

**Recognizing Fact from Fiction: A Social Critique of Premature Recognition in
Libya**

by

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Abstract:

Lassa Oppenheim tells us that states and governments become International Persons through recognition only, and exclusively. According to this legally constitutive doctrine, the recognition of governments operates in an intricate system between established states and recipient political entities. In these circumstances existing governments have the power to create international personality and, as a result, yield a high degree of influence and coercion over nascent recipient regimes. It is not surprising, therefore, that countries have repeatedly sought to withhold the recognition of certain governments, or prematurely recognize others, as a means of influencing a recipient regime's survival or policies. These arguments and practices have been problematic, however, because they treat recognition solely as an act of political or legal coercion, which presumes that recipient regimes may value recognition more than their own contentious domestic or foreign policies. Moreover, viewing recognition solely as an act between states, between governments, and between political entities, obscures the fact that recognition may also be a "social act" whose consequences may extend far beyond a state's governing apparatus, and into its civil society. Using France's 2011 recognition of the Libyan rebels as a theoretical test case, this paper analyzes the impact of recognition beyond the legal and into the social realm. In this respect, recognition is treated not simply as a constitutive act of legal rights and duties, but additionally as a symbolic endorsement by one state towards the citizens of another, on the question of the legitimacy of their government. Beginning with a critique of legal recognition's constitutive impact, and ending with an alternative view of recognition as a social phenomena, this paper asks two central questions: a) Under what circumstances can we expect external recognition to impact a population's conception of legitimate governance, and b) under what conditions will this impact benefit the goals of the donor and recipient entities?

Table of contents:

Abstract:	ii
Table of contents:	iii
Acknowledgement:	iv
Dedication:	v
Introduction:	1
Recognition as a legal phenomena:	4
Political uses of recognition:	8
United States policy of constitutive recognition:	10
Non-recognition of the Bolshevik government of Russia:	12
Non-recognition of the People's Republic of China:	15
Collective non-recognition of Ian Smith's Rhodesia:	20
Recognition as a "social act":	24
A crisis in legitimacy:	27
Attitudinal and behavioural shifts:	29
Libya as a tribal society:	34
Recognition as reflexivity:	36
Critiquing the socially constitutive school:	38
Conclusion:	41
References:	43

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Dedication:

For my parents, David and Claire, whose mention here is but a small token of the debt of gratitude which is truly owed.

Introduction:

Whether governments should be recognized on the basis of their moral legitimacy or simply their factual existence is a dispute akin to that between “those who imagine the world to suit their policy, and those who arrange their policy to suit the realities of the world.”¹ While this debate is certainly a normative dispute over how recognition ‘should’ work, it is, importantly, also a utilitarian debate over how recognition ‘can’ work. Those who argue, in the tradition of philosophical idealism, that recognition is a ‘moral act’, do so on the basis of both normative and utilitarian arguments.² In the normative sense, there is a moral duty to recognize certain governments over others, and additionally, in the utilitarian sense, there are legal and practical consequences which are believed to flow from such actions.³

It is on the basis of such utilitarian arguments that the withholding or granting of recognition according to moral criteria is believed to be an effective way of inducing just behaviour and moral progress within deviant regimes.⁴ However, in making such claims, political actors and philosophers alike rely on a false assumption that established and aspiring governments will prefer recognition to their contentious domestic or foreign policies. In actuality, a litany of un-recognized, de-facto regimes have enjoyed a great deal of durability precisely because the dichotomy between international law and international politics is such that legal personality is by no means necessary for a

¹ E.H. Carr. *The Twenty Years' Crisis 1919-1939: An Introduction to the Study of International Relations*. 2nd ed. (New York: St Martin's Press, 1946) 11.

² See Allen Buchanan. *Justice, Legitimacy, and Self-Determination*. (Oxford: Oxford University Press, 2004); Thomas M. Franck. "The Emerging Right to Democratic Governance." *The American Journal of International Law* 86, no. 1 (1992): 46-91; and Peter Singer. *One World: The Ethics of Globalization*. 2nd ed. (New Haven: Yale University Press, 2004).

³ This distinction coincides with Buchanan's own dichotomy between moral recognitions 'nonconsequentialist' and 'teleological' effects. See Allen Buchanan. *op.cit.*, p.262.

⁴ Allen Buchanan. *op.cit.*, p.271.

government to factually exist or strive in the territory under its control. In the rare cases where the use of non-recognition has hastened the demise of an established regime, or where the application of recognition has hastened the growth of a nascent one, its use has paralleled that of more tangible material and coercive acts, shedding doubt on recognition's true causal impact.

Yet, the problem with treating recognition solely as an act of political or legal coercion, as the preceding arguments have, is it ignores that recognition is also a social act; the consequences of which may extend beyond a state's governing apparatus and into its civil society. Using France's premature recognition of the Libyan rebels as a theoretical test case, this paper analyzes recognition's impact beyond the political and into the social realm. In this respect, recognition is treated not simply as a constitutive act of legal rights and duties, but additionally as a symbolic endorsement by one state, toward the citizens of another, on the question of the legitimacy of their government. This paper proceeds in two parts; beginning with a critique of legal recognition's constitutive impact, and ending with an alternative view of recognition as a social phenomena. Once recognition is viewed through a socially constitutive, rather than a legally constitutive lens, the circumstances of its success differ widely from the coercive approaches outlined above. The remainder of the paper asks two central questions; a) under what circumstances can we expect external recognition to impact a population's conception of legitimate governance, and b) under what conditions will this impact benefit the goals of the donor and recipient entities.

As previously defined, the debate over recognition is as much about the role such practices 'should' play in contemporary international relations, as it is about what role

such practices 'can' play. Having accepted that recognition operates beyond the legal, and within the social realm, understanding how this will effect the latter debate is a critical inquiry of this thesis.

Recognition as a legal phenomena:

The legal concept of recognition can be traced to the emergence of mid-18th century positivism which stressed that the basis of international law derived from the common consent of states. Because the creation of new states would create new legal duties and obligations for existing states, positivism required that these entities first receive the consent and recognition of existing countries in order to be eligible for ‘international personality’.⁵ Recognition thus became the vehicle by which existing states sanctioned the creation of new states, in so far as ‘international personality’ became a necessary component of statehood. This practice was entrenched further by Article I of the *Montevideo Convention* which stipulated that in addition to possessing a permanent population, defined territory, and government, states must have a capacity to enter into relations with other states.”⁶ Political entities who lacked the recognition of their sovereign peers, invariably also lacked the ability to meet Montevideo’s final qualification of statehood. These criteria were quickly carried into the practice of government recognition as well, requiring political entities to receive the consent and recognition of existing states before they could operate as sovereign representatives in the international system.⁷

In so far as the above explanation defines ‘recognition’ as a necessary pre-condition for legal rights, duties, and statehood, it is in line with the *constitutive* doctrine of recognition theory.⁸ Adherents of this doctrine argue that aside from its constitutive characteristics in generating rights and obligations, there are no definitive rules governing

⁵ James Crawford. *The Creation of States in International Law*. 2nd ed. (Oxford: Oxford University Press, 2006) 13.

⁶ *Ibid.*, p. 46.

⁷ M.J. Peterson. *Recognition of Governments: Legal Doctrine and State Practice, 1815-1995*. (New York: St. Martin's Press, 1997) 166.

