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**RESTLESS BEYOND STATEHOOD: RETHINKING THE ROLE OF  
RECOGNITION VIS-À-VIS THE CONSTITUTION OF SUBJECTS UNDER  
INTERNATIONAL LAW**

**by**

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A thesis submitted in the fulfilment of the  
requirements for the degree of  
Ph.D.

University of London  
(School of Law, Birkbeck College)

2018

I hereby certify that the work presented in this thesis is my own.

26 June 2018

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Erdem Ertürk

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Date

## ABSTARCT

The central thesis developed here is that recognition is imperative for the constitution of subjects under international law. The thesis addresses the failure of the prevalent theories of recognition of states to account for the relational element of coming-into-being of international subjects. I identify the notion of absolute sovereignty, the idea that states can entirely be independent from their external relations, as the underlying cause of this failure. The outcome is that, the constitutive theorists limit their perception of recognition to an act of sovereign consent and the declarative theorists assume that states can individually acquire international personality on an *ipso facto* basis.

I employ Hegel's theory of recognition to demonstrate that free and independent subjects come into being through mutual recognition, that the unity of independent self-consciousnesses "in their opposition, enjoy perfect freedom and independence: 'I' that is 'We' and 'We' that is 'I'." States cannot be purely absolute entities which are independent of any relations to the external world. By applying Hegel's notion of self-consciousness to the concept of statehood, we can begin to understand that the source of states' freedom and independence is the unity of states in their opposition, that the sovereignty of each state can essentially be maintained within an international community which comprises the aforementioned 'We'.

The thesis, therefore, seeks to depart from the prevalent theories' restrictive economy of recognition wherein statehood is constantly reproduced as a subject which, in its absoluteness, is complete and closed, is without any relation to its externality. I argue that, through a rereading of Hegel's theory, one can gain an accurate perception of the international subject — contra the atomistic idea of absolutely sovereign state — as always in flux, constantly determined by one's relation to its others. Such a perception does not only bring to the fore the constitutively imperative role of recognition but also accounts for the determinative force of dynamic relations under international law.

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## INTRODUCTION

Theories of recognition of states under international law are grouped into two camps — the constitutive and the declarative theories. The proponents of these theories contemplate the relevance of the act of recognition vis-à-vis the attainment of statehood and international personality. The advocates of the constitutive theory perceive recognition as legally constitutive of new states' international personality. An emerging entity may meet the criteria of statehood, however, based on the constitutive approach, the new state can only become a subject of international law if recognition is accorded to it by the established states. The rationale behind this approach is that, through recognition, established states demonstrate their consent to be bound by rights and obligations in relation to the new state. Two major problems are attributed to this approach. Firstly, the constitutive theory gained prominence in an age in which international law was thought to govern the relations within a Eurocentric family of nations. Non-member states gained membership through recognition which was granted on the basis that these states achieved a certain level of European civilisation. Even if one strips such an approach from its racist elements, the constitutive theory produces another problem: *subjective* criteria of international personality.

Viewed from the perspective of the constitutive theorists, attainment of international personality becomes contingent upon the volition of established states. In addition to failing to provide an objective standard by which such volition may be practiced, the proponents of this theory leave essential questions which determine veritable issues related to the practice of recognition unanswered. How many states are required to recognise a new entity for it to become a subject of international? What would be the effects upon an entity's international personality of the fact that some states may recognise, and others may not? Can one state create new international subjects by merely recognising any aspiring entity? International

community lacks a centralised authority powered with adjudicating issues vis-à-vis the attainment of international personality by emerging entities. The constitutive theory may be understood as passing this role on to individual states, however, aforementioned practical concerns obscure any constitutive role that may be attached to recognition within this context.

Declarative theory's response to these practical issues is to opt for an objective test for international personality. Proponents of this theory argue that a state becomes a subject of international law the moment an emerging entity meets the international criteria of statehood. Regarding the attainment of international personality as concurrent with the attainment of statehood, in turn, leaves no room for according any constitutive role to recognition. In other words, the gap, which the constitutive theorists claimed existed between statehood and international personality, is absent in the declarative theorists' formula and this absence eliminates the need to utilise the act of recognition for constitutive purposes. Thus, in the declarative theorists' perspective, this act comprises a mere political declaration whereby an established state acknowledges the existence of a new state. The statehood and the international personality of this new entity is, therefore, legally established irrespective of recognition from established states.

Among these two theories, the declarative approach is more prevalent in international practice. While Article 1 of the Montevideo Convention provides the often quoted criteria of statehood, Article 3 declares that '[t]he political existence of the state is independent of recognition by the other states.'<sup>1</sup> Another example of the embracement of the declarative theory in international practice appeared in the first opinion of the Arbitration Commission of the Hague Conference on Yugoslavia: 'the existence or disappearance of the State is a question of fact; that the effects of recognition by other States are purely

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<sup>1</sup> Montevideo Convention on the Rights and Duties of States, 1933.

declaratory.<sup>2</sup> Furthermore, Stefan Talmon informs the reader of Germany's declared position vis-à-vis the question of recognition: 'We and our partners in the EU have not recognised the [Federal Republic of Yugoslavia]. [...] This is of no relevance for the question of the international legal personality of the Federal Republic of Yugoslavia, as recognition does not have constitutive effect.'<sup>3</sup>

Pervasiveness of the declarative theory in practice ensures that recognition does not carry any constitutive significance. When subjected to close scrutiny, it becomes apparent that even the proponents of the constitutive theory do not advocate a formula wherein mutual relations of recognition among states are constitutive of international personality. While, in the declarative camp such constitutive effect is entirely denied. Constitutive theorists conceive recognition as a key that gains access into a family of nations but one that is used only at the sovereign volition of established states. Such conception lacks an intersubjective element of coming-into-being that mutual recognition suggests. Responding to this lack, the central thesis I develop here is that recognition is imperative for the constitution of subjects under international law. I demonstrate this imperative by adopting Hegel's theory of recognition wherein free and independent subjects come into being through mutual recognition; such recognition comprises a dialectical unity as a result of which opposing self-consciousnesses can attain freedom and independence.<sup>4</sup>

The failure to adopt a dialectic formula for the coming-into-being of states as international subjects can be explained by reference to the notion of absolute sovereignty of states and this notion's influence upon the constitutive and the declarative theories. Vattel's prominent concept of absolute sovereignty rendered the state 'absolutely free and

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<sup>2</sup> *Opinion No. 1*, (1992) 31 ILM 1488, p. 1494.

<sup>3</sup> A letter of the German Foreign Office, dated 10 February 1994, (ZaöRV, 56 (1996), pp. 1007-8, cited in Talmon S., 'The Constitutive Versus the Declarative Theory of Recognition: *Tertium Non Datur?*', *British Yearbook of International Law*, Vol. 75, Issue 1, 1 January 2005, pp. 101-108, p. 106.

<sup>4</sup> Hegel G.W.F., *Phenomenology of Spirit*, (trans. A.V. Miller) (Oxford: Oxford University Press, 1977) p. 110.

independent with respect to [...] all other nations, as long as it has not voluntarily submitted to them.<sup>5</sup> Therefore, the state is conceptualised as an ostensibly self-relating, self-sufficient atomistic substance which can actually be free from external relations. The influence of Vattel's formulation of sovereignty of states upon the theories of recognition can be glanced in the following way. For the constitutive theorists, the act of recognition amounts to an act of *sovereign consent* without which established states cannot be bound by rights and obligations towards a newly emerging entity. For the declarative theorists, coming-into-being as a state is a *self-sufficient* act which does not involve relating to any external entity. Once the criteria are fulfilled, the entity becomes a state and a subject of international law.

To the extent that the notion of absolute sovereignty intricately underlies these theories, the issue of relation as a determinative element of the very being of international subjects is evaded. However, as Nancy would have it, '[...] one cannot make a world with simple atoms. There has to be a *clinamen*. There has to be an inclination or an inclining from one toward the other, of one by the other, or from one to the other.'<sup>6</sup> Therefore, rethinking recognition as a constitutive imperative requires reconciling the sovereign quality of statehood with the perception that states exist within an international community. Accordingly, in this thesis I achieve this reconciliation first by questioning the tenability of Vattel's formula of absolute sovereignty and the type of international subject which this formula generates in conjunction with the prevalent theories of recognition. In its absoluteness, this subject is complete and closed, it is without any relation to its externality.

Second, I depart from the idea of the subject as complete-in-itself and reconceive the international subject as always in flux, in relation with an other, and is determined by this relation. To achieve this reconception, I apply Hegel's theory of recognition to the issue of international personality. I show that the dialectical understanding of the constitution of the

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<sup>5</sup> Vattel E., *The Law of Nations*, (Indianapolis: Library Funds Inc., 2008) p.83.

<sup>6</sup> Nancy JL., *The Inoperative Community*, (Minneapolis: University of Minnesota Press, 1991) p.3.

international subject entails gaining independence and freedom through continuous and mutual relations of recognition. Inasmuch as this dialectical understanding can be adopted to account for sovereign singularities of states, it does also incorporate the dynamic relations among states as a determinant force, as a constitutive imperative which constantly shapes each state's personality.

## **OUTLINE OF CHAPTERS**

### **Chapter One**

In the first two chapters, I provide a case study of the Turkish Cypriot community. The purpose of this study is twofold. Firstly, I demonstrate the way in which recognition is determinative, in practice, of the very being of an entity. The second purpose of the case study is to expose the rigid practice behind international community's act of according personality to entities under international law. To achieve these purposes, in the first chapter, I introduce the 1960 constitution of the Republic of Cyprus and delineate the share of sovereign power Turkish Cypriots enjoyed under this constitution. These powers form the departure point of the study wherein I portray Turkish Cypriots' struggles to regain any form of sovereign assertion after the community lost its share in the interethnic conflict of 1963. While I consider the community's struggles in more detail in the second chapter, I use the first chapter to establish the parties with whom Turkish Cypriots had relations that determined the being of this community. In this regard, I refer to Greek and Turkish Cypriots' anti-colonial struggles against the British and how, during this period, the islanders' connections with mainland Turkey and Greece affected their post-colonial future.

