sports and many other social spheres? Under conditions of a world society, which is not imagined *a priori* as hierarchical, multiple 'thirds' co-exist, each constituting distinct, yet global orders of recognition. Focusing on such differentiated practices of recognition might help us to unearth these different functionalist logics without reifying them.

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# 'Recognition': some analytical remarks

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In institutional contexts, the term 'recognition' is commonly used as a technical term. It either ascribes a certain status to an entity, or expresses acknowledgement that an entity has a certain status. Any further description of the status, of course, depends on the relevant entity and the context. In international relations, the relevant status is most frequently recognition of 'states' as legal subjects of international law. But sometimes what is at stake is recognition of 'a people', or rather recognition of the 'political autonomy' of a people, whereby 'people', here, is roughly equivalent with 'sovereign political association'. In addition, recognition sometimes concerns the recognition of a body of government as representative of a state in international law. In the first two cases, recognition confers a certain legal status on an institution, in the third case on persons in their role as representatives of an institution. All cases will be called 'legal recognition', despite the fact that acts of recognition are political acts, because they concern a legal status.

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Thus understood, 'recognition' is a formal acknowledgment and is different from a sense of recognition found in Hegelian philosophy, where the term is often used to express an attitude of mutual acceptance of another person or respect for her status, as in Hegel's famous master–slave paradigm of recognition. 'Hegelian recognition' is a mental, 'psychological', attitude of positive endorsement. In that respect it is very different from legal recognition as both Jens Bartelson and Eva Erman point out when they insists that 'legal recognition' is a *speech act*. Unfortunately, to say that only raises the question, 'What is so special about speech acts?'. I hope my commentary will further clarify some of the analytical and normative distinctions, which can be found in Bartelson's and Erman's contributions.

Following J.L. Austin (1975, 1979) we might start at the beginning and remind ourselves what speech acts are not: they are not declarative sentences. Speech acts do not serve the purpose of describing how things are or of telling what has happened. What is special about speech acts is their performative character. Speech acts are, indeed, acts or actions, in the sense of conventional moves within a rule-guided practice or system of rules and norms. The workman in the engine room who shouts out 'fire' is not passing on information about what is happening in the engine room. What he 'does' by his utterance is giving a warning with the intention of making others react in certain ways, in this case: leaving the premises or looking for fire extinguishers. We might say that in a certain sense we can infer information about what happens from the shouting workman, because he may not shout 'fire' unless there *is* a fire, which is to say: unless certain facts hold. Nevertheless, the relevant fact is not part of the performative function of the utterance as such. Rather, the fact that there is a fire *justifies* the warning. It is one of the conditions under which it makes sense to perform the speech act of 'warning' – which is something very different from declaring that there is a fire.

I consider this point to be relevant to the thesis, defended by both Bartelson and Erman, that the dispute between declarative and constitutive accounts of recognition misses the point. Defenders of the declarative account seem right to insist that recognition of statehood is strongly underpinned by certain institutional qualities of political associations. Nevertheless, understood as a speech act, both authors claim, recognition is not redundant because its meaning can be neither reduced to nor identified with the presence of those qualities. The 'error' of the declarative theorists consists in neglecting the performative function of acts of recognition, whereas the 'error' of the constitutive theorists consists in neglecting the conditions and norms that make recognition a speech act.

Identifying the error, of course, does not settle the institutional question whether recognition of states indeed requires inter-state recognition.

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In order to approach that question, one must clarify what the legal status of states is about (Wendt 1998). I take it that in international law that status is mainly defined in terms of the rights and responsibilities that one state has against other states (and international organizations), and thus consists of rules of behavior for states toward other states as represented by their governments. Given such a relational understanding of the legal status of states, it follows that recognition of that status must be a multilateral acknowledgment, as both authors emphasize. It, therefore, seems right to say that acknowledgement of that status by other states is a necessary and constitutive aspect of recognition, and that recognition is a normative political act by which states acknowledge that they have certain duties and responsibilities toward the newly recognized state. As a performative act, recognition marks a change in the relations of relevant states, which must then become ordinary practice in the mutual behavior of states toward each other.

As Erman rightly points out speech acts receive their meaning by being embedded within institutions or systems of norms. The question 'Who is a member of, or participant in, the institutional system?' is determined partly by the very function and purpose of the institutional framework, partly by the rights and responsibilities that come with the recognition of the legal status, and partly by the normative ideas and expectations concerning the purpose of political associations and their governments. Since customary and legal practice in international relations are not eternally fixed, but change in reaction to political, technological and social changes, the relevant rules, as Erman correctly remarks, undergo historical change, and can be a matter of dispute especially during phases of change. Nevertheless, no (subgroup of) single actor(s) can change the rules arbitrarily nor apply and suspend them *ad libitum*, but only for general and institutionally shared reasons. That, of course, is not to say that all subjects of international law always play by the rules, or resist the temptation to abuse rules in favor of their own strategic interests or to bend rules if that seems to be an appropriate means toward a desirable end.