⁸ Ian Brownlie. *Principles of Public International Law*. 6th ed. (Oxford: Oxford University Press, 2003) 97.

the practice of recognition.⁹ Recognition may be accorded at the discretion of existing states and need not conform with any existing doctrine concerning ‘what a state or government is’. Constitutivists make these claims on the basis that, as Oppenheim summarized; “A state is, and becomes, an International Person through recognition only and exclusively.”¹⁰ Constitutive recognition doctrine has thus attracted much of its criticism from the fact that while it is an act which ascribes juridical personality, its implementation need not be governed by similar legal considerations. Rather, recognition acts adhering to this doctrine tend to be accorded on the basis of political interests, political ideals, and even moral concerns, often divorced from legal realities.¹¹

The rival *declaratory doctrine* emerged as an effort to de-politicize the act of recognition. Under the declaratory school, recognition is associated less with state discretion, and more with traditional legal rules governing the creation of states and governments. Recognition should therefore not be accorded on the basis of political ideals or preferences, argue declarativists, but rather on the basis of certain empirical facts conditioned by international law.¹² As a result, while constitutivists may favour recognition as a political act denoting a willingness by one actor to enter into relations with another, for declarativists, recognition is simply an acknowledgement of factual independence and existence. Naturally, critical to this distinction is how we actually evaluate when states and governments ‘factually’ exist. While recent scholarship has favoured evaluating ‘existence’ on the basis of moral and democratic criteria, judicial

⁹ James Crawford, *op.cit.*, p.18.

¹⁰ Lassa Oppenheim. *International Law: A Treatise*. Edited by Hersch Lauterpacht. 8th ed. (London: Longmans, Green and Co., 1955) 125.

¹¹ Hersch Lauterpacht. *Recognition in International Law*. (Cambridge: Cambridge University Press, 1947) 41.

¹² Thomas D Grant. *The Recognition of States*. (London: Praeger, 1999) 4.

practice remains committed to traditional notions of ‘effectiveness’.¹³ In essence, if a state or government can claim to effectively rule and administer the territory and population under its possession, then that political entity can be said to ‘exist’ according to the criteria of effective control. The declaratory doctrine of recognition thus inhabits *defactoist* tendencies because it entails recognizing whatever regime actually holds power in a given state, regardless of both how that regime gained power, and how it maintains it.¹⁴

Accordingly, political entities who fail to wield effective control over the territory they claim to represent, would similarly lack legitimate claims to recognition. In turn, recognition could not be used to pre-emptively create a state or national government where one did not currently exist, striking a major discord with constitutive doctrine.¹⁵ Declarativists believe this to be a more favourable approach governing the use of recognition because it explicitly prevents the divorcing of legal from empirical facts. As Crawford illustrated; “the question is whether the denial of recognition to an entity otherwise qualifying as a State entitles the non-recognizing State to act as if it was not a State... under international law”. As argued categorically by jurists over the last century, and as Crawford maintains, factually existing states are not exempt from their rights and duties under international law simply because they may lack recognition.¹⁶

It is at this intersection, within the constitutive and declaratory debate, that the current Libyan case is so interesting and paradoxical. When the *Transitional National*

¹³ See Allen Buchanan. *op.cit.*, p.269; and Peter Singer. *op.cit.*, p.98.

¹⁴ M.J. Peterson. *op.cit.*, p.36.

¹⁵ Henry J Richardson III. "The Obligation to Withdraw Recognition from Pretoria as the Government of South Africa." *Temple International and Comparative Law Journal* 1, no. 2 (1987): 160.

¹⁶ James Crawford. *op.cit.*, p.27.

*Council*¹⁷ was recognized as the “legitimate representative of the Libyan people” by France on March 10, they were in control of roughly half the country. Within the following week, pro-Qaddafi forces had re-captured Zawiya and the major transit city of Ras Lanuf. By March 19, Qaddafi’s forces were on the outskirts of Benghazi, the de-facto rebel capital.¹⁸ If, as declarativists argue, recognition flows from existence, and existence flows from effective control, then France’s recognition was not only *premature*, but it was also a violation of international law.¹⁹ If we accept that Sarkozy’s France was fully aware of these facts when they issued their recognition then we would have to additionally conclude that in doing so they were striving for more than what the declaratory school would allow.

In effect, France was practicing *constitutive recognition*. By recognizing the *TNC* as the “legitimate representative of the Libyan people” during an active civil war, France was predetermining not only the *TNCs* ability to factually and administratively represent Libya’s population, but they were also predetermining their domestic legitimacy for doing so.²⁰ Once we view France’s recognition as a political and not a legal act, its implementation stops being governed by legal obligations and starts being governed by the discretionary political or perhaps moral goals of the donor state.

¹⁷ The Libyan rebels have been variously referred to as the *Libyan National Council*, the *National Transition Council*, the *National Libyan Council*, and the *Transitional National Council*, all of which refer to the same political entity. Henceforth this paper will refer to the Libyan rebels as the *Transitional National Council* (TNC).

¹⁸ Steven Erlanger. "By His Own Reckoning, One Man Made Libya a French Cause." *The New York Times*, 1 April 2011.

¹⁹ Hersch Lauterpacht. "Recognition of Insurgents as a De Facto Government." *The Modern Law Review* 3, no. 1 (1939): 7.

²⁰ German Foreign Minister Guido Westerwelle echoed these concerns when in his immediate reaction to France’s recognition he declared; “I advise everyone to look very closely to see if these people who say they represent the people are really speaking in the name of the people.” see Nadege Puljak. "Sarkozy Takes Lead on Libya Despite Risk of EU Rifts." *Agence France-Presse*, 11 March 2011.

Political uses of recognition:

The political uses of recognition can manifest in three distinct types of cases; a) premature recognition of a new regime; b) prolonged nonrecognition of a new and effective regime; and c) prolonged recognition of a defunct government.²¹ While France's recognition is indicative of the first case; premature recognition of a new regime, it shares in the political nature of the other types, and their common rejection of the *defactoist* tendencies of the declaratory school.

States will engage in these political acts, according to Peterson, for primarily three reasons.²² At the most superficial and symbolic level, recognition can be used to express approval or disapproval of a regime, as was often the case during the bi-polarity of the Cold War. These acts of political recognition are akin to Buchanan's argument that states have a moral duty to express their disapproval of politically illegitimate regimes by withholding recognition. Without doing so, argues Buchanan, donor states risk becoming accomplices to the crimes of the recipient government.²³

At a more tangible level, the act of granting or withholding recognition may be used to influence a regime's policies, and more importantly, influence its survival.²⁴ Central to these more tangible goals is the notion, as expressed earlier by Oppenheim, that recognition is constitutive by virtue of empowering political entities with rights and duties previously absent. Accordingly, as a political tool, the recognition of governments operates in an intricate system between donor and recipient entities, in which donor states have the power to create international personalities, and as a result yield a high degree of

²¹ M.J. Peterson. op.cit., p.154.

²² *Ibid.*, p. 155.

²³ Allen Buchanan. op.cit., p.271.

²⁴ M.J. Peterson. op.cit., p.155.

influence over nascent recipient regimes. The crux of this power is however dependent on two circumstances which remain far from certain. First, in order for recognition to be truly constitutive in the political sense it would have to be able to not only empower regimes with legal rights and duties, but also hasten their de-facto existence. By this same token, in order to be truly constitutive, non-recognition would have to be able to not only remove an entity's legal personality, but usher in its de-facto political demise. The second circumstance of this power, which remains wedded to the first, is dependent on recipient entities actually 'wanting' recognition. It is here where Buchanan argues that a policy of recognition which places justice-based criteria ahead of effectivist principles could contribute to the moral progress of the international system.²⁵ Buchanan's argument is, however, predicated on the notion that aspirational and established governments actually value recognition higher than they value their own contentious domestic policies. Accordingly, Buchanan believes the withholding or granting of recognition on the basis of moral criteria can be an effective policy for inducing just behaviour among deviant regimes.²⁶

Yet, in reality, there is a major discrepancy between the tangible goals states try and achieve when politically issuing or withholding recognition of foreign governments, and the actual outcomes they end up receiving. As will be argued in the next portion of this paper, with reference to the constitutive practices of the U.S government, withholding recognition has been a relatively ineffective means of hastening and thereby threatening a regime's demise.

²⁵ Allen Buchanan. *op.cit.*, p.262.

²⁶ *Ibid.*, p. 271.