I demonstrate a web of relations that resulted in the establishment of the Republic of Cyprus wherein Turkish Cypriots had to cooperate with their Greek counterparts to maintain their communal well-being in a bi-communal state structure. I also show how the antagonistic relations among the communities resulted in the collapse of this state structure

and dragged the Turkish Cypriot community into a political impasse. Therefore, in the first chapter, I emphasise the relational element of coming-into-being by demonstrating that the 1960 constitution, which defined the Turkish Cypriot community, was the product of an attempt to appease the requirements of a couple of external powers, namely, Turkey and Greece, and, as such, blatantly disregarded the political ambitions of the Greek and Turkish Cypriot communities. I begin the second chapter by tracing the effects of such disregard on the short lifespan of the constitutional setup of the new Republic.

## **Chapter Two**

In this chapter, I present a range of historical events that led to Turkish Cypriots' unilateral declaration of independence in the northern region of the island. The starting point is the collapse of the constitutional structure of the island in 1963 due to interethnic conflict that erupted as a result of the communities' antagonistic ambitions for the future of the new Republic. I explain how this collapse ousted Turkish Cypriots from the governmental positions and commenced a long and futile process of negotiations to restore the constitutional order on a bi-communal basis. I, then, consider two military interferences on the island in the year of 1974 which geographically separated the communities and rendered reconciliation among them much more difficult. Following a series of yet another round of futile negotiations, Turkish Cypriots unilaterally declared independence in 1983 that was instantly rejected by the international community with a resolution of the Security Council of the United Nations which called all of its members not to recognise the Turkish Cypriot state.

Therefore, in this chapter, my focus is upon a chain of events that comprises Turkish Cypriots' efforts to regain the level of sovereignty provided by the 1960 constitution in order to ensure the survival of the community and the eventual manifestation of these efforts as a struggle for recognition. I argue that international non-recognition determines the very being

of the Turkish Cypriot community by majorly contributing to the political impasse that surrounds the community and to the existential crisis that this impasse generates. In addition to emphasising the central role of recognition vis-à-vis the being of an entity, the second overall purpose of the case study is to expose the rigid practice behind international community's act of according personality to entities under international law. The futility of Turkish Cypriots' long struggle to regain any form of sovereign assertion — either by trying to solve the Cyprus problem or striving for international recognition of an independent Turkish Cypriot state — provides an opportunity to assess international community's response to dire consequences that this futility entails. To the extent that the Turkish Cypriot community cannot benefit from the 1960 constitutional setup and cannot protect itself against political vulnerabilities of economic dependence, the existence of the community is threatened. Non-recognition of a Turkish Cypriot state, however, renders this community's international personality conditional upon the resolution of the Cyprus problem — a problem which have been proving, for more than half a century, to be irresolvable. Therefore, through the case study, I establish that, despite the evident existential cul-de-sac, international law fails to provide Turkish Cypriots with any meaningful safeguards to maintain their communal being.

In the next chapter, I build upon the first argument of this case study that recognition is necessary in practice to maintain one's personality under international law. In view of this necessity, I offer an analysis of the prevalent theories of recognition of states under international law to demonstrate whether such necessity is met by these theories. I return to the second argument of the study regarding the inflexibility of international community's approach vis-à-vis international personality later on in the thesis to distinguish between a restrictive and a general economy of recognition.

### Chapter Three

After establishing recognition as a necessary element in achieving international personality in the previous chapters, in Chapter Three, I question whether the prevalent theories of recognition of states accommodate such necessity. I introduce the constitutive theory of recognition by referring to the respective works of Oppenheim, Lauterpacht, and Kelsen.<sup>7</sup> Despite certain disparities between their views, the works of these eminent scholars help us grasp the elemental aspects of the constitutional theory: that the act of recognition is legally constitutive of a newly emerging state's international personality; that this act operates as a form of consent by which established states agree to be bound by rights or obligations towards this new entity; that without recognition, statehood can be separated from international personality; that the lack of a central authority under international law to determine personality necessitates such a state-centric approach to recognition.

I refer primarily to the works of Hall, Williams, and Chen to draw a general framework of the declarative approach to the issue of recognition.<sup>8</sup> The fundamental features of the declarative theory that I discern from the works of the aforementioned scholars are the following: the declarative theory rejects the subjective and ostensibly arbitrary approach to the determination of international personality; this rejection extends to the separation of statehood from international personality; as a result of the latter rejection, states are deemed *ipso facto* subjects of international law basing the criteria of personality, in turn, upon the objective test of statehood; the *ipso facto* basis of international personality does also circumvent the lack of a central authority under international law which can determine statehood or personality.

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<sup>7</sup> Oppenheim L., *International Law*, vol. I., *Peace*, (1<sup>st</sup> Ed.), (London: Longman, 1905); Lauterpacht H., *Recognition in International Law*, (Cambridge: Cambridge University Press, 1947); Kelsen H., 'Recognition in International Law Theoretical Observations', 35 *American Journal of International Law*, 1941.

<sup>8</sup> Hall W.E., *Treatise on International Law*, (4<sup>th</sup> Ed), (Oxford: Clarendon Press, 1895); Williams J.F., 'Recognition', Transactions of the Grotius Society, Vol. 15, *Problems of Peace and War*, 53, 1929 Chen T-C., *The International Law of Recognition*, (Edited by L.C. Green) (London: Stevens & Sons Limited, 1951).

The overall outcome of my assessment of the prominent theories of recognition is that, for declarative theorists, the moment an entity meets the criteria of statehood it becomes, *ipso facto*, a subject of international law; therefore, recognition is perceived as a declarative act of merely *political* significance. For the constitutive theorists, recognition is deemed a sovereign act of consent which can be arbitrarily and subjectively granted to new entities turning these entities into new states. Although the adherents of the latter theory argue for a legally constitutive role for recognition, they fail to ground this argument upon a practical and objective basis. I draw two conclusions from the overall assessment.

The first conclusion is that, underlying the prevalent theories of recognition is the notion of statehood as absolutely sovereign. I introduce the notion of absolute sovereignty by tracing its historical development via the works of Bodin, Hobbes, Grotius, and Vattel. I demonstrate that Bodin and Hobbes respectively thought of sovereignty as absolute but did so at the level of internality.<sup>9</sup> This level concerned a sovereign's relations with its subjects. Whereas, with Grotius' and Vattel's separate works, the absoluteness of state sovereignty found an external domain of applicability.<sup>10</sup> States were deemed absolutely independent of each other, suggesting that statehood can be complete-in-itself and entirely free of external dependencies. The first conclusion which I draw above refers to the absoluteness of state sovereignty at this external level.

I argue that, with regard to the constitutive theory, the underlying notion of absolute sovereignty is manifest in the perception of recognition as a sovereign act of consent. This perception suggests that states' absolute freedom of external dependencies cannot be contravened unless states consent to be bound by rights and obligations towards new entities. For the declarative theory, it is manifest in the attainment of international personality on an

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<sup>9</sup> Bodin J., *On Sovereignty – Four chapters from the Six Books of The Commonwealth*, (Cambridge: Cambridge University Press, 1992); Hobbes T., *Leviathan*, (Oxford: Oxford University Press, 1996).

<sup>10</sup> Grotius H., *The Rights of War and Peace*, Book I (Indiana: Liberty Fund Inc., 2005); Vattel E., *The Law of Nations*, (Indianapolis: Library Fund Inc., 2008).

*ipso facto* basis which suggests that there is no need for the states to interact with each other when coming-into-being as international subjects.

In light of these manifestations, my second conclusion is that neither of the theories asks the conceptual question of the other's role in establishing the international personality of each subject. This conclusion sets the purpose of my next chapter. Therefore, in what follows, I employ a theory of coming-into-being of the subject which incorporates recognition as a constitutive *modus operandi*. Departing from the prominent theories of recognition, this theory has to account for the role an entity's relation to another entity plays in determining each other's being.

#### **Chapter Four**

In this chapter, I introduce Hegel's theory of recognition to account for the ontologically imperative role one's relation to an other has in constituting both entities as subjects. Hegel developed his theory of recognition by explaining how self's transformation into a self-conscious, free and independent subject is contingent upon mutual recognition between self and its other; that this transformation takes place through a dialectical movement wherein self moves out of itself into the encountered self, and then moves back into itself as the encountered self reciprocates the same constitutive movements.<sup>11</sup>

By turning to Hegel's theory of recognition to explain the constitution of the international subject, I follow the works of three authors who used Hegel's theory to account for different forms of subjects. The first author is Axel Honneth who built his notion of the moral subject upon the intersubjective element of Hegel's theory of recognition.<sup>12</sup> The second author is Charles Taylor who based his notion of the cultural subject upon an

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<sup>11</sup> Hegel, *op. cit.*, at pp. 109, 110.

<sup>12</sup> Honneth A., *Struggle for Recognition: The Moral Grammar of Social Conflicts*, (Cambridge: Polity Press, 1995).

Hegelian understanding of historical progress through claims of recognition.<sup>13</sup> The third author is Costas Douzinas who argued that the legal subject (or subject of rights) is determined by one's relation to its other(s).<sup>14</sup> While these authors provided key examples of ways in which Hegel's theory of recognition can be utilised to explain the coming-into-being of various forms of subjects, a certain challenge remains vis-à-vis the incorporation of the dialectic of master and slave within the context of international law.

Inasmuch as his theory can account for the constitutive element of mutual recognition among two parties, the fact remains that Hegel's account of recognition culminates in the relation between a master and a slave. Both Taylor and Douzinas interpreted this relation as a moment which has to be overcome on the way to achieving one's identity. For Taylor, master and slave marked a historic epoch in which personal identity was based upon grant of honours. For Douzinas, it constituted a narcissist phase of consciousness which desired the subjugation of its other but is later overtaken by mutual recognition. The utilisation of Hegel's theory for the purposes of this thesis, therefore, necessitates the grasping of challenges posed by the dialectic of master and slave within the context of international law. In the next chapter, I turn to Kojève's interpretation of Hegel's work to understand certain repercussions of the dialectic which may be relevant to the aforementioned context.

