"National self-determination and emancipation, a difficult symbiosis in separatist politics"

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Abstract

The national ideals underpinning separatist politics are in tune with the broader idea of nation-states that has evolved as a core political principle in international relations. Secessionist struggles are fought and statehood, or some form of political autonomy, is sought as a means of liberating oppressed communities. State-creation on the basis of national self-determination is thus seen as the ultimate political solution – as the end product of resistance that can give to suppressed minorities a "place in the sun" of sovereign states. This paper argues that resistance on the basis of nationalism lacks the transformative character of emancipation, and, therefore, it cannot proceed to alternative forms of political association. Instead of proposing and promoting emancipatory programs of political and social inclusion separatist movements tend to reproduce lines of identity demarcation on a different scale. This paper investigates the evolution of self-determination as a collective norm and how it informed the international practice of recognition and state creation. In doing so the paper discusses the subject of self-determination as well as its association with emancipatory politics. In particular it analyses the non-emancipatory character of national self-determination politics highlighting the lack of a progressive and inclusive ideological framework of political organization.

Introduction

State creation is a political and diplomatic act that encapsulates the essence of political organization in the international system under the so-called Westphalian model. Political communities are defined as such through the creation of territorial states; these are territorial administrative units in which the political community exercises supreme authority – in other words, it is sovereign. The validity of this act is underscored by two conditions: first, the extent to which the political community can exercise effective control over the territory it claims sovereignty and second, whether the entity is recognized as such by other sovereign states in world politics. In combination these conditions are necessary and sufficient for the creation of a sovereign state which becomes a member of the international society. Not meeting one of these conditions can still lead to state creation, for example, if there is effective control of territory manifested by state structures but no international recognition of this entity, then the entity is called a *de facto* state (Caspersen 2012). Alternatively, when an entity is

internationally recognized but cannot exercise effective control over the entire territory it claims under its jurisdiction, then it can be described as a fragile state (Brock, Holm et al. 2012). Originally recognition of statehood was a marginal field of scholarly attention, early students of international society were locating the source of state sovereignty within the territorial unit thus there was no need for recognition by other states (Pufendorf 1744:165-166). Gradually the interest increased and the views on the question of state recognition were crystallised along the axis between constitutive and declaratory accounts. The core question these theories are trying to answer is whether the act of recognition is necessary for the existence of an independent state, in other words whether state creation is a question of law or fact (Crawfrod 2005). The international practice of state creation has been associated with the idea of collective self-determination. In the current international system territorial borders are more likely to change as a result of internal revolution, violent or not, than as a result of conquest. International recognition in contemporary international politics indicates that the act of state creation is legitimate and manifests the collective right of self-determination of the entity's population. This paper will investigate the evolution of self-determination as a collective norm and how it informed the international practice of recognition and state creation. In doing so the paper discusses the subject of self-determination as well as its association with emancipatory politics.

Self-determination and state sovereignty until the end of World War II
International relations until the start of the nineteenth century were mainly composed by states based on dynastic rule. The borders of states could change either through war or inheritance based on royal marriage. The locus of state legitimacy was the absolute sovereign monarch who was accountable only to God. Accordingly, recognition of sovereignty by other states was seen as unimportant, an early-nineteenth century author summarises the dominant view in the scholarship of the time: '[I]n order to consider the sovereignty of a State as complete in the Law of Nations, there is no need for its recognition by foreign powers; though the latter may appear useful, the de facto existence of sovereignty is sufficient…thanks to the perfect independence of States a foreign power is not authorised to judge the legality or illegality of what happens in another State but has to take only facts into consideration' (Saalfeld 1833: 26, 63 in Alexandrowicz 1958: 189).

The transition from the *ançien régime* to the era of nation-states during the nineteenth century paved the way for the evolution and crystallization of the principle of self-determination in the years after World War I as the driving force for state creation and state recognition based on a territorial understanding of political communities.
Collective self-determination could only appear in the presence of a democratic/popular ideology which obtained momentum in the second half of the eighteenth century. Two different manifestations of self-determination highlight the complexity of the issue and the role that identity played in shaping the political agenda of collectivities. In some cases, and depending on the socio-political setting, the concept of self-determination had a political/civic orientation which downplayed, to a degree, ethnic considerations, whereas in other cases the concept was strongly linked to ethnic and cultural factors.
The political and administrative homogenization that had developed in Western Europe by the eighteenth century had produced a sense of national identity and political cohesiveness within the boundaries of the then existing states. With the French Revolution the people collectively became the locus of supreme authority following an emancipatory path in which

the people took control of their system of government (Hinsley 1966; Tuck 1996). The turning point in this development was that popular sovereignty reflected an electoral body that included literally all the inhabitants of the territory (Hall 1999: 142–3). The belief that elections should have some effect on how political power was exercised allowed the principle of sovereignty to embrace notions of a popularly exercised self-government. With the influence of the new national and democratic ideas, the notion of the people started taking shape; the people, characterised by an increased perception of coherence, were called the nation, were the source of sovereignty, and identified with the territorial state. The logical consequence of the democratization of the state was the theory of national self-determination (Laoutides 2015).

