework of the UN.[65]

3.2 The Liberty to Recognise

I contend that the aforementioned benefits of recognition apply whenever it is granted in compliance with international law.[66] In this respect, when compared to the other positions outlined in this chapter, the instrumental argument from ethically valuable politics represents a superior justification for the influence that recognition seems to possess over the success or failure of secession movements. However, its advantages in terms of fit do not stop there. Defending recognition's apparent influence through an appeal to ethically valuable politics also fits the fact that international law is often cited as imposing no *duty* to recognise emergent communities on the part of established states.[67] This would be difficult to defend on the basis of, for example, the stability thesis: prioritising peace and friendly relations would most likely require recognition to be obligatory wherever offering it would enhance those goals,[68] whereas, legally speaking, no such obligation exists.[69]

Whilst ethically valuable politics can be facilitated by establishing mutual recognition between two or more political communities, it also lends moral weight to the legal *liberty* that states have to grant recognition. Unlike a legal duty, which makes behaving in particular manner obligatory, a liberty entails only the legal permissibility of doing so.[70] Insofar as developing international relations can be important to domestic politics,

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[64] The moral corollary of this is that violating the rights of a recognised state becomes wrong for another reason: not only is the relevant community disrespected by the 'mere' fact that its rights were violated but doubly so in that its reasonable expectations that those rights would be upheld were undermined.
[65] SC Res. 541, 38 SCOR at 15, UN Doc. S/RES/541 (1983)
[66] For more on the relevant legal constraints, see the following subsection.
[67] Cf. Lauterpacht, *Recognition in International Law* 12-22, 26-37
[68] The granting of recognition arguably incentivises peaceful relations by declaring the recognised entity to be a beneficiary of international legal protections, which may make its government more amenable to law abidance (Ratner, *The Thin Justice of International Law* 198-199).
[69] Hans Kelsen, 'Recognition in International Law: Theoretical Observations', (1941) 35 AJIL 605
[70] Wesley Newcomb Hohfeld, Some Fundamental Conceptions as Applied in Judicial Reasoning' (1913) 23 Yale LJ 16, 32

having a *duty*, rather than a *liberty*, to interact on particular terms (beyond those mandated by relative political independence, territorial integrity, and so on) would limit the *recognising* state's capacity to develop a distinct approach to international relations: something that helps shape its own political character, thereby providing a focus for the activity of its population.

Consider the somewhat analogous case of inter-personal friendship. Friendship exists where a mutual and uncoerced inter-personal association routinely motivates individuals to supererogate what they owe to each other simply in virtue of their shared humanity.[71] Conversely, a friendship would be impoverished if the behaviour it involved was primarily motivated by a purely impersonal sense of duty. The position is similar in the case of international recognition, even though the normative relationship is characteristically thinner than those that characteristically exist between friends. Recognition does not necessitate entering into any further relations, for instance via bilateral treaty, but it *does* signify the beginnings of formal discourse through the exchange of embassies or other diplomatic officials. This exercise identifies its recipients as worthy of closer association, thereby expressing something about what the *recognising* community values in 'outsiders', which is itself an important element of its political 'ethos', as it were.[72] In this way the recognition of a foreign state can create a focus for a unique area of domestic political activity in the community that grants recognition.[73]

3.3 Valuable Politics and the Duty of Non-Recognition

Ethically valuable politics also suggests that the aforementioned legal liberty should have its limits. Given the apparent potency of recognition, accepting the statehood of an entity governed so as to forestall or destroy the political capacities of its own population would undermine the relevant moral values. Thankfully, contemporary international law supports an *erga omnes* duty not to recognise entities of this kind,[74]

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[71] John Finnis, *Natural Law and Natural Rights* (OUP 2011) 141-143

[72] If there was a duty to recognise the issue would be whether the recognising community complied with its international obligations or not. That is distinct from asking which other states merit more than 'baseline' association.

[73] The UK debates about the status of Palestine provide an indicative example, see: HC Deb 13 October 2014, vol 586, cols 61-131

[74] Karl Zemanek, 'New Trends in the Enforcement of *Erga Omnes* Obligations', 4 *Max Planck Yearbook of United Nations Law* (2000), 1-52; Crawford, *The Creation of States in International Law*, 158

as evidenced by past instances of collective non-recognition, including in the cases of Manchukuo, Southern Rhodesia, Namibia,[75] the Bantustans, Northern Cyprus and Kuwait.[76] As Crawford argues, this practice of coordinating a denial of recognition is 'enjoined by the status – or lack of it – of the entity in question…[but] goes beyond this in that it reinforces the legal position, and helps to prevent the consolidation of unlawful situations'.[77] This has characteristically been carried out under the auspices of the United Nations Security Council, for instance through Resolutions 217 (1965), 253 (1968), 277 (1970) in the case of Southern Rhodesia, and 541 (1983) and 550 (1984) in the case of Northern Cyprus.