## **Chapter Five**

In this chapter, I begin to scrutinise the difficulties one may face in attempting to abstract Hegel's theory of recognition from its overall context. As I pointed out in the previous chapter, the dialectic of lordship and bondsman forms the major part of Hegel's

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<sup>13</sup> Taylor C. 'Politics of Recognition' in Taylor C., *et.al.*, *Multiculturalism*, (Amy Gutmann (Ed.)), (New Jersey: Princeton University Press, 1994).

<sup>14</sup> Douzinas C., 'Identity, Recognition, Rights or What Hegel Teach Us About Human Rights?', *Journal of Law and Society*, vol. 29, No3, September, 2002.

theory and previously mentioned authors who employed this theory had to overcome, in various ways, the challenges the dialectic posed. In this chapter, I turn to Kojève's interpretation of Hegel's work wherein the former placed lordship and bondsman at the centre of his reading.<sup>15</sup> I demonstrate that Kojève understood the struggle between master and slave as the driving force of historical progress. According to Kojève, this progress reaches its teleological end by the reconciliation of the struggle. Kojève's historicism and his teleological approach provide insights into certain challenges which may be relevant in the international law context.

According to Kojève, effects of the dialectic of master and slave are twofold. Firstly, the dialectic sets the historical context within which recognition takes place. This context consists of the anthropogenetic generation of human society which is brought about via a desire for recognition. Secondly, the dialectic serves a teleological purpose which is completed by bringing an end to history with the attainment of the universal and the homogenous state. Therein lies the challenge to utilising Hegel's theory of recognition within the context of international law. I argue that Kojève's historical contextualisation of the theory of recognition hinders my overall attempt to use Hegel's theory to reconceive the constitution of the international subject, that the teleological progress towards a universal and homogenous state misplaces my attempt to deviate from the state-centric orientation of the prevalent theories of recognition under international law.

My attempt to circumvent the challenge posed by the dialectic of master and slave through Kojève's interpretation of Hegel's work consists of two steps. First, I contest the Kojèvean understanding that in Hegel's work, human society is oriented towards a teleological end. I rely upon Frederic Jameson's counterargument that the dialectical perception of the notion of society plunges this notion into a perpetual flux.<sup>16</sup> This reliance

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<sup>15</sup> Kojève A., *Introduction to the Reading of Hegel: Lectures on the Phenomenology of Spirit*, (Ithaca: Cornell University Press, 1969)

<sup>16</sup> Jameson F., *The Hegelian Variations: On the Phenomenology of Spirit*, (London: Verso, 2010).

entails a detour into Hegel's thoughts on Sophocles' tragic play *Antigone* as Jameson derived his argument from Hegel's understanding of the opposition of ethical substances that the primary characters of the play — Creon and Antigone — represented. This is an opposition which, as Jameson interpreted, led to the destruction of the ethical order and, in turn, enhanced the mortality of social forms in Hegel's thought.

Second, I refer to Jean-Luc Nancy's reading of the notion of negativity to demonstrate that the perpetual flux pertains not only to Hegel's thoughts on the notion of society but also to his theory of recognition.<sup>17</sup> Nancy understood the concept of negativity — that is to say, the core element of Hegel's theory of recognition — to be restless. This restlessness informs a form of subject which is always in a transformative relation with its other. Therefore, the subject is re-conceived as *becoming* which can never have a beginning nor a teleological end. According to Nancy, the restless subject is always in flux, in relation and is continuously determined by this relation. Relying upon Nancy's reinterpretation of Hegel's thought, I argue that a fresh understanding of the theory of recognition can incorporate the determinant force of dynamic relation and, as such, counter the perception of international personality as rigidly closed and complete-in-itself.

In the next chapter, I distinguish between the restrictive economy of the prevalent theories of recognition of states under international law and the general economy of the recognition of a restless subject. In order to draw this distinction, I benefit from a paradox inherent to Hegel's theory of recognition. This is a paradox which can help us understand the reasons for the constitutive and the declarative theorists' failure to account for the constitutive role of one's relation to its other. Furthermore, a close scrutiny of the paradox also shows that my departure from the position of the prevalent theories to a renewed perception of recognition does not amount to an implausible leap.

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<sup>17</sup> Nancy JL., *Hegel: Restlessness of the Negative*, (trans. J. Smith, S. Miller), (Minneapolis: University of Minnesota Press, 2002).

## Chapter Six

In this chapter, I turn to another set of Kojève's lectures on Hegel's thought to bring to the fore the aforementioned paradox.<sup>18</sup> These lectures consist of Kojève's interpretation of Hegel's work as a philosophy of death. The interpretation centres upon discovering a conceptual link between the notions of negativity and death within Hegel's account of the life and death struggle. As this struggle precedes, and, therefore, sets up the scene for the dialectic of lordship and bondsman, Kojève argued that man's freedom is contingent upon an encounter with death wherein one has to risk his animal life to attain recognition of his humanness. The paradox pertains to the impossibility of encountering death and remaining alive at the same time.

I rely upon Bataille's critique of Kojève's interpretation to elaborate upon this impossibility.<sup>19</sup> Bataille argued that absolute negativity, indeed, corresponded to death or nothingness in Hegel's work, and, as such, it established the vast scope of Hegel's philosophy. The rejection of fear of death, according to Bataille, marked the moment of an authentic sovereignty wherein limits set by this fear is transgressed. However, Bataille also demonstrated that within the dialectic of lordship and bondsman, absolute negativity (and its very philosophical potential) was held in check with abstract negativity whereby neither of the participants die in the life and death struggle nor the fear of death is overcome. Inasmuch as holding absolute negativity or actual death in check is necessary for attaining the meaning of the master's discourse (for if one of the parties to the life and death struggle were to die, such meaning would be lost) it does also entail the subjugation of what Bataille called authentic sovereignty to the servile operation of the Hegelian dialectic.

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<sup>18</sup> Kojève A., 'The Idea of Death in the Philosophy of Hegel', in Keenan D.K. (editor), *Hegel and Contemporary Continental Philosophy*, (Albany: State University of New York Press, 2004).

<sup>19</sup> Bataille G., 'Hegel, Death and Sacrifice' in Botting F., Wilson S. (editors), *The Bataille Reader*, (Oxford: Blackwell Publishing, 1997)

Derrida interpreted this subjugation as a restricted economy of lordship which limited the outcome of recognition to the production, reproduction and circulation of servile subjects.<sup>20</sup> Derrida also pointed out that the subterfuge with which Hegel achieved this economy hides the true potential of the latter's philosophy, a blind spot which is capable of subsuming the Hegelian discourse and of transgressing its limits.

I draw upon Derrida's notion of restricted economy to argue that the constitutive and the declarative theorists' aforementioned failure is the product of a similar restricted economy of recognition. My contention is that the overarching effect of the underlying notion of absolute sovereignty, which I demonstrate in the third chapter, can be explained as engendering such a restrictive economy. By upholding the elements of absolute sovereignty of states, the prevalent theories of recognition are at the service of producing, reproducing and circulating statehood as the sole subject of international law. In other words, recognition serves the production of the aforementioned subject which is ostensibly complete-in-itself and free of all external dependencies.

Viewing the failure of the prevalent theories within the framework of such a restrictive economy, in turn, illuminates the international community's reluctance to recognise personalities which may transgress the discourse of statehood. The outcome of such an economy is that the fluidity of the problems faced by the Turkish Cypriot community is met by a steadfast once-and-for-all decision of the Security Council of the United Nations which does not accommodate the flux of the continuous struggle to maintain one's very being. However, respective thoughts of Bataille, Derrida and (as I demonstrate in the fifth chapter) Nancy converge on the idea that the restricted economy of recognition can be overcome by grasping the full potential of Hegel's notion of negativity.

I maintain that the restrictive economy of the theory of recognition of states under international law can also be overcome, that the aforementioned failure of the prevalent

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<sup>20</sup> Derrida J., *Writing and Difference*, (London: Routledge Classics, 2001).

theories also carries the potential to transgress the limits set upon these theories by the underlying element of the notion of absolute sovereignty. Albeit, such transgression will have to subsume or sacrifice the very problematic and limiting discourse of the so-called absoluteness of the sovereignty of states and to discover that even in its true nature, absolute is not without a relation, that self-relation would render absolute self-same and static, and finally, that absolute's inevitable relation to non-absolute establishes recognition as a constitutive imperative. In the conclusion of the thesis I revisit the problems presented by the case study of the Turkish Cypriot community and reflect upon the ways in which a general economy of recognition can assist us in resolving the major problems this study highlights.

## **Conclusion**

I begin the conclusion of the thesis by recapitulating my argument on the failure of the prevalent theories of recognition under international law. I repeat my assertion that the constitutive and the declarative theories fail to account for the constitutive role of one's relation to its other. The constitutive theorists render recognition a sovereign act of consent with the corresponding impractical and arbitrary power to create states out of entities. The declarative theorists' reaction to this arbitrariness is to deem recognition a political act of declaration and grasp international personality as concomitant with achieving statehood on an individualistic basis. In light of the Hegelian approach utilised throughout the thesis, I argue that one's relation to its other has an imperatively constitutive role in both establishing and continuously determining the very beings of entities involved.

Reflecting back upon the case study of the Turkish Cypriot community, I demonstrate the manner in which taking into account the imperative force of relation necessitates rethinking the constitution of international subject. The case study is of a community which finds itself in the political impasse of the Cyprus problem. On the one

hand, this problem prevents Turkish Cypriots from having access to a recognised state. On the other hand, international non-recognition of the unilaterally declared independence of a Turkish Cypriot state (based on the illegality of this declaration) plunges the community into an existential crisis. However, with forty-plus years of struggle (and relative success) to organise itself, Turkish Cypriots create *de facto* governments which govern a set population over a defined territory seemingly fitting the criteria of statehood but for the aforementioned illegality. I argue that, it is at this juncture of continuously attributing illegality to a Turkish Cypriot state (and, therefore, to Turkish Cypriot international personality) where imperative force of relation can help us attain a better understanding of the constitution of international subjects. Both the aforementioned failure of prevalent theories of recognition and international community's reluctance to recognise a Turkish Cypriot state point towards a once-and-for-all act of recognising statehood as a subject which is closed and complete in-itself. Such an act of recognition, in turn, ensures that any later problems which may arise within the closed subjects will have to remain trapped in these complete closed-ness.