The second manifestation of self-determination was based on ethnic identity and culture. In the early nineteenth century Johan Gottfried von Herder developed the idea of the *Volk* (people or nation). According to Herder, a *Volk* was a community bound together by blood ties and characterized by a particular language, culture, religion, and set of customs (Hobsbawm 1992: 57). The nation was understood as a natural social unit being an extension of the family. Accordingly, every nation had the right to develop its own political institutions uninfluenced by others and, thus, could express its own unique character in the political realm. Herder's work influenced other writers in Central and Eastern Europe such as Johann Fichte, Ernst Arndt, Friedriech von Schlegel, and Giuseppe Mazzini who was then working in favour of the Italian unification. Mazzini believed that each nation had a certain mission to accomplish, which would further human progress overall. This mission could only be accomplished through the instrumentality of the nation-state. It was, therefore, of the utmost importance that nations could achieve political unity (Beales 1969: 146).

Furthermore, we should note that the concept of the "nation-state," in both the civic and the ethnic manifestation of self-determination, eventually essentialised the relationship between the territorial state and the political community that exercises effective and legitimate control of the state. Later, under the UN Charter, the sacralisation of national territory and its normative confirmation came to underscore the politics for state recognition in the international system. Self-determination that emphasizes national identity could be seen in this context as exclusive and particular in nature because it attaches primary importance to the group rather than the individual (Brubaker 1992). During the nineteenth century the need to establish a national cause emerged, further soliciting the oppression of ethnically diverse groups within states that felt compelled to be homogeneous. In the event that a political entity was not homogenized enough for its people to regard themselves as a single national community, and therefore, be able to become a nation-state, the entity ought to lose its cohesion and its diverse elements should fly apart – this is what happened to the Austro-Hungarian and Ottoman Empires. From this perspective, the history of self-determination is essentially a history of the making of nations and the breaking of non-national states (Cobban 1945: 6). The collapse of dynastic rule in Europe signified the impossibility of defending states as possessions of individuals or families. The transfer of state ownership to the collective was a corollary of the historical transition from oligarchy to collective rule via consent. But who is this collective within a territorially demarcated state that holds the right to self-determination has remained an open question. Although nationalism was projecting a straightforward basis for the new global order, namely that world politics should be consisted of nation-states, the core of this assertion, the definition of the nation, has been highly contested to this day.

The theory and practice of state recognition during this period did not provide any solution to this question. By drawing a distinction between the conditions that formed a new state

and the process of obtaining legal personality, the law of nations at the time was not concerned with the origin of a new entity. Rather international recognition was seen as an initiation rite for *de facto* entities to enter the society of states which were operating under the "standards of civilization" doctrine (Crawford 2005). As Phillimore (1879: 79-80) aptly argued: "The question as to the origin of States belongs rather to the province of Political Philosophy than of International Jurisprudence". In tune with this approach, state recognition in cases of national liberation struggles was based on the test of effectiveness of the new entity. In the context of the Greek struggle for independence, George Canning, British Foreign Secretary 1822-1827, formulated the test as follows:

"...acknowledgment to be subject to the qualification that such State shall have shown itself substantially capable of maintaining an independent existence, of carrying on a Government of its own, of controlling its own military and naval forces, and of being responsible to other nations for the observance of international laws and the discharging of international duties. *These are questions of fact. By acknowledgment we can only acknowledge what is…* We should look to Greece…with a disposition to seize the first occasion of recognizing as an independent State such portion of her territory as may have freed itself from Turkish dominion." (Canning 1826: 1216, emphasis added).

The hidden paradox of the international practice on state recognition in the nineteenth century was that by ignoring to question the origins of state creation the international society was sending tacit signals of legitimization for the nationalist agenda which continue to grow fast.

The collapse during the long nineteenth century of the once powerful empires that had dominated European political life for so long acted as a warning against newly coined states which did not hesitate to implement policies of cultural assimilation. The exact correlation between the boundaries of a nation and those of a state led to tensions and grievances in the relations of majority and minority groups defined along ethnic identity lines. Ethnic minorities could not join in building the national character and culture of the dominant people, nor could have their own national aspirations satisfied. Minorities were perceived as anomalies within the nation-state, therefore they ought to be assimilated so that the entire population of the state reflected one culture and one language (Petrie 1946; Hayes 1960). Assimilationist policies were often counter-productive, leading to increased national and political awareness of the underdog that paved the way for subsequent claims in favour of independent statehood (Guelke 2012).

The evolution of the principle of self-determination and its link to popular sovereignty brought about a firm connection between nationalist and democratic movements. The political thinking of the post-World War I period treated nationalism and democracy as almost synonymous (Mayall 1990). The nation-state was regarded as the political expression of the democratic will of the people. In effect, the principle of self-determination was serving a dual purpose. On the one hand, it was the principle chosen to guide international governance in the new post-dynastic world order. On the other hand, it was serving as the underpinning principle for the social contract within states, old and new.

However, although self-determination posed as the only means of allowing the democratization of nation-states, the oppression of minorities it generated was largely silenced. Even though the principle was designed to allow the peoples to achieve political

emancipation in their states, its national dimension inflamed and justified oppression against those whose identity did not match the dominant national narrative. The elevation of popular will in the government of states could not be applauded enough; however, the emancipatory character of self-determination was lost along the way in a zealous effort to apply the principle to the extreme. Post-World War I denial of ethnic diversity within nation-states became a standard policy given that ethnic pluralism was perceived as a direct threat to the emerging political order underpinned by the centrality of a single nation as the new body politic. In this light Kurds in Turkey, for example, during the first few decades after the creation of modern Turkey in 1923 were sent to the gallows "for having claimed that the Kurds existed" (Nezan (aka Kendal) 1993: 77).

