

Joining the Club? The Politics of Government Recognition

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ABSTRACT

Under international law, when governments come to power through extra-legal means, the governments of other states must decide whether to recognize the new government as a legitimate agent of the state, and we observe considerable variation in who recognizes the new governments, the circumstances under which recognition occurs, and even how long it takes to recognize new governments. This project studies the processes that drive recognition decisions. Despite attempts, mainly by legal scholars, to limit the discretion that third-party governments have in this regard, the institution of recognition has persisted over time. I argue that states use recognition as a political tool to weaken hostile governments and support amicable ones. In addition to these direct self-interested motivations, I also posit that the nature of recognition itself shapes recognition decisions and encourages coordination among potential recognizers with regard to new governments. To support these suppositions, I develop a theory that uses both international legal (IL) arguments regarding recognition and international relations (IR) concepts and speaks to both literatures. IR scholars have developed a significant field of study regarding the recognition of states, particularly with respect to secessionist movements, but to date, there are no empirical studies of the recognition of governments, which are fundamentally distinct events. This project represents the first step in that regard, and I use an event history approach to empirically test how and when countries strategically recognize new governments. Consistent with my theoretical expectations, countries do appear to use recognition to weaken their enemies but do not seem to use recognition to bolster their friends. I also find support that countries coordinate their recognition decisions.

Introduction

On July 15, 2011, the United States, France, and nearly 30 other states recognized the National Transition Council (NTC) as the legitimate government in Libya (Black 2011). The Libya Contact Group, the international community's collective response to the Libyan civil war, issued a strongly worded statement that echoed the sentiments of its individual members (Libya Contact Group 2012). And yet, recognition of the new government was not universal. China and Russia waited nearly two full months before recognizing. The United Kingdom strongly objected to the language used by the Contact Group and refused to endorse it. These decisions to recognize or not a new government all occurred during the civil war that ultimately ended with the death of Muammar Gaddafi and the installation of the NTC as the governing authority in Libya, but many political scientists seemed not to take notice or question any of the recognition decisions.

Few government or leadership changes that take place are as eventful as the Libyan example. The vast majority of changes in the vast majority of governments have little bearing on the international system. Consider that in 2011, the same year Gaddafi was overthrown and killed, there were 32 other world leaders who left office. One retired due to health concerns, two died of natural causes, and 26 others left office in a normal fashion.¹ Two more, Hosni Mubarak in Egypt and Zine El Abidine Ben Ali in Tunisia, left office as a result of the Arab Spring in their countries, while Laurent Gbagbo was ousted in Cote d'Ivoire (Goemans, Gleditsch, and Chiozza 2009). The infrequency of these types of events is not noted to trivialize them but rather to highlight the fact that they are the exception rather than the rule. Moreover, it is in these exceptions—specifically in Libya—that we find opportunities for an important and nearly unstudied phenomenon in international politics.

Recognition is a topic that is familiar to many political scientists, especially as the subject relates to the sovereign entities that comprise the international system—states. In fact, the past decade has seen an increase in the number of studies examining recognition or not of secessionist movements around the world.² Yet, similar scholarly appreciation for the recognition of

While states are the fundamental actors in the international system, their governments are the agents through which they interact. Recognition is the process by which those entities are legitimized in the international community, and that legitimacy comes from other states and other governments. This paper focuses on the recognition of governments and provides insight into why and when countries recognize new governments, which is virtually unstudied in IR. It also adds to the growing literature on recognition in general.

Recognition is a legal act with legal consequences, and it is also a political act with political consequences. The rich tradition of international legal analysis focuses on the development of the law surrounding recognition, its interpretation, correct use, and the legal consequences associated with it. That scholarship is discussed in the next section. Following that discussion, I provide an examination of recognition as a political tool and present a theory for how and when countries strategically use recognition to further their own political goals to help friendly governments and punish others. I also offer a system-level theory of a cascade effect of how recognition functions that are consistent with both IL and IR scholarship. Next, I describe the quantitative research design and analysis of recognition decisions from 1995 – 2010 and find support for my theoretical account. Finally, I provide concluding thoughts on where future studies of recognition should be directed.