This once-and-for-all act of recognition (or non-recognition) disregards the imperative force of relation in continuously determining subjects (which, therefore, come to be always in flux, always subject to change). *Vis-à-vis* the Turkish Cypriot case study, the effect of this disregard is manifest in continuing to attribute illegality to the idea of a Turkish Cypriot state in the north of the island despite the fact that the current political juncture of the Cyprus problem threatens the very being of the Turkish Cypriot community. As the community struggles to overcome what is proving to be the insurmountable political impasse of the Cyprus problem, the ever-increasing economic dependence upon and ensuing political interference by Turkey, and international non-recognition result in an existential crisis.

I conclude by arguing that, in its current restrictive form, international recognition remains the major contributor to the aforementioned existential crisis, that, by only taking

into account the imperative force of relation — in this case study, Turkish Cypriots' continuous act of relating to Greek Cypriots and other parties involved in the Cyprus problem, namely Greece, Turkey, Britain, the European Union and the United Nations — can one remedy the ongoing injustice of once-and-for-all determination of the Turkish Cypriot international personality.

## CHAPTER ONE

### Case Study Part One: The Constitutional Setup of the Republic of Cyprus

#### Introduction

In the overall scheme of the thesis, I argue that recognition is imperative for the constitution of subjects under international law. I build this argument upon two premises. The first premise is that relations of recognition shape the very being of communities. In other words, the coming-into-being of entities are relational. The second premise is that the prevalent theories of recognition of states under international law fail to account for this necessity. The purpose of the current and the next chapters is to demonstrate the first premise with a case study on the Turkish Cypriot community. I engage with the second premise in the third chapter.

Two major events in the recent history of the Turkish Cypriot community are relevant to achieving the purpose of the first two chapters. The first event is Turkish Cypriots' unilateral declaration of independence and the ensuing refusal, of the international community, to recognise this independence. Through an analysis of the declaration and its rejection, I substantiate the role recognition plays in determining the very being of a community. In the Turkish Cypriot example, the effects of withholding recognition include exclusion from the international community, ever increasing economic dependence upon another country, and the resultant existential vulnerability against political manipulation.

The second event is the unsuccessful referendum held on the proposed plan to resolve the constitutional crises and reunite the Greek and Turkish Cypriot communities of the island. The historical progress toward and the outcome of the referendum set the context of Turkish Cypriots' communal struggles. This context consists of a political impasse the disentanglement of which depends not only upon the actions of the Turkish Cypriot community but also upon the deeds of others who relate to this community. For instance,

Greek Cypriots' reluctance to solve the Cyprus problem and the ensuing 'no' vote (despite Turkish Cypriots' 'yes' vote) in the referendum prevent Turkish Cypriots from using their share of sovereign power of the Republic of Cyprus. In addition, Turkey's economic engulfment of the Turkish Cypriot community and the resultant political repercussions instigate the demographic disintegration of the community. As the community lacks the necessary means to solve these issues, it is its external relations which continue to shape the community's existence.

An additional purpose of the case study is to expose the rigid practice behind the international community's act of conferring legal personality to entities under international law. I achieve this purpose by showing that international community is obstinately disinclined to take into account the relational element of coming-into-being. I argue that, in relation to the Turkish Cypriot community, this disinclination is manifest in the international community's refusal to review the decision to withhold recognition. This decision appears to be made on a once-and-for-all basis and its review is ostensibly out of the question even in light of the fact that the failed referendum and the increasing economic dependence is dragging Turkish Cypriots into oblivion as a community.

The recent history of the Turkish Cypriot community's struggles constitutes an appropriate topic for the case study in two ways. Firstly, the community is defined and its existence is safeguarded by the 1960 constitution of the Republic of Cyprus. The establishment of this Republic and the ensuing collapse of its constitutional setup involves several actors. This involvement, in turn, provides an opportunity to examine the Turkish Cypriot community's relations with these actors and understand the determinative effects these relations have upon the very being of the community. Due to the infamous Cyprus problem which led to the aforementioned collapse, the community cannot benefit from the relevant provisions of the constitution and, as such, remains outside of the state structure and the constitutional set-up of the Republic of Cyprus. Secondly, therefore, the exterior

position of the community accentuates the effects of international non-recognition of Turkish Cypriots' unilateral declaration of independence allowing one to draw clear conclusions vis-à-vis the necessity of recognition and international law's rigid approach against the relational element of coming-into-being.<sup>21</sup>

In this chapter, I begin the case study with a focus upon the manner in which the 1960 constitution defined the Turkish Cypriot community and secured its existence. Thus, in the first part of the study, I present the constitutional division of the sovereign power among Greek and Turkish Cypriot communities. This division entailed a bi-communal state structure wherein Turkish Cypriots enjoyed a share of legislative, executive and judicial powers that were meticulously balanced against any overwhelming use of these powers by the Greek majority. Insofar as the constitutional provisions ensured that Turkish Cypriots participated in the running of the state on a politically equal

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<sup>21</sup> The Turkish Cypriot case study displays certain similarities to cases that emerged in the aftermath of the dissolution of the Union of Soviet Socialist Republics. These cases also feature non-recognised entities that are situated within the boundaries of parent states and struggle to gain independence with the economic and military support of a third state. The gist of each study is that a frozen conflict or a political impasse constitute the status quo trapping each entity within a condition of continuous dependence and political vulnerability. Factors that determine the fate of the self-proclaimed republic of Nagorno-Karabakh, for instance, are that the entity is located within Azerbaijan, the majority of its population is ethnically composed of Armenians, and it has unilaterally declared independence that is recognised solely by Armenia. Thus, the entity, despite *de facto* compliance with the criteria of statehood, is heavily dependent upon economic and military support of Armenia and cannot escape this state of dependence due to the futility of relations between Azerbaijan and Armenia. The Republic of Abkhazia is another example in which the entity's struggle against the parent state of Georgia is supported by another state, namely Russia, with the resultant unilateral declaration of independence. This declaration is recognised by a small number of states. Similar to the previous case, however, the political impasse between Russia and Georgia continues to affect the very being of Abkhazia. In another case, assimilation of the South Ossetians into Russia through extensive grants of Russian passports demonstrates the type of threat against the existence of the small communities of non-recognised states. The reasons for presenting a singular case study herein, instead of a comparative one that includes above-mentioned cases of the post-USSR era, are twofold. Firstly, a concentrated focus is necessary for the analysis of a complex set of events that resulted in a loss of both internal and external forms of autonomy or sovereignty. Sovereignty (or sovereign assertion of rights) is necessary to maintain an independent political will which is, in turn, crucial for the existence of a community, especially for one that is isolated from the constitutional structure of the parent state. A singular focus permits a more complete demonstration of such loss of sovereignty, constitutional isolation, and ensuing threats to one's existence. Secondly, in the case of the Turkish Cypriot community, the loss of sovereign share of state power took place in 1963 providing a longer period of political impasse in which the repercussions of lack of international personality can be clearly assessed compared to the emergence of post-USSR entities in the early 1990s. An additional benefit of this longer period of impasse is that it reveals the economic dependence of the non-recognised entity upon the sponsor state as unsustainable and as a major contributor to the political manipulation of the entity. References to the aforementioned post-USSR republics are from separate case studies presented in Walter C., Von Ungern-Sternberg A., Abushov K. (editors), *Self-Determination and Secession in International Law*, (Oxford: Oxford University Press, 2014).

footing with Greek Cypriots, these provisions also accorded exclusive powers to each community for their respective communal internal affairs.

In the second part of the study, I consider a time period in which decolonisation of Cyprus from the British rule took place. The relations that occurred throughout this period were not limited to a single-dimensional conflict between the coloniser and the colonised; that is say, between the British and the Cypriots. The Greek and the Turkish Cypriot communities had an antagonistic relationship based on mutual mistrust of each other's ideological stances. Both communities respectively turned to their so-called mother-countries, that is to say, Greece and Turkey, for inspiration and liberation. However, it was a confrontational relationship among these mother-countries which ultimately led to the establishment of the Republic of Cyprus. In other words, the decolonisation of Cyprus manifestly demonstrated a set of relations that have been defining the very beings of the two Cypriot communities ever since the inception of the Republic.

Throughout the second part of the chapter, therefore, I introduce the parties to the Cyprus problem and outline the hostility inherent to relations among them. First, I present the Greek Cypriot community by focusing upon this community's anti-colonial struggles which was epitomised by the idea of unification with Greece. Second, I introduce the Turkish Cypriot community by referring to their reaction to the idea of unification. This reaction found its expression in the idea of separation of the island into Greek and Turkish-ruled regions. Third, I refer to the manner in which the agreement between mainland Greece and Turkey was instrumental in establishing a new republic in which neither the Greek nor the Turkish Communities of Cyprus achieved their ultimate aims of above-mentioned unification or separation.

In the final part of the current chapter, I evaluate the communities' reactions to the establishment of the new republic. The outcome is that neither of the communities

accepted the settlement and carried on working for their pre-1960 ambitions. A network of relations resulted in the drafting of the 1960 constitution the provisions of which safeguarded the very being of the Turkish Cypriot community. The rejection of these provisions as an ultimate solution ensured that this network later occasioned the collapse of the constitutional structure paving the way for the geographical separation of the Cypriot communities. Therefore, in this chapter, I bring to the fore the relational element of coming-into-being by focusing upon the role of the parties within the web of the Cyprus conflict. In the next chapter, I show how, in the aftermath of the separation, this relational element clearly manifested itself as a question of recognition.

