REPORT FROM PRACTICALLY SOMEWHERE: LIBERLAND, SOVEREIGNTY, AND NORM CONTESTATION

By
Sam Koebrich

Submitted to
Central European University
Department of International Relations

In partial fulfillment of the requirements for the degree of Master of Arts

Supervisor: Professor Alexander Astrov

Word Count: 16,671
Budapest, Hungary
2017

Abstract:

Liberland is a state that does not exist—or rather, it is not recognized by any other state and is occupied by Croatian police despite Croatia not claiming the territory. This project to form a new sovereign state on what would otherwise be *terra nullius* reignites debates of the normative and legal rule of sovereignty in its declaratory and constitutive forms. The exclusion of Liberland from international society demonstrates the operative paradigm of sovereignty as favoring norm over law. By examining why this is so, the purpose of sovereignty as a structure to reproduce power asymmetries in international society is revealed.

Acknowledgments:

I would like to thank my supervisor, Alexander Astrov for entertaining a thesis topic many would scoff at. I paid little attention to sovereignty or norms at the beginning of this degree, but through his course instruction, syllabus, and comments these are now concepts I care quite a bit about. I would like to thank my parents for their emotional (and sometimes financial) support in getting myself and a wheelchair onto a plane to Budapest. I would like to thank my friends in Canada for trying to push me further to the left, and my friends in the US for keeping me grounded. Lastly, I would like to thank the Liberlandians I met for accepting me into their community despite my drastically different worldview.

Table of Contents:

Introduction: The Brief National History of Liberland

The total land mass of earth is 148,940,000 km^2, nearly all of this is part of a recognized sovereign state, is disputed between states, or is unclaimed territory in Antarctica. And then there's *Gornja Siga*, a 7 km^2 territory on the Western bank of the Danube River between Croatia and Serbia, claimed by neither. It *de jure* existed as *terra nullius*—no person's land. That is, until 2015 when Vit Jedlicka, a fringe Czech libertarian politician arrived on the swamp-land territory, planted a flag, and declared it the sovereign Free Republic of Liberland. In attendance were his fiancé and a friend; the pair immediately voted Jedlicka the President of the new state. Since then, Liberland has acquired a large amount of press, most of which treats it as an absurd and unlikely project. Despite this, Liberland represents the most serious attempt in the post-colonial era to create a state on territory that would otherwise exist as *terra nullius*, yet it has failed to gain recognition from international society.[1]

Croatia was granted title to the land by the post-war Badinter Commission in 1991, but only tacitly accepted the findings. Croatia rejects ownership of the territory to maintain separate claims on the Eastern side of the Danube. Through the 1940s and 50s several infrastructure and damming projects on the upper Danube altered the course of the river, shifting its path from the Western side of Gornja Siga, to the East. Croatia's claim follows the previous flow of the Danube, where cadastral ethnic-enclaves of Croats now exist on the Eastern-Serbian side of the Danube. Both Serbia and Croatia risk losing their claim to the much larger ethnic-Croat cadastral territory along the Eastern side of the Danube by claiming Gornja Siga.[2] The Serbian Ministry of

[1] The only other example of modern *terra nullius* exists between Egypt and Sudan in "Bir Tawil". Its environment is far less habitable than Liberland.

[2] Gabriel Rossman, "Extremely Loud and Incredibly Close (But Still So Far): Assessing Liberland's Claim of Statehood." *Chi. J. Int'l L.* 17 (2016): 311.

Foreign Affairs issued a statement that "the official position of the Republic of Serbia is that the state border goes along the Danube water in lieu of the legal border setup from 1945 and that [Liberland] has not been formed on Serbian territory," the statement then opines "the ministry also considers [the establishment of Liberland] a frivolous action that should not even be commented upon."[3] Croatian MP Ivan Perner explicated Croatia's position to me: "this territory is not in the interest of Croatia, because there is a ten times bigger land we claim on the other side, I do not see [Liberland] interfering with Croatia's claim." Despite rejecting ownership of the land, Croatia maintains an extraterritorial police deployment in the territory, and has arrested anyone who attempts to enter. Thirty-four such arrests and countless detentions have occurred as of May 2017. Liberland has argued that such arrests are illegal cross-border kidnappings, and that international law is being violated.[4]

Regardless of the *de facto* lack of territorial control, Liberland remains earnest and committed to their project. Jedlicka is hoping to create the "freest nation on earth, a place where government handouts will likely be nonexistent."[5] Liberland has received 400,000 citizenship applications (75,000 from "people [who] are very serious," and 20,000 from Syrian refugees).[6] A draft constitution has been published on their website. Jedlicka stated that "[Liberland has] representatives in 80 countries that are working on setting up diplomatic relations," and while they "do not strive to be full members of the United Nations, we are considering observatory status."[7] Liberland is presently based out of an office in Prague, but its representatives operate

[3] Copy of letter posted to Liberland's Facebook page. May 19, 2015.
[4] Rossman, Extremely Loud, 315.
[5] Michael Glaser. "Want Liberland Citizenship? Here's How to Increase Your Chances". *Liberland Press.* May 29, 2015.
[6] "About 20,000 Syrians Apply for Liberland Citizenship". *Sputnik International.* September 24, 2015. Article citing Sputnik Radio interview with Jedlicka.
[7] Vit Jedlicka, email message to author, Nov. 30, 2016.

'honorary consulates' around the world. They host regular conferences in locations including the Southern Hungarian city of Baja, in rural townships on the Serbian beachfront across from Liberland, and in their consulates.

To conduct my research I attended one such conference, a three day weekend in Baja in celebration of the second anniversary of Liberland's founding in April, 2017. A group of around 50 Liberlandians and supporters attended, most paid a registration fee of $200 to $400. A private boat was chartered to take attendees from Budapest to Liberland, but the hired company cancelled at the eleventh hour; Liberland claims IP traces on their websites indicate the Hungarian Government had researched them and instructed the tour company to cancel the trip.[8] Similar auras of conspiracy against them (perhaps justified) surround much of Liberland's activity.

A bus was hired instead, and the conference began after delay. Speakers included Jedlicka, Bogie Woznaik—one of the two Vice Presidents, Thomas D. Walls—their employed Foreign Minister, Dan Mitchell—an American economist from the CATO institute, Alexander Borodich—a Russian Venture Capitalist, a variety of entrepreneurs and libertarians from around Europe, Cryptocurrency brokers, and a utopian architect. Following the presentations, a chartered bus took us on a day trip to Serbia, where a naval landing on Liberland was planned, but hampered by a large Croatian police presence. On the Serbian shore a citizenship ceremony took place instead, granting official status and passports to some supporters.

[8] Deane Thomas. "Liberland, the Police, and the Croatian Taxpayer Bill". *Total Croatian News*. April 20, 2017.

Two Ways to Become Sovereign:

There are two theoretical models addressing how a state obtains sovereignty. The first, 'declaratory' argument ascribes a rudimentary list of criteria whose completion entails holding sovereignty. This model is present dating back to Westphalia or *ab aeterno*, but is codified in the Montevideo Convention on the Rights and Duties of States. The Convention was signed in 1933 by a vast majority of North and South American states, and accepted as law by the Organization of American States and the League of Nations. It outlines four criteria prospective states must meet to gain sovereignty: "(a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with the other states."[9] The declaratory model treats sovereignty as an act of self-production in an anarchical system, no societal element of recognition is needed in the natural development of a civilized state towards sovereignty.

The second model, 'constitutive' recognition views sovereignty as something that only occurs through recognition from other sovereigns. This model can find philosophical origin in Hegel, who wrote "without relations to other states, the state can no more be an actual individual than an individual can be an actual person without a relationship with other persons."[10] This model exists with no explicit criteria dictating the ontology of a sovereign, rather it focuses on the phenomenon of sovereignty as an act of recognition within society.[11] Jens Bartelson describes this as a "short circuit between that which is to be legitimized and that which provides the legitimization," and that "the fact that sovereignty performs both these functions helps to explain why it has been able to generate a sense of entrapment among political philosophers for

[9] "Montevideo Convention on Rights and Duties of States": Article 1. Organization of American States. 1933.
[10] Georg Hegel, *Elements of the Philosophy of Right*, 1821. Cited in Jens Bartelson, "Recognition: A Short History." *Ethics & International Affairs* 30.3 (2016): Page 313.
[11] Thomas D. Grant "Defining statehood: The Montevideo Convention and its discontents." *Colum. J. Transnat'l L.* 37 (1998). Page 422.

so long."[12] As two states are necessarily interacting for this recognition to occur, an international society is pre-existent for this model to operate. For an international society to be pre-existent, the sovereign state must already exist as a unit of analysis, and the criteria for when a state ought recognize the sovereignty of another already exists in the norms present in that society. Future acts of recognition conform to this norm, but also alter it subtly in their particularities. Bartelson refers to this in similar terms as a parergonal frame of sovereignty—meaning that the constitutive act of recognition contributes both in the particular instance, and as a way of gradually shaping the norms which dictate what it means to be sovereign. Because constitutive recognition requires a capable international society to operate, the constitutive model gains prominence through globalization and institutionalism.

It is curious that the declaratory model existed far before the Montevideo Convention, and that the constitutive model was being applied by European powers before the Montevideo Convention. Analytically, there is little temporal association between the two. It is only in modernity that interconnectedness has made it untenable for distant geographic regions to hold different concepts of what a state is, and what the purpose and form of sovereignty is. Now a singular rule exists which takes the sovereign state as the basic unit of analysis in international society, requiring common definitions for concepts.

The two models of sovereignty are not in a Cartesian duality against one another, nor has humanity's progress brought society from one to another by virtue of one model's innate superiority over the other. Nor does either model contain a natural presence beyond the structure humankind has assigned to them. Within these structures, each model contains its own internal validity, and argumentation is made within each or through a combination of the two. Discourses

[12] Jens Bartelson, *Sovereignty as Symbolic Form*. (Vol. 6. Routledge, 2014), 4.

and norm contestation within international society allow arguments invoking these models to rub and overlap with one another, generating social friction until one is held within international society to be the operative model, finding rule as an operative paradigm.

By focusing only upon the operative model, one falls victim to accepting the status-quo as a causal reality rather than a socially constructed concept. The limitation of this structuralism is in its absolute essentialism of the state. It has unfortunately become common to understand sovereignty as a static force which drives the progress of groups from ethnic-kins, to nations, to states, to sovereigns with relations with others. International Relations has found its disciplinary niche in the latter, and has presupposed because of this that sovereignty is intuitive rather than constructed. A post-modern extension of this paper could approach the Brobdingnag[13] question of why sovereignty is perceived as a quintessential necessity. The scope of this paper is less ambitious, it seeks to only trace how constitutive-linked sovereignty became accepted as the operative model. The case of Liberland then provides a rare glance at modern norm contestation in the way they challenge and adapt to this model.

Liberland's claim is most vocally in law, not norm. In conversation with Jedlicka, Walls and their legal counsel—Sonja Prstec, five statues have been brought forth to explicate Liberland's legal claim: the Montevideo Convention, the UN Charter's Article 1(2) on self-determination and Article 2(4) on territorial integrity, the Schengen Procedure for policing of external borders, the European Court of Human Rights Protocol No. 4 supporting the freedom of

[13] The fictional country in Jonathan Swift's Gulliver's travels inhabited by colossal giants. As an adjective, meaning colossal. Swift used the country to critique the statism present in eighteenths century Europe as noted by Iver Neumann and Sieglinde Gstohl, "Lilliputin in Gulliver's World?" in Ingebritsen, et. al. *Small States in International Relations*, (University of Iceland Press, 2006), 11-12.

movement & additional protocol against discrimination, and EU & Croatian procedural violations in the arrest of Liberlandians on their claimed territory.[14]

Jedlicka described Liberland's inception to me as a "loophole" he discovered while browsing Wikipedia late at night. He discovered the territory looking at examples of *terra nullius* present on earth, and understands the Montevideo Convention as a legal checklist to become sovereign. As such, Liberlandians refer to their project as a legally sovereign state whose land is unjustly occupied, rather than that of a non-recognized state seeking sovereignty. Liberland's emphasis on the Montevideo Convention contributes to their perspective that sovereignty can still be found through the declaratory path, in itself a normative argument. They believe they are already sovereign regardless of recognition of such, and that recognition is useful, but not necessary.