United States policy of constitutive recognition:

As a frequent practitioner of constitutive recognition during much of the inter-war and cold war years, the United States, and accordingly, U.S recognition policy during this period are an ideal place to begin a critique of recognition's constitutive impact, and political consequences. American adherence to constitutive doctrine was three fold. First, it was based on an inherently positivist belief that *recognition* was the subjective right of each individual state to accord as they saw fit.²⁷ The second principle, tied to the first, was that because recognition was thought to carry with it political and constitutive consequences, its use should parallel American grand strategy. Accordingly, successive American administrations refused to recognize a string of *de-facto* communist regimes from the Bolsheviks and the PRC, to the MPLA in Angola, on the basis that doing so would be contrary to the national interest. Finally, U.S recognition policy during this period repeatedly sought to replace the 'test' of effectiveness, with one of constitutionality²⁸ and democratic legitimacy.²⁹

In the following section I will analyze two of these cases in detail, the United States prolonged non-recognition of the Bolshevik Government of Russia, and their prolonged non-recognition of the People's Republic of China.³⁰ In both of these cases, non-recognition not only failed to undermine the survival of these regimes, but the United

²⁷ Vernon A. O'Rourke. "Recognition of Belligerency and the Spanish War." *The American Journal of International Law* 31, no. 3 (1937): 401.

²⁸ This policy began with President Woodrow Wilson who sought to withhold recognition of Victoriano Huerta's revolutionary government in Mexico on the grounds that because Huerta seized power through a military coup, his government lacked both constitutional and moral legitimacy. See Peter V.N. Henderson. "Woodrow Wilson, Victoriano Huerta, and the Recognition Issue in Mexico." *The Americas* 41, no. 2 (1984): 158. Huerta's regime eventually collapsed in 1914, but only after the U.S supplemented their policy of non-recognition with military action. See *Ibid.*, p. 175.

²⁹ Hersch Lauterpacht (1947). *op.cit.*, p.128.

³⁰ When referencing the *People's Republic of China* I am explicitly referring to the government recognition of the communist regime, not the state recognition of the territory of China.

States eventually abandoned their constitutive approach and recognized both governments. Finally, a third case, the collective non-recognition of Rhodesia will be analyzed to anticipate flaws in the previous examples. While Ian Smith's government in Rhodesia remained un-recognized for over a decade, his white-minority regime eventually collapsed, somewhat vindicating Buchanan's teleological argument.

Non-recognition of the Bolshevik government of Russia:

Following the October revolution, and the collapse of the Tsarist regime, the Bolsheviks who replaced them faced a prolonged period of international non-recognition. By 1923, six years after seizing power in Russia, and a year after the formation of the Soviet Union, the Bolshevik government had received the recognition of just seventeen states. Notably absent from this group was the United States, who held out recognition of the Soviet government until November 1933, sixteen years after the dissolution of Tsarist Russia.³¹ That the U.S.'s policy of prolonged non-recognition toward the Soviet government was an act of *constitutive recognition* is demonstrated clearly by both the fact that the Soviet government had adequately met the test of 'effective control', and further, that the U.S had no intention of disputing this claim. Rather, the American decision to deny recognition was, in the words of the U.S State Department, "not based on the ground that the regime does not exercise control and authority in territory of the former Russian Empire, but on other facts."³² These 'other facts' according to Lauterpacht flowed from two objections. The first U.S objection³³ was that the Soviet government appeared unwilling to fulfil the international obligations, treaties, and commitments of the Tsarist government.³⁴ The second objection, much like Wilson's non-recognition of Huerta in 1913, was the American argument that the Soviet government denied the self-determination of its people in violation of democratic principles.³⁵ Having established that the American policy of Soviet non-recognition

³¹ Stefan Talmon. *Recognition of Governments in International Law*. (Oxford: Oxford University Press, 1998) 35.

³² *Ibid.*, p. 36.

³³ Lauterpacht criticized the political nature of this objection on the basis that it opened the door for recognition's use as a means of exacting promises and treaty concessions. See Hersch Lauterpacht (1947). *op.cit.*, p.112.

³⁴ *Ibid.*, p. 110.

³⁵ *Ibid.*, p. 130.

derived more from political motives and rationales than specific legal questions of existence, it is a useful test case for critiquing the political consequences, and constitutive value of recognition and non-recognition.

In *Salimoff v. Standard Oil*, Russian nationals attempted to reclaim previously nationalized assets on the grounds that because the Soviet regime was not recognized by the U.S, it could not constitute a government in the legal sense. Accordingly, the plaintiffs argued that on the basis of this non-recognition, the Soviet governments nationalization of oil lands could emphatically be described as an illegal robbery, not the act of a functional sovereign. Despite the logical consistency of this argument, U.S courts argued that while the Soviet government remained legally unrecognized, its de-facto political existence could not be ignored. The plaintiffs were accordingly denied their claim of illegal seizure, illustrating vividly the loggerhead between *political uses of recognition* and questions of *de-facto existence*.³⁶ What *Salimoff v. Standard Oil* ultimately illustrates is the degree to which the discretionary state power to ‘create’ or ‘deny’ international personality, can be checked and undermined by the *declaratory preferences* of judicial practice. U.S Supreme Court Justice William Taft observed as much in the *Tinoco Concessions Arbitration* when he argued that “when recognition *vel non* of a government is by such nations determined by inquiry, not into its *de facto* sovereignty and complete governmental control, but into its illegitimacy or irregularity of origin, their non-recognition loses something of evidential weight.”³⁷ Beyond questions of ‘international personality’ the Soviet case also speaks to the political resiliency, and durability of un-recognized governments, and the political significance of ‘effective

³⁶ See *Salimoff & Co. v. Standard Oil Company of New York*, (1933).

³⁷ Ian Brownlie. *op.cit.*, p.87.

control'. This is no more evident then in Peterson's conclusion that the eventual decision by the United States and its allies to accord recognition to the Soviet regime was primarily driven by the simple impracticality of ignoring such a large, powerful, and economically viable government.³⁸

³⁸ M.J. Peterson. *op.cit.*, p.80.

Non-recognition of the People's Republic of China:

Much like the Bolshevik's in Russia, the communist regime which ruled Mainland China after its 1949 victory over nationalists in the Chinese civil war faced a prolonged period of non-recognition. In this civil war, communist forces under Mao Zedong were successfully able to rout the established *Republic of China* government from the Chinese Mainland, and isolate it to the island of Taiwan. Despite this obvious exercise in effective control over Mainland China, an area of territory comprising 98% of China's population, and the founding of the *People's Republic of China* in October 1949, the exiled *ROC* government continued to claim *de jure* title over not only Taiwan, but mainland China as well.³⁹

Whereas the Tsarist regime quickly dissolved and failed to resurface in the Russian case, the *ROC's* ability to relocate and maintain control over a small, but isolated portion of historic China provided their regime with a platform for launching a sustained recognition contest against the *PRC*. It is in this context that the United States declined recognition of the nascent but effective Communist regime on China's mainland, in favour of the near-defunct Nationalist government in Taiwan.⁴⁰ Paralleling earlier recognition policies towards Huerta and the Soviet Union, the U.S's non-recognition of the *PRC* certainly found precedent in the American belief that revolutionary regimes who fail the test of constitutional and democratic legitimacy should not be accorded the

³⁹ See Brad R. Roth. *Governmental Illegitimacy in International Law*. (Oxford: Oxford University Press, 1999) 261; Robert A. Madsen. "The Struggle for Sovereignty between China and Taiwan." In *Problematic Sovereignty: Contested Rules and Political Possibilities*, edited by Stephen D. Krasner. (New York: Columbia University Press, 2001) 141; and Pamela P. Price. "The Impact of Constitutive Recognition on the Right to Self-Determination: An Analysis of United States Recognition Practices Utilizing the Chinese Question as a Guide." *Valparaiso University Law Review* 14 (1979): 150.