## **Part One**

### **1.1. Introduction**

Until the year of 1960, Cyprus remained a Crown Colony under the British rule. With the proclamation of the Republic of Cyprus on 16<sup>th</sup> August, Britain formally relinquished its sovereignty over the island. The first article of the 1960 constitution asserted the sovereignty of a new state:

The State of Cyprus is an independent and sovereign Republic with a presidential regime, the President being Greek and the Vice-President being Turk elected by the Greek and the Turkish Communities of Cyprus respectively as hereinafter in this Constitution provided.<sup>22</sup>

The purpose of this part of the chapter is to determine Turkish Cypriots' share of sovereign power within the new republic. To achieve this purpose, in what follows, first, I present the bi-communal state structure and then delineate the constitutional positions occupied by

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<sup>22</sup> Article 1 of the Constitution of the Republic of Cyprus.

Turkish Cypriots within the structure. Finally, I briefly outline the extent of constitutional power Turkish Cypriots enjoyed in these positions.

## 1.2. The State Structure

As observed above, Article 1 of the 1960 constitution provided for a presidential regime. The executive power of the regime is entrusted to the president and the vice-president of the Republic.<sup>23</sup> For the exercise of this power, the presidency of the Republic is supported by a Council of Ministers members of which are nominated by the president and the vice-president.<sup>24</sup> The legislative power of the new state is divided among the House of Representatives<sup>25</sup> and two Communal Chambers — one Greek and the other one Turkish Chambers.<sup>26</sup> The Supreme Constitutional Court,<sup>27</sup> the High Court of Justice, and the subordinate courts<sup>28</sup> form the judiciary of the new republic.

Many authors are in agreement that the 1960 constitution created a bi-communal state structure. In this regard, Kyriakides wrote about the ‘strong bi-communal character’ of the 1960 constitution.<sup>29</sup> In an attempt to emphasise the bi-communality of the state, Özersay drew readers’ attention to the fact that nowhere in the constitution reference to a uniform Cypriot Nation could be found and in its stead, all the provisions of the constitution are directed towards two separate communities of the island.<sup>30</sup> In addition, Necatigil referred to the constitutional arrangements as ‘a functional federative system’ which provided for ‘the

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<sup>23</sup> Article 46.

<sup>24</sup> *Ibid.*

<sup>25</sup> Article 61.

<sup>26</sup> Articles 86 and 87.

<sup>27</sup> Article 133 (1).

<sup>28</sup> Article 152 (1).

<sup>29</sup> Kyriakides S., *Cyprus – Constitutionalism and Crisis Government*, (Philadelphia: University of Pennsylvania Press, 1968) pp. 55,56.

<sup>30</sup> Özersay K., *Kıbrıs Sorunu: Hukusal İnceleme* (Cyprus Problem: Legal Investigation), (Ankara: Ankara Üniversitesi Basım Evi, 2009) p.39.

partnership and co-founder status of the communities, the bi-communality of the state, and the dichotomy of functions and powers between the state and the communities.<sup>31</sup>

In contrast to Necatigil, Dodd found the notion of ‘functional federation’ illogical: ‘There is little point in referring to it as a “functional” federation, as is often the case, since all federations are organised on the basis of functions.’<sup>32</sup> Instead, Dodd preferred to call the constitutional arrangements of the new Republic a ‘communal federation’ based on the fact that the arrangements did not create a ‘geographical federation.’<sup>33</sup> Although these authors brought the issue of federalism into the debate concerning the nature of the 1960 constitution, it must be noted that the constitution does not involve terms such as ‘federalism’ or ‘federal state(s)’. Accordingly, any discussion of federalism or probable federal systems of Cyprus is avoided in this case study.

Instead of the issue of federalism, the focus of this part of the chapter remains upon what Kızılyürek emphasised as the basic principle of the 1960 constitution – the sharing of sovereignty among the Greek and the Turkish communities.<sup>34</sup> In their analysis of the constitutional provisions of the Republic, Kızılyürek and Erhürman pointed out that the state structure of Cyprus was designed for two ethnically different communities to co-exist and conjointly rule the state while maintaining their communal differences.<sup>35</sup> Articles 2(1) and 2(2) of the 1960 Constitution could be regarded as the starting point of this design. These articles provided respective definitions for the two communities of the island. The first article identified the Greek community as ‘all citizens of the Republic who are of Greek origin and whose mother tongue is Greek or who share the Greek cultural traditions or who are members of the Greek-Orthodox Church.’ The latter identified the Turkish community

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<sup>31</sup> Necatigil Z. M., *The Cyprus Question and the Turkish Position in International Law*, 2nd Ed. (Oxford: Oxford University Press, 1993) p.18.

<sup>32</sup> Dodd C., *The History and Politics of the Cyprus Conflict*, (Basingstoke: Palgrave Macmillan. 2010) p.42.

<sup>33</sup> *Ibid*, p.42.

<sup>34</sup> Kızılyürek N., *Daha Önceleri Neredeydiniz?* (Where were you before?), (İstanbul: Birikim/Güncel, 2009) p.16.

<sup>35</sup> Kızılyürek N., Erhürman T., *Kıbrıs'ta Federalizm* (Federalism in Cyprus), (Lefkoşa: Işık Kitabevi, 2009) p.70.

as ‘all citizens of the Republic who are of Turkish origin and whose mother tongue is Turkish or who share the Turkish Cultural traditions or who are Moslems.’ A complex division of constitutional positions and powers was ostensibly necessary for these communities to conjointly rule the new Republic. In the next section, I outline the constitutional positions Turkish Cypriots occupied within the state structure.

### 1.3. The Constitutional Positions

In 1960, the Turkish Cypriot community comprised eighteen percent of the total population of Cyprus.<sup>36</sup> Seventy-seven percent of this total population were Greek Cypriots.<sup>37</sup> The significant numerical difference between these communities required application of specific ratios for the executive, the legislative and the judicial positions. For the first branch of the executive power, the division is between two positions. Article 1 of the 1960 constitution declared that the president of the Republic is to be elected from the Greek community, and the vice-president from the Turkish community. The composition in the second branch of the executive is based on a 30 to 70 percent ratio. Therefore, in the Council of Ministers three seats are granted to the members of the Turkish community and the remaining seven seats to the members of the Greek community.<sup>38</sup>

The legislative power of the Republic is exercised at two different levels. In the House of Representatives, where the majority of this power is exercised, the Turkish community is granted thirty percent of the seats.<sup>39</sup> In the fifty-seat House, this percentage corresponds to fifteen seats; the remaining seats are occupied by the Greek community. The

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<sup>36</sup> Markides K.C., *The Rise and Fall of the Cyprus Republic*, (New Haven: Yale University Press, 1977) p.3; Polyviou P.G., *Cyprus Conflict and Negotiation 1960-1980*, (London: Duckworth, 1980) p.1.

<sup>37</sup> Hatay M., ‘Is the Turkish Cypriot Population Shrinking?’ PRIO Report 2/2007, (Oslo: International Peace Research Institute, 2007) p.4.

<sup>38</sup> Article 46.

<sup>39</sup> Article 62(2).

second level of the legislature consists of the Communal Chambers. Each community has its separate Communal Chamber where limited legislative powers are exercised.<sup>40</sup>

With regard to the judiciary, a Turkish judge is among the three judges that form the Supreme Constitutional Court of the Republic; one of the remaining two judges is Greek and the other one a neutral judge who also assumes the role of the President of the Court.<sup>41</sup> The High Court of Justice is comprised of two Greek judges, one Turkish judge and a neutral judge – again the neutral judge assuming the role of the President of the Court.<sup>42</sup> Finally, the 1960 constitution determines the composition of the public service at a ratio of seventy percent Greek and thirty percent Turkish,<sup>43</sup> of the army at a ratio of sixty percent Greek and forty percent Turkish,<sup>44</sup> and of the security forces (the police and gendarmerie) at a ratio of seventy percent Greek and thirty percent Turkish.<sup>45</sup>

#### **1.4. The Constitutional Powers**

The bi-communal mosaic of the state structure is further complicated by the complex division of powers within each constitutional position. In order to achieve the conjoint rule of the island among the Greek majority and the Turkish minority, a matrix of powers which check and balance each other in varied ways are introduced. In this regard, the most important position to be occupied by a Turkish Cypriot in the Republic is that of vice-presidency. Dissimilar to the traditional role of a deputy whose main task is to act on a temporary basis as the chief executive in the president's absence, the vice-president of Cyprus is granted powers that almost equal that of the president. The most significant of

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<sup>40</sup> Article 86.

<sup>41</sup> Article 133 (1)(1).

<sup>42</sup> Article 153 (1)(1).

<sup>43</sup> Article 123 (1).

<sup>44</sup> Article 129(1).

<sup>45</sup> Article 130 sub-sections (1) and (2).

these powers are the entitlement to the ‘final veto’ of the decisions of the Council of Ministers,<sup>46</sup> and of the laws of the House of Representatives.<sup>47</sup> Article 57 of the constitution stipulates that the right of final veto in relation to the decisions of the Council of Ministers may be used by the vice-president either conjointly with the president or on his/her own accord.

Article 50 determines the vice-president’s right of final veto on any laws or decisions of the House of Representatives. According to this article, the right of final veto can be exercised on laws or decisions concerning the foreign affairs, questions of defence, and questions of security. Issues concerning the foreign affairs upon which the vice-president can exercise his/her right of final veto include the recognition of states, declaration of war, conclusion of peace and international treaties, and the protection of the citizens of the Republic abroad.<sup>48</sup> The laws and decisions concerning the question of defence upon which the vice-president can exercise the right include ‘the composition and the size of the armed forces,’ ‘importation of war materials and explosives,’ and ‘cession of bases and other facilities to allied countries.’<sup>49</sup> Finally, the issues of security involve the ‘distribution and stationing of forces,’ ‘emergency measures and martial law,’ and ‘police laws.’<sup>50</sup>

In addition to the right of final veto, vice-president also has the ‘right of return’ of the decisions of Council of Ministers<sup>51</sup> and of laws and decisions of the House of Representatives.<sup>52</sup> This right consists of the prerogative to send back to the Council any decisions<sup>53</sup> or to the House any decisions or laws<sup>54</sup> for reconsideration. Furthermore, vice-

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<sup>46</sup> Article 49(d).