A Legal Act with Legal Consequences

In very broad international legal terms, recognition refers to the "acknowledgment of the existence of an entity or situation

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Despite the best efforts of legal scholars and practitioners, there are no agreed-upon rules for the recognition of governments beyond those identifying when it is necessary. Objective criteria proposed in the past, including effective control, democratic

Hillary Clinton acknowledging that the United States officially recognized the NTC as ". . . the legitimate governing authority for Libya, and we will deal with it on that basis. In contrast, the United States views the Qadhafi regime as no longer having legitimate authority in Libya" (US Department of State 2011). Recognition can also be tacit or implied, as many states choose to convey their intention to recognize through some other means. Historically, tacit means have included the establishment of formal diplomatic relations, the establishment of formal consular relations, and/or the conclusion of a bilateral treaty (Peterson 1997, 87). In short, tacit recognition exists when a government performs a bilateral act that is inconsistent with nonrecognition. Whether express or implied, however, the manner in which recognition is given has no effect on its validity.

The second distinction that legal scholars focus on is whether recognition is *de facto* or *de jure*. British practice for some years was to distinguish between these types of recognition in an effort to more or less legitimacy on a regime. *De facto* recognition is considered by some to be a lesser form of recognition, perhaps an acknowledgment of a temporary situation on the ground that might change, while the *de jure* is a more permanent and fuller form of recognition. *De facto* recognition might be given to a group that is struggling for power and appears to have control, and *de jure* recognition is reserved for a later time (Roth 1999, 150). In practice, this often manifested itself in one government's acknowledgment that a new government was in power but that the recognizing government did not fully support the new regime (Peterson 1997, 98). In principle, the distinction is one of degrees but rarely has that distinction had any practical effect (Talmon 1998, 52).

It is abundantly clear that the possibility for recognition only exists when an extra-legal change in government takes place. It is also clear that states other than the one undergoing the change influence whether or not the change is deemed legal. This fact highlights the opportunity for states to use recognition as a political tool. States have attempted to adapt the tool to suit their purposes, but the institution has remained remarkably resilient. Yet how is it that states developed and maintained this power? Two fundamental legal perspectives—the declaratory view and the constitutive view—relate to recognition and the development of the international system as a whole. As I discuss in the next sections, the constitutive view maintains that states have broad discretion in recognizing those entities (states and governments) that will be able to participate in the system. Because state practice has consistently employed, and therefore reinforced, the fundamental precepts of the constitutive perspective, the political use of the institution of recognition continues to this day.

Theories of Recognition

While certain legal systems and principles of international law pre-date the Peace of Westphalia in 1648, most international legal scholars identify that event as the dawning of modern international law. More specifically for legal scholars, Westphalia marked the emergence of an international community of sovereign, equal, and independent states that recognized no superior authority (von Glahn and Taulbee 2013, 33). This horizontally ordered system was a clear break from the previous feudal hierarchical structure that dominated Europe until that time. The new system would see its membership grow from 25 states in 1815 to just over 50 following World War I and to nearly 200 today (Coggins 2014). The manner in which states enter this system, however, has long been a point of contention between the declarative and constitutive theories of recognition, and this argument is mirrored by the contentions surrounding recognition of governments.

As is the case with many legal arguments, the debate between the declarative and constitutive views reduces to what should be a simple legal question of whether a duty to recognize exists. Proponents of the declarative theory maintain that an entity—a state or a government—exists in law as soon as it exists in fact (Lauterpacht 1947, 38). That is, there should be clear criteria that establish what a state or government is, and once an entity meets these requirements, it should be legally deemed a legitimate state or government. Moreover, there is no discretion with respect to whether recognition as a legal duty exists. The act of recognition is merely a formality—an acknowledgment of an already existing legal fact (Roth 1999, 124). One of the clear implications of such logic is that a new entity can come into existence and obtain legitimacy largely independent of other states in the sense that its identity is established whenever the relevant criteria are met. (Kelsen 1966, 390).