⁴⁰ Pamela P. Price. *op.cit.*, p.149.

affirmation and support of American recognition.⁴¹ More significant however, was the role that cold war geopolitics played in China's early recognition contest. It was, as exemplified in numerous U.S declarations during this period, not just the circumstances of its origins, but also its communist ideology, which led the United States into a prolonged period of non-recognition toward the PRC.⁴² Writing in 1955, U.S Secretary of State John Foster Dulles reflected the American *constitutive* approach when he argued that recognizing China's communist regime would provide its government with tangible benefits tantamount to facilitating the spread of communism itself. Dulles further elaborated that to deny "recognition on the other hand is a positive handicap to the regime affected and one which makes it that much the more difficult for it to pursue its foreign policies with success."⁴³ In accordance with this policy the United States and a large number of other Western governments became vigorous champions of the ROC,⁴⁴ not only recognizing the stagnant Nationalist Government in Taiwan, but also providing it with extensive financial and military support.⁴⁵

As a result, twenty two years of intractability passed in the United Nations before the General Assembly was able to reach the two-thirds majority vote necessary to grant China's representative UN seat to the PRC in 1971.⁴⁶ It would take another seven years

⁴¹ *Ibid.*, p. 125.

⁴² In a U.S state department note sent to all American diplomatic and consular posts on 11 August 1958, the U.S advised that; "Recognition by a leading free world nation would therefore be interpreted as an important victory for the Chinese Communists, as a sign of free world reluctance to stand up to Communist pressures, and as damaging evidence of a serious difference of opinion within the free world concerning the problem of how to deal with the expansionist forces of international Communism." See *Foreign Relations of the United States, 1958-1960. China*. Edited by Harriet Dashiell Schwar and Glenn W. LaFantasie. Vol. XIX. (Washington: United States Government Printing Office, 1995) 49.

⁴³ Pamela P. Price. op.cit., p.149.

⁴⁴ These included the Australians, Canadians, French, and West Germans, who continued recognizing the ROC as government of China for anywhere between ten and thirty years after the Chinese Civil War. See M.J. Peterson. op.cit., p.158.

⁴⁵ Pamela P. Price. op.cit., p.125.

⁴⁶ Brad R. Roth. op.cit., p.263.

until U.S President Jimmy Carter formally extended *de jure* recognition to the PRC on 15 December 1978.⁴⁷ Because the continued existence of an effective Nationalist government in Taiwan remained the primary wedge to resolving China's recognition contest, it is here where we should turn to judge the constitutive and political effects of American recognition and non-recognition policy during this period.

Madsen and Price concurrently argue that prolonged recognition of the *ROC* between 1949 and the mid-1970s provided the nationalist regime in Taiwan with an invaluable source of external legitimacy. The *ROC*, whose ruling elites were mainlanders with little direct connection to the island of Taiwan, and no electoral mandate justifying their control of the island, lacked traditional legitimacy claims to governance.⁴⁸ Price's thesis on the interrelationship between self-determination and the international law of recognition takes this argument a step further in her claim that prolonged recognition of the *ROC* directly compromised native Taiwanese efforts at self-government.⁴⁹

These arguments would suggest that recognition was at once constitutive in so far as it provided the 'external legitimacy' necessary to maintain the existence of an otherwise foreign regime in Taiwan. At the same time however it is necessary to note that while recognition provided the Nationalists' in Taiwan with some semblance of legitimacy, their survival as a regime was also heavily predicated on external military and financial support. Beginning as early as 1949, the *PRC* began assembling an amphibious force capable of crossing the Taiwan strait and unseating the *ROC* regime.⁵⁰ President Truman, who was heavily influenced by events in the Korean peninsula, interpreted

⁴⁷ Pamela P. Price. *op.cit.*, p.123.

⁴⁸ Robert A. Madsen. *op.cit.*, p.149.

⁴⁹ Pamela P. Price. *op.cit.*, p.125.

⁵⁰ Robert A. Madsen. *op.cit.*, p.148.

Peking's gestures towards Taiwan not as a policy of national unification, but as one of communist expansion.⁵¹ Accordingly, on 27 June 1950 the United States dispatched its Seventh fleet to the Formosa Strait in a bid to prevent a communist invasion of Taiwan, and the toppling of its nationalist government.⁵² Crucially, Truman made no effort to justify this intervention within the context of American recognition policy. While the United States could have claimed to have been responding to requests for help from 'the legitimate government of China', these arguments never figured into American justifications.⁵³ The simple explanation for this oversight is that while recognition can be used as a pretext for military support, military support need not follow diplomatic recognition, as the Libyan case illustrates well.⁵⁴ It would be difficult, then, to try and claim that U.S military assistance during this period could not have happened without recognition, and thereby claim that recognition was a crucial component of the *ROC*'s survival in Taiwan. The counterfactual test would be to imagine if the *ROC* could have survived as a regime had it maintained the prolonged recognition of its Western peers, while lacking their financial and military support. It is likely, given the PRC's fervent desire for national unification, that they wouldn't have.

Finally, there is the question of how prolonged non-recognition impacted the *PRCs* own survival. The cold war certainly mitigated some of non-recognition's effects in so far as Communist China was able to offset its own isolation in the West with

⁵¹ Jerome Alan Cohen. "Recognizing China." *Foreign Affairs* 50, no. 1 (1971): 35.

⁵² Robert A. Madsen. op.cit., p.148.

⁵³ Jerome Alan Cohen. op.cit., p.36.

⁵⁴ Consider that at the time of UNSC Resolution 1970, and the beginning of NATO's military action over Libya, France had been the only country to formally recognize the TNC. UNSC Resolution 1970's ability to proceed without substantive collective recognition hardly gives off an impression that recognition is necessary to precede aid of a rebel group.

financial and military support from the East.⁵⁵ In the traditional *declarativists* argument however, Western governments who sought to isolate China quickly realized, as they had previously with the Soviet Union, that as a governing regime, the PRC was simply too effective to ignore. Dulles admitted as much, saying “There is no doubt we recognize Communist China as a fact, as we deal with Communist China. Indeed, I suspect that the United States has had more continuous serious dealings with Communist China than any other free-world country over the last 10 years.”⁵⁶ While this statement certainly contradicted formal U.S policy of the day, it reflects the common extent to which politically motivated acts of recognition are often compelled to yield to the de-facto reality of undesirable regimes.

From Communist China’s own perspective, by the time President Nixon and Henry Kissinger began a process of normalization in the early 1970s, the PRC appeared ambivalent toward the notion of its own recognition. Speaking before visiting American graduate students in 1971, Premier Chou En-Lai stressed that normalization between the PRC and the United States would have to be preceded by not only a resolution to the Taiwan problem, but also a withdrawal of all U.S military forces from Indochina.⁵⁷ Chou En-Lai’s willingness to stress demands, and bargain with his own government’s recognition certainly undermines both the notion that recognition is fully constitutive, and further, that as a result of its constitutive characteristics, it is widely coveted by political actors.

⁵⁵ Robert A. Madsen. op.cit., p.151.

⁵⁶ Pamela P. Price. op.cit., p.148.

⁵⁷ Jerome Alan Cohen. op.cit., p.30.

Collective non-recognition of Ian Smith's Rhodesia:

The final case study in this review concerns the collective and prolonged non-recognition of the white minority government of Rhodesia, which extended from its unilateral declaration of independence in 1965,⁵⁸ to its ultimate collapse in 1980. The Rhodesian recognition case is an ideal compliment to our earlier examples because it both reflects the durability of long unrecognized regimes, while showing that recognition can take its toll on a government when issued with collective and universal force.

Unlike the Soviet Union,⁵⁹ and the People's Republic of China,⁶⁰ which enjoyed at least some form of *de jure* recognition by a select cadre of allies, Ian Smith's government in Rhodesia went universally unrecognized for the entire duration of its existence.⁶¹ This was precipitated in large part by United Nations Security Council Resolution 277 which, in 1970, called on all member states to deny the international personality of, what the resolution termed, the "illegal regime of Southern Rhodesia."⁶² As a result, while practices of non-recognition in the Soviet and Chinese cases were issued unilaterally by individual regimes, for individual subjective reasons, the Rhodesian case represented an act of universal and collective will on the part of the international community.⁶³

Accordingly, if a central critique of the earlier cases is that individual recognition is not nearly as effective as its collective counterpart, the Rhodesian case is meant in part, to

⁵⁸ While Rhodesia's declaration of independence in 1965 concerned both the creation of a new state, and a new government, the case of its prolonged non-recognition has dealt solely with the illegitimacy of the latter. It was not the creation of a Rhodesian state which was at issue, but rather the ruling apparatus of that state. See Brad R. Roth. *op.cit.*, p.239.