<sup>47</sup> Article 49(f).

<sup>48</sup> Article 50(1)(a).

<sup>49</sup> Article 50(1)(b).

<sup>50</sup> Article 50(1)(c).

<sup>51</sup> Article 49(e).

<sup>52</sup> Article 49(g).

<sup>53</sup> Article 57(2).

<sup>54</sup> Article 51(1).

president has the right of recourse to the Supreme Constitutional Court<sup>55</sup> and the prerogative of mercy in capital cases.<sup>56</sup> Finally, vice-president designates and terminates the appointment of Turkish ministers to the Council of Ministers.<sup>57</sup> Turkish Cypriots occupied three ministerial positions and their share of executive power required one of these positions to be chosen among the following ministries: the Ministry of Finance, or the Ministry of Defence, or the Ministry of Foreign Affairs.<sup>58</sup>

In terms of the legislature, Article 61 of the constitution provides that the House of Representatives has legislative power in all matters that do not fall within the legislative authority of the Chambers. The laws are passed in the House with a simple majority vote.<sup>59</sup> There are exceptions to this rule if the House tries to amend the Electoral Law or pass any laws concerning the municipalities, the imposition of duties, or taxes. In these cases, the constitution requires ‘a separate simple majority of the Representatives elected by the Greek and the Turkish Communities respectively taking part in the vote.’<sup>60</sup>

Therefore, in most of the matters that fall within the legislative authority of the House, the total of the Turkish votes can only be effective in conjunction with the Greek votes. In other words, if Bill X<sup>61</sup> comes before the House, fifteen Turkish votes, without any support from Greek members of the House, will not be sufficient to enact or prevent the enactment of this Bill. However, in matters that fall within the exceptions mentioned above, the Turkish vote acquires a determinative power. For instance, the Electoral Law cannot be amended unless out of the fifteen Turkish representatives, eight of them concur — i.e. a separate simple majority emerges from the Turkish vote.

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<sup>55</sup> Article 49(h).

<sup>56</sup> Article 49(m).

<sup>57</sup> Article 49(a).

<sup>58</sup> Article 46.

<sup>59</sup> Article 78(1).

<sup>60</sup> Article 78 (2).

<sup>61</sup> Assuming that this Bill concerns a matter which does not fall within the legislative authority of the Chambers and that it does not engage the exceptions to the simple majority vote.

In addition to the membership of the House of Representatives, the Turkish community enjoys legislative power through the Communal Chambers. Distinct from the House which accommodates elected members from both communities and requires collaboration among them, the Communal Chambers provide the Greek and the Turkish community with their respective legislative bodies. Article 87 of the constitution determines the legislative scope of each Chamber. Accordingly, the Chambers have the right to exercise legislative power over an extensive list of issues which solely concern their communities. These issues include the following: religion, education, and culture; personal status; the composition and instances of courts dealing with certain civil disputes; the imposition of personal taxes and fees on the respective members of the communities; the charities and foundations; subsidiary legislation or bylaws for the functioning of the municipalities; the producers' and consumers' cooperatives; and the credit establishments.<sup>62</sup>

The intricate division of state power among the two communities continues within the judiciary of the Republic. It was previously observed that the Supreme Constitutional Court is composed of a Greek, a Turkish, and a neutral judge — the neutral judge being the president.<sup>63</sup> The President and the Vice-president of the Republic jointly appoint the judges of the Court.<sup>64</sup> However, if a disagreement arises among the President and the Vice-president vis-à-vis the appointment of the Greek and the Turkish judges, the President's nominee succeeds to the position of the Greek judge, and the Vice-President's nominee succeeds to the position of the Turkish judge.<sup>65</sup> Regarding the appointment of the neutral judge the constitution provides that '[t]he neutral judge shall not be a subject or a citizen of the

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<sup>62</sup> Article 87(1).

<sup>63</sup> Article 133(1).

<sup>64</sup> Article 133(2).

<sup>65</sup> Article 133(2).

Republic [of Cyprus] or of the Kingdom of Greece or of the Republic of Turkey or of the United Kingdom and the Colonies.’<sup>66</sup>

While the composition of the High Court of Justice slightly differs from that of the Supreme Constitutional Court, the presidency of the High Court is also entrusted to a neutral judge. Within the set-up of the High Court there are two Greek judges, a Turkish judge and a neutral judge.<sup>67</sup> Despite the fact that the numerical equilibrium of Greek and Turkish judges of the Supreme Court is not maintained within the High Court structure, the neutral judge is granted two votes.<sup>68</sup> This allows the neutral judge to cast a determinative vote in cases where a single vote from the neutral judge could result in a numerical tie. For instance, in a case heard before the High Court, the Greek judges could vote to allow an appeal from one of the parties. In turn, the Turkish judge could vote to dismiss the appeal. If the neutral judge had only one vote and s/he were to side with the Turkish judge in his/her decision, the case would remain unsolved. Thus, the neutral judge’s second vote is a potential tie-breaker. Furthermore, it also has the capability to ensure that any probable intra-communal bias of the numerically superior Greek judges can be held in check.

## **1.5. Conclusion**

The purpose of this part of the chapter was to determine Turkish Cypriots’ share of sovereign power within the state structure of the Republic of Cyprus. In order to achieve this purpose, I presented a brief outline of the constitutional provisions which determined the composition and the functions of the executive, the legislative and the judicial branches of the new Republic. I showed that the 1960 constitution did not only define the Turkish

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<sup>66</sup> Article 133(3).

<sup>67</sup> Article 153(1).

<sup>68</sup> Article 135(1).

Cypriot community, it also granted considerable share of power to this community within all of the branches.

At the beginning of this part, I referred to authors who argued that the constitutional set-up of the Republic formed a bi-communal state. Despite the numerical gap between the populations of each community, the constitutional provisions, which I considered above, demonstrated that Turkish Cypriots could hold in check any probable desires of Greek Cypriots to exclusively rule the state. My concluding argument is that, insofar as the constitution weaved a web of checks and balances among the communities, it safeguarded the very being of the Turkish community. Particularly, the legislative powers of the Communal Chamber ensured that Turkish Cypriots could singularly be in charge of matters which most affected their communal existence. Generally, the extensive powers of the Turkish Cypriot vice-president guaranteed the exercise of political power on an equal basis with the Greek Cypriot head of state. However, the constitutional arrangements of the Republic could only be maintained for the first three years of its establishment. The outbreak of an inter-ethnic armed struggle resulted in the exclusion of the Turkish Cypriot community from the constitutional structures of the state. In the following part, I demonstrate the factors which contributed to the collapse of these arrangements and to the resultant exclusion.

## **Part Two**

### **2.1. Introduction**

In the year of 1963, armed conflict between the two communities of the island forced Turkish Cypriots to continue their existence within guarded enclaves. In addition to the humanitarian crises of life in the enclaves, this conflict resulted in the obstruction of the community's enjoyment of the share of sovereign powers. This obstruction marked the beginning of a period which ultimately resulted in the geographical separation of the

communities and, later on, the unilateral declaration of independence by the Turkish Cypriot community. In this part of the chapter, I present a close study of the events that led to the conflict in 1963. The purpose of this study is to introduce the parties to the conflict and outline the causes of hostility inherent to their relations with one another.

I begin this study with a section on the decolonisation of the island from the British rule. Under this section, beside the British as the colonisers, I identify four parties. First, I present a brief outline of Greek Cypriots' anti-colonial movement. The term *enosis* (Greek word for 'union') symbolised Greek Cypriots' struggles against the British by epitomising unification with Greece as the desired outcome of decolonisation. Second, I show that this expression determined Turkish Cypriots' reaction to the *enosis* movement; this reaction comprised the idea of *taksim* which meant 'partition' in Turkish and represented the division of the island into Greek and Turkish parts. Finally, I complete the identification of the parties by considering the respective mother-lands Greece and Turkey and their role in the settlement of the issue of independence of Cyprus. The antagonistic relationship among these four parties, which was forged during the decolonisation period and was overshadowed by their then political stances, has played a continuous role in shaping the future of the island ever since.

I conclude this part by reflecting upon the initial effects of these antagonistic relations on the post-colonial constitutional structure. I present the manner in which Cypriot communities acted upon their respective desires for *enosis* and *taksim* to the detriment of the established order. I show that two elements were instrumental in the behaviour of the communities: the appointment of the paramilitary leaders of the anti-colonial movements into constitutional positions, and the continuation of the arming of clandestine groups. I follow upon the incipient consequences of these elements in the next chapter to trace the development of the relational conflicts into a struggle for recognition with existential repercussions.

## 2.2. The Last Years of the British Rule on the Island

To present an outline of the conflicting desires of the two communities of the island, in this section, I focus upon three central elements of the decolonisation process of Cyprus. For the first of these elements, I demonstrate the manner in which the idea of *enosis* shaped the anti-colonial struggle Greek Cypriots staged against the British rule. To achieve this demonstration, I focus upon the respective roles the influential leadership of Archbishop Makarios III and the fanatical militarism of General Grivas played in the struggles. The second element consists of Turkish Cypriots' reactions to Greek Cypriots' movements. I show that these reactions were determined by Turkey's involvement in the question of Cyprus and the establishment of a clandestine Turkish defence unit on the island. The final element constitutes the manner in which the decolonisation process started with an initial agreement struck between mainland Greek and Turkish authorities to the exclusion of the communities of the island.