Would it, then, not be reasonable, as both authors suggest, that we make the criteria and standards explicit, according to which political associations qualify as states in order to prevent abuse? Unfortunately, I think that any such attempt would be a non-starter – not because we lack criteria and standards of statehood, but because there are good reasons for recognition, as well as non-recognition, which have nothing to do with those standards but derive from empirically contingent circumstances. To borrow a phrase from H.L.A. Hart (1965), 'legal recognition' is a 'defeasible concept', that is to say: it is a *judgment in the light* of certain standards and empirical facts. But at the same time there is also

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a plurality of very heterogenous facts and considerations that justify withholding or granting recognition in particular cases. Considerations of regional stability, preservation of peace, historical justice, pragmatist methods of conflict resolution, and so on, *can* be good reasons for either granting or denying recognition of statehood under certain circumstances. Because of their empirically contingent nature, however, it would be futile to try to give a complete list all those reasons and conditions, or summarize them in terms of 'necessary and sufficient conditions' for legal recognition.

As emphasized above, even though certain conditions and standards or criteria *justify* recognition or its denial, 'legal recognition' is not *defined* by these conditions. It is and remains a judgment in the light of such conditions, and thus is not a descriptive or declarative statement, but a genuinely political (speech) act.

Moving from the concept to the practice of legal recognition, I would like to support Bartelson's and Erman's plea for the inclusion of *normative* standards of statehood. Focusing on legal recognition is treating the state as an institution with a certain status within the wider institutional system 'international relations'. Thus understood, it is not a matter of identity and self-other-relations, but mainly circumscribes the purpose of states and state sovereignty, that is, their internal functions and their role in international relations and international law.

From such a perspective, two questions seem most pressing. First, what are reasonable standards of normative statehood, that is, 'good government?' Second – and in the light of the challenges that arise from failed states for affected peoples as well as international relations – should recognition as a (sovereign) state be conceived as an either–or matter or rather as a matter of degrees.

As to the first question, I would like to support the thesis that standards of 'good government' should not be normative maximalist, such as demands for 'democratic' government, because that would depart too far from the actual practice of recognition. What seems important, nevertheless, is to keep in mind that 'states' are specific institutional arrangements for the collective self-organization of political associations, and as such must not be confused with whoever it is who holds governmental powers. To conceive of states as institutions is *per se* to conceive of them as social arrangements that are justified only to the extent to which they are considered as legitimate by the people whose organization they are. Accordingly members of government should be recognized as legitimate representatives of states in international relations only if their rule is legitimate in the eyes of the people over whom they rule. Legal recognition of states, accordingly, is not always identical with equal treatment of all governments.

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The distinction between state and government, therefore, should be taken seriously, even if requirements of legitimacy do not fully coincide with liberal ideals of good political government. Some minimal standards, which are connected to the very purpose of states and the institutional nature of statehood seem uncontested, although not always achieved. These include the rule of law, respect for basic human rights, pursuit of the general welfare of the people, separation of office and private advantage, resistance to corruption, and efficient maintenance of public order. A government that is either not willing or not able to live up to these standards to a sufficient degree (given the particular circumstances) lacks legitimacy, and should not be (fully) recognized as the official representative of the state by other states. That is to say that members of illegitimate governments might be denied the legal status and immunities usually conferred on members of government in international law. In addition, members of illegitimate government should not automatically be treated to be honest representatives of their people in international organizations to the same degree as representatives of legitimate governments are. And finally, if there exists a viable alternative to illegitimate government, it should be supported on the international level.

The normative argument is frequently questioned on grounds of pragmatism, tolerance, or recourse to the needs of politics and to the value of external sovereignty. Undoubtedly, those are serious objections that need to be considered because legal recognition must certainly serve the purpose and functions of international law and state practice. That is the reason why legal recognition requires *judgments* not a definition. Nevertheless, the normative standards listed above seem also supported by the very aims and purposes of international order, because the idea of well-ordered international relations requires also well-ordered states.

A more difficult challenge for the existing practice of legal recognition is the problem of efficiency of government. Failed states and systemic failure of governance conflict with functional requirements of statehood, on both the internal and the external dimension. For the sake of the peoples as well as of international relations, it might be advisable to treat some states as 'less equal than' others. But the last point goes beyond the contributions by Bartelson and Erman.

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# Theorizing state recognition

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What is the purpose and criteria of state recognition? Despite its regular occurrence in world affairs of the last 250 years, there is no scholarly agreement on this question. Yet the question remains as urgent as ever. Even a cursory glance at the very latest cases involving the phenomenon – whether Kosovo, South Ossetia, Abkhazia, South Sudan, or Palestine – suggests that recognition of a new state represents a crucial aspect of conflicts over statehood, many of which are prone to generate major and protracted international crises.

For many decades now, academic study of this thorny and multifaceted subject has been dominated by international lawyers. That scholarship has been driven by an explicit theoretical interest in its nature and effects. Entire library shelves can be filled with a long-standing debate revolving around two seemingly irreconcilable theories of recognition. Yet non-lawyers have been generally unimpressed by this debate and even some lawyers (O'Brien and Goebel 1965; Brownlie 1983; Grant 1999) have voiced doubts about its elucidatory value. Eva Erman and Jens Bartelson rightly maintain that it is time to rethink the existing legal literature and bring it into a conversation with non-legal disciplines.

Erman and Bartelson provide an insightful critique of the declaratory and constitutive theories. At the same time, they both accept the central tenet of the latter theory: that recognition is constitutive of statehood. An entity has the status of a 'state' internationally not only because it asserts so internally, but also because it is acknowledged as such externally. If this position, held today by only a small minority of lawyers, is correct – and I believe it is – then the question is how to theorize, in both explanatory and normative terms, recognition's criteria?

Erman is persuasive in contending that both internal and external criteria are important in recognition and that at least some of these criteria have

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