It should be noted that the libertarian ambition of forming a state with decentralized and limited government requires that there is no singular plan or policy. The use of "Liberland" as a subject in this paper represents the general momentum of the project as expressed by the current administration. Liberland has not held an official state election yet. Pavel Pospisil, the Honorary Consul of Liberland in Switzerland formed the first political party in Liberland (modeled after Ayn Rand) and stated that it is "not necessary to have territorial control of Liberland to form a parliament," optimistically he believes elections can occur in 2018. This is to say that pieces are

[14] Prstec is a Croatian lawyer and supporter of Liberland who is representing the Liberlandians in court and preparing a case to bring before the Croatian Constitutional Court on behalf of the arrested Liberlandians, and if that fails, perhaps before the European Court of Human Rights. She stated in email that the following has been neglected: "no information from the police about reasons of arrests, no right for calls, no translators, no translation of documents, rude and unprofessional approach." She plans on advancing the cases of the 30 arrested to the Croatian Constitutional Court, but concedes that "The court at first trials last year and again in retrials this year doesn't accept and disregards any arguments of defense."

still very much in motion and the internal politics and policies of Liberland are liable to change. However, a strong consensus around Jedlicka's leadership seems to exist.

Jedlicka's current administration has a clear foreign policy approach from which two goals emerge: first to gain recognition of their sovereignty, *not* to seek dutiful membership in international society, but rather to further legitimize their territorial claim in effort to normatively pressure Croatia to withdraw its presence. Second, to create a new digital-first state capable of decentralizing administrative and governance roles held by the traditional state. The empirical section of this paper will identify Liberland's specific foreign policy methods and elaborate on their desire for territorial recognition.

Using the Outlier to Examine Sovereignty:

In 1955, a young journalist—John Sack—traveled the world's small-states to provide "an account of thirteen no-account countries."[15] *Report From Practically Nowhere* (and its excellent illustrations by Shel Silverstein) deserves to be revisited by scholars today. Sovereignty is less relevant to Sack, who instead focuses on statehood. With hindsight it is easy to see why—a paradigmatic shift was underway, as international society was developing the institutional membership system now present. Statehood is a concept far less concerned with recognition from other states, but upon the state's own internal governance—fulfilling the declaratory model of sovereignty is a side effect. What is interesting is how the cases Sack examined in 1955 exist today—Sack puts little stock in any of them to prove durable, but some did.

Four became full sovereign members of international society (Andorra, San Marino, Monaco, and Liechtenstein). The Sovereign Military Order of Malta, a unique case of a

[15] John Sack, *Report from Practically Nowhere*, (Harper, 1959), 3.

sovereign *non-state* entity existing in two buildings in Rome, now holds UN Observer Status. Six disappeared, absorbed by larger neighboring states (Lundy, Sharjah, Swat, Amb, Punial, Sikkim). Only two (Sark and Athos) exist today as they did in 1955, as autonomous governances, although neither emphatically claims sovereignty. A retrospective look at Sack's work proposes an interesting argument: although projects like Liberland might seem unlikely to succeed, so did micro-states (a term Jedlicka dislikes but used by Sack) in the past which did. Even the smallest of states is useful to study, as the outlier often dictates the rule.

Scholars have taken this approach in recent years. In their introduction to *Small-States in International Relations* Iver Neumann and Sieglinde Gstohl formulate fundamental questions on the realities of sovereignty by examining how the concept treats outliers.[16] Erik Ringmar assessed how European great-states constructed sovereignty to understand their own fringes.[17] Sovereign equality, self-determination, territoriality, diplomatic-capacity, governmentality and order are a few of the concepts challenged when examining the empirical reality of small-states. Neumann and Gstohl find that much of International Relations theory is overly focused on the capabilities-based power held by great-states. The weakness in this approach is accepting sovereignty as something born in power and ability, rather than existent in a parergonal frame which adapts to itself.

What emerges is two different conceptualizations of sovereignty. One, in which absolute autonomy and *de jure* sovereign-equality are accepted as reality. The other, in which great-states use their sovereignty to subordinate others, and view small-states as owing their "independence either to the balance of power… the preponderance of one protecting power, or to their lack of

[16] Iver Neumann and Sieglinde Gstohl, "Lilliputin in Gulliver's World?" in Ingebritsen, et. al. *Small States in International Relations*, (University of Iceland Press, 2006), 11-12.
[17] Erik Ringmar, "Recognition and the origins of international society." *Global Discourse* 4, no. 4 (2014): 446-458.

attractiveness for imperialist aspirations," as stated by Hans Morgenthau.[18] The former seems focused upon the declaratory model of sovereign recognition. The later appears to be the *de facto* reality; that sovereignty is contingent upon recognition by others. Debate between these two conceptualizations has occurred elsewhere, such as in great-state intervention into the conflict of smaller-states which seemingly betraying the absolute autonomy of sovereignty voiced in the UN Charter. While these debates are valuable, they occur in a frame where illegal violations of a state's sovereignty occur *a posteriori* to sovereignty holding a concrete legal understanding. The case of Liberland proposes the *a priori* claim that sovereignties legal roots are not being respected by international society.

The thesis of this paper argues that while constitutive recognition is paradigmatic, the declaratory model holds purchase in its legalism. While one model is operative, both hold discursive worth. The constitutive model has achieved operative status in modernity through the normative advantages it provides to great-states in international society, but Liberland is a case which challenges these norms on an empirical basis. In doing this, false progressive dichotomies between legal and normative, declaratory and constitutive are also confronted.

Plan of This Paper:

To do this, there will first be a theoretical assessment of sovereignties purpose in enlightenment and post-enlightenment political thought. Colonization brought about the most consequential effects of sovereignty, but modern (perhaps postmodern) globalization continues this trend. Then, a look at the disparate nature of sovereignties legal and normative functioning occurs. This dissects the nuances and obligations of sovereignty's constitutive form.

[18] Iver Neumann and Sieglinde Gstohl, "Lilliputin in Gulliver's World?", 18.

Following these theoretical sections, two empirical sections correspond to the questions asked above; one asking why sovereignty is important for Liberland, and a second questioning why a state would or would not recognize Liberland's sovereignty, and if Liberland even needs sovereignty as recognition.

By using Liberland as an outlier case-study that challenges the status-quo, a broader understanding of sovereignty is formulated. This formulation is useful to apply to a variety of territorial disputes, secessionist projects, and unrecognized peoples to better understand why certain territories lack full membership in international society. As such, treating Liberland as an extroverted case study is the most appropriate methodology.[19] While little is written academically about Liberland, my own field notes and interviews were semi-structured with an intent to understand Liberland's conceptualization of sovereignty, their foreign policy, and their future ambition. Several poignant anecdotes were relayed to me, and these are presented in the empirical section.

While this paper can be read as an inquest into Liberland's foreign policy, and as an empirical example of how a new-entrant to international society goes about entering diplomacy, it can also be read as an exposition of sovereignties role in international relations. It is my hope that by marrying the theoretical to the empirical section, modern sovereignty can be unveiled as a norm based concept designed to reproduce asymmetries in international society by constructing an order of states.

[19]Richard Rose. "Comparing forms of comparative analysis." *Political Studies* 39, no. 3 (1991): 454.

Chapter One: Non-Recognition as Exclusion, Recognition as Subordination

While the concept of sovereignty stretches back to classical thought, its early purpose was in distinguishing the emperor and their property from the serf. In the enlightenment era—following the Peace of Westphalia—it became far more relevant in political philosophy to construct a dichotomy between sovereign statehood and anarchy.[20] Thomas Hobbes advanced this philosophic basis by codifying moral principles as natural law that rational actors ought follow. Natural law initially served to foment domestic order within states, instructing citizenry to surrender an amount of their absolute freedom to a government and receive rule of law.

At a higher level—the interaction between states—it is irrational to expect one capable state to surrender their sovereignty to another. Absent a "super-leviathan" world government, Hobbes instructed states to act rationally to one another, to avoid provoking war, and to respect others territorial claims.[21] These formulations of natural law were negative in their character; they understood rationality as the salient method of conduct which separates order from anarchy. To harm others is irrational as it erodes the normative rule which protects oneself from harm. Natural law existed as a norm born in ethics, but international law emerged as a discipline to codify this norm as positive law.[22] Jurists such as Grotius and Vattel used it in positivist application absent any precedent for international arbitration—Bartelson describes how the later viewed the act of recognition as a legal act which functioned to create international society.[23] Positivism allowed for epiphenomenal natural law to hold an obligation, preventing its erosion.

[20] This tradition continues into mainstream International Relations through realism, most notably Waltz's *Man, the State, and War* in 1979.
[21] Kinji Akashi. "Hobbes's Relevance to the Modern Law of Nations." *Journal of the History of International Law* 2, no. 2 (2000): 199-216.
[22] Jens Bartleson, "Recognition: A Short History." *Ethics & International Affairs* 30, no. 3 (2016): 305.
[23] Martti Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960*. (Vol. 14. Cambridge University Press, 2001), 131. And Gerry Simpson, *Great Powers and Outlaw States: Unequal*

This notion proved problematic when progressives such as Bluntschli and Lorimer extended Montesquieu's notion of cultural law to ethnic primordialism; racialist orderings of ethnic superiority emerged that assigned Western Europeans with the burden "to educate other races in political theory and statehood so as to fulfill their great historical assignment."[24] By juxtaposing sovereignty with an order of races, a hierarchy of race and power justified the powerful in subordinating the weak—this surely violated Hobbes's Second Law of Nature, which makes a normative assignment to not harm others, but did not violate the applied positivist law which only protects a sovereign's own citizens.

Recognition of sovereignty emerged as a normative assessment of civility—sovereignty was not given to those Lorimer cast as barbarian (half-civilized) or savage (uncivilized).[25] Recognition by a sovereign implies that they cannot justifiably—in natural or positive law—dominate the other state *explicitly*, implying that the 'civil' must treat other 'civils' rationally; this came to be known as sovereign equality. In the transmutation of natural law to positive law, sovereignties utilization shifted from an ethical obligation to oneself, to an instrumentalized understanding of others.

Within natural law, a society was formed through communication between states. The conception of sovereignty in positive law implied that an international society is "ontologically prior" to a collection of states within it.[26] Bartleson notes that the European sovereigns saw it as within their power to recognize which states belonged in this society and exclude those that did

Sovereigns in the International Legal Order, (Cambridge University Press, volume 32), 122. And Bartelson, *Recognition*, 310.

[24] Koskenniemi, *The Gentle Civilizer of Nations*, 104.

[25] *Ibid*, 131.

[26] Bartleson, *Recognition*, 306.

not. Bartelson also notes the application of sovereignty as a method of exclusion "originated *within* the European context before it was projected outward onto non-European peoples."[27]

Regardless of origin, European exploration and imperialism spread this ideal of sovereignty with horrendous consequences. Colonialism allowed for those who hold sovereignty to explicitly dominate new-entrants to international society if they could be deemed uncivilized. Materially stronger-states such as Turkey and Japan could not be physically dominated,[28] so they were denied any recognition of sovereignty on the implicit basis of their subordinately ordered race.[29] Sovereignties' enlightenment era purpose was to justify an individual's devotion to a strong-state, its utilization for the next 300 years was in explicitly subordinating new entrants to international society through colonial processes of ordering.[30] Martti Koskenniemi says as much in his exposition of sovereignty—"to attain equality, the non-European community must accept Europe as its master—but to accept a master was proof that one was not equal."[31]

The initial motivation for dominating new-entrants through colonization was economic. Corporations sought cheap materials to extract, and new markets to sell developed materials.[32] As the process continued, the colonized became increasingly aware of their own agency in the arrangement, and resistance occurred. Self-determination became a powerful concept, as the

[27] Bartleson, *Recognition*, 316.