### 2.2.1. Greek Cypriots' Anti-Colonial Movement

Emerging as a state-doctrine in the aftermath of Greek independence in 1830, *Megali Idea* (Big Idea) consisted of the project to unite all of the Greek-Orthodox people who lived outside the territory of Greece under the same state.<sup>69</sup> The Greek word ΕΝΩΣΙΣ (*enosis*, union) connotes the project of *Megali Idea* and played an important role in shaping the Greek Cypriots' struggles against the British rule in Cyprus. In this regard, Thomas Ehrlich observed the following:

As early as 1830, substantial sentiment was voiced on the Island for enosis. Pressures built up steadily and unremittently [*sic*] in the next century. The roots of the desire for union cannot be found among the

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<sup>69</sup> Kızılyürek N., *Milliyetçilik Kışkırcısında Kıbrıs* (Gripped by Nationalism: Cyprus), (İstanbul: İletişim Yayınları, 2002) pp. 50, 51.

ruins of ancient Greece; Aphrodite's island [i.e. Cyprus] was never a part of Hellenic Greece. Though Greeks colonised the Island, they regarded the Cypriots as an alien people. The Hellenic ties of Greek Cypriots are rooted in the Byzantine period rather than in classical times. Religion and language were the major pressures unifying Greece and Cyprus – and their centripetal force was substantial. Many Greek Cypriots considered themselves Greeks living on Cyprus, even though their ancestors had lived there for centuries.<sup>70</sup>

In terms of the anti-colonial struggle staged against the British, Greek Cypriots' desire for *enosis* had been demonstrated most ardently in three important events: the riots of 1931, the plebiscite of 1949 and the organisation of *Ethniki Organosis Kyprion Agoniston* (EOKA, National Organisation of Cypriot Fighters) in 1953.

In the aftermath of the dissemination of the news on 21<sup>st</sup> October 1931 that, the Greek members resigned from the Colony's Legislative Council due to the ongoing disagreement in relation to the budget talks, a reactive Greek crowd, which exceeded the number of three thousand, gathered in and around the Commercial Club.<sup>71</sup> Amid the stirring of passions with speeches that glorified *enosis* and cries that proclaimed the revolution against the British rule, the crowd, waving mainland Greek flags, proceeded to the Government House.<sup>72</sup> The angry masses dispersed only after a round of shots was fired by the police forces. However, seven were injured by the shots, one among the injured would later die, and the destruction of the Government House by fire could not be prevented.<sup>73</sup>

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<sup>70</sup> Ehrlich T., *International Crises and the Role of Law: Cyprus 1958-1967*, (London: Oxford University Press, 1974) p.9.

<sup>71</sup> Holland R., *Britain and the Revolt in Cyprus 1954-1959*, (Oxford: Clarendon Press, 1998) p.1.

<sup>72</sup> *Ibid.*

<sup>73</sup> *Ibid.*, p.3; Beratlı N., *Kıbrıslı Türklerin Tarihi – Kitap III* (History of the Turkish Cypriots – Book III), (Lefkoşa: Galeri Kültür Yayınları, 1999) p.108.

O'Malley and Craig reported that, in the aftermath of the riot, '[t]he colonial power sent in troops and warships from Egypt, and tried to crush the nationalist movement by deporting its leaders, outlawing any mention of *enosis*, and abolishing the legislative council in favour of rule by decree.'<sup>74</sup> However, the force of *enosis* should not be thought as a temporary catalyst which led to the 1931 riot and then faded away with the enactment of the repressive colonial policies by the British. Holland suggested that behind the British Empire's uncharacteristic suspension of the constitutional government for the entire duration of the decolonisation of Cyprus, continuous influence of *enosis* could be found.<sup>75</sup>

The year of 1945 saw the Labour Party come to power in Britain with a landslide success in the elections over the Conservatives.<sup>76</sup> With the intention to mitigate the effects of repressive policies over Cyprus, the new Labour government established a Consultative Assembly in 1947.<sup>77</sup> The purpose of this Assembly was to offer 'a large measure of self-government' to Cypriots with the enactment of a new liberal constitution.<sup>78</sup> Greek Cypriots rejected this offer.<sup>79</sup> According to Kızılyürek, the Greek-Orthodox Church pronounced an outright rejection of the British attempt to establish self-government in Cyprus, damned this enterprise and called the Greek Cypriots to join the struggle for 'Enosis, and only enosis' under the auspices of the Church.<sup>80</sup> With regard to the British offers of self-government from 1947 to 1956, Reddaway wrote the following:

On each occasion suggestions were made in London that, if only the British would adopt a more liberal position on this or that aspect of the proposed constitution, agreement might be possible. But such

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<sup>74</sup> O'Malley B., Craig I., *The Cyprus Conspiracy: America, Espionage and the Turkish Invasion*, (London: I. B. Tauris, 1999) p.9.

<sup>75</sup> Holland, op. cit. at pp. 5,18.

<sup>76</sup> Brown D., '1945-51: Labour and the Creation of the Welfare State', *The Guardian*, 14 March 2001, Access: <http://www.guardian.co.uk/politics/2001/mar/14/past.education> (date of access: 23 July 2012).

<sup>77</sup> Necatigil, op. cit. at p.5.

<sup>78</sup> *Ibid*; O'Malley and Craig, op. cit. at p.9.

<sup>79</sup> O'Malley and Craig, op. cit. at p.9.

<sup>80</sup> Kızılyürek (2002) op. cit. at p.91.

comments missed the essential point that acceptance or rejection by the two Cypriot communities depended not on the constitutional merits of the proposals, but on a political judgment whether they could be made to serve the cause of Enosis [...] The Ethnarchy [i.e. Greek Cypriot leadership] consistently rejected offers because they did not include an assurance that constitutional government would, in a short space of time, lead to the ending of British rule and to the realisation of the national aspiration of the Greek Cypriots to be united with Greece.<sup>81</sup>

The incessant force of *enosis* was later to be publicly revealed with a plebiscite which was held by the Greek-Orthodox Church among the Greek Cypriots on 15 January 1950.

The plebiscite returned a 95.7 percent ‘yes’ vote for *enosis*.<sup>82</sup> There are, however, several aspects of this vote which must be noted. Firstly, O’Malley and Craig drew readers’ attention to the fact that the vote could not account for Turkish Cypriots’ view on the issue of *enosis* since the voting took place in Greek Orthodox churches and being Muslims, Turkish Cypriots would not attend to these churches.<sup>83</sup> Secondly, as the plebiscite was organised by the Greek-Orthodox Church — an institution which assumed the leadership of the Greek Cypriot community and was the foremost advocate of *enosis* — the voters could be unduly influenced by the likely repercussions of voting ‘no’ for *enosis*.<sup>84</sup> As Stavrinides noted,

[...] the voting took the form of signing one’s name under a petition in public. If a Greek was to ‘vote’ on this issue at all, it was as

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<sup>81</sup> Reddaway J., *Burdened with Cyprus – The British Connection*, (London: K.Rustem &Bro, and Weidenfield & Nicolson Ltd, 1986) p.40.

<sup>82</sup> O’Malley and Craig, op. cit. at p10

<sup>83</sup> *Ibid.*

<sup>84</sup> *Ibid.*

embarrassing and risky for him to ‘vote’ against enosis as to declare in public that he was not ‘a true Greek.’<sup>85</sup>

Accordingly, the final result of the plebiscite may not be reliable. However, the result was instrumental in establishing a young Bishop as one of the most important men in the history of Cyprus.

With the encouragement of his priest uncle, Michail Mouskos entered the Kykkos Monastery at the age of 13.<sup>86</sup> After finishing high-school in Nicosia and assuming the name Makarios at his ordination,<sup>87</sup> Mouskos attended the University of Athens to study in the Theology Department.<sup>88</sup> It was at the time when he was pursuing further studies in theology at the Boston University in the year of 1948 that he received a telegraph informing him of his election as the Bishop of Kition. In the aftermath of his return to Cyprus, the young Bishop proved his worth for the *enosis* cause. In this regard O’Malley and Craig reported the following:

In 1948 the Ethnarchy council was revamped and its leader, the young Bishop Makarios, was given responsibility for re-uniting Greek Cypriots under the church banner. At a popular rally in October 1949 in Nicosia, he roused the Greek Cypriots by calling for freedom for his ‘enslaved people’ from the ‘British yoke’, and entreating them to join the ‘noble struggle for union with the Motherland.’<sup>89</sup>

In another occasion Makarios was quoted making this statement: ‘We do not believe, as some traitors and friends of England do, that Enosis will be realised within the framework

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<sup>85</sup> Stavrinides Z., *The Cyprus Conflict: National Identity and Statehood* (Wakefield, England: the author, 1976) p.28.

<sup>86</sup> Kızılyürek N., *Doğmamış Bir Devletin Tarihi: Birleşik Kıbrıs Cumhuriyeti* (History of an Unborn State: United Cyprus Republic), (İstanbul: İletişim, 2005) p.94.

<sup>87</sup> O’Malley and Craig, op. cit. at p.9.

<sup>88</sup> Kızılyürek (2005) op. cit. at p.95.

<sup>89</sup> O’Malley and Craig, op cit. at p.10.

of Anglo-Hellenic friendship. Enosis is not granted; it can only be won by continuous struggle.’<sup>90</sup>

In relation to the plebiscite mentioned above, O’Malley and Craig wrote that Makarios was in charge of its organisation and the resounding message its result sent to the public assisted Makarios in the election for Archbishop which was to be held nine months after the plebiscite.<sup>91</sup> Makarios won the election with 97 percent of the votes.<sup>92</sup> It was unmistakable that he was elected Archbishop ‘on the Enosis ticket.’<sup>93</sup> Becoming the Archbishop at the age of 37, Makarios assumed the name Makarios III and was regarded by Greek Cypriots as the dynamic leader who could achieve *enosis*.<sup>94</sup> The oath he swore on the occasion of his enthronement dismissed any doubts as to the role of *enosis* in shaping the fate of the new Archbishop and the Greek struggle against the British rule: ‘I take the holy oath that I shall work for the birth of our national freedom and shall never waiver from our policy of uniting Cyprus with Mother Greece.’<sup>95</sup>

According to Kızılyürek, Makarios’ main political strategy was to internationalise the Cyprus problem via the United Nations with the hope to gain the right to self-determination and use this right to achieve *enosis*.<sup>96</sup> Thus, Makarios tried to benefit from a period in which many former colonies were decolonized and he used the Church’s resources for this cause; nonetheless, he also needed to acquire mainland Greece’s support before attempting any international enterprise.<sup>97</sup> In this regard, Kızılyürek reported that Makarios was disappointed with the result of his meeting with the Greek Prime Minister Plastiras in 1951 as Plastiras disapproved of Makarios’ political strategy and refused to support it.<sup>98</sup>

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<sup>90</sup> Makarios quoted in Reddaway, op. cit. at p.73.