⁵⁹ Recall, by 1923 the Soviet Union had received the recognition of seventeen states.

⁶⁰ Despite American reservations, Canada recognized the PRC in 1970, eight years earlier than the United States. See John English. *Just Watch Me: The Life of Pierre Elliot Trudeau, 1968-2000*. (Toronto: Vintage Canada, 2009) 164.

⁶¹ Yael Ronen. *Transition from Illegal Regimes under International Law*. (Cambridge: Cambridge University Press, 2011) 30.

⁶² Brad R. Roth. *op.cit.*, p.239.

⁶³ Such was the strength of this collective will that even Apartheid South Africa, Rhodesia's comparative equivalent, failed to recognize Smith's regime. See Yael Ronen. *op.cit.*, p.30.

reflect on these concerns.

The collective non-recognition of Rhodesia is also unique for giving universal character to the constitutional legitimacy arguments advocated by President Wilson half a century earlier. When UNSC Resolution 277 labelled Southern Rhodesia an “illegal regime”, this did not stem from a belief that Smith’s government lacked effective control over the territory of Southern Rhodesia,⁶⁴ but rather that the political character of his regime lacked ‘moral legitimacy’.⁶⁵ As Cummings described, the question of Rhodesia’s recognition ultimately hinged on whether the international system was willing to accept, and admit a racist, colonial regime, as a sovereign equal.⁶⁶

In taking stock of the political ramifications of Rhodesia’s non-recognition, the eventual disintegration of Smith’s regime in the late 1970s would certainly indicate that non-recognition took its toll on the regime’s strength and survival. Recall that in Crawford’s own critique of constitutive recognition he argued that ‘factually existing’ political entities still have basic rights and duties under international law, absent recognition.⁶⁷ In the Rhodesian case, however, collective non-recognition on the part of the United Nations and its member states, was specifically relied on to deny Smith’s regime any semblance of international legal protection. When Rhodesia responded to incursions into its territory from Zimbabwean rebels, with cross-border raids into neighbouring Angola, Mozambique, and Zambia, it was condemned by the UNSC for

⁶⁴ In 1968, in an effort to sustain what it considered to be its continued de jure title over Southern Rhodesia, the British crown commuted the death sentences of five black Rhodesians. Rhodesian courts ignored the request claiming that Smith’s unilateral declaration of independence, and the effective control of his government, provided the regime and its courts with the legal right to administer its own laws. The five defendants were summarily executed. See Richard M. Cummings. "The Rhodesian Unilateral Declaration of Independence and the Position of the International Community." *New York University Journal of International Law and Politics* 6, no. 1 (1973): 63.

⁶⁵ Allen Buchanan. op.cit., p.265.

⁶⁶ Richard M. Cummings. op.cit., p.58.

⁶⁷ James Crawford. op.cit., p.27.

flagrant violations of sovereignty and territorial integrity. Critical here was the UNSC's claim, not simply that Rhodesia's response was beyond the bounds of legitimate self defence, but further, that as an entity, Rhodesia lacked the standing to even assert such a sovereign right of self defence in the first place. The UNSC resolution went on to commend Zimbabwean rebels for their just and legitimate struggle.⁶⁸

This is important to note because of the nature of Rhodesia's demise. Ian Smith ultimately acquiesced to international and domestic pressure when he allowed for free and fair elections in 1980. These elections ushered Robert Mugabe into the Presidency, ending the Rhodesian regime and paving the way for its successors international recognition.⁶⁹ Whether Smith's willingness to reform in the late 1970s was based on the tenacity of Zimbabwe's rebel fighters, the economic costs of successive UN sanctions, or the illegitimacy of collective non-recognition is less easy to determine. What is clear however, is that the collective nature of Rhodesia's non-recognition prevented the type of recognition contests implicit in the earlier Soviet and China cases.

Politically motivated unilateral acts of recognition must contend with the illogical fact that a government can at once be both recognized and un-recognized. Such unilateral action, when met with divergent practices from other states essentially creates governments that are both 'international persons' and 'outlaw regimes'. Thus, as a function of conferring factual existence, it is not difficult to imagine how constitutive recognition may lose much of its effect when conferred in a unilateral, ad hoc, and contradictory matter. Such was not the case in Rhodesia, where the United Nations after having denied Rhodesia's international personality in collective fashion, felt compelled to

⁶⁸ Brad R. Roth. *op.cit.*, p.241.

⁶⁹ *Ibid.*, p. 242.

follow suit and deny it any and all international legal recourse.⁷⁰

⁷⁰ As a companion case, consider the Arab worlds non-recognition of the State of Israel after 1948. While Arab states may have denied Israel's international personality in a largely unilateral, and regional action, the United Nations, as the international systems security arbiter was never prepared to argue that such non-recognition denied Israel a right to self-defence and territorial integrity, as was done in the Rhodesian case.

Recognition as a “social act”:

Taken together, the Russian, Chinese, and Rhodesian cases suggest that in order for recognition to be constitutive when it should be declaratory, to create fact from fiction, or to likewise, turn fact into fiction, it must be collectively applied. If such collective action is not possible, or is not pursued, then those applying unilateral and political acts of recognition must be willing to supplement their aspirational goals with profound material acts. Witness Kuwait, a country which after being swallowed whole by Saddam Hussein’s army, and annexed under Iraqi law, no longer existed in the ‘effectivist’ and ‘declaratory’ sense of the word.⁷¹ Nonetheless, the international community maintained their de jure recognition of Kuwait, eventually restoring its sovereignty through a collective use of force.⁷² Similar examples can be found in President Wilson’s non-recognition in 1913 of Huerta’s revolutionary government in Mexico, and Prime Minister Churchill’s recognition in 1940 of Charles de Gaulle as “leader of all free Frenchmen, wherever they may be, who rally to you in support of the Allied Cause.”⁷³ Huerta’s regime only fell after the United States supplemented its policy of non-recognition with direct military action in 1914,⁷⁴ whereas de Gaulle’s government in exile only returned to France after the allied invasion of 1944.

Finally, consider a counterfactual scenario in Libya whereby France continued its premature recognition of the *TNC*, but never elevated its commitment to a plea for the use of force at the United Nations. Assuming Qaddafi’s forces were victorious in re-capturing

⁷¹ Third party states have an obligation not to recognize the sovereign consequences of a breach of peremptory norms of international law. Iraq’s annexation of Kuwait was framed as such, allowing the international community to continue treating Kuwait as though it were an effective state. See James Crawford, *op.cit.*, p.105.

⁷² William Thomas Worster. "Law, Politics, and the Conception of the State in State Recognition Theory." *Boston University International Law Journal* 27 (2009): 134.

⁷³ René Cassin. "Vichy or Free France?" *Foreign Affairs* 20, no. 1 (1941): 103.

⁷⁴ Peter V.N. Henderson. *op.cit.*, p.175.

Benghazi, which is more than likely, France's premature recognition of the *TNC* would have become nothing more than a historical curiosity, joining the ranks of those countries who recognized the brief existence of the now defunct state of Biafra.⁷⁵ What if any value then, does premature recognition or non-recognition have as an instrument of statecraft if its legal impact is predicated on the deployment of concrete material acts? This is especially relevant in reference to the Libyan case if we consider that although recognition of the *TNC* could have been used as justification for NATO's military intervention, such justifications were not legally necessary, nor were they relied upon.