Self-Determination during the Cold War
The employment of self-determination in redrawing the European map after World War I was not extended to non-European territories, neither was such an extension intended in any of the treaties promoting self-determination as the par excellent principle of the new political era (Manela 2007). Nevertheless, it provided anti-colonial movements with a precedent that could potentially be applied in non-European contexts (Cassese 1995: 27–31; Musgrave 1997: 33–7). The reluctance of adopting self-determination as a universal legal norm was confirmed by the League of Nations which introduced minority rights as an international regime with the aim to tame nationalist aspirations and to maintain international peace (Kymlicka 1995; Nickel 1997: 235–44; Jackson-Preece 2005). Thus, during the interwar period self-determination continued to inspire and mobilize populations without, however, having any legal validity. It is important here to note the obvious tension between the two facets of self-determination as a political principle. Internally, it provided legitimacy for the social contract between the political community and the government. Externally, it created the basis for a new international order based on legitimate claims of a collective over territory. In doing so it unpacked the complexities of defining collective political identity, for the uncertainty about who is (or should be) member of the political community requires first boundaries to be in place.
The mind-blowing scale of the two World Wars with their territorial ramifications kept the issue of suppressed nationalities and their right to statehood to the forefront. Still, the long debate on whether self-determination ought to be included in the UN Charter was an indication of the unease caused at the international level from the very early stages of its theoretical formation. This uneasiness can be explained post-1945 as a balancing act by the UN in pursuit of international peace: on the one hand, to outlaw the use of violence as an instrument of foreign policy including territorial changes and, on the other, to ensure that state creation would be based on popular will and free choice (Grenville 1974: 198–210).

The principle of self-determination was included in the final draft of the Charter in San Francisco after a Soviet proposal was put forward, according to which, references to the 'self-determination of peoples' should be included. The Committee, which adopted the amended articles unchanged, provided little clarification of the meaning or import of self-determination. It indicated that the principle of equal rights and the self-determination of peoples were "two complementary parts of one standard of conduct" and that "an essential element" of the principle was "a free and genuine expression of the will of the people" without simultaneously shedding new light on the difference among "nations," "peoples" and "states" (Russell 1958: 811-13; Sureda 1973: 99). Eventually the "self-determination of the

peoples" was included in Articles 1(2), 55 and 57 of the UN Charter leading to the accurate observation by Ivor Jennings (1956: 56) that "on the surface it seemed reasonable: let the people decide. It was in practice ridiculous because the people cannot decide until someone decides who are the people."

Jennings' observation was not a moot point, and after 1945 there were two parallel developments that pushed for clarification regarding the subject of collective self-determination under the UN. First, the decolonization movement was growing fast across Asia and Africa underpinned by nationalist politics; the newly created states proceeded with the consolidation of political identities along ethnic lines and such a process created internal divisions and spheres of exclusion for minority groups. For example, Myanmar (former Burma) introduced a system of ethnically-based citizenship in its constitution which excluded from citizenship any individual who was not a member of a formally recognized "national race"; this had a significant impact on the status of the Rohingya in Myanmar who were turned effectively stateless (Ware and Laoutides 2018; Cheesman 2017). The second development was the perceived or real involvement of metropolitan powers with the politics of former colonies. Katanga's unsuccessful secession from Congo-Léopoldville is a case in point: Belgium (the former metropolis) provided Katanga with support that amounted to no less than the total panoply of state infrastructure (Heraclides 1991). Such interference was perceived as a neo-imperial effort of divide and rule aiming to perpetuate dependency and control of the newly founded states that could potentially derailed the whole decolonization process.

The response to this challenge came with a rather strict definition of the "people" who have the right to self-determination. It was deemed that only European colonies could claim the right to self-determination but even this needed further qualification because in many parts of the colonial world populations had been separated between different colonial administrations resulting in high levels of social heterogeneity which was seen as the kernel for any secessionist movement driven by neo-colonialism (Mojekwu 1980; Ouguergouz & Tehindrazanarivelo 2006). The solution was the introduction of the principle of *uti possidetis* [Latin phrase meaning "as you (plural) possess"] which confirmed the borders of colonies as the borders of the new independent states. In this light, the inhabitants of these administrative units were seen collectively as the "people" with the right to self-determination and state creation (Hannum 1990). In essence, *uti possidetis* defined a people in territorial terms, as the population of a territorial unit which is either an internationally recognized state or a colonial entity. In the latter case, the people in the colonial entity could exercise their right to self-determination and become an independent state (Buchanan 2004; Ratner 1996). During the apex of the decolonization movement the self-determination units seeking independence were recognized almost immediately. The requirements of stability and permanence that were emphasized in the nineteenth century international practice did not necessarily apply (Crawford 2005).

The introduction of *uti possidetis* led to two important conclusions for self-determination movements during the Cold War. First, the international community eschewed any definition of the people on identity grounds by deferring this discussion as a matter of internal organization and nation-building in the newly created states. Second, the territorial approach to self-determination precluded a part of the population of any territorial unit from being a "people" thus blocking any secessionist aspirations from having any international legal anchorage. From this perspective, self-determination as the basis for state creation was closer to its Western European understanding of representative government and it was consistent

with post-World War II political order that was based on the territorial integrity of states and the inviolability of international borders.