[28] Friedrich V Kratochwil, *Rules, Norms, and Decisions: On the Conditions of Practical and Legal Reasoning in International Relations and Domestic Affairs*, (Vol. 2. Cambridge University Press, 1991), 252. It is interesting that although denied sovereignty by Europe, the Ottoman Empire held its own conceptualization of sovereignty and used this to hold the various ethnic nations of the Middle East together under a single Sultan.

[29] (See Lorimer drawing on Montesquieu: "the Turks probably did not even belong to the progressive races!" Hence the dual meaning in the title of Koskenniemi chapter on this political history of the concept: "Sovereignty: A Gift of Civilization", 105).

[30] Simpson, *Great Powers and Outlaw States*, 105.

[31] Koskenniemi, *The Gentle Civilizer of Nations.* 136.

[32] Werner Baer, "Import substitution and industrialization in Latin America: experiences and interpretations." *Latin American Research Review* 7, no. 1 (1972): 95-122.

United States demonstrated in 1776.[33] Spanish America gained independence in 1822, followed by the secession of Brazil from Portugal. French Imperialism contributed to three domestic revolutions, and "when the Empire fell in 1870, many felt that imperial ambition was partly to blame."[34] British Parliamentarian Thomas Macaulay realized by 1833 that "to trade with civilized men is infinitely more profitable than to govern savages."[35] Thus in the mid-1800s focus in India, China and British North America turned from maintaining political domination, to maintaining economic subordination through free-trade agreements which reproduced asymmetries through legal arrangement. Exploitation still occurred, but within the *de jure* rules of 'sovereign equality'.

By the 1900s former colonial small-powers were receiving some recognition of their sovereignty, but were disappointed to learn that the reality of sovereign-equality was not respecting the egalitarian natural law it implies.[36] These small-states had the capacity to send lawyers-as-diplomats to advocate for a more robust set of rights; Luis Drago and Rui Barbosa advanced the sovereign-equality position by arguing within the framework of classical international law.[37] Embodied deep in this argument is a Kantian or Montesquieuian appreciation of cosmopolitanism in natural law, seeking to partially supersede state's sovereignty through international institutions. Legal positivism shifted towards *de facto* sovereign-equality: equal access was provided to small-powers to serve as jurists on the International Court of Justice,[38]

[33] Bartleson, *Recognition*, 311.
[34] Both quotes from Cooke, James J. *New French Imperialism, 1880-1910: The Third Republic and Colonial Expansion*. David & Charles Publishers, 1973. Page 13. Cited in Koskenniemi, *The Gentle Civilizer of Nations.* 108-111.
[35] *Ibid*, 108-111.
[36] Bartleson, *Recognition*, 306.
[37] Simpson, *Great Powers and Outlaw States*, 267.
[38] *Ibid*, 31.

the debt-sovereignty of Venezuela nearly brought the US and U.K. to war in 1902, and the recognition of the global south advanced.[39]

Sovereignty as Order:

Despite concessions to small-states, subordination through order was still present in a multitude of forms over the next 40 years: in forced trade arrangements with states, in justifications given for the invasions of states, in the mandate system established by the League of Nations, in the moralist subordination of the losing state's at Versailles, Bretton Woods, and Nuremberg, and in the construction of the UNSC as a forum for great-states to engage in power-politics.

After the advent of the UN, implicit subordination replaced explicit domination, and was invoked during the Cold War. Schmittian "state of exception" arguments justified subordination by rival hegemons in the Soviet occupation of Eastern Europe, the imperial aspirations of China, or in US invasions of states susceptible to communism.[40] In fact, Carl Schmitt and Morgenthau were concerned with how freely sovereignty was interfered with by great-states. Justifications like moralism, utopianism, legalism, positivism, and formalism served as reason enough to intervene in a sovereign's affairs, abandoning the original principle of what sovereignty was. Morgenthau's view of "politics as intensity amidst a population," describes the popular support

[39] T. Boyle, "The Venezuela Crisis and the Liberal Opposition, 1895-96." *The Journal of Modern History* 50.S3 (1978): D1185-D1212.

[40] Koskenniemi, *The Gentle Civilizer of Nations*, 414, 428. And Louiza Odysseos, and Fabio Petito, eds. *The International Political Thought of Carl Schmitt: Terror, Liberal War and the Crisis of Global Order*. Routledge, 2007. Page 85-87.

of great-states invoking these '-isms' to justify acts of aggression or war.[41] Whenever a rule grants autonomy in relations between states (as sovereigns), that rule is ensuring the asymmetry of that society by providing great-states not only the ability to construct the operative rule and order, but to get away with violating it by deciding upon its exception.[42]

In this history, the friction between the models of declaratory and constitutive sovereignty is apparent. At times normative orderings of race, civility, or economic development are accepted as operative, at other times legalism justifies the actions of states in the exclusion, or subordination of another. This friction is not caused by the models replacing each other's formal existence, but by the alternate stress put upon qualities of each model by society. When one model receives enough support to become operative, the empirical reality of the world is not drastically altered, but the justification provided for the structure of that reality shifts between legal and normative.

The Types and Purpose of Order:

Order in international relations conceptualizes the material (in terms of demographic, military, economic, geographical) advantages states hold into normative applications (weaker-states craft alliances with stronger-states, weaker-states vote in 'blocs' following the lead of stronger-states). When a single state, or a small group of states control an absolute material advantage over others, a construction of hegemonic, or hierarchical order is formed. This order is not codified, but shaped by norms and power-politics.

[41] Carl Schmitt. *The Concept of the Political*, 38. And Hans Morgenthau, "An Intellectual Autobiography." 67. Cited in Koskenniemi, *The Gentle Civilizer of Nations.* 436, 449. And Simpson, *Great Powers and Outlaw States*, 262.

[42] Nicholas Greenwood Onuf. *World of our Making: Rules and Rule in Social Theory and International Relations*, 1989, 214.

Hegemony is understood in the Gramscian context of a ruling societal actor whose dominant cultural ideology coerces other actors to accept that their subordination as natural or inevitable.[43] This hegemon constitutes the social reality, so even consent of rule received by subordinates is coerced. While the Gramscian conception of hegemony sees no autonomy in the actions of subordinates, the Weberian concept does.[44] The implication of Nicholas Onuf's use of *herrschaft* is that states in international society can feel as though they are autonomous beneath a hegemon, when in fact their actions are restricted**.**

Hierarchy is understood in the context of bureaucracy, whereby each actor is positioned in a chain of command—all but the top and bottom of the hierarchy have both superordinates and subordinates.[45] This implies that any norm constituted must arise from a position higher in the hierarchy and diffuse downward, "the validity of any directive is ultimately traceable to the directive of a chief."[46] In this formulation coercion is explicit as each sovereign understands that any order is necessitated by a sovereign above their own position.

While the Greek roots of '-archy', 'cracy,' and '-nomy' all suggest a condition of rule, only '-nomy' conveys the notion of rule as arrangement.[47] Heteronomy derives from Kant, and purveys a system of rule as arrangement through its 'nomy' root—Kant locates this arrangement in the transcendental conditions of rationality and autonomy of all actors in any social reality.[48] Because actors are self-aware of these conditions, each actor is able to relate available means to particular ends they desire with an awareness that others will do the same. The result of each

[43] Onuf, *World of Our Making*, 211.
[44] Onuf, *World of Our Making*, 209.
[45] *Ibid*, 211.
[46] *Ibid*, 212.
[47] *Ibid*, 209.
[48] *Ibid*, 37, 213.

state competing for the ends they desire can appear as an anarchical system in which the materially strongest create an order of hegemony or hierarchy, but in fact heteronomy is the "background condition of rule against which episodes of hegemony and hierarchy are set."[49] So long as a multitude of states are aware of each other's existence, a society exists, and whenever a society exists, anarchy cannot be the base condition.

The recognition of sovereignty is not a mutual process of recognizing each state's sovereign-equality in international society. Rather, recognition of a new-entrant's sovereignty is recognizing their position in an order created in one of these forms; the hegemon or hierarch establish the rules of recognition, and lesser states subscribe to these rules to secure their own recognition. Although hegemony or hierarchy concentrate power at the top, the background condition of heteronomy implies that all rules are societally upheld.

The Falsity of Sovereign Equality:

What then, is the role of sovereignty in our age of international society and globalized institutionalism? In Taiwan, Kosovo, Transnistria, Palestine, Abkhazia and South Ossetia, great-states have enjoyed the final say in granting or denying sovereignty. The case of Abkhazia is fruitful in demonstrating the power of norms. Abkhazia was briefly recognized by both Vanuatu and Tuvalu in 2011, but the recognition was withdrawn in favor of recognizing Georgia in 2013/14. Tuvalu's Minister of Foreign Affairs stated that "[Tuvalu] had a drop in assistance [funding] from the European Union for this coming cycle and they hope the agreement with Georgia will rectify that in future."[50] Tuvalu and Vanuatu violated no law in recognizing

[49] *Ibid*, 197.
[50] "Tuvalu joins traditional friends by renewing ties with Georgia". *RNZ*. April 16, 2014.

Abkhazia, it is their ostensible power as sovereigns to recognize whoever they please. However their action had normative consequences—the loss of prestige affected their monetary assistance. The European Union disciplined them to avoid the dilution of their own power to recognize. The case of Liberland is far less entrenched in power-politics than Georgia, but it is not unreasonable to expect similar discipline should a small-state recognize them, as this still erodes the norm which benefits great-states.[51]

In modernity, subordination can rarely be explicit without receiving condemnation from others. Even great-states risk losing prestige when they explicitly overpower another state's claim to sovereign-equality. The 2003 US led invasion of Iraq, or 2008 Russian support for secessionist movements from Georgia demonstrate this. Norms are asymmetrically shaped by great-states, but their obligation is collectively held by international society. The philosophical paradigm shift towards egalitarianism, sovereign-equality, and self-determination found footing in positivist formulations like the UN Charter. While these institutions *de jure* afford these rights to small-states, they also provide a forum for power-politics to proceed to overpower them.[52] Great-states always intended to hold the ability to decide upon the exception, but this is not an unequivocal right. The US could hypothetically annex Canada quite easily and secure a great deal of resources in the process; but the normative consequences of doing so would be unimaginable in scale. While great-states are self-interested as much as any other state, and it can be expected that they will use their position to shape norms to benefit themselves, they alone cannot decide what the norms are. When deciding upon the exception to a norm great-states still risk the loss of

[51] The example of Liechtenstein outlined by Jorri Duursma in Neumann ed. al *Small states in international relations*. University of Iceland Press, 2006. Page 104. Contributes to this, Liechtenstein did not play into power-politics either, but still met fierce resistance in their desire for recognition.
[52] Koskenniemi, *The Gentle Civilizer of Nations,* 439.

prestige in the process. The difference is that great-states are far less affected by this loss of prestige than a smaller-state.

This theoretical section began by asking what the purpose of modern sovereignty is; the answer is in creating an order that reproduces asymmetries in international society. Great-states maintain this order to protect their position within it. To gain recognition provides rights like territorial autonomy, but at the cost of entering an ordered international society where subordination to other states is implicit.[53]

Non-recognition and sovereignty exist as two separate barriers of exclusion in international society. The first is explicit in its exclusion—non-recognition allows sovereigns to occupy and dominate without an obligation to justify their actions, as Croatia is doing in Liberland. The second, constitutive recognition of sovereignty, is a more tenuous barrier than sovereign-equality would imply. To gain recognition provides membership in international society, but also assigns an implicit position in the order within it. States lower on that order are expected to conform to the expectations of those higher up. Hence, constitutive recognition replaces explicit domination with implicit subordination.

[53] Simpson, *Great Powers and Outlaw States,* xii.

Chapter Two: Norms as Rule

Rules in international society can take place in either normative or legal form. Legal iterations; such as infringement proceedings against an EU member state, treaties, or other codified agreements have a formalism in their instruction. Normative iterations; like customary international law, and much of human rights law find their compliance within social expectation. Normative rules are not codified, but still perform an 'unwritten' function in instructing states what expected etiquette is. The formation of these is ostensibly in values shared by all members of international society, but great-states enjoy an asymmetric share in shaping them. This section will address the unique function norms hold in relation to sovereignty.