In the remainder of this paper, with reference to France's premature recognition of the *TNC*, I suggest that where recognition is understood merely as an act of legal constitution, it would be correct to view it as a relatively limited act of statecraft. However, when recognition is understood as a social act, whose tangible impact contributes less to the allocation of international rights and duties, and more to a discourse of contested legitimacy and external validity, its impact can be profound. Whereas legal recognition is targeted toward established and aspiring regimes, social recognition targets the civilians within these regimes by making external claims on a political entity's legitimate right to govern. While the term "legal" and "social recognition" may suggest the occurrence of two entirely different diplomatic acts, I am instead referring to two different ways of interpreting the effect of a single act: government recognition. Libya's civil war, which has been defined by a breakdown in the monopoly over the use of force, a fragmentation of space, and a crisis in regime legitimacy presents itself as a unique case for understanding this dichotomy. Whereas

⁷⁵ Five countries recognized the state of Biafra during its brief moment of existence between 1967 and 1970; Tanzania, Zambia, Ivory Coast, Gabon, and Haiti. See James Crawford. *op.cit.*, p.406.

both Russia and China's recognition contests played themselves out in post-conflict scenarios with clearly defined victors, France's recognition occurred during a period of significant political and territorial contestation in Libya.

A crisis in legitimacy:

By their very nature, civil wars are defined by a breakdown in the monopoly over the use of force, a fragmentation of space, and a crisis in regime legitimacy.⁷⁶ Various political actors exist, but none, whether they are the established government or rebellious factions, can claim to effectively control the full territorial boundaries or population of the state in question.⁷⁷ The use of force is a critical component of such intrastate conflicts, but so too are the attitudes and behaviours of the countries' civilian population, whose alienation from, and rejection of the established government often serves as the initial catalyst for civil conflict.⁷⁸ Such was the case with Libya's civil war, which began on a February 17 'day of rage', in a public display of disapproval for Qaddafi's regime.⁷⁹ The ability of political actors to control and influence the 'attitudinal shifts' of the population they wish to govern thus becomes an important component for victory, alongside hard territory and military gains.⁸⁰

Kalyvas reflected on the strategic weight of these attitudinal shifts in his observation over the contested use of the term 'civil war' during intrastate conflicts. According to Kalyvas, incumbent governments, preferring to maintain their own political supremacy and legitimacy will avoid use of the term 'civil war' in favour of framing their opponents struggle as acts of 'terrorism' or 'criminality'.⁸¹ Qaddafi repeatedly employed

⁷⁶ Christian Reus-Smit provides a concise definition of such a legitimacy crisis: "I suggest that an actor or an institution can be said to experience a crisis of legitimacy when the level of social recognition that its identity, interests, practices, norms, or procedures are rightful declines to the point where the actor or institution must either adapt (by reconstituting the social bases of its legitimacy, or by investing more heavily in material practices of coercion or bribery) or face disempowerment". See Christian Reus-Smit. "International Crises of Legitimacy." *International Politics* 44 (2007): 158.

⁷⁷ Stathis N. Kalyvas. *The Logic of Violence in Civil War*. (Cambridge: Cambridge University Press, 2006) 88.

⁷⁸ *Ibid.*, p. 92.

⁷⁹ Frederic Wehrey. "Libya's Terra Incognita: Who and What Will Follow Qaddafi?" In *The New Arab Revolt*. (New York: Council on Foreign Relations, 2011) 255.

⁸⁰ Stathis N. Kalyvas. *op.cit.*, p.94.

⁸¹ *Ibid.*, p. 17.

such tactics after February 17, referring to his opponents as “rats” and “hirelings” under the control of foreign intelligence services and al Qaeda.⁸² Likewise, insurgents who seek to position themselves and their struggle as a political alternative to the ruling regime tend to embrace the civil war narrative, and the legitimizing effects which are sought to flow from it.⁸³ Thus, if civil wars are as much internal military conflicts as they are legitimacy contests between rival political factions, then unilateral recognition could have political merit if it can be found to hasten attitudinal shifts among a territory’s civilian population.⁸⁴ Critical here is understanding what factors cause civilians to shift allegiances between rival factions, and moreover, what non-legal, and non-political, but social ramifications may follow constitutive recognition.

⁸² See Muammar al-Qaddafi. "Excerpts from Libyan Leader Muammar Al-Qaddafi's Televised Address." In *The New Arab Revolt*. (New York: Council on Foreign Relations, 2011) 414; and David D Kirkpatrick. "A Libyan Leader at War with Rebels, and Reality." *The New York Times*, 6 March 2011.

⁸³ Stathis N. Kalyvas. *op.cit.*, p.17.

⁸⁴ As suggested by the thesis on ‘popular support’.

Attitudinal and behavioural shifts:

At the most elementary level, civilians are driven to support certain domestic political entities over others because of either an inherent belief in the legitimacy of a given entity, or alternatively, because they were coerced into doing so. In between these poles lies a litany of micro motivators which range from economic to emotional incentives.⁸⁵ As a motivating factor, coercion is fairly easy to explain. Governments and rebel movements alike may often rely on the use of force against civilians, or the threat of force, in order to achieve their compliance and support in the form of civilian goods, acquiescence and intelligence. Support through coercion is not necessarily designed to effect the attitudes of a civilian population, but merely its behaviour, which in the end is the desired result.⁸⁶

Legitimacy as a motivating factor is less easy to explain, and it is here where the act of international recognition may be most palpable. Taken further then the act of coercion, the power of legitimacy is designed to impact the behaviour of a civilian population by influencing the very attitudes and opinions of civilians themselves. Forceful acts of coercion are not necessary in these situations as civilians choose to voluntarily support a rebel movement or incumbent government based on their own subjective conception of that entity's legitimate right to rule.⁸⁷ These observations on the power of legitimacy are in line with the basic tenets of constructivist social theory which stresses that individuals will behave toward political entities on the basis of the meanings

⁸⁵ Stathis N. Kalyvas. op.cit., p.98.

⁸⁶ *Ibid.*, p. 94.

⁸⁷ Thomas M. Franck. *The Power of Legitimacy among Nations*. (Oxford: Oxford University Press, 1990) 16.

they apply to such actors.⁸⁸

Thus far, recognition has been approached according to its legal, and political effects. As Thomas Franck argues however, international recognition is also an act of profound symbolic validation.⁸⁹ According to Franck's distinction, recognition has both institutional, and symbolic legitimacy. In the former act, recognition has great practical significance for the recipient state and government by making available to it all the rights and duties of international law and sovereign equality.⁹⁰ In the latter act, recognition carries with it an additional symbolic validation which may help new political entities consolidate their domestic authority.⁹¹

According to Freudenschuss, as an act of symbolic validation, recognition confers on a nascent rebel movement and its cause, the 'acceptability' of a greater power. This 'acceptability' and 'validation' can translate into increased local prestige for a rebel movement and its leaders, especially vis a vis rival factions who may remain unrecognized by similar donor states.⁹² Consider Talmon's argument that premature recognition of the TNC may have not only funnelled support away from Qaddafi, but from other Libyan opposition movements as well, who lacked similar external prestige and validation.⁹³ These strategies of external validation become especially relevant, argues Mastanduno, Lake, and Ikenberry, as domestic political instability within a state

⁸⁸ Alexander Wendt. "Anarchy Is What States Make of It: The Social Construction of Power Politics." *International Organization* 46, no. 2 (1992): 397.

⁸⁹ Thomas M. Franck (1990). op.cit., p.123.

⁹⁰ Recall, however, that these rights and duties may continue to operate even in recognition's absence.

⁹¹ Thomas M. Franck (1990). op.cit., p.123.

⁹² Helmut Freudenschuss. "Legal and Political Aspects of the Recognition of National Liberation Movements." *Millennium* 11, no. 2 (1982): 122.