The adoption of self-determination by the UN could be described as a victory of the oppressed who liberated themselves from colonial rule and institutionalized racial discrimination. But the particular interpretation of the principle by the UN also explains the negative climate in which unilateral state creation is still received internationally. In addition, the above analysis also exemplifies that the focus in the discussions and practice for the international governance of state creation is temporally limited up to the moment of creation and recognition. There is little control over the type of regime that the new state will establish post-secession. We can theoretically be persuaded about the maltreatment of communities in their host states, but we cannot regulate that secession will realize the emancipatory character of self-determination, since the interpretation of the principle at the inter-state level is bestowed upon the community. Although we may often assume that people who have experienced violation of human rights are bound to respect these in their own state, we forget the realities of separatist struggles, that is, that most of these communities had little, if any, experience of democratic governance and the daily exercise of self-determination. A case in point here is the complex conflict in Rakhine State in Myanmar where, although the ethnic Rakhine have been subject to oppression and discrimination by the Bama-dominated military rule, their dominant narrative for self-rule treats the Muslim Rohingya as intruders creating thus another level of ethnic dichotomy and oppression (Ware and Laoutides 2018).

Self-Determination after the Cold War

The consolidation of *uti possidetis* allowed for the control of ethnic centrifugal tendencies within the former colonies. Because sub-groups within new territorial units were not the subject of the collective right to self-determination, the right only concerned the people of the territorial unit as a whole, without further distinction or fragmentation. The case of Bangladesh's independence in 1971 was the exception that confirmed the validity of *uti possidetis* during the Cold War (Heraclides 1991). The collapse of the Eastern Block signalled the end of bipolarity and the start of a democratic transition for the Soviet Union and its satellites. This was followed by a series of claims to statehood especially in Eastern Europe and the Balkans. The response of the international community to the dissolution of the Soviet Union and Yugoslavia represented a departure from the established approach to self-determination making space for the reformulation and enforcement of a new understanding of the collective right to self-determination (Musgrave 1997: 123–4).

The European Union (then known as European Community) considered the exercise of popular sovereignty within the constituent republics of the Soviet Union and of Yugoslavia as amounting to acts of self-determination (Pazartzis 2006: 361–7). Western states seemed no longer able to assert, as they had traditionally done in the UN context, that self-determination must occur within the state as a whole and amongst its entire population (Higgins 1994). On the contrary, it appeared that the great powers of the time were accepting the proposition that the process of self-determination and subsequently, state creation could legitimately occur within one section of a state's territory and amongst one part of that state's population. The response of the European Community, and subsequently, the UN to the situation in Yugoslavia indicated that sections of the state's population, inhabiting certain regions of the state, could unilaterally create an independent state of their own. This state would be, in turn, recognized by the international community on the basis that an act of self-determination had occurred (Caplan 2005). In addition, although Western states emphasized that self-

determination must occur within the frontiers of a constituent republic and amongst its entire population regardless of ethnic criteria, the exercise of popular sovereignty within the constituent republics of the Soviet Union and of Yugoslavia was in reality an act of self-determination by particular ethnic groups, because the constituent republics had been organized on an ethnic basis. In front of the politically appealing dilemma to break up Yugoslavia and the Soviet Union with the less possible normative impact of the established interpretation of collective self-determination, the international community adopted the argument that both countries were federations in a process of disintegration (Gray 1992: 477–84; Pullat 1991: 512).

An inevitable and unforeseen result of allowing self-determination to occur within a territory organized along ethnic lines, was that an act of national self-determination had taken place leading to the creation of an independent nation-state. But the unwillingness of the international community to generalize the ethnic interpretation of self-determination beyond the constituent federal republics of the Soviet Union and Yugoslavia is evident by the way that attempts for further application of the right to self-determination by ethnic communities within the constituent federal units, as in the cases of Krajina in Croatia and Vojvodina in Serbia, were discouraged and eventually blocked (Radan 2018; Waters 2000). The re-drawing of boundaries along ethnic lines through the principle of self-determination confirmed the non-emancipatory character that had been historically attached to it: ethnic minorities within these new states already experience ongoing repression. Thus, in essence the international community's balancing act to satisfy strategic interests in the emerging new world order without jeopardising the normative landscape with regard to self-determination led to treating new state creation in the Soviet Union and Yugoslavia as acts of decolonization (Mayall 2011).

The fear of nationalist tendencies to perpetuate the fragmentation of the international system is also found in the attempt of the then UN Secretary-General, Boutros Boutros-Ghali to discourage unilateral secession with a strong system of human rights protection that include protection of minorities. In his words, "…if every ethnic, religious or linguistic group claimed statehood, there would be no limit to fragmentation, and peace, security and economic well-being for all would become ever more difficult to achieve" (Boutros-Ghali 1992: para 17). Accordingly, a way to reconcile claims to self-determination with respect of territorial integrity and state sovereignty was through "respect for democratic rights at all levels of social existence …: in communities, within states and within the community of states" (Boutros-Ghali 1992: para 19).

The new states that emerged from the ashes of the Soviet Union and of Yugoslavia also propelled a new discussion of the UN's approach to the principle of self-determination (Hannum 1993: 57). As already mentioned, the principle of self-determination found a field of application in the former colonies which declared their independence under the support of the UN. The treaty and customary law of the UN attempted to confine the right to self-determination on a territorial basis to colonial people only or populations who were under foreign occupation. To this end, the international community was highly concerned with implementing the principle in order to grant independence to former colonies, while they paid little attention to the political structures of the new independent states. There was a lack of anticipation regarding internal self-determination because of reluctance towards an articulation of customary law in this field (Henrard 2000: 288). This attitude may be attributed to the fear that any action in this field by the international community would lead to unwitting interference with the domestic affairs of sovereign states. Given the fact that the principle of

no interference is a fundamental rule of the international system, every attempt that would create the potential to challenge it was received with scepticism. Even though the common Article 1 of the UN International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights is in effect since 1966, democratic values have been subordinated to the maintenance of state sovereignty. Nevertheless, customary law of internal self-determination has been in the process of formation as the right for a people to develop itself socially, economically and culturally within an encompassing state and to determine its political status within that state.