Such instances of non-recognition are typically explained in terms of self-determination, or rather by the fact that, in each of the cases listed above, the principle of self-determination under international law was violated by the attempted (or alleged) secession of the relevant community.[78] Nonetheless, there is a considerable degree of fit between this claim and the motivating concerns of ethically valuable politics. First, oppressed individuals are typically excluded from using the governance institutions of the aspiring state as 'forums' for political activity. Since the barriers placed in their way may well form part of the constitution of the disenfranchising entity, any claim it makes to facilitate sufficient opportunities for political action will be presumptively weak. Second, deliberate disenfranchisement and other forms of extreme oppression disrupt existing political activity. By excluding those previously able to participate, the relevant regime knowingly or carelessly undermines the capacity that such individuals have to undertake political action. Third, individuals expelled from the aspiring state's territory will be forced to abandon their ongoing political projects, being both symbolically and physically alienated from any institutional successes to which they previously contributed. Fourth, where violent oppression of the subordinated group is particularly severe, their general capacity to engage in political projects will suffer.

[75] *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion,* ICJ Rep. 1971 (21 June), p.6, paras.122-127
[76] Crawford, *The Creation of States in International Law* 159
[77] Ibid.
[78] As Crawford puts it, 'where a particular people has a right of self-determination in respect of a territory, no government will be recognized which comes into existence and seeks to control that territory as a State in violation of self-determination' (Ibid. at 131)

Unlawfully granting recognition to seceding entities that behave in this manner would undermine ethically valuable politics by offering international acceptance to regimes that crush the potential for such activity to be undertaken. For example, any recognition of the entity sometimes called 'Daesh' would lend support – and symbolically legitimise – a regime that systematically dispossesses, oppresses, and murders those over whom it exerts control.[79] Such considerations do not morally obligate states to *completely* shun entities like Daesh – international stability may justify *ad hoc* legally regulated interactions with them – however, they weigh heavily against the sort of formalised, ongoing relations implied by recognition.

It bodes well for the instrumental argument from ethically valuable politics that it lends justificatory weight to this duty: not only does its ability to explain the normative foundations of this international legal principle reflect well in terms of fit, but the practical implications of that justification in this context have independent normative appeal. When combined with its capacity to locate the instrumental benefits of recognition *as such*, together with the illumination it brings to the legal liberty that established states enjoy to withhold recognition, this makes it a *prima facie* convincing moral defence for the influence that recognition apparently exercises over circumstances of attempted secession.

4. Conclusion

This chapter began by noting the strong positive correlation between successful attempts at secession and those movements that received international recognition. On the assumption that this correlation evidences some kind of influence on the part of recognition decisions over the emergence or non-emergence of new states, it then asked whether that influence could be morally justified. To that end I examined three putative justifications, based respectively upon the values of democracy, distributive justice, and stability in international relations. Having rejected all three I turned to an alternative: that the apparent potency of recognition might be justified by its facilitation of ethically valuable political action. Arguing that this defence of our current recognition

[79] Karim Asad Ahmad Khan, 'Letter dated 15 November 2018 from the Special Adviser and Head of the United Nations Investigative Team to Promote Accountability for Crimes Committed by Da'esh/Islamic State in Iraq and the Levant addressed to the President of the Security Council', 16 November 2018, UN Doc. S/2018/1031.

practices was by far the most promising, I suggested that not only did it illuminate the benefits of recognition as such, but also both the liberty established states have *not* to recognise nascent communities, as well as their collective duties of non-recognition.

It is my hope that this initial analysis of an important but under-theorised issue presented the instrumental argument from ethically valuable politics in an appealing manner. However, care must be taken not to overstate the normative force of my conclusions. Nothing I have argued here implies that our current practices of recognition are always morally acceptable. Perhaps international relations really would be more just if established states refused to recognise nascent communities that did not take serious steps towards implementing democratic governance. Maybe stability and legitimacy would be served if there was – as Lauterpacht once argued – a binding duty to recognise seceding entities that satisfied particular legal standards.[80] However, such laudable aspirations for law reform should not blind us to whatever moral value might be instantiated by international relations and the international legal system as they currently exist. Acknowledging the merits of what we already possess in no way commits us to uncritically maintaining the status quo.

With this in mind, to what extent does the instrumental argument from ethically valuable politics *ultimately* justify the apparent potency of international recognition? How much moral weight should be attached to the mere fact of foreign recognition, even assuming that everything I have said here in its favour is true? Sometimes *both* international stability and ethically valuable politics will be promoted by particular acts of recognition. In such circumstances, at least when the positive influence of recognition can be clearly identified, the recognising state may legitimately expect its acknowledgement of successful secession to be treated with considerable respect. But even when stability is not in play, ethically valuable politics provides a *presumptive* case for treating recognition as more than morally inert. When one state extends recognition to another, a new mutual tradition is created within international relations: one around which innumerable individual acts with political and ethical significance may cluster. Even though this is not enough to proclaim upon the once and for all, and

[80] Lauterpacht, *Recognition in International Law* 12-22, 26-37

all-things-considered, justifiability of the influence that such acts seem to enjoy, it is surely enough for us not to dismiss their value out of hand.