⁹³ Stefan Talmon. "Recognition of the Libyan National Transitional Council." *ASIL Insights* 15, no. 16 (16 June 2011): 4.

increases, and actors turn to international strategies in order to consolidate support.⁹⁴ The rationality of such international strategies is best understood with reference to the international organizations literature on institutional legitimacy. Just as civilians are likely to support and respect the direction and policies of what they perceive to be their legitimate national government, so to are they likely to respect and support the policies and direction of what they perceive to be legitimate foreign states and international organizations. Accordingly, Chapman details how when IOs that are perceived as symbolically legitimate approve specific foreign policy acts, we can expect such approval to “convince audiences of the appropriateness” of these proposed policies, leading to an increase in individual public support.⁹⁵ External validation in the form of international recognition operates in the same way. Just as the legitimacy of an IO may be expropriated by a state for the purposes of its foreign policy goals, so too may the legitimacy of a donor regime be expropriated by a nascent regime for the purposes of expanding its domestic legitimacy.⁹⁶ In effect, international recognition, even of a unilateral variety, may have a profound influence on a population’s subjective conception of domestic legitimacy. It operates, as Alexander Wendt argues, in the form of a ‘social act’ which through processes of signalling and cues creates intersubjective meaning for observant actors.⁹⁷

Witness the case of the *Palestinian Liberation Organization* who were recognized as the “representative of the Palestinian people” and accorded ‘observer status’ by the

⁹⁴ Michael Mastanduno, David A. Lake, and G. John Ikenberry. "Toward a Realist Theory of State Action." *International Studies Quarterly* 33 (1989): 466.

⁹⁵ Terrence L. Chapman. "Audience Beliefs and International Organization Legitimacy." *International Organization* 63, no. 4 (2009): 740.

⁹⁶ *Ibid.*, p. 760.

⁹⁷ Alexander Wendt (1992). *op.cit.*, p.405.

UN General Assembly on 22 November 1974.⁹⁸ As an act of ‘institutional legitimacy’, the UNGA’s recognition began the process of allowing the PLO to ‘take part in all efforts, deliberations, and conferences on the Middle East under United Nations auspices.’⁹⁹ This had a practical impact on the PLO’s ability to exercise its political goals while symbolically also rectifying traditional ambiguities amongst both the international community, and Palestinians themselves, over the question of Palestinian leadership.¹⁰⁰ International recognition thus had the additional effect of legitimizing the PLO amongst a Palestinian people traditionally plagued by political factionalism.¹⁰¹ Two years after receiving observer status in 1974, municipal elections in the West Bank revealed a decisive trend away from Israeli and Jordanian incumbents, and toward PLO-supported candidates.¹⁰² While the direct connection between the PLO’s recognition, and its electoral gains in the West Bank cannot be conclusively proven, it remains strong correlative evidence.

It would be short sighted, therefore, to evaluate recognition solely on the basis of its legal impact, and moreover, to do so under cases where questions of legitimacy and force have largely been resolved. As Franck admits, the symbolically constitutive impact of recognition likely looses influence as the level of military and legitimacy contestation within a state decrease. Recognition cues, argues Franck, “can validate only when they

⁹⁸ Patrick J. Travers. "The Legal Effect of United Nations Action in Support of the Palestine Liberation Organization and the National Liberation Movements in Africa." *Harvard International Law Journal* 17 (1976): 569.

⁹⁹ *Ibid.*, p. 571.

¹⁰⁰ Shibley Telhami. "The Road to Palestinian Sovereignty." In *Problematic Sovereignty: Contested Rules and Political Possibilities*, edited by Stephen D. Krasner. (New York: Columbia University Press, 2001) 302.

¹⁰¹ While the PLO had a significant amount of legitimacy in Lebanon and amongst Palestinian refugees in neighbouring Arab states, they were never as successful at consolidating the support of Palestinians in the West Bank. These Palestinians, who remained in the territory of the former British mandate after 1948, were less committed to the maximalist gains of Palestinian refugees, and more supportive of their Jordanian interlocutors. The PLO's election victories in the West Bank after its recognition by the UNGA thus represented a real expansion of the PLO's legitimacy amongst the Palestinian people. See Thomas L. Friedman. *From Beirut to Jerusalem*. (New York: Anchor Books, 1990) 113.

¹⁰² Shibley Telhami. *op.cit.*, p.313.

are perceived as true or appropriate: that is, when they symbolize a reality which is not seen to be false by those to whom the symbol is addressed.”¹⁰³ Accordingly, the U.S’s recognition of the *ROC* as the governing regime in China likely had little to no social impact on Chinese mainlanders precisely because the act of recognition was so far beyond the realm of fact or appropriateness. Unlike in the Chinese and Russian cases however, no Libyan political actor could claim to have an overwhelming control over the states material power or popular support after 17 February 2011.

Accordingly, when the Libyan civil war is analyzed through Kalyvas’s argument of ‘public support’ and ‘attitudinal shifts’, Franck’s lens of ‘symbolic’ and ‘external validation’, and Wendt’s thesis on ‘intersubjective meaning’, the rebel’s pursuit of even a single, unilateral act of recognition appears highly rational. When the domestic uniqueness of the Libyan case is unpacked, the rationality of this pursuit becomes even more apparent.

¹⁰³ Thomas M. Franck (1990). op.cit., p.117.

Libya as a tribal society:

Historically, the main sources of opposition to Qaddafi's regime in Libya have come from two places; islamic militancy, and tribal factions in Cyrenaica, the Eastern bloc of the country.¹⁰⁴ Because both of these sources of opposition represented narrow religious, ethnic, and tribal causes rather than broad based civil coalitions, Libya's rebels risked being branded by the precedent of these historical movements. Such counter narratives would undermine the rebels claim of representing an all inclusive national liberation movement. Moreover, the fact that the *TNC* is militarily headquartered in Cyrenaica, and saw its greatest and earliest victories there, only helps further claims that the rebels lack broad-based national legitimacy.¹⁰⁵ Consider that the *TNC's* own de-facto capital in the East, Benghazi, was a major source of opposition and anti-regime activities during the 1990s.¹⁰⁶ The *TNC's* pursuit of an international strategy of recognition thus conforms not only to the attitudinal and legitimacy arguments put forth by Kalyvas, Freudenschuss, and Franck, but additionally to the unique historical condition of Libya's opposition movements. Under this argument, 'external validation' could conceivably help the Libyan rebels augment civilian concerns that they represent nothing more than a dissatisfied tribal or religious bloc from the east. The extent to which these socially constitutive goals may have been intended both by France as the donor state, and the rebels as the recipient entity can be found in the wording of the recognition itself.

When France recognized the *Transitional National Council* on 10 March 2011, they did so under the justification that they viewed the *TNC* as the "legitimate

¹⁰⁴ Ronald Bruce St. John. *Libya: From Colony to Independence*. (Oxford: Oneworld Publications, 2008) 224.

¹⁰⁵ Benjamin Barber was an early proponent of this theme when he argued on 7 March 2011 that Libya is at its core a 'tribal society', and that its civil war had "tribal overtones". See Benjamin Pauker. "Understanding Libya's Michael Corleone: Interview with Benjamin Barber." *Foreign Policy* (7 March 2011).

¹⁰⁶ Ronald Bruce St. John. op.cit., p.254.

representative” of the Libyan people.¹⁰⁷ This emphasis on domestic legitimacy was a significant departure from earlier civil war recognition practices. Traditionally, rebel movements and governments engaged in civil war have been accorded a type of belligerent or insurgent recognition. These forms of recognition are not akin to full sovereignty or statehood, but are rather acknowledgements of certain legal facts. Mainly, just that a state of war exists between belligerents of the same country.¹⁰⁸ During the Spanish Civil War, for example, Britain accorded a recognition of insurgency to the Spanish rebels who by February 1939 exercised effective control over a major part of Spanish territory.¹⁰⁹ In issuing a recognition of insurgency, and according the rebels certain belligerent rights befitting their military position, Britain was specifically trying not to prematurely recognize their status as the government of Spain.¹¹⁰ France’s declaration of March 10th went much further, recognizing not only the military status of the Libyan rebels, but presupposing, or in fact dictating, that they had a legitimate claim to rule the country as well.

¹⁰⁷ "Libya: France Recognises Rebels as Government." *BBC News*, 10 March 2011.