<sup>91</sup> O’Malley and Craig, op. cit. at p.10.

<sup>92</sup> *Ibid.*

<sup>93</sup> I borrow this phrase from Necatigil, op. cit. at p.6.

<sup>94</sup> Kızılyürek (2005) op. cit. at p.96.

<sup>95</sup> Reddaway, op cit. at p.73.

<sup>96</sup> Kızılyürek (2005) op. cit. at p.96.

<sup>97</sup> *Ibid*, p.96.

<sup>98</sup> *Ibid*, pp. 96, 97.

However, Makarios' attempts to procure support from Greece were not entirely futile. In his travels to mainland, Makarios enquired about a Cyprus-born army officer who started a brand-new chapter in the Greek struggle against the British rule on the island.

George Grivas was the leader of Organisation X, a paramilitary organisation whose members, in Kızılyürek's opinion, embraced excessive nationalist views.<sup>99</sup> Born and raised in Cyprus, Grivas reached the rank of colonel in the mainland Greek army and gained experience as a guerrilla fighter.<sup>100</sup> O'Malley and Craig described him as 'a rigidly self-disciplined soldier, fanatically fit, daring and brutally single-minded.'<sup>101</sup> Makarios met Grivas in Greece in June 1951 for the purpose of establishing an organisation for armed struggle in Cyprus.<sup>102</sup> This meeting was followed by Grivas' visit to island in July 1951; Kızılyürek is of the opinion that the purpose behind Grivas' visit was the investigation of the conditions on the island for guerrilla warfare.<sup>103</sup> While Makarios remained sceptical about carrying out a guerrilla war in Cyprus, he met again with Grivas and the members of the 'Fighting Committee' in Athens to take the following oath for *enosis*: "I swear in the name of Holy and Consubstantial and Indivisible Trinity to keep secret, sacrificing even my life, suffering even the harshest tortures, all that I know or will hear regarding the question of the Union of Cyprus. And I shall obey blindly the relevant orders given to me from time to time."<sup>104</sup> This incident marked the birth of EOKA and the organisation began its 'campaign of bomb attacks and sabotage' in Cyprus in April 1955.<sup>105</sup>

The instigation of EOKA's campaign followed the first Greek attempt to bring the Cyprus issue before the General Assembly of the United Nations in 1954. While the question

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<sup>99</sup> *Ibid.*, pp. 97, 98.

<sup>100</sup> O'Malley and Craig, op. cit. at p.10.

<sup>101</sup> *Ibid.*

<sup>102</sup> Kızılyürek (2005) op. cit. at p.98.

<sup>103</sup> Kızılyürek (2002) op. cit. at p.101.

<sup>104</sup> Reddaway, op. cit. at p73 – Oath of the Members of the Fighting Committee in Athens for the Union of Cyprus (the twelve members included Makarios and Grivas). 7 March 1953.

<sup>105</sup> O'Malley and Craig, op. cit. at p.15.; Kızılyürek (2005) op. cit. at p.99, Stefanidis I.D., *Stirring the Greek Nation: Political Culture, Irredentism and Anti-Americanism in Post-War Greece, 1945-1967*, (Hampshire: Ashgate, 2007) p.78.

of Cypriots' right to self-determination was successfully put on the agenda, it was deemed by the Assembly that 'for the time being, it does not appear appropriate to adopt a resolution on the question of Cyprus.'<sup>106</sup> Ehrlich reported that this result was regarded by the Greek representatives as an 'important tactical victory' for 'Cyprus was no longer an internal matter of British policy; it was an international question.'<sup>107</sup> However, the Greek 'tactical victory' combined with the terror of EOKA would soon backfire as the British drew Turkey into the question of Cyprus to fend off Greek ambitions.

### **2.2.2. Turkish Cypriots' Reaction to the Greek Cypriot Movement**

The increase in the number of violent acts EOKA committed against the British necessitated the declaration of a state of emergency in the island. This declaration provided Greece with the pretext to renew her attempts regarding the Cyprus question at the United Nations.<sup>108</sup> In order to avert these attempts, British called 'a conference in London on the political and defence questions affecting the Eastern Mediterranean, including Cyprus' and invited the foreign ministers of Greece and Turkey.<sup>109</sup> According to O'Malley and Craig, underlying the then British Prime Minister Eden's decision to call the conference was the idea that 'the conference would provide a chance to change the international perception of the Cyprus problem as a purely anti-colonial struggle and put the spotlight on the antagonism between Greece and Turkey instead' with a purpose to 'put pressure on Athens to accept a compromise plan that suited Britain.'<sup>110</sup>

While Turkey had 'remained quiet about Cyprus after being on the losing side in the First World War,' Dr. Kuchuk — the communal leader of the Turkish Cypriots who was to

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<sup>106</sup> Ehrlich, op. cit. at pp. 13, 14; O'Malley and Craig, op. cit. at p.14; Stefanidis, op. cit. at p.77.

<sup>107</sup> Ehrlich, op. cit. at p.14.

<sup>108</sup> O'Malley and Craig, op. cit. at p.19.

<sup>109</sup> *Ibid*, pp.19, 20.

<sup>110</sup> *Ibid*, p.19.

be elected the first Vice-president of the Republic in 1960 — suggested the reasons for the Turkish government's quietness in the following terms:

This has been the attitude of the Turkish government. They have never taken the Greek campaign for enosis seriously because they believed that Great Britain's decision not to quit the island was an unassailable answer to the whole question; but they have made it emphatically clear that if Great Britain ever considers leaving Cyprus then the Turkish government has a great interest in the ownership of the island [...] Turkey cannot tolerate seeing one of her former islands, lying as it does only forty miles from her shores, handed over to a weak neighbour thousands of miles away, which is politically as well as financially on the verge of bankruptcy.<sup>111</sup>

Turkey followed a very similar line in the London conference as the Turkish Foreign Minister Fatin Zorlu vociferated Turkey's opposition to Greece's demand for a plebiscite in Cyprus on the issue of self-determination and insisted that if British were to relinquish sovereignty over the island, Cyprus should revert back to Turkey due to the island's geographically strategic position.<sup>112</sup>

Realising that this argument may not be sufficiently convincing, Zorlu sent a coded telegraph to the Turkish Prime Minister Adnan Menderes informing him that the British and the Greek authorities would not be persuaded by mere persistence of the Turkish line of argument, and that, orders from Menderes to relevant positions would be very valuable to the Turkish cause.<sup>113</sup> Following this telegraph, on 6<sup>th</sup> and 7<sup>th</sup> September 1955, anti-Greek protests took place in Turkish cities of Istanbul and Izmir destroying many Greek properties

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<sup>111</sup> Dr. Kuchuk's editorial in his newspaper *Halkın Sesi* (Voice of the People) on 17 August 1954, quoted in Hitchens C., *Hostage to History: Cyprus – From the Ottomans to Kissinger*, (London: Verso, 1997) pp. 41, 42.

<sup>112</sup> O'Malley and Craig, op. cit. at p.22.

<sup>113</sup> Kılıç E. *Özel Harp Dairesi* (Special Warfare Department), (İstanbul: Güncel Yayıncılık, 2007) p.87.

— 73 churches, 8 cemeteries, 26 schools, 1004 houses, 4,212 shops, 21 factories, 17 hotels, 97 restaurants and 23 warehouses — and killing 16 Greeks.<sup>114</sup>

Initially, the protests were portrayed as a reaction to the bombing of the Turkish consulate in the Greek city of Salonika — the location of the consulate was near the birthplace of Mustafa Kemal<sup>115</sup> — and this would seem a good-enough provocation to stir up the emotions of Turkish nationalists; however, it was later to be revealed that the bomb in Salonika was planted by a young Turkish man.<sup>116</sup> In addition to this, it was also revealed that, Menderes met the president of Kıbrıs Türktür Cemiyeti (Cyprus is Turkish Society), informing him of Zorlu's request for 'an uncontrollable Turkish public reaction;' the president of the society later disseminated this information to the local branches of the society and the very next day, on 6<sup>th</sup> September, the events in Istanbul and Izmir took place.<sup>117</sup> The British plan to shift the spotlight in the Cyprus problem had succeeded. On the pretext of the crises in Istanbul and Izmir, Zorlu left the London conference,<sup>118</sup> the Greek bid for self-determination in Cyprus failed at the UN,<sup>119</sup> and a new chapter in the question of Cyprus began.

In this new chapter, Turkey played a central role in shaping Turkish Cypriots' reaction to Greek Cypriots' struggle for *enosis*. In this regard, Zorlu persuaded Menderes for the formation of a Turkish organisation in Cyprus against the activities of Greek EOKA.<sup>120</sup> Consequently, the Special Warfare Department under the General Staff of the Turkish Army established *Türk Mukavemet Teşkilatı* (Turkish Defence Organisation, TMT) in Cyprus; a lieutenant colonel from the Warfare Department was appointed as its leader;

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<sup>114</sup> Hakkı M. M., *Kıbrıs Çıkmazı* (The Cyprus Dead-End), (İstanbul: Emre Yayınları, 2006) p.27.

<sup>115</sup> The founder and the first president of the Republic of Turkey.

<sup>116</sup> Kılıç, op. cit. at p.88.

<sup>117</sup> *Ibid.*

<sup>118</sup> Kılıç, op. cit. at p.87.

<sup>119</sup> O'Malley and Craig, op. cit. at pp. 22, 23.

<sup>120</sup> Kılıç, op. cit. at pp. 118, 