The European Community declared to the Third Committee of the UN General Assembly in 1986:

In accordance with the principles set out in the Charter, the common first article of both International Covenants proclaims the right to self-determination. It is important to remember that, under the Covenants, self-determination is a right of peoples. It applies with equal force to all peoples, without discrimination …the mere absence of foreign invasion or occupation did not mean that a people was free to exercise its right of self-determination, which was not a single event but a continuous process. People must have regular opportunities to choose their Governments and their social systems freely, and to change them when so they wished (UN 1986, para 37, 38).

In addition, the Vienna Declaration on Human Rights in 1993, signed by 160 state members of the UN, adopted pluralist representative democracy as the means of securing the well-being and progress of citizens within a state, regardless of any particular identity they might possess (Henrard 2000). Hence, a new understanding of the principle of self-determination towards a more democratic and "internal" interpretation has already been put forward. This understanding was further confirmed in the UN *Declaration on the Rights of Aboriginal Peoples* (2007). The forms of internal self-determination may vary from a very weak version of basic political rights of representation and participation in the government of the encompassing state, to a form of self-government such as one implying a special constitutional status that address an asymmetric relationship between a majority and a minority in the encompassing state. The *via media* between the two versions of internal self-determination is the right to self-government implying that the people has political control over its own institutions within the state as in the cases of Scotland and Wales in the United Kingdom (Kymlicka 2007).

The UN architecture as was designed in Boutros-Ghali's *Agenda for Peace* viz. the right to self-determination of the people involved, at least in theory, a stratified implementation of self-determination with an internal application of the people to "freely determine their political status and freely pursue their economic, social and cultural development" within the territorial unit they exist. If the encompassing state is not willing to grant internal self-determination to its peoples, this for the UN may can count as an injustice and seems to justify state creation and recognition as a remedy to gross violations of human rights (Buchanan 2004). Nevertheless, so far, a linear relationship between gross violations of human rights, such as genocide or ethnic cleansing, and the right to external self-determination has not been established.

After the end of the Cold War the international community seemed to be in limbo with regard to revisiting the notion of self-determination and its application in the creation and recognition of new states in the post-colonial world. If we set apart rare cases such as Czechoslovakia and Montenegro whose so-called "velvet divorce" was based on mutual

consent between the different peoples to break up their territorial unit and create two or more new states, then the international community seems to have followed an *ad hoc* approach toward self-determination movements, typically recognizing the political outcomes generated through military victory or through mediation after a period of armed violence, which has eventually led to a stalemate. Since 1989-90 there has been no case of state creation which was declared unilaterally by the separatist movement and which received unambiguous international recognition measured as state creation leading to UN membership (Crawford 2005: 415). The reliance on the outcome of international mediation is evident in the case of South Sudan where the 2005 Comprehensive Peace Agreement ended the longest civil war in Africa. The peace agreement provided the opportunity for a referendum on South Sudan's independence after a transitional period of joint government. In January 2011 the people of South Sudan voted overwhelmingly to declare its independence by July 2011, although several issues are pending resolution, including the division of oil revenues and the status of the border. The UN recognized the right of self-determination of the Southern Sudanese as a result of a negotiated settlement after a very long period of civil war and destruction. Most importantly, the ongoing ethnic violence that followed in South Sudan after independence highlights that external self-determination does not necessarily lead to internal self-determination.

From a different standpoint, Kosovo's unilateral declaration of independence by the majority Albanian government in February 2008 followed a period of international military intervention and administration. Until December 2018, Kosovo was recognized by 116 states, of who 10 have withdrawn the decision to recognize Kosovo but as yet Kosovo is not a member of the UN. Those states that recognized Kosovo would argue that the Kosovar government's independence was constitutional and legitimate. In October 2008 the UN General Assembly issued a resolution requesting an Advisory opinion by the International Court of Justice on the legality of Kosovo's declaration of independence. The ICJ delivered an ambiguous advice suggesting that Kosovo's declaration of independence did not violate international law (ICJ 2010). Nevertheless, the ICJ Advisory Opinion has been perceived as more favourable to Kosovo because it has helped to consolidate independent statehood and facilitated the country's growing participation in the international community. So far, Kosovo has become a member in international and regional organizations which are open to international entities that are not necessarily independent states such as the International Monetary Fund, the European Bank for Reconstruction and Development and the Council of Europe Development Bank (Caplan and Wolff 2015).

Self-Determination, resistance and emancipation

Having traced the evolution of national self-determination as a principle for political organization in international politics, I proceed to a discussion on the relation between self-determination and emancipation through the concept of resistance.

Resistance is the active opposition to actions or decisions made by the ruling establishment, which have a negative impact on the social, political, and cultural existence of a social group. All instances of resistant behaviour are rooted and rationalized in accordance with a sense of a broadly defined perceived "injustice" (Bell 1973: 78). Such a conceptualization leads to the construction of a binary of opposing forces—between those who exercise dominating power and those who resist it—thus posing a central dialectic of conflicting forces: the rulers and the ruled (Said 1983: 221). Accordingly, national self-determination movements can wield considerable power in their resistance which can counter the dominating power of the state.

This has been the process through which self-determination movements operated in the European political scene and was expressed through the will of the people to claim a dynamic role in the state and the way they would be ruled.