¹⁰⁸ Vernon A. O'Rourke. "Recognition of Belligerency and the Spanish War." *The American Journal of International Law* 31, no. 3 (1937): 400.

¹⁰⁹ Not unlike the military and territorial status of the Libyan rebels in March 2011.

¹¹⁰ Hersch Lauterpacht (1939). *op.cit.*, p.2.

Recognition as reflexivity:

Finally, continuing along this social thread, consider how premature acts of recognition or non-recognition may help resolve what Wendt described as the problem of reification. Reification, as described by Berger and Luckmann, takes place when man forgets “his own authorship of the human world” and begins experiencing reality “as a strange facticity... over which he has no control.”¹¹¹ As it pertains to international politics, reification occurs when international actors confront ‘social kinds’ as ‘natural facts’, forgetting their own authorship of these phenomena. For decades, the cold war was treated as an intractable natural fact whose trajectory was thought to be far beyond the influence of its main participants. Reification ensured that despite effectively authoring the cold war, both the United States and the Soviet Union viewed themselves merely as passive actors within this system. Reification can, however, break down, and it is during these moments of ‘reflexivity’ that actors begin remembering their authorship of such ‘social kinds’, and as a result, are able to re-constitute these phenomena. For Wendt, the sudden end of the cold war was one such moment of ‘reflexivity’.¹¹²

Because recognition is as much a legal as it is a social act, its premature applicability to a nascent rebel group, or its sudden removal from an established regime may help usher in similar moments of reflexivity. If nothing else, foreign recognition may remind political actors and civilians that governments are fundamentally social and not natural facts. Certainly governments have empirical characteristics such as party leaders, members, bureaucrats, policy elites, armed loyalists, and funds, but what legitimizes these entities in the eyes of its adherents and a country’s citizenry is

¹¹¹ Alexander Wendt. *Social Theory of International Politics*. (Cambridge: Cambridge University Press, 2000) 76.

¹¹² *Ibid.*, p. 76.

fundamentally social, not empirical. One need only look to the recent deposition of Hosni Mubarak, and the Egyptian military's neutral stance during his decline, to recognize this argument. Recognition, which has the possibility of re-igniting social discourses on legitimate governance, may hasten a moment of 'reflexivity' within such autocratic regimes.

Critiquing the socially constitutive school:

The ultimate problem with these arguments, however, is that in order to assume that recognition has the ability to give social meaning to a political entity in such a way as to legitimize that entity for a civilian population, we would have to additionally accept that the reverse is true. For example, if France's unilateral act of recognition had the constitutive power to influence the attitudes of Libyan citizens, it would only benefit the rebel government if Libyans themselves accepted France's legitimate right to issue such a diplomatic cue. In this respect, one can again draw conceptual comparisons from the literature on IO legitimacy. Ian Hurd details how states have repeatedly sought to associate themselves with the UNSC for the purposes of legitimizing their foreign policy actions with an expectation that such association will alter how their own policies are perceived.¹¹³ The power of these associations are, however, dependent on the UNSC's ability to maintain its underlying legitimacy.¹¹⁴ There is no reason to expect that donor states, whose legitimacy is also fluid, wouldn't face similar complications. Consider the counterfactual case in which a majority of Libyan citizens viewed France's diplomatic overtures not as an act of 'external legitimacy' but rather as an act of 'external manipulation'. France's recognition would remain a socially constitutive act, but the intersubjective meaning it creates would stray wildly from the rebels intended goal of external validation and increased legitimacy. These concerns are especially relevant in Libya, where despite having now received recognition from upwards of thirty states, the *TNC* remains an un-democratic, and unelected authority. As Bartmann discusses in the

¹¹³ Ian Hurd. *After Anarchy: Legitimacy and Power in the United Nations Security Council*. (Princeton: Princeton University Press, 2007) 176.

¹¹⁴ *Ibid.*, p. 177.

related issue of state recognition, 'the active presence of foreign allies can obscure the clarity and even the authenticity of the domestic call for self-determination.'¹¹⁵ In this case, not only might recognition fail to help the rebels, but it could contribute actively to their loss of public support across Libya.

Consider U.S President Wilson's non-recognition of Huerta's regime in Mexico. Henderson points out that Wilson's policy of non-recognition may have actually prolonged Huerta's survival specifically because it bolstered his popularity in a country highly critical of American imperialism.¹¹⁶ Huerta's case thus recalls the logical continuation of Wendt's constructivist argument, which suggests that the additional meaning civilian audiences attach to the donor state will effect how they interpret and adjust to its diplomatic cues. Similar domestic examples can be found in the Clinton administration's prolonged non-recognition of the Taliban government in Afghanistan.¹¹⁷ As Cristol recalls, while the Taliban actively sought closer relations with the U.S government in the mid-90s, they preferred secret contact over public displays of support. Fearing that overt acts of American support could be interpreted by Afghanistan's citizens as 'great power interference', the Taliban withheld any request for American recognition during the early period of their rule, limiting such requests to Islamic governments.¹¹⁸ Determining how a country's citizens will react to various acts of foreign recognition should thus be a paramount concern for political entities seeking external

¹¹⁵ Barry Bartmann. "Political Realities and Legal Anomalies: Revisiting the Politics of International Recognition." In *De Facto States: The Quest for Sovereignty*, edited by Tozun Bahcheli, Barry Bartmann and Henry Srebrnik. (New York: Routledge, 2004) 16.

¹¹⁶ Peter V.N. Henderson. op.cit., p.174.

¹¹⁷ After capturing Kabul in September 1996, the Taliban effectively controlled 90% of Afghan territory making them Afghanistan's de-facto ruling power until 2001. See Jonathan Cristol. "Morality and the Miscalculation of the National Interest: The Clinton Administration's Non-Recognition of the Taliban Government." In *American Political Science Association 2010 Annual Meeting*, 3 September 2010: 8.

¹¹⁸ Jonathan Cristol. op.cit., p.10.

validation. At a more conceptual level, the notion that a regime or its citizens might actually value the non-recognition of certain sovereign peers, seriously complicates the teleological arguments of moral recognition theory.

Conclusion:

Speaking before thousands of supporters in the coastal city of Zlitan on 15 July 2011, Qaddafi told the attentive crowd to “trample on those recognitions, trample on them under your feet... they are worthless.”¹¹⁹ Qaddafi was reacting to the most recent decision by the United States to recognize the *TNC* as Libya’s legitimate representatives, following France’s premature recognition four months earlier. Disregarding the obvious propaganda of this statement, whether such political and constitutive acts of recognition actually contributed directly to the collapse of Qaddafi’s regime a month later remains to be seen. As in the case of Rhodesia, the political use of recognition almost immediately paralleled the application of significant economic and military pressure, leading to the problem once again of differentiating recognition’s effects from those of other actions.

Yet, as the theoretical framework of this thesis has argued, to analyze recognition solely on the basis of its coercive or legal effects would be to ignore the profound social relationship which can exist between donor states, and recipient civilians. It has been through the use of such a social lens that the Libyan case provides a more detailed understanding of the multiple roles recognition ‘can’ play, and precisely when it will play some roles over others. This thesis suggests that recognition’s social impact will be most influential on societies already suffering from a crisis in regime legitimacy. Moreover, it suggests that donor states do not operate as undifferentiated billiard balls, but rather, carry a legitimacy of their own, which if compromised, could negatively effect how their endorsement is received by recipient civilians. Whether civilians in such societies will be positively or negatively persuaded by such attempts at external validation or

¹¹⁹ Sebnem Arsu and Steven Erlanger. "Libya Rebels Get Formal Backing, and \$30 Billion." *The New York Times*, 15 July 2011.

manipulation is a question which ultimately must be posed, however, to civilians themselves. Accordingly, while this thesis has determined to develop a theoretical framework more conducive to understanding recognition as a social and not simply a legal phenomena, further research should go beyond such theoretical questions and attempt to ultimately discern empirical answers.

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