The constitutive theory, meanwhile, strongly opposes the idea that there is a legal duty to recognize new entities. Whereas proponents of the declarative school argue that the legal existence of states and governments begins when established criteria are met, constitutive thinkers argue that the legal existence of new entities derives solely from the will of those that are already established (Lauterpacht 1927, 38). In other words, the constitutive view holds that recognition is a precondition to the existence, legitimacy, and associated legal rights (Brownlie 2008, 87). In this conception, recognition is a matter of sovereign consent and is based on the mutuality of recognition (Menon 1994). Because there is no duty to recognize, states are free to recognize new entities entirely at their own discretion.

In many ways, the arguments for and against the declaratory and constitutive views mirror the larger philosophic debate of naturalism vs. positivism in international law (Roth 1999, 124). Natural law stresses that universal principles exist separate and apart from laws or rules that are created in a given system. Positive international law, meanwhile, asserts that the only law that matters is that which has been created and agreed to by states. The declaratory view of recognition is argued as a far more ethical basis of state emergence as it acknowledges the importance of political self-determination.⁵ Under a declaratory system,

⁵The most notable example of such thinking is reflected in the Montevideo Convention of 1933, which established four criteria for statehood. The

any community that possesses those four criteria has a fundamental right to recognition. A constitutive system, on the other hand, that prizes state sovereignty is necessarily dependent on the decisions of states with respect to recognition. Recognition becomes a political decision and one that states can use to further their own interests.

A Political Act with Political Consequences

A common criticism of international law is that it often does not reflect the political realities of the day or that states simply ignore or enforce it when it is most convenient or expedient (Mearsheimer 1994/95). Much of the work done by IR scholars with respect to recognition involves the recognition of states and broadly falls into two distinct literatures. The first is largely theoretical and/or qualitative in nature, but recently there has been an increased emphasis on quantitative empirical work that has examined recognition, particularly in the case of secessionist movements. One of the first studies in this regard summed up prior work on state emergence and state recognition by stating, "Most theories take the fundamental units of political life to be exogenous. States either exist or do not, and how they come to be is presumed to be relatively unproblematic" (Coggins 2011, 434-35). While the focus of this article is on recognition of governments after an extra-legal change, it is useful to consider the work on recognition of states for the proper context.

Like international legal scholars, political scientists consider the Peace of Westphalia (Westphalia) a formational event in the history of the discipline. A classic retelling of IR history notes the date of Westphalia as the emergence of the modern international system. From that point on, like units struggled to survive in an anarchic system characterized by either conflict or the possibility for cooperation, depending on one's own paradigmatic predilections.⁶ The "states" that make up the system are widely defined in the Weberian sense of the word wherein the "state" is the entity that monopolizes the legitimate use of force in an area. Even Spruyt (1994), who disputes the inevitability of the development of the modern state system, argues that this type emerged as the fittest of all competitors when the new international order was established. In this conception, new states emerge as a bottom-up process as groups develop the means to defend their territory and autonomy (Coggins 2014, 22).

to recognize or legitimize a new entity is a subjective choice that states can make based on their own calculations. While IR scholars do not use the same language as IL scholars, the concepts are the same. The main difference is that while international law continues to debate which theory of recognition and statehood emergence is preferable, state practice over time has demonstrated a clear preference for the constitutive model.

It is well beyond the scope of this paper to summarize the entirety of the current state of that literature with regard to state recognition.⁷ Nonetheless, a few studies in particular p

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Honduras, Nicaragua, and Costa Rica agreed to a treaty that would limit recognition of governments that were violently overthrown (Roth, 1999, 144). None of these politically expedient criteria have remained over time. History shows that the only criteria that seems to have had any sort of lasting effect is that before a new government can be recognized it must have effective control of the state, but even the importance of that criterion was ebbed and flowed over time (Peterson 1997, 36).