In contrast to domestic norms, domestic laws dictate the relation between sovereign and subject, but barring the development of a super-leviathan, international laws only constitute codified promises states make to one another.[54] International law can be viewed as a more explicit form of norms; while arbitration can occur between states when one violates a law, arbitration can also be refused by either party, and the only recourse a state can then take is to sanction or engage in war.[55] The latter is in itself violating international law.[56] Both international norms and law are only as powerful as their compliance.[57] Wittgenstein's philosophical convention of rules as occupying the normative guidance of "play" in a "game" draws upon this. As states rarely interact in one-off situations, they are encouraged to value their prestige by

[54] Kinji Akashi, "Hobbes's Relevance to the Modern Law of Nations." *Journal of the History of International Law* 2.2 (2000): 202-206.
[55] Koskenniemi, *The Gentle Civilizer of Nations.* 143.
[56] UN Charter Article II. Sec. 4.
[57] Rawls' formulation of rules is useful here, he portrays two types: a 'summary view' of rules which are "generalizations from experience", and rules "as defining a practice". The former is based in an actor's cause, the later in an actor's intentions. John Rawls. "Two Concepts of Rules." *The Philosophical Review*, vol. 64, no. 1, 1955, 3–32. Cited in Onuf, *World of Our Making*, 52.

respecting the rules of the game.[58] To not follow a rule does not sacrifice its existence, but risks placing the actor outside of the system where the "game" is still respected in play. Persistent norm violation can lead to norm erosion, but in turn lead to a "players" position in the order lowered.[59]

To express norms in international society, states use a variety of actions which can be examined using speech-act theory—"unless we immediately give up attempts to communicate with the other, and prefer an exchange of blows, we utilize a variety of communicative acts."[60] Speech-acts are examined in three categories. *Illocutionary* action-words are those which perform actions such as warn, threaten, claim, assert, consent or pressure. To have an illocutionary effect means that the statement is doing something, it assigns a path of behavior and expectations to the speaker. A *locutionary* statement has no such effect, they are words in-and-of themselves. A *perlocutionary* effect is the force a speech-act has upon the hearers of that act.[61] Speech-act theory then ascribes that an actor using an illocutionary action-word has a perlocutionary effect on any actor that speech-act is directed at.[62] These words also have an instilled normative concept of the terms, conditions, and consequences the speech-act constructs.

Promises and threats are two examples of speech-acts that establish the normative preference of the speaker, as well as the normative consequence of compliance. If one state promises to increases trade to another without a formalized agreement, the other can only be pleased or disappointed by the fulfillment or not of the promise. If the promise is formalized in an agreement, the consequence then becomes legal and can be levied as a fine or compliance

[58] Ludwig Wittgenstein, Philosophical Investigations. New York: The Macmillan Company, 1965.
[59] Onuf, *World of Our Making*, 47.
[60] Kratochwil, *Rules, Norms, and Decisions*, 7.
[61] Kratochwil, *Rules, Norms, and Decisions*, 8.
[62] *Ibid*, 7.

measure. In this vein, Morgenthau outlines how sanctions are an act with both a normative and legal component—"The fear of sanctions as the psychological reality of norms that brought about conformity as the physical reality. If the expectation of sanction is missing, then the norm lacks reality."[63]

The difference between the normative and legal implications of speech-acts is in their obligation. Whereas legal obligations ascribe statutory consequences, normative obligations are socially driven—ranging from prestige and respect, to anger and shame.[64] Even legal obligations find their legitimacy within a deeper societal mandate. This mandate implies that it is in the interest of all states for normative rules to be codified as legal rules to avoid the erosion of rule. But what consequences are derived from eroding legal rules that are not present in eroding normative rules?

What if a state legally promises to accept a quota of refugees, fails, and refuses to pay any fines arising from that failure? Unless a strict compliance mechanism such as military invasion is present, the consequences are societally driven and normative—disfavor, anger and reluctance to trust the offending state again. Even legal enforcement consequences like economic sanctions can have their same effect achieved by extreme disfavor created through the perlocutionary violation of normative arrangements. The most drastic compliance measure—war—guides International Relations scholars towards assuming that anarchy persists beneath international society.

[63] Hans Morgenthau, "Théorie des sanctions internationales." *Rev. Droit Int'l & Legis. Comp.* 16 (1935). Cited in Koskenniemi, *The Gentle Civilizer of Nations,* 455.

[64] Kratochwil specifically identifies this term as conceptualizing the "reputation" of a state, dependent on that state's position within a normative order. In *Rules, Norms, and Decisions.* 52.

The lack of any centralized compliance system lead Hedley Bull to identify International Relations as an *Anarchical Society*.[65] The assumption that war and diplomacy can only take place within a legal framework derives from this mistake. The threat of war is as much an *illocutionary* normative act as a legal one, and as war is an extension of diplomacy, diplomacy is as much a legal process as a normative one. By understanding recognition of sovereignty as a speech-act which holds both a normative and legal utility, it can then be compared which form of rules is more important. In the case of the operative rule of constitutive-linked sovereignty, recognition is a normative, not legal distinction.

When two actors are performing speech-acts which invoke either legal or normative precedent, they are negotiating criteria they desire from the other. Specific to the case of recognizing sovereignty, there is no legal consequence or legal obligation for a state to recognize another's sovereignty.[66] Even the monetary expense of establishing embassies and diplomatic channels is, both marginal and only obligated based on normative expectations. While a small-state like Liberland might desire legal recognition of sovereignty in order to secure their land claims, those states in a position to grant recognition of sovereignty are only concerned with the normative implications to the status-quo that such recognition provides. The prior example of Tuvalu and Vanuatu demonstrates how a legal act can be displaced by normative consequences.

By eroding the normative rules which construct the status-quo, states are diluting their own normative standing within international society (in terms of favor or disfavor—a state might lose prestige for recognizing Liberland). Therefore, the only conditions under which a state

[65] Simpson, *Great Powers and Outlaw States*, 63.

[66] Kratochwil demonstrates several typologies of norms, *Rules, Norms, and Decisions.* 12.

would likely grant recognition to Liberland is a situation where the material benefit they gain as result of such recognition outweighs the normative consequences of doing so.

The Power of Norms in International Society:

All norms involve a 'tacit' expectation of compliance, but can differ in the explicitness of their expression.[67] An unspoken rule might obligate parties and constitute rule. The Monroe-Doctrine was a unilateral declaration which explicitly created a norm obligating all states in international society, but did not constitute a legal statute, treaty or anything requiring ratification by others. Its normative obligation was backed only by illocutionary threat. An even more extreme example provided by Friedrich Kratochwill is the SALT II nuclear non-proliferation talks, which were ratified by the USSR, but never by the US. Nonetheless, both sides complied with the terms of the treaty—while the USSR's compliance was born in the legal promise of their ratification, the US's was born in the normative implications of failing to do so.[68]

Normative rules seem to carry as much obligation as law in international society. A state's membership in international society implicitly obligates them to comply with norms shaped asymmetrically from above, violation of norms causes a loss of prestige—which is significant, but can be as extreme as revocation of absolute sovereignty. For example, while there was some legal obligation of Iraq to allow chemical weapons inspectors into their territory, the legal consequence of failure was hardly invasion. This action arose from the fulfillment of the US's normative threat. Invading required the US to weigh the normative obligation of their

[67] Kratochwil, *Rules, Norms, and Decisions.* 55, 146.
[68] Kratochwil, *Rules, Norms, and Decisions.* 57-58.

threat against the legal obligation of the UN Charter Article 2 (7). Concepts like 'just war' and 'humanitarian intervention' demonstrate other normative exceptions to law; this construction of normative obligations imposed by great-states upon small-states was feared by Rousseau, Mills, Kant, Schmitt, and Morgenthau.[69]

Upholding "peace and security" is another powerful norm in international society. It is an expectation the UN Charter holds of all states, but legally only permits the Security Council to maintain. Simultaneously, the right held by any UNSC member to veto any resolution exists. While United Nations General Assembly Resolution 377—"Uniting for Peace"—purportedly gave a consensus of small-states the ability to override vetoes when "peace and security" are at risk, a UNSC member still holds their legal right to veto this override. The right provided to small-states through Uniting for Peace is legally contestable and is often categorized only as customary international law—it only exists as norm. Nonetheless, on multiple occasions the normative consensus of the General Assembly has been respected by Security Council members.

If a situation arose wherein great-states used their legal right of veto to override a Uniting for Peace resolution, the UN Charter would be in something of a "constitutional crisis", torn between normative claims made by a consensus of small-states, and the legal right of great-states.[70] It bears noting that the origin of Uniting for Peace was in the US instrumentalizing a consensus of small-states to circumvent the Soviet veto preventing the deployment of a UN force in Korea. The USSR could have insisted upon its legal right to overpower the Uniting for Peace resolution, but recognized that they would be isolated in doing so. Uniting for Peace then should be viewed as a norm constructed by the US to overcome the legal right of the USSR. This serves

[69] Ian Holliday, "Ethics of intervention: just war theory and the challenge of the 21st century." *International Relations* 17, no. 2 (2003): 115-133. And Louiza Odysseos and Fabio Petito, *The international political thought of Carl Schmitt*, Page 64. And Koskenniemi, *The Gentle Civilizer of Nations*, 230.
[70] Michael Reisman. "The Constitutional Crisis in the United Nations." (1993): 84.

as a poignant example of a great-state constructing norms to cement power asymmetries not only in their position over small-states, but over the legal rights of other great-states, perhaps this is the fine line between hegemony and hierarchy.[71]

Examples of norms as rule are frequent in pre-institutional arrangements of sovereignty. China's Tributary System created a highly performative expectation of diplomacy with states looking to trade.[72] In the colonization of Africa, European lawyers viewed it "improper" to "take land contractually" because "savages had no idea or legal rights."[73] Civility was a normative standard that the European Lawyers held themselves too when exploiting.[74] In each case, no law restricted actors, but a rule of the way things ought be done was present. These practices were upheld because they benefitted because actors understood they would face isolation if they violated them. When normative rule is violated, it is at risk or erosion. If a single actor violates it they are isolated, but if others realize that it is in their self-interest to violate the operative rule as well, they are motivated to do so.

In a hypothetical wherein the modern norm of sovereignty is completely disregarded, states would be compelled to fight over territory wherever they understand it rational to do so. While this would be advantageous in the short-term for states who are well-positioned to conquer land in their region, the dispersed effects upon international society would be devastating as no state could trust another, warfare would be perpetual unless one power conquers all; the resulting order would be untenable.

[71] Larry D. Johnson. ""Uniting for Peace": Does it Still Serve Any Useful Purpose?." *American Journal of International Law* 108 (2014): 106-115.
[72] Erik Ringmar, "Performing international systems: two East-Asian alternatives to the Westphalian order." *International Organization* 66, no. 01 (2012): 1-25.
[73] Koskenniemi, *The Gentle Civilizer of Nations*, 113.
[74] *Ibid*, 127.

Norms in international society prevent actors from self-interested conduct which has a detrimental effect distributed through society. International society is victim to the 'tragedy of the commons' as is any other society. If no international society existed beyond anarchy, states would be tempted to invade the territory of another whenever they calculate the material risk they expose themselves to balances against the resources they gain in conquering territory. Conquest becomes a rational calculation absent norm. The operative rule of sovereignty prevents this by imposing a cost of extreme isolation for violating its norm; this isolation ought overpower any gain that could be found in conquering territory. This threat of isolation defines warfare in the modern order; multiple sovereigns warring over territorial disagreements is all but antiquated—rather civil-war, ethnic conflict, and ideological conflict are the modern templates of war.

Secessionist movements and dissolution of states are both instances wherein the nuance of this rule must be assessed in determining if a new-entrant is legitimate in claiming that its own territorial integrity supersedes that of the previous state. Great-states enjoy the asymmetrical position of deciding upon these cases through the constitutive model of sovereignty. They can invoke the 'isms' outlined in the previous chapter to justify their decision, or simply act unequivocally to protect their own interests.