Resistance presupposes some form of collective self-realization which serves a dual purpose: it makes resistance the outcome of a conscious decision not to obey authority and, it also, offers legitimacy to organized struggle. In the case of self-determination movements this realization was restrained gradually, by the nationalist project, which did not manage to break free from parochial methods of securing national homogeneity. Thus the resistance of nations and their quest for freedom did not allow the same right to resistance (and self-determination) for any of the minorities in their territories. The emancipatory potential of self-determination as resistance was confined only to national groups which had the power to exercise effective control over a territory and its inhabitants. A case in point is the Rakhine people in Myanmar who increasingly pursue a national self-determination struggle to resist the dominant nationhood of the Burmese-led state. Although the Arakan Army is cautious not to target any non-Rakhine minorities in Rakhine, the Arakan National Party and its supporters has been hostile towards the Rohingya by subscribing to the infiltration narrative constructed by the Burmese state (Ware and Laoutides 2018).

The meaning of resistance can be twofold: it can connote conservative elements in the sense of preserving forms of community life as it existed in a previous, rather than the current, state of affairs, and, in this context, the legacy of anti-colonial struggle could offer useful illustrations of resistance. In a more progressive mode, resistance can be a defence of, or petition for political and social change which itself may be the crystallization of a previous wave of political struggle. Political and social change, however, does not necessarily aim at the improvement of society as a whole. Its content might be progressive in the sense that it could call into question and eradicate relations of domination, but, also, it may entail the (re)birth and perpetuation of such patterns (Tilly 2003: 177).[1] In separatist politics, this dual possibility of resistance stands at the epicentre of the political struggle. Separatism as a process is a path from a quest of meaning and group identity through disadvantage or inequality to a group demand for recognition and political power (Rothschild 1981: 6). The desire of a particular group to create its own polity (based on national self-determination) does not necessarily mean the cessation of patterns of domination for all the members of the evolving state.

Resistance and Patterns of Domination

Viewing national self-determination as a form of resistance leads the analysis into an examination of the limitations of resistance as a social practice. The critique against the concept of resistance is related to the reproduction of existing systems of power relations that cannot be eliminated if we accept that resistance diametrically opposes domination (Maiguashca 2003: 21). Such a formulation recognizes that domination and resistance cannot exist independently of each other, but equally, that they cannot be reduced to one another. They are thought of as occupying a continuum, which might be characterized as resistance in domination and domination in resistance (Sharp et al. 2000: 21ff). They are always hybrid phenomena as, typically, one contains the seeds of the other (Foucault 1980: 142). Furthermore, the idea of resisting subjects as autonomous from the dominating power

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[1] Tilly notes that: "Populist historians and social scientists find the analysis of everyday resistance attractive despite its difficulty. It allows them to voice sympathy for underdogs and losers "*without lambasting the same underdog and losers for passive acceptance of injustice*" (emphasis added).

assumes the existence of an Archimedean point that stands outside the material world, thus making resistance an external intervening force, stemming from an indefinable realm (Moore 1997: 87).

Practises of resistance are partially conditioned by a form of hegemony, since their logic of enactment accept, at least in part, the larger structures of political and economic power. There is no autonomous consciousness or completely self-determining subject who thoroughly escapes the effects of hegemonic practises (Mitchell 1990: 545–77; Laclau & Mouffe 2001: 7). Thus, even the seemingly most overt and successful occasions of resistance may be scarred by lines of power which reinforce, rather than dismantle, certain forms of domination (Tilly 2004: 56–9).[2] The latter point begs the question: successful resistance for whom?

Acts of resistance may be a reproduction or extension of dominating power, rather than a challenge to it. It is possible to identify "soft subversions" occurring within regimes of domination, whereby subtle or confrontational forms of resistance may appear. In one respect the nation-state may be a manifestation of power of the dominant nation like in the case of the Persian controlled Iran. However, this may be challenged by a similar national resistance, such as the securitised Kurds in Iran who subscribe to the same overarching mode of political organization (the nation-state) that leaves unanswered the question of nationalities in a potential Kurdish state (Akbarzadeh et al. 2019). Resistance in one place may be complicit with domination in another (Sharp et al. 2000, p. 24).

Nevertheless, the aforementioned critique does not imply that there is no essential difference between domination and resistance. Such a reductionism could lead to the rather extreme conclusion that oppression has been eliminated in the world. The possibility of defining the difference between resistance and domination echoes the view that there are still oppressed in the world (Said 1993, p. 191). However, it is essential to start considering the idea of reorienting the normative content of resistance and its consequent practise in order to avoid foreseeable harm and undesired repercussions against others. Resistance must not be seen as an ineffective means of action towards any form of political domination that is exerted over people against their will (Konrad 1984). It is important, however, to see how resistance is informed, what principles are guiding the resisting movement, and how these principles are realised in the political practise of the relevant separatist movement. One manifestation of this inquiry is the empirical observation regarding the type of regime that emerges in newly formed state. This is especially important when state creation is the outcome of a violent conflict and, as we saw earlier in the paper, the international community intervenes only *ad hoc* and when, in essence, the success of the separatist struggle has legitimized the use of violence. Examples may include Eritrea, South Sudan, the Kurdish Autonomous Region in Iraq. The next step in the analysis is to examine how emancipation has informed practises of resistance. The aim is to identify pseudo-emancipatory elements within the practise of resistance which, in essence, constituted the source of further oppression in the context of territorial separatism and state creation.