To summarize the discussion to this point, recognition is an institution that should be important to both international legal

cynically, a potential recognizer may wish to add to the chaos and unstable political environment by granting legitimacy to a group that is challenging the hostile regime. Byman et al. (2001) and Saideman (2002) offer these and other motivations for why states support some insurgencies and not others, but the core argument is that states seek to weaken their most threatening enemies. In terms of recognition, this means that an antagonistic relationship with a prior government should increase the likelihood that a potential recognizer grants legitimacy to a new regime. Consistent with that logic:

- *H1 (Enmity): A country is more likely to recognize a new government when a hostile relationship exists with the previous regime in a country that experiences an extra-legal change.*

While enmity suggests that potential recognizers are more likely to recognize new governments as a means to weaken their enemies, amity suggests that potential recognizers should use recognition to strategically bolster friends and allies. Ensuring that amicable governments maintain legitimacy directly increases external security by ensuring that hostile governments does not come to power, as an ally should be less likely to attack. It also has more indirect effects, though, as amicable and like-minded governments make cooperative tasks easier. Trade, for instance, is far more likely when a stable relationship exists between two countries. Potential recognizers should prefer a government that it has enjoyed an amicable relationship and should resist change by hesitating for refusing to acknowledge a new regime that comes to power extra-legally. In short, an amicable relationship with a prior government should decrease the likelihood that a potential recognizer grants legitimacy to a new regime. Thus:

- *H2 (Amity): A country is less likely to recognize a new government when an amicable relationship exists with the previous regime in a country that experiences an extra-legal change.*

In addition to the enmity-amity dynamics at work, the nature of recognition itself suggests another theoretic expectation. I have argued that countries have adopted and maintained the constitutive model of recognition with regard to both states and governments, and the primary mechanism that underlies the constitutive model is the notion that state and governments hold the power of legitimacy. That is, like a club good that individuals can be excluded from enjoying, recognition is an action that opens the doors of the club to new members. However, no one country holds the key. Much like the norm life cycle that requires a tipping point before norm adoption and internalization (Finnemore and Sikkink 1998), a similar critical mass of countries must recognize a new government before it is legitimized

Since membership is contingent on multiple countries recognizing a new government, this suggests the possibility of strategically coordinated action on the part of potential recognizers. It makes little sense for only one country to recognize a new government because no one country's decision constitutes recognition by the community. In fact, by acting alone a recognizer risks drawing the ire of other potential recognizers that could make acceptance of the new government more difficult on the whole. If potential recognizers actions are coordinated it should make recognition easier and quicker. Thus,

- *H3: As the number of recognizers increases, the likelihood of recognition should increase.*

Quantitative Research Design and Analysis

Irregular Leader Entries as Extra-Legal Changes and Opportunities for Recognition

Goemans, Gleditsch, and Chiozza (2009) developed the Archigos project, which is a comprehensive dataset on political leaders from 1875-2004. Along with capturing leader attributes, the authors identify and code the manner in which every leader assumed and left office. That is, based on Gleditsch and Ward's (1999) identification of independent states, Goemans, Gleditsch, and Chiozza identify the "effective primary ruler" in every state and record the manner in which they came to and left power. They code each entry and each exit as either regular or irregular depending on the manner in which it occurs. More specifically:

We identify whether leaders are selected into and leave political office in a manner prescribed by either explicit rules or established conventions. In a democracy, a leader may come to power through direct election or establishing a sufficient coalition of representatives in the legislature. Although leaders may not be elected or selected in particularly competitive processes, many autocracies have similar implicit or explicit rules for transfers of executive power. Leader changes that occur through designation by an outgoing leader, hereditary succession in a monarchy, and appointment by the central committee of a ruling party would all be considered regular transfers of power from one leader to another in an autocratic regime (Archigos v. 2.9 Codebook 2009).