Additionally, smaller-states look to the great-states to determine the legitimacy of the new entrants. Great-states often disagree on the recognition of new-entrants, as their recognition is not based on any objective criteria of the state's character or quality, but upon the geopolitical consequences of recognition. For smaller-states to recognize a new-entrant then is a political speech-act in of itself; the act locates their obedience to certain great-states. As such, a norm exists in international society that states ought not recognize new-entrants to international society

unless they emerge through secession or dissolution of a state, and even then small-states ought differ to the guidance of great-states. At the same time a parallel norm exists that new-entrants ought seek membership in international society, or be excluded and hold no territorial integrity. The combination of these norms puts Liberland in a paradoxical position, wherein they need recognition to gain territorial integrity, but no great-state will recognize them, and no smaller-state is willing to violate the norm of not recognizing new-entrants.

Dinner as Politics:

I would like to conclude this section by presenting an analogy that demonstrates the normative presence of recognition and exclusion within a society. Imagine a celebratory dinner party with a sizeable number of guests. The main table is large, but with multiple families attending, a children's table is needed in the other room. While the children at the table are explicitly subordinated by the adults, this is accepted because their non-recognition of maturity is mutually understood. Every actor at the child's table is still calculating internally what criteria they must meet to be seated with the adults.

Eventually, a seat is freed, or an additional chair is dragged over, and a new-entrant accedes from the child to adult realm. But surely, unless they are the children of the host's family, they are not going to be seated next to the hosts, those seats are reserved for those with prestige at the societal gathering. They will be placed far away, next to other adult guests who also lack prestige. Thus an order is constructed at the table's own society, but the order is implicitly, rather than explicitly maintained through the seating. If no seating order existed—to say that no 'sovereignty' exists within society—it would not be an anarchical scramble for

seating, as interactions between guests would require them to consider how their actions will affect their relationships with the other guests.

It also needs to be considered how one is invited to the adult table from the children's table. Despite there being little cost to the individual who invites a member of the child's table up; a societal cost is present as everyone is slightly more crowded, or annoyed by the—perhaps still immature—new guest. If the person who invited the new-entrant to the table lacks prestige within the group themselves, they will likely see their prestige even further diminish. If a teenager invites their younger sibling to the adult table, both might find themselves at the children's table at the next gathering. If a more prestigious guest, or the host, invites a new-entrant to the table, others might be annoyed, but are likely to not voice their grievances for fear of disturbing the order.

Chapter Three: Is Liberland Already Sovereign?

So far it has been argued that two models of recognition of sovereignty exist: constitutive, and declaratory. These correspond with two paradigms of sovereignty: a declaratory-linked form of sovereignty based on objective criteria of statehood, and a constitutive-linked form rooted in the normative order of membership international society. While one form can cohere enough support to become operative, this does not entail that it has replaced the other. As such, while the constitutive model appears to be operative in international society, President Jedlicka along with most members of Liberland indicate that they intend to adhere to the declaratory form. Jedlicka stated that "the great thing about Liberland is that it is already recognized, everyone knows what we're talking about, it's difficult to find an ambassador or diplomat who hasn't heard about us." Jedlicka pointed out that his Liberland passport has been used to enter several states already, he showed stamps from Bulgaria, the US and others. The pitfall in conflating 'knowledge of Liberland' or anecdotes of apathetic border agents with recognition is in believing that the two are one and the same.

Two exclusion barriers to participation in international society were also presented: non-recognition, and ordered sovereignty. As Liberland exists in the former, states are able to ignore their claim entirely. Croatia's *de jure* illegal extra-territorial policing has raised little concern because Liberland is not viewed as an ordered member of international society. If Croatia were behaving this way in Serbia or BiH, they would receive fierce condemnation from international society.

The decision is not as black-and-white for Liberland as deciding to either conform to the constitutive-linked modern form of sovereignty, or to continue to insist upon their declaratory right. Bartelson describes how some states have previously sought to "split the difference"

between the declaratory and constitutive models "by arguing that though some attributes of sovereignty certainly are subject to historical change, its core characteristics remain the same across time and space."[75] This is to say that while Liberland is only emphasizing the declaratory model in their speech-acts, they still are making empirical strides towards constitutive recognition.

They have voiced some long-term goals to become members of international society—Liechtenstein's Head of State Prince Hans-Adam II is a supporter, and said that he looks forward to the day when Liechtenstein and Liberland are seated alphabetically next to each other at the UN, an anecdote Jedlicka enjoys. Opposite this, Liberland supporters will decry the UN and EU as liberal bureaucracies which restrict the freedom of individuals. The ideological conviction of libertarianism inherently opposes joining an international society if it would subordinate Liberland's independence in any way.[76] If Liberland wants recognition in the operative paradigm, it will be hard to swallow the normative obligations and subordination this entails. Libertarian ideology is necessarily restricted by institutional requirements (be them EU acquis, ICJ decisions, or UN resolutions). Ivan Pernar stated that "Croatia already lost their sovereignty to the EU," and that Liberland should not follow the same path. Libertarian ideology views these memberships with the critical suspicion voiced in the preceding theoretical section.

By splitting-the-difference, Liberland is striving to achieve recognition to back their declaratory claim without an invitation to membership in international society. The normative rules of recognition—entering an order and accepting subordination—are either not understood

[75] Bartelson, *Sovereignty as Symbolic Form*, 9.

[76] Thomas Hobbes, "Leviathan, ed. Richard Tuck." (1991). §II.8. and §XIV.2. Of the Draft Liberland Constitution, which disallows the creation of a military, and leaves little room for international law which can be interpreted as 'restricting' the rights of Liberlandians (environmental, labor, and other public-good obligations are obvious points of conflict).

or completely rejected by Liberland. They view recognition at its aesthetic level, that its only function is a superficial speech-act identifying that a state is of the qualities that it ought be afforded legal protection. Note that there is still a normative element in this; that they ought be recognized. But the normative set of rules regarding subordination and ordering is stripped. This perspective on recognition allows Liberland to have its cake and eat it too, they do not have to enter international society and lose their formal autonomy, but still reinforce their territorial claim against Croatia's occupation. Liberland is demonstrating how friction between the two models of sovereignty can still be created, they are doubting the legitimacy of the operative paradigm.

Croatia meanwhile has accepted the constitutive paradigm of sovereignty to justify its independence at the cost of exposing themselves to subordination. They have modified domestic political and economic practice to please the EU; such as resolving other territorial disputes with Slovenia they otherwise would have preferred not to. They have joined NATO, which obligates them to spend 2% of their GDP on military expenditures (although this has proven to be a soft-obligation in recent years). If they apply to join the Schengen Area as is commonly speculated, they would be forced to declare finite external borders—with or without the inclusion of Liberland's claimed territory.[77] Croatia's gambit then is to stall the dispute with Liberland by simply ignoring them and delegitimizing them as fantastical. This works so long as Liberland is at the first barrier of non-recognition.

[77] Croatian Liberlandian Dean Thomas wrote about his experience accompanying a group of filmmakers who were briefly detained at the Croatian Border, the guard asked the crew "if they had Liberland passports" and was referencing a guide to "Schengen Border Code" at the stop. The film crew was present at the second anniversary event I attended, they were producing a pilot episode for a television series. "The Second Anniversary Conference". Published by *Total Croatian News.* April 20, 2017.

Liberland's gambit is to generate normative pressure for Croatia to disengage its police occupation on Liberland's claimed territory. By gaining recognition from even geographically small-states, Croatia's government is pressured to withdraw from the territory or risk losing prestige for occupying a recognized sovereign illegally.[78]

Modes of Liberland's Foreign Policy:

To empirically evaluate Liberland's *modus operandi* and intention for gaining recognition of sovereignty it is useful to outline Liberland's specific foreign policy. I constructed this framework of four distinct methods that are being used to promote their recognition or gain territorial control; it was presented to the President, Vice President Bogie Wozniak, and Foreign Minister and all were receptive to it:

1) **A Strategy of Asymmetric Attrition against Croatia:**

Croatia is maintaining a large police presence surrounding Liberland. Upon my visit to the area this involved two police cars on the roads leading to Liberland in Croatia; two smaller soft-body police boats each holding two to three officers; one larger hard-sided police speed boat holding a contingent of officers; and an officer with binoculars stationed on the Croatian border of a bridge connecting Serbia and Croatia overlooking the naval launching point Liberland utilizes in Serbia. Some administrative and intelligence effort is expended as Legal Counsel Prstec indicated that four Liberlandians have been labeled threats to national security and banned entrance to Croatia. Additionally the administrative cost of court proceedings in the thirty-four cases involving the arrest of Liberlandians is incurred by Croatia. The cost of Liberland's operations are relatively inexpensive but leverage the expense of these operations to Croatia. A

[78] In a much more serious example, this is Fatah's gambit with Israel too.

Croatian MP who is amiable to Liberland, and who has been granted 'honorary' Liberland citizenship—Ivan Perner—said in an interview that the expense to Croatia "is raising awareness" and concern within the Croatian bureaucracy. One commited Liberlandian, René Malmgren, agreed that not only is the monetary expense Croatia incurs asymmetric, but so is the physical condition: "[Liberland] is a mosquito infested swamp ... mosquitos are our biggest ally, they make it uncomfortable for police!"

Through 2015, the Liberland Settlement Association existed as a group of around 20 who camped on the Serbian side of the Danube and made constant attempts to enter Liberland via boat or car. They were usually arrested or detained, but infrequently were able to make it onto the territory and post photos on social media to rile supporters.[79] On my visit, a former member of the LSA said that the organization is now more or less defunct, and that visits to Liberland occur only spontaneously, or framed as events such as conferences or anniversary celebrations.

2) Official Diplomatic Approach by Liberland:

Liberland maintains representative offices (referred to as 'honorary consulates' because of their unofficial status) in "almost 60" states according to literature distributed at the second anniversary event.[80] Wozniak, Walls, and Minister of Protocol Dr. Tariq Abassi oversee the operation of these offices. Wozniak informed me in an interview about the "official way" that Liberland uses these representative offices. Most Liberland representatives have a background in business; as such these representatives are directed to identify business colleagues that have a connection with the government in their state. Liberland's representatives then inform the

[79] The last incursion occurred on 28 February 2017 as documented by the Liberland Press.
[80] Free Republic of Liberland Brochure. Accessible on investment.ll.land. Page 48.

business connection about Liberland and their attempts to gain recognition of sovereignty. Wozniak estimates "around 80%" of these introductions are positive. If the business connection is willing, they are asked to backchannel to their government connection to introduce Liberland. At this point Wozniak or Walls make formal contact with the government connection. If the initial contact is receptive, Liberland considers sending an envoy to the state. This has occurred in Liechtenstein, Guatemala (Liberland published an article about the diplomatic visit in August 2016) and other African and Latin American states whose names were withheld.[81]

Liberland operates an office in the Czech Republic where they frequently hold galas and invite ambassadors. Published photos on the Liberland Facebook page indicate that ambassadors from Brazil, Liechtenstein, Thailand, Kazakhstan, and Austria have attended these galas. Malmgren stated in an interview that the Syrian ambassador attended such a gala in Prague, although this is not verifiable.

Recognition of sovereignty by small-states that have no geographic relationship with Liberland, and present no easily foreseen method of developing trade or formalized diplomatic relations with Liberland contributes to this concept of 'splitting the difference'. This is, in a way a concept already prototyped by the earlier example of Tuvalu and Vanuatu recognizing Abkhazia, it was never realistically expected of either state to find a way to trade or form productive diplomatic relations with one another, the recognition was purely symbolic. As such, Jedlicka's priority in this is to approach states without any significant diplomatic relation with Croatia: "[recognition from a small-state] would add weight to our claim—Croatia only has embassies in 70 countries, so there are 130 left that we can talk with them without harming their relation with Croatia."

[81] Free Republic of Liberland Brochure. Page 6.