Resistance and Emancipation
In linguistic terms, emancipation is concerned with freedom from restraint. In the Roman world, *emancipatio* (release from authority) carried the juridical meaning of the release of juveniles from paternal authority (Collins Latin Dictionary 1997, p. 75). In Europe, in the

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[2] Tilly argues that social movements do not necessarily include proliferation of democracy. Empirically speaking, anti-democratic movements have been formed continuously.

sixteenth and seventeenth centuries, the expression was used as a legal term for the early attainment of majority status. Steadily, the use of the term also appeared outside the legal realm and with the French Revolution it became a political keyword. In this context, initially it alluded to the disengagement of the bourgeoisie from the bonds of absolutism and clericalism. The struggles of working people which followed were also considered as struggles for their emancipation. Gradually, towards the middle of the nineteenth century, the term gained broader application to other social categories, such as national and religious groups, slaves as well as gender. The meaning of emancipation in all these processes is the extension of political rights to non-privileged groups (Wertheim 1974, p. 47). Especially in the case of national groups, the aim was not only their recognition as political associates, but also, the establishment of a new polity where the nation could exercise self-government.

More fully, it has been defined as "the freeing of people (individuals or groups) from those physical and human constraints which stop them carrying out what they would freely choose to do" (Booth 1991: 319). This definition indicates that the development of the free will of individuals and groups is central in the discourse of emancipation. The evolution of free will could be interpreted as a challenge to existing social and political structures which are identified as an impediment to the development of human potential. Emancipation could also signify the pursuit of new structures and power relationships that would lead to the development of human capabilities within a more just system of human relations. The Latin roots of the term imply that emancipation initially was concerned mainly with resistance against a state of affairs that was perceived as unjust, such as slavery and religious oppression. In recent times emancipation became, not only a struggle against various forms of oppression, but also, most importantly, a struggle for new visions of the society and the creation of a different social, human, political, and international order (Booth 1999: 41). While Enlightenment rhetoric solemnly spoke of reason in one breath with freedom, in actuality reason and science were increasingly mobilized as a foundation and instrument of order and power (Said 2003). This point is evident in the way the emancipation process of bourgeoisie in Europe—specifically, of mercantile and professional classes in northwest Europe—unfolded in tandem with contempt for and ruthless exploitation or enslavement of most of the non-European world in the name of universal reason and was equated with the advance of light, freedom, and order. The ethnocentrism and the parochialism of the new "universal" knowledge became unquestionable.[3]

This point is of particular interest for territorial separatism. The principle of self-determination, an achievement of intellectual and political contest for the national communities who did not have voice in the political sphere, could have valid application only on European soil.[4] At the end of the First World War, national groups outside the European boundaries were not entitled to self-rule under the principle of self-determination.[5] Thus, a

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[3] It is interesting to remember that what was considered "rationality" and "science" at the time covers much of what later came to be considered as the "irrational tendencies," including "race science," of the 19th and the 20th centuries.

[4] The critique at this point has a twofold meaning; the political organization of the West was shaped by the principle of nationality which constituted an artificial boundary between communities. In addition, even this "faulty" principle was applied only within the Western context, leaving aside, for several years, similar claims by communities outside the West.

[5] Thus, whereas W. Wilson in his tenth point requested that "The peoples of Austria-Hungary, *whose place among the nations* we wish to see safeguarded and assured, should be accorded the *freest opportunity to autonomous development*,". In the fifth point, the language changes in order to support an "absolutely impartial adjustment of all colonial claims" where "the interests of the populations concerned must have *equal weight* with the equitable claims of the government whose title is to be determined." W. Wilson, *Fourteen Points*, January 8,

dichotomy was evident from quite early between those who could achieve freedom of will and action through the application of new "universal knowledge" and those who were bound to remain silent and oppressed.[6]

A comparison can be made between resistance and emancipation. Resistance may be instigated as a desire to maintain pre-existing forms of life, or, alternatively, it may be a defence of a new state of affairs ensuing from previous political struggles. Emancipation in the modern political context has been described as the liberation of particular social groups from the restraint and the injustices that the establishment imposed on them. Therefore, the idea of liberation from restraint and unjust treatment is central in the discourse of emancipation and resistance; by informing each other the two concepts constitute the basis and determine the means of the political struggle. Both resistance and emancipation are interested in self-realization, which in separatist politics was encapsulated in the principle of national self-determination. The latter was the political foundation for communities who were claiming detachment from a territorial state in order to exercise self-rule.[7] The result was the creation of several new states which produced systems of inclusion and exclusion based on particularistic and ascriptive criteria of ethnicity. In this context, the realization of the free will of a group through the principle of national self-determination and its consequent liberation from the injustices of the past, regardless of whether they were perceived or real, could equally produce injustice to other groups which happened to co-inhabit the same territory with the secessionist community. Conceptually, emancipation and resistance offered a carte blanche for the exercise of the right to national self-determination without any regard for any identity differences. It was a defence to express their identities in ways that could prove harmful to groups standing outside the artificial boundaries of nationality.

The comparison between resistance and emancipation echoes the distinction between protest and transformation. Emancipation is a process of a group freeing itself from restriction. It is concerned with "freedom from" rather than "freedom to." It is proactive, but in an unfinished sense, as a negative commitment to resistance, rather than as a positive blueprint. To put it differently, emancipation is best seen as a process rather than as an end. Emancipation cannot be defined in a timeless fashion, as the end-point of human history. It creates new margins, and it contains a theory of progress, but also recognizes that life is one thing after another. "Emancipation is not a state of being, but rather, it is a condition of becoming" (Booth 1999, p. 41).