Since the end of World War II there have been more than 2,000 leadership changes in countries around the world. More than 80% of those changes were normal: in democracies elections were held; in monarchies, the line of succession was followed; in Communist countries, the Party chose the next leader. A significant number of changes, however, were irregular—they did not conform to the laws, customs, or common practices of a country.

the world recognized a new government, I limited the analysis to politically relevant dyads including local and regional powers. Therefore, each case had a minimum of five potential recognizers while most had more. Moreover, many cases span multiple years, which means there were often multiple dyad-years within each case. The 132 recognition events represent the fact that recognition took place in 13.6% of the dyad-years.⁹ Table 1 provides the descriptive statistics for time to recognition.

Table 1. Descriptive Statistics – Summary of Survival Times

Data	Total Time at Risk	Mean Time
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dichotomous variable and takes the value 1 in every year that an agreement is in force between a potential recognizer and a

Table 3. Determinants of Recognition of New Governments after Extra-Legal Change

Independent Variables	Hazard Ratio (1995-2010)
Hostility (+)	2.849***
Bilateral Trade Agreement (-)	2.076
Mutual Democracy (-)	3.147***
Mutual Autocracy (-)	1.254
Previous Recognition (+)	1.272***
Colonial History (+/-)	1.771*
Oil Production (+/-)	1.495**
Instability (-)	1.157
Number of observations	964
Time at risk (days)	247,370
Number of failures	129
Number of subjects	352
Number of clusters	352

Notes: Hazard ratios are presented. The hazard ratio is the exponentiated form of the coefficient. All tests are two-tailed. Standard errors are clustered within each case by dyad-id and are presented with coefficient estimates in Appendix B. Significance at *** $p < 0.01$, ** $p < 0.05$, and * $p < 0.1$.

previous regime are mutually democratic the likelihood of recognition of a new government—one that came to power in an extra-legal fashion—increases. This finding is particularly worrisome for proponents of the democratic legitimacy criteria as that theory holds that other countries, particularly democratic ones, should delay recognition or withhold it entirely from a government that came to power in a non-democratic fashion. This particular finding warrants further study in the future.

Consistent with the ideological findings it seems that the presence of a preferential trade agreement with a previous regime also has the effect of increasing the likelihood of recognizing a regime that comes to power in an extra-legal fashion, though not at a statistically significant level. Unlike the results for mutual ideology, there is perhaps a ready explanation for the trade

that I attempt to explain the self-interested behavior of countries in terms of their relationships with the governments that lose power. It does appear that countries want to weaken opponents, as the presence of a hostile relationship between the potential recognizer and the previous government greatly increases the likelihood of recognition of a new government. This perhaps suggests that countries want to act quickly to ensure that a prior regime does not reclaim power.

On the other hand, amicable relations with a previous government stimulate rather than deter recognition when that government ousted extra-legally. The results surrounding mutual democracies are the most troubling and are most indicative of the need for future work. A beneficial economic relationship likewise did not have the expected effect on a recognition decision. Again, this perhaps suggests a more cynical approach to diplomacy that favors economic stability over helping a friend but that is conjecture at this point.

The social aspect of recognition is also an important consideration. Scholars have consistently advocated for an acknowledgment of the role that social constructs play in international relations, and some go so far as to argue that international society is itself a social construct. From this perspective recognition plays an important role as an institution that countries have worked over decades and centuries to develop and maintain and it serves as the fundamental mechanism for new actors to become members of that society. To that end, the role of coordination among potential recognizers cannot be ignored. Recognition can still be a strategic decision that countries make, but how the community views a new government matters as well.

As mentioned above, this study hopefully encourages other scholars to examine recognition. Questions about why mutual democracies act in the manner that they do abound and better data and different methods can always help answer new questions. Perhaps the most notable avenue for future research, though, is what happens after recognition. Whether or not newly recognized governments are more stable or survive longer than their counterparts are two immediate questions worthy of investigation. Likewise, the focus here has been on bilateral recognition, but the role of regional and international organizations warrant study. In short, this project should prove the starting point for many others going forward.

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