3) Less-Official Diplomatic Approach:

This approach was mentioned in contrast to the previous by Wozniak. It involves directly making contact with members of conservative or libertarian parties in foreign states and pleading their case. Through this method Liberland has attained statements of intention to recognize Liberland from at least six minority parties: US (Gary Johnson of the Libertarian Party), Norway (Liberlistene), Turkey (Liberal Democratic Party), Poland (KoLiber), Serbia (former Deputy Speaker of Republic of Serbia National Assembly), and Croatia (Ivan Perner founder of Human Shield party). While none of these parties are likely to gain enough support to fulfill their pledges to recognize Liberland, parties in Croatia and Poland have spoken to their parliaments about recognizing Liberland.

Liberland also sends envoys to conservative political conferences.[82] This has lead to supportive conversations from prominent politicians: Romania (two members of USR), US (Several republicans including Senators Rand Paul and Mike Lee, and Member of the House Justin Amash), Switzerland (Lukas Reimann, member of SVP), The UK ("10 or 12 members of Labour" are friends of Liberland according to Jedlicka). While this support has fallen short of any promise to pursue recognition, Liberland values planting seeds and developing connections with ideologically similar politicians.

Liberland is hoping that the continuance of these operations will cause Croatia to give in or expose themselves to risk in international society. One example of risk was the June 2015 visitation to Liberland by Czech MEP Tomáš Zdechovský, accompanied by President Jedlicka

[82] Liberland press releases and photos published online indicate Jedlicka's presence at conferences in the Canary Islands, Estonia, BiH, Czech Republic, Austria, Turkey, Serbia, Russia, Spain, United States, Venezuela, Poland, the UK, Germany in the past two years.

and an independent filmmaker. Video captured the following interaction between the landing party and Croatian police:

> Police: "What are your intentions please?"
> Jedlicka: we are taking over this piece of land because it's ours
> Police: "What are your intentions now?"
> Zdechovský: "I'm from the European Parliament and I'll be controlling your border."
> Police: "Everyone who steps on the right side of the River Danube will be arrested."
> Zdechovský: "[Where] did you read [that]? ... my mandate is in your country ... I'm from the control committee and the [Liberty, Justice and Home Affairs] committee and this is my mandate to control your border."

Zdechovský was reportedly able to access Liberland on his diplomatic passport, but his aide, the documentarians, and Jedlicka were detained.[83] By bringing institutional representatives sympathetic to their cause with them, Liberland is able to expose Croatia to risk within those institutions.

4) Pursuit of Institutional Recognition:

Liberland has sought institutional recognition, but not in the paradigmatic form. UN Observer status, which has been held as the ultimate gateway to full sovereign recognition, was earlier considered by Jedlicka responding to my emailed question in November 2016, but in speaking with him in April 2017 he deprecated the idea, stating that the UN is an organization in decline. He referenced increasing power-politics in the UNSC, US President Trump's ambition to decrease funding to the UN, and Switzerland's sovereign recognition for decades without a desire to join the UN: "I don't think that UN observer status is necessarily helpful." Additionally, any presence at the UN would need to be initiated by a Member State proposing a memorandum to the General Assembly.[84]

[83] Footage available in the trailer for "This No Man's Land of Mine: Declaration of a Tax Haven." By Filip Rojik & Petr Salaba. Available at liberlandthefilm.com
[84] *2008 United Nations Juridical Yearbook*, 438.

For now, Liberland has pursued smaller institutional roles. A 'Liberland Red Cross' operates without recognition from the International Federation of the Red Cross, although Walls expressed plans to secure status from the organization. At the second anniversary event, a major announcement was Liberland's application to the Unrepresented Nations and Peoples Organization (UNPO). Representatives of Liberland previously attended a UNPO workshop in November 2016 which taught techniques to pursue recognition.[85] The UNPO currently represents 42 states, and acts as a non-governmental interface for states to exchange advice and information to pursue recognition.

An implicit danger in joining the UNPO is casting oneself completely outside the theoretical order of international society—entering a society of potential states that are stuck at the first barrier to international society, non-recognition. States which frankly have little hope of advancing. There have been success stories from the UNPO: Georgia, Estonia, Latvia, Armenia, Palau, and Timor-Leste are former members that gained UN membership. But almost the entirety of the institution's current membership (excluding perhaps Kosovo, Iraqi Kurdistan, Abkhazia, Somaliland, Taiwan, Zanzibar, and Tibet) are best described as weak-secessionist movements, tribal confederations, or small ethnic enclaves rather than distinct geographic entities or states which could be ordered in international society. Liberland is entirely unique in this group for two paradoxical reasons: first they appear to be the only entity that does not currently hold some territorial control over their claim, and second they are the only entity with a salient territory not *de jure* claimed by another state, no other has the sole legal claim to territory that Liberland does. By joining this institution without holding territorial-control, Liberland risks ostracizing itself by ordering itself not within the implicit subordination of international society, but within the

[85] "Liberland UNPO Learning Material". *Hermilia*. 2015. And "How to be a successful Liberland Contributor" *Liberland Press*. January 9, 2017.

explicitly subordinated group of non-recognized states. The best way to gain a seat at the adult's table is to avoid sitting at the children's table in the first place.

Can Liberland Split-the-Difference?

If any state does recognize Liberland, the act can be understood in an illocutionary context. While it would hypothetically cause no immediate legal obligation to either Liberland or Croatia, it contributes to norm erosion. In doing so, the recognition creates two weak normative obligations which can then be compounded by other state's recognition: first for Croatia to withdraw from the territory it does not claim, and second for Liberland to accept membership in international society. If enough states recognize Liberland to cause Croatia to withdraw, there would be a significant normative expectation on Liberland to join international society and accept the constitutive-linked paradigm of sovereignty—violating their ideological libertarianism.

Chapter Four: Why Would a State Constitutively Recognize Liberland?

The norm previously examined theoretically—that of non-recognition of new-entrants to international society—deserves to be empirically and temporally located. Much of this, I believe, can be found in the 'Badinter Template' which only provides legitimacy to new-entrants in the event that they were previously understood as autonomous regions with defined territorial boundaries within a larger sovereign state. By assessing the normative influence of the 'Badinter Template', the norm gains clarity; assessing what it would take for a state to violate this norm and recognize Liberland becomes more apparent.

In 1992 the EU created the Badinter Commission—a political and judicial body tasked with providing a legal answer to which new-entrants should be normatively legitimized following the breakup of Yugoslavia. The following questions needed answering: can a formerly domestic administrative boundary be transposed as an international border? Which methods of state creation should be respected? The legal answer brought forth by the Commission found *uti possidetis* (a Roman concept deciding that warring states may keep whatever territories they control at the end of conflict) useful to transpose previous administrative boundaries to the new state's internationally recognized borders.[86] *Terra nullius* was thought of as antiquated by 1992, and all parties wanted to avoid its creation, as it provides a new venue for further conflict. As such, the Commission proposed that there are only two methods a state can emerge: secession from, or dissolution of a preexisting state. In both cases the new-entrants only find their borders delineated on schoolhouse maps if great-states levy their position in power-politics to advocate recognition. The present paradigm of order has no epistemological precedent to understand

[86] Peter Radan, "Post-secession international borders: a critical analysis of the opinions of the Badinter Arbitration Commission." *Melb. UL Rev.* 24 (2000): 50.

Liberland's claim. Had Liberland been founded in an earlier era, the Montevideo Convention would have been the method of assessing their claim; in an even earlier feudal era, the only method of assessing their claim would be their capacity for self-defense. Ironically, the present norm of avoiding the creation of *terra nullius* was constructed by the Commission in the same area that Liberland's claimed territory is now.

There have been many historical examples indicating that the Badinter Commission's findings were not accepted on a normative or legal basis by the former Yugoslavian states, but maintained by the US and EU as great-states.[87] Boundary disputes like that of Croatia-Liberland can also be found in recent history along the Croatia-Slovenia and Croatia-BiH borders, the Kosovo-Montenegro and Kosovo-Serbia borders, and the Montenegro-Serbia border.[88] Despite disagreement, the findings became an international norm through their top-heavy support. By the late 90s the prospect of Quebec secession was feasible, and the Badinter Commission was flagged by the Quebec Provincial Government as precedent for the maintenance of their borders should secession occur. The Canadian Government responded, that there "is neither a paragraph nor a line in international law that protects Quebec's territory ... [and that] international experience demonstrates that the borders of the entity seeking independence can be called into question."[89] The Commission's findings have also been raised as precedent in Somaliland and South Sudan and subsequently disputed.[90]

[87] Alain Pellet, "The opinions of the Badinter Arbitration Committee a second breath for the self-determination of peoples." *Eur. J. Int'l L.* 3 (1992): 178.
[88] Marija Ristic, "Boundaries Still Unresolved in Ex-Yugoslav Countries. Balkan Investigative Reporting Network. April, 2012.
[89] Letter from Canada's Federal Minister for Intergovernmental Affairs, Stéphane Dion, to the Premier of Quebec, Lucien Bouchard, 11 August 1997 reproduced in Stéphane Dion, *Straight Talk: On Canadian Unity* (1999) 189, 191. Cited in Radan, "Post-Secession and International Borders".
[90] Redie Bereketeab, *Self-determination and secession in Africa: The post-colonial state*. (Routledge, 2014). 28-35.

These disagreements surrounding the Commission's findings—both in its normative and legal effect—created the opportunity space for the loophole that allowed Liberland to emerge, as Serbia agrees with the Commission's findings (with respect to Croatia, not Kosovo) and Croatia does not. Cornelia Navari has gone so far as to assess the Commission's faulty norm creation as creating the 'Badinter Template' which grants the right to secede to any territory already existing in an 'autonomous' fashion. Navari blames this template for justifying the annexation or secession of Crimea, Abkhazia and South Ossetia.[91]

The 'Badinter Template' needs to be seen at two levels then; first the legal which applies to the specific geographic region of its focus—the Former Yugoslavia. Second, its norm generation which suggested its findings ought be applied beyond Yugoslavia. This is a significant contribution to the norm held that new-entrants to international society ought not be recognized unless emerging through legitimized secession or dissolution. The final say lies in power-politics. This can be seen in the contested ground of Kosovo, which in its existence as a semi-autonomous area within Serbia arguably fell within the 'Badinter Template', but even with the recognition of the United States, is still victim to the power-politics of international society.

Curiously, the EU might now doubt the durability of the 'Badinter Template' as a norm. As a commissioned and accepted EU investigation, the Commission's findings should be firmly held by the EU. Upon their 2013 accession to the EU, Croatia tacitly accepted the Commission's findings as a previously held principle of the EU, and waived any significant right to further

[91] Cornelia Navari, "Territoriality, self-determination and Crimea after Badinter." *International affairs* 90.6 (2014): 1299-1318.

dispute the border clearly delineated by the Commission. Inexplicably, this is not currently true: on several prominently available EU maps, Liberland is not indicated as EU territory.[92]

The 20th century was defined by some as an "age of secession",[93] constitutive-linked sovereignty emerged as the way to decide which of these movements deserves legitimacy through recognition. While the UN Charter textually recognizes the right of peoples to "self determination" through secession, this is hardly a clear and applicable principal; if the textual positivism was normatively accepted, a far larger number of nations would be recognized as states (Kurds, Tamils, Igbos, Punjabi Sikhs, Uyghurs, Palestinians, Tibetans and dozens of other repressed nations which contain secessionist movements). Consociational means of power-sharing would be far more prevalent, and the international community would be obligated to respect any mandates formed through secessionist referendum.[94] This is rarely the case. Rather, both the perlocutionary act of recognizing a secession as legitimate, and the outcome of delineating boundaries in the event of dissolution of a state are resolved in the arena of power-politics. Empirically, international society has sought in all but a few exceptions to protect present boundaries unless civil war makes them untenable. The Badinter Template exists as norm, great-states have demonstrated a capacity to violate this norm when it benefits them politically, but for a small-state to violate this norm, as Tuvalu and Vanuatu did, results in discipline.

[92] "European Commision Website—Regional Policy—Maps" As of May 2017 the maps published online indicate this, when questioned about this the European Commision Contact Centre responded by email: "[the] border limitation is deeply linked to the national sovereignty of the Member States and they have therefore never transferred any competence in these matters to the European Commission. The topic ... is a bilateral issue between Croatia and Serbia and the European Commission therefore has no mandate over it."