In this light, emancipation informs the content of resistance which constitutes the translation of the political program into political action. Emancipation and resistance are interdependent in the sense that the latter constitutes the critique of the existing state of affairs, but, simultaneously, is conditioned by a program of change and transformation stemming from

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1918, available from the Avalon Project at <http://avalon.law.yale.edu/20th_century/wilson14.asp>, accessed on 08/04/2019, emphasis added.

[6] This point is also illustrated in the way E.H. Carr accounts for the pacific character of nationalism in the 19th century: " … a phenomenal increase of production and population, offered to the newly enfranchised nations of Europe the opportunity to expand and spread their material civilization all over the world, and, by concentrating the direction of this world economic order in one great capital city, created an international—or, more accurately, supra-national—framework strong enough to contain with safety and without serious embarrassment the heady wine of the new nationalism" (Carr 1945, p. 7). Another example is Renan's Eurocentric analysis of the nation (Renan 1991, pp. 8–22, the original lecture by Renan was given on March 11, 1882).

[7] The fact that non-national groups which experience injustices, perceived or real, are compelled to create a sense of a national community demonstrates the degree of influence the principle of nationality exercises in the international community.

the emancipatory character of the endeavour. Non-emancipatory resistance is negative and conservative, it does not produce justice in the social context it is applied to. It can only alter the form of the injustice and the subjects that are subjugated to it (Booth 2007: 112).

However, what is important to note is that, even when resistance is informed with emancipatory elements, there is still a possibility that the whole enterprise of political and social restructuring will produce new patterns of domination. The false content that is given to emancipatory politics can sometimes lead to more oppression, thus undermining the whole process for a world where free will can be realized in a positive manner for all (Booth 2007: 113). Pseudo-emancipation can inform a practise of resistance which instead of opening the way to political and social advancement actually blocks it. Not every form of resistance relates to emancipatory politics. Resistance can have a negative point of departure which does not indicate any desire for the elevation of free will. This is evident in the secessionist context, by movements that aim at the maintenance or reintroduction of tribal–primordial or religious elements within the new state; a clear example of such a form of non-emancipatory separatism and state creation is found in the episode of the Islamic State.

There has been a tendency for the use of the term empowerment in development projects and its defining feature is a participatory approach which aims to "enable people to emancipate themselves," thus blocking the evolution of domination (Kronenburg 1986: 229–33). Similar characteristics may be found on power-sharing methods of ethnic conflict resolution where the adversaries arrive at a system of distribution of power that would accommodate their interests and needs (Sisk 1996: 77). Despite its appealing aura, empowerment (or power-sharing) does not problematize power at any depth. In particular, there is no distinction between "power to" (ability) and "power over" (control), between empowerment as acquiring skills or as seeking control. Accordingly, empowerment may carry conservative implications, or more precisely, it can be politically neutral. It does not necessarily imply a critical consciousness. Emancipation implies empowerment, but not every form of empowerment is emancipatory (Nederveen Pieterse 1992: 10–11).

Resistance as political struggle may appear in two different versions. In the first version the practise of resistance is informed by a pseudo-emancipatory political program which, in spite of professing liberation and progress for some social groups, produces new forms of domination and control for others. This is expressed in separatism and state creation through the principle of national self-determination which obscured the emancipatory process of liberation by raising artificial boundaries based on ethnicity. In the second version, resistance poses as reaction to oppression and can be informed by an emancipatory political program that seeks to transform the structure of political and social relations and, also, to construct new avenues of political action based on a series of principles that could utilize the political and intellectual achievements of humanity, or, to put it differently, to develop human potential and (re)-invent humanity (Booth 2007, p. 112).

Conclusion: Self-Determination and the Recognition of New States in the Twenty-First Century

International recognition is an indicator of legitimacy of any national self-determination movement. From a political perspective the survival of a new state is more secure when it enjoys wider recognition and increases the state's participation in the international community including membership in the UN and major regional organizations. State creation is directly associated with the right to self-determination of the peoples. However, the international framework for self-determination and subsequent state recognition is still

entrapped in the logic of *uti possidetis* and the territorialisation of the people. In cases where the decolonization principle cannot be applied the international community pegs international recognition on an unprincipled *fait accompli* of power politics, either violent or non-violent. The static anti-colonial view of territorial self-determination not only refrains from granting any right of internal or external self-determination outside this context but, also, does not provide any remedy for the present plight of so many minorities. The reluctance of the international community is also evident in the lack of a formal international forum where oppressed minorities can voice their grievances and put forward their claims at the international level. How and where the Rohingya, for example, can register their grievances about ethnic cleansing and what ways are available for them to exercise their right to self-determination? A final thought about state recognition and self-termination is related to the idea of progress in the international system. Historically, progress in international relations has been equated with expansion. This idea echoed the position that only nations of a certain size could constitute states (Mill 1998: 431–5). Thus, the move from small political units—typically conforming to family, clan or tribal patterns of social organization and political authority—to larger ones—in which social and political organizations were regulated by the market and defended by the military—was irreversible. There was no other way to extend human progress, but through the merger of smaller nations with larger ones. But if progress is identified with ongoing enlargement of human economies, societies and cultures, the fate of small peoples, languages and traditions is bound to be represented as conservative resistance to the inevitable advance of history (Hobsbawm 1992: p. 41). A new interpretation of self-determination should overcome the small states syndrome and focus on a principled process of state recognition that can maximise the emancipatory potential of the peoples broadly defined.

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