[93] Ryan D. Griffiths, *Age of Secession*. (Cambridge University Press, 2016).

[94] Allison McCulloch, and John McGarry, eds. *Power Sharing: Empirical and Normative Challenges*. (Routledge, 2017). 11.

The Types of States Most Likely to Recognize Liberland:

By explicating this norm in detail, the first answer to the proposed question—what would it take for a state to recognize Liberland—can be approached. The state would either need to be willing to understand the norm of not-recognizing new-entrants as already eroded, or be willing to accept their action as norm erosion in of itself. The question then becomes: What can Liberland offer in exchange for recognition that holds more value than the risk of loss of prestige incurred by a state that eroded the norm?

It was told to me by several Liberlandians that early on in the project multiple African states offered them recognition for a sum of money (I heard $50,000 thrown out, but this entire anecdote is hardly verifiable, and Liberland officials were understandably hesitant to provide specific details of the unaccepted offer). More recently a Latin American state was nearly willing to recognize Liberland on ideological grounds, to the extent that the Minister of Foreign Affairs of that state approved of it recognition, until the Director of that state's diplomatic protocol informed them that such an act would have to pass through the legislative body. Liberland is still optimistic that recognition from this state might occur, and as such asked me to withhold its name.

But where is the *pareto optimal* for a state to recognize Liberland? Four methods of finding recognition appear: (1) finding a sympathetic state small enough that they have nothing to lose, (2) proving their worth to small-states who are interested in developing blockchain technology which Liberland offers, (3) positioning themselves such that recognition by a great-state would be an act of power-politics, (4) seeking for international arbitration or for the Croatian-Serbian territorial dispute to be resolved with the inclusion of Liberland.

1) **Sympathetic States:**

Seeking recognition from small-states who have little prestige to lose, and few relations with Croatia to harm appears viable. Switzerland and Liechtenstein both have political members sympathetic to Liberland who might be willing to do this if able. If Liberland could work their way up a ladder of recognition—in a series of states increasing in size—they would slowly erode the norm of not recognizing a new-entrant in international society. In practice, this method would be long and tedious. The pitfalls detailed in the previous section of membership in international society would apply. There is no magic number of states needed to recognize Liberland, nor any guarantee that the norm of non-recognition can be eroded sufficiently enough for Croatia to give in.

2) **Enticed by Decentralizing Technology:**

Liberland believes they offer novel technological value to warrant recognition from developing states. Jedlicka told me "we want to bring something valuable to the International Community, it can be cryptocurrency and tech of the future for management of the state… the potential there is enormous." Surely there is interest in the digitization of the state, especially in countries where the maintenance of a fiat paper currency or staffing of government offices creates expenses which could be dramatically reduced through the blockchain technologies that Liberland advocates.

Several branchless mobile banking services have become popular in the developing world; M-Pasa is a service now widely used in Tanzania, Kenya, South Africa, Afghanistan, India, Romania and Albania. Its advantage to users is low transaction costs and ease of use, its acceptance by governments is in easing regulatory burden present with brick-and-mortar banks, developing taxation and economic systems by bringing millions of citizens into formal financial

institutions, and in reducing crime in cash-strapped economies by creating traceable digital transactions.[95]

Larger states are finding cryptocurrency attractive too. In April 2017, Japan legalized the usage of Bitcoin as a payment method with major retailers supporting the legislation. Russia has moved towards creating a state-run cryptocurrency.[96] If Liberland is able to develop a functioning, state-run crypto currency of its own, it would be enticing for developing economies to legitimize its usage, and to recruit Liberland to develop blockchain solutions for their own state. On the other hand, few states would be willing to accept a decentralized cryptocurrency as reserve, disallowing them any monetary or fiscal policy of their own.

3) Engaging in Power-Politics:

A third possible method to garner recognition is to play into global power-politics, something Liberland has thus far sworn off. Liberland's location between Serbia and Croatia would prove incredibly symbolic for a foreign great-state to recognize it. Russia in particular could make a poignant illocutionary statement by recognizing Liberland. NATO would be forced to take note of Liberland's existence, although this would likely not be productive for Liberland––without a permanent population present, NATO tanks would roll up to Liberland's claimed territory, or perhaps into it in a strategic response. Pursuing this method of recognition presents a high-risk of falling victim to geopolitics and losing any chance of actually gaining territorial control.

[95] John Aglinoby, "Fintech Takes Off In Africa As Lenders Tap Mobile Technology". *Financial Times*. May 17, 2016. And Murithi Mutiga, "Kenya's Banking Revolution Lights a Fire". *New York Times*. January 20, 2014.
[96] Arjun Kharpal, "Bitcoin value rises over $1 billion as Japan, Russia move to legitimize cryptocurrency". *CNBC*. April 12, 2017.

4) Arbitration:

As both Croatia and Serbia specifically denied territorial control at the time of Jedlicka declaring Liberland, their *terra nullius* claim deserves at the least an inspection before the ICJ if the case were to go there, it is hard to judge if their claim would be successful though. As mentioned, Liberland's Legal Counsel has also floated the idea of taking their case to the ECHR, another body which could have decisive power in forcing states to recognize Liberland. Of course, if their case is rejected by a court their claim is significantly weakened.

A Digital First State—Does Liberland Need Constitutive-Linked Sovereignty?

Should the recognition of Liberland not occur and Croatia's occupation continues, a different question needs to be asked. Can Liberland survive and develop without constitutive-linked sovereignty? Does Liberland even need to control territory to find durable existence? A significant motivation for Liberland's funding and support comes from their advocacy of novel digital tools. Alexander Borodich, a Russian venture capitalist and tech entrepreneur is a major ideological supporter and fundraiser for Liberland. In an interview he told me bluntly that "national laws were created when digital laws did not exist—to this extent you have to at least pretend to be a real country ... but I simply do not care if we are recognized by Croatia, this is a digital first country."

Borodich has built systems and protocol to attract ecommerce and tech startups to Liberland, most prominently at the second anniversary event he announced that it is now possible for businesses to incorporate in Liberland (ostensibly allowing Liberland to function as a tax haven), and further that Liberland has secured $10 million from investors for a "global

startup challenge in the world's first smart country."[97] Blockchain is a decentralized distributed database system that is disrupting law and finance. Bitcoin, a decentralized currency is the most notable example of blockchain technology, but examples outside of cryptocurrency exist. Liberland is pursuing blockchain technology for applications ranging from voting, vehicle registration, property sales, taxation, loans and mortgages. The idea is that blockchain permits a state to function without centralized or physical institutions. The administrative role of the state is not needed because secure information registries function autonomously. Law can be created and administered digitally between citizens under their own consent, and the only security roll of the state is in upholding the digital contracts made between citizens.

Some, of this can function without territorial control. For instance, Liberland has produced vehicle license plates and soon hopes to build an automotive registrar based in blockchain; Presenters at the conference claimed this would allow Liberlandians to ignore any parking tickets or non-criminal speeding tickets a vehicle with Liberland plates receives in the EU. It is doubtful that this would work in practice, but one presenter enthusiastically voiced "I want to be exempt from parking tickets, that's my dream!" to loud applause.

More realistic applications of this technology include Liberland beginning their own cryptocurrency with global circulation. Current cryptocurrency market capitalization is far from insignificant with $39 Billion in circulation. Bitcoin accounts for a majority of this, but has been losing dominance to other currencies like Ethereum, which is a new cryptocurrency based on 'smart contracts' that execute contingent upon coded conditions. Ethereum market capitalization has rapidly grown from $700 Million in January 2017, to over $7 Billion as of May. This growth is largely because of their smart contract feature—many of Liberland's blockchain ambitions are

[97] "Liberland to Launch Online Startup Contest to Kick Off Smart Nation" *Blockchain News*. February 23, 2017.

aligned with this shift as well. Members of the Ethereum Project's coding team, as well as Bitcoin brokers are Liberlandians. A hypothetical Liberland cryptocurrency could be extremely attractive because of Liberland's congruent ability to incorporate businesses. This would allow for a Liberland cryptocurrency to function as an investment resources for businesses incorporated in Liberland—overcoming the speculation based instability that other cryptocurrencies suffer from.

René Malmgren, the Swedish Representative has created Liberland's own internet domain (.ll) and with this has begun producing modified internet routers that route a user's traffic through the Liberland domain. This feasibly allows a user anywhere in the world to access an uncensored internet through a non-monitorable connection by routing their traffic through Liberland.[98] Other digital-first ideas are likely to spring from Liberland regardless of territorial control. Through demonstrated persistence it is possible that Liberland could function as a digital tax haven, a catalyst for a major cryptocurrency, a domain to escape internet censorship, and a loophole to escape parking tickets. All without ever gaining constitutive-linked sovereignty or territorial control.

To answer the question of why Liberland wants sovereignty is complicated. The majority of Liberlandians clearly want enough recognition to force Croatia to grant territorial control, but there are many Liberlandians who emphasize the digital-first roll of the state, this roll can feasibly operate so long as neither Croatia nor Serbia make a *de jure* legal claim upon Liberland's territory. If that would occur, there would be little that would differentiate Liberland from an illegal trafficking and money laundering organization. For the time being, Liberland is trying to balance the territorial and digital presence; Jedlicka said in an interview that "the state

[98] Beta versions of the routers are now available, and an official release is scheduled for fall of 2017.

exists independently of the recognition, the most important feature is the functioning of the state ... I'm trying to be balanced between the digital and the physical. It wouldn't work if we jumped into the digital completely without the functioning systems and procedures on the territory, so that's my priority." Liberland has a foreign policy, a desire to 'split-the-difference' between declaratory and constitutive models of sovereign recognition, and enough resources and participation to continue a sizeable campaign for some time. They believe they make a persuasive case to some states sympathetic to their ideology or interested in seeing Liberland function as a beta-test for blockchain governance. However, it is impossible to gauge just how close they actually are to recognition.

Conclusion: Sovereignty is What Norms Make of It

International society is complicated and vast, its norms and laws are difficult for even scholars to interpret. The response by International Relations has been to craft neat theories and pigeon-hole within them. The pitfall is whenever 'isms' and 'ists' get invoked as operative labels, these theories necessarily sacrifice nuance of fact and history. While many elements of these theories can generally be found true, there are always exceptions at the fringe.

Liberland is the exception at the fringe; their claim is simple, a legal loophole was discovered, and they want to create a state within it. Liberland's difficulty has been in learning how to translate their simple argument into the complicated order of international society. A society reluctant to accept the premise that *terra nullius* can exist in the contemporary—it would much rather pronounce the territory part of Croatia or Serbia than admit that its norms are not universally true. International society is even more reluctant to admit that a handful of passionate ideologues could have the declaratory legal right to create and perform the functioning of a state. After all, the role of states in international society is created by virtue of the serious Leviathan-esque role states understand that they perform. To admit an entity as small and hobbyist as Liberland to international society is self-disparaging to the states who believe they are uniquely qualified to provide a social contract to their citizens.

It is entirely possible that Liberland disappears without pomp and circumstance in the coming years. If Croatia were to give in to EU normative expectations and drop its cadastral land claims within Serbia, it would be rational to claim *Gornja Siga.* Liberlandians would protest that their claim was *a priori*, but the normative weight behind Croatia would dampen them. On the other hand, as John Sack demonstrated earlier, the durability of micro-state often surprises

observers. Even the smallest of states has some power, and is capable of using it.[99] Once history is seen as something being created in the present, then ideas can be seen as causes of events.

Even if history proves unkind to them, Liberland's significance is far broader than the 7 km^2 of territory they claim. Their significance is in presenting serious contestation to the norms of constitutive sovereignty which are taken for granted as universal truths in much of international society. Liberland is the most serious empirical exception to the operative norms of sovereignty. While "the age of secession" has provided plenty of case studies for the study of sovereignty more consequential (in terms of size of territory and consequences of war) than Liberland, these secessionist movements have always worked within the norms of constitutive-linked sovereignty. Liberland is the first modern example to ignore this framework, it returns to a still legal, although no longer accepted version of declaratory sovereignty.

By examining this case it has been possible to better understand what the rules and obligations of modern sovereignty are. It is a process intended to reproduce asymmetries in international society by requiring new-entrants to accept their subordination. It is a process where implicit globalization has replaced explicit colonization. It is a process where new-entrants are rarely accepted, and even then not along *terra nullius* arguments. However, as all these truths exist only in norm, not law, and there is little legal defense against Liberland's claims. The root of all these apparent truths about sovereignty is that international society upholds them as true, they only hold value in their normative compliance and are liable to contestation.

[99] Iver Neumann and Sieglinde Gstohl, "Lilliputin in Gulliver's World?" in Ingebritsen, et. al. *Small States in International Relations*, (University of Iceland Press, 2006), 3.

Quality of Sovereignty:

A concluding restatement of the concept of sovereignty is warranted. As neither a word nor thing, the only pertinent way to study a concept is to "describe the organization of the field of statements where they appeared and circulated."[100] The concept of sovereignty is difficult to locate ontologically, some find its origin as nominal—the Monarch's ability to hold sovereignty and pass it to their heirs rested in a higher mandate, Bartleson locates the symbolic form of the Crown as an item which vests sovereignty in its wearer as indicative of this.[101] But why does sovereignty still have significant purchase as a descriptive device in the modern globalized, bordered world?

Kant and Wendt have each viewed sovereignty as a progressive force; sovereignty allowed for the creation of an international society by creating an interface for states to recognize one another, and that international society can eventually become cohesive enough to wear-away the borders which make sovereignty tenable in their obstruction of a world state.[102] Perhaps sovereignty is on a rocky path towards this world state, or perhaps the instituted norms are taking us in the opposite direction.

One observable truth is that "practices of inclusion often have gone hand in hand with practices of exclusion, and how this has led to an informal stratification of international society."[103] Sovereignty then has been demonstrated as a method of both excluding and including, stratifying and ordering, empowering and subordinating other states. Sovereignty expects states to be constituted in its form, and states do this as much as their power affords them

[100] Michel Foucault, "The archaeology of knowledge, trans." *AM Sheridan Smith (New York: Pantheon, 1972)*, 24.
[101] Bartelson, *Sovereignty as Symbolic Form*, Chapter 1.
[102] Bartelson, *Recognition*, 304. And Alexander Wendt, "Anarchy is what states make of it: the social construction of power politics." *International Organization* 46.02 (1992): 408, 412.
[103] Simpson, *Great powers and outlaw states*, 446-458 and Bartelson, *Recognition*, 303.

to. In this sense, sovereignty is not directly what states interpret it to be, but what states interpret the norms which construct sovereignty to be. This normative base allows sovereignty to be self-reinforcing. Ronald Jennings says as much—"nothing is better testimony to the success of political modernity than how widely the concept of sovereignty has been—and remains today—accepted as the sole important term of comprehending political power and we remain without a viable alternative vocabulary for thinking politically."[104]

Observing the historical present, sovereignty serves a very different purpose now than in its natural law origins. With no non-included territory (outside of Liberland, Antarctica, and perhaps outer-space) to indoctrinate into international society, states have turned inwards in the pursuit of self-determination through secession. The power of exclusion is now largely in determining which secessionist movements are legitimate and those that are not, the relevance in using this paper's conceptualization of sovereignty as a process of subordinating and ordering these new-entrants is to understand the role of power-politics in recognition. When the US and Russia, China, or another great-state disagree over the recognition of Abkhazia or Taiwan, each is using speech-acts to indicate their preference of how sovereignty should exist normatively.

The operative paradigm has been instituted as rule for some time, but every rule meets contestation. The volume and importance of this disagreement is indicative of the status of stratification in the order of international society. Keen readers will notice that this paper has not advanced that either a hegemonic or hierarchic order is currently operative; although many would say the US is the hegemon of international relations following the Cold War, others would disagree. By examining the outcomes of pushes to recognize secessionist new-entrants, one can study the balance of power among those at the top of the order. Many academic inquests have

[104] Ronald C Jennings, "Sovereignty and political modernity: A genealogy of Agamben's critique of sovereignty." *Anthropological Theory* 11.1 (2011): 23-61. In Bartelson, *Sovereignty as symbolic form*, 9.

done just this, examining intervention and recognition through the frame of power-politics. All too often though these assessments presuppose that sovereignty exists in static form—that its current norms are concrete and will not change. This static perspective often fails to question why a new-entrant desires or requires sovereignty, assuming it is something ontologically intertwined with existence as a state.

The opposite seems true with Liberland, if Croatian police were not occupying their claimed territory, they would have little reason to seek recognition from any member of international society. They are a modern state that essentially desires no recognition, but are forced into a position where they must seek it. Absent the respect or recognition of international society they still make a convincing case to hold a form of sovereignty completely disparate with the operative model. They demonstrate that the declaratory-linked model of legal sovereignty is no longer respected in the world. They demonstrate that both non-recognition and subordinated recognition are barriers to a fabricated imagining of sovereign-equality. And finally, they demonstrate that norms of sovereignty can be contested outside of the realm of power-politics.

Liberland is an eccentric outlier in the examination of small-states, but is a case that powerfully demonstrates the danger in thinking of sovereignty as static and unchanging. Rather, this case concurs with Bartelson's understanding of sovereignty as a parergonal frame; norms function both to constitute what sovereignty is, and what the norms of sovereignty are. Discourses and power-politics among states shapes what these norms are, but the state's actions are equally shaped by the presence of norms. Thus sovereignty is less what states make of it, but what states make of the norms that make of it.[105]

[105] Jens Bartelson, *A Genealogy of Sovereignty*, (Vol. 39. Cambridge University Press, 1995), 52.

Bibliography:

Books and Articles:

Akashi, Kinji. "Hobbes's Relevance to the Modern Law of Nations." *Journal of the History of International Law* 2, no. 2 (2000): 199-216.

Baer, Werner. "Import substitution and industrialization in Latin America: experiences and interpretations." *Latin American Research Review* 7, no. 1 (1972): 95-122.

Bartelson, Jens. "Recognition: A Short History." *Ethics & International Affairs* 30, no. 3 (2016): 303-321.

—— A genealogy of sovereignty. Vol. 39. *Cambridge University Press*, 1995.

—— *Sovereignty as symbolic form*. Vol. 6. Routledge, 2014.

Bereketeab, Redie. *Self-determination and secession in Africa: The post-colonial state*. Routledge, 2014.

Cooke, James J. *New French imperialism, 1880-1910: the Third Republic and colonial expansion.* David & Charles Publishers, 1973.

Dion, Stéphane. *Straight Talk: Speeches and Writings on Canadian Unity.* McGill-Queen's Press-MQUP, 1999.

Foucault, Michel. "The archaeology of knowledge, trans." *Sheridan Smith* (New York: Pantheon, 1972).

Grant, Thomas D. "Defining statehood: The Montevideo Convention and its discontents." *Colum. J. Transnat'l L.* 37 (1998): 403.

Griffiths, Ryan D. *Age of secession: The international and domestic determinants of state birth*. Cambridge University Press, 2016.

Hegel, Georg Wilhelm Fredrich. *Hegel: Elements of the philosophy of right.* Cambridge University Press, 1991.

Hobbes, Thomas. "Leviathan, ed. Richard Tuck." (1991).

Holliday, Ian. "Ethics of intervention: just war theory and the challenge of the 21st century." *International Relations* 17, no. 2 (2003): 115-133.

Ingebritsen, Christine, and Neumann, Iver ed. *Small states in international relations.* University of Iceland Press, 2006.

Jennings, Ronald C. "Sovereignty and political modernity: A genealogy of Agamben's critique of sovereignty." *Anthropological Theory* 11, no. 1 (2011): 23-61.

Johnson, Larry. "“Uniting for Peace”: Does it Still Serve Any Useful Purpose?." *American Journal of International Law* 108 (2014): 106-115.

Koskenniemi, Martti. *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960*. (Vol. 14. Cambridge University Press, 2001).

Kratochwil, Friedrich V. *Rules, norms, and decisions: on the conditions of practical and legal reasoning in international relations and domestic affairs.* Vol. 2. Cambridge University

Press, 1991.
McCulloch, Allison, and John McGarry, eds. *Power Sharing: Empirical and Normative Challenges.* Routledge, 2017.
Morgenthau, Hans J. "An intellectual autobiography." *Society* 15, no. 2 (1978): 63-68.
Navari, Cornelia. "Territoriality, self-determination and Crimea after Badinter." *International Affairs* 90, no. 6 (2014): 1299-1318.
Odysseos, Louiza, and Fabio Petito, eds. *The international political thought of Carl Schmitt: terror, liberal war and the crisis of global order*. Routledge, 2007.
Onuf, Nicholas. *World of Our Making*. Columbia, SC. (1989).
Pellet, Alain. "The opinions of the Badinter Arbitration Committee a second breath for the self-determination of peoples." *Eur. J. Int'l L*. 3 (1992).
Radan, Peter. "Post-secession international borders: a critical analysis of the opinions of the Badinter Arbitration Commission." *Melb. UL Rev*. 24 (2000)
Rawls, John. "Two concepts of rules." *The philosophical review* 64, no. 1 (1955): 3-32.
Reisman, W. Michael. "The constitutional crisis in the United Nations." (1993): 83-100.
Ringmar, Erik. "Performing international systems: two East-Asian alternatives to the Westphalian order." *International Organization* 66, no. 01 (2012): 1-25.
—— "Recognition and the origins of international society." *Global Discourse* 4, no. 4 (2014): 446-458.
Rose, Richard, and William James Millar Mackenzie. "Comparing forms of comparative analysis." *Political Studies* 39, no. 3 (1991): 446-462.
Rossman, Gabriel. "Extremely Loud and Incredibly Close (But Still So Far): Assessing Liberland's Claim of Statehood." *Chi. J. Int'l L*. 17 (2016): 306.
Sack, John. *Report from practically nowhere.* Harper, 1959.
Schmitt, Carl. Political theology: Four chapters on the concept of sovereignty. *University of Chicago Press*, 1985.
Simpson, *Gerry. Great powers and outlaw states: unequal sovereigns in the international legal order.* Cambridge University Press, 2004.
T. Boyle, "The Venezuela Crisis and the Liberal Opposition, 1895-96." *The Journal of Modern History* 50.S3 (1978): D1185-D1212.
Waltz, Kenneth Neal. *Man, the state, and war: a theoretical analysis.* Columbia University Press,
2001.
Wendt, Alexander. "Anarchy is what states make of it: the social construction of power politics." *International Organization* 46, no. 02 (1992): 391-425.
Wittgenstein, Ludwig. *Philosophical Investigations.* New York: The Macmillan Company, 1965.

News Sources and Press Releases:

"About 20,000 Syrians Apply for Liberland Citizenship". *Sputnik International*. September 24, 2015.

"How to be a successful Liberland Contributor" *Liberland Press*. January 9, 2017.

"Liberland to Launch Online Startup Contest to Kick Off Smart Nation" *Blockchain News.* February 23, 2017.

"Liberland UNPO Learning Material". *Hermilia.* 2015.

"Tuvalu joins traditional friends by renewing ties with Georgia". *RNZ.* April 16, 2014.

Arjun Kharpal. "Bitcoin value rises over $1 billion as Japan, Russia move to legitimize cryptocurrency". *CNBC.* April 12, 2017.

Deane Thomas. "Liberland, the Police, and the Croatian Taxpayer Bill". *Total Croatian News*. April 20, 2017.

Free Republic of Liberland Brochure. Accessible on investment.ll.land.

Filip Rojik and Petr Salaba. "This No Man's Land of Mine: Declaration of a Tax Haven." 2016.

John Aglinoby. "Fintech Takes Off In Africa As Lenders Tap Mobile Technology". *Financial Times.* May 17, 2016.

Marija Ristic. "Boundaries Still Unresolved in Ex-Yugoslav Countries. *Balkan Investigative Reporting Network.* April, 2012.

Michael Glaser. "Want Liberland Citizenship? Here's How To Increase Your Chances". *Liberland Press*. May 29, 2015.

Murithi Mutiga. "Kenya's Banking Revolution Lights a Fire". *New York Times.* January 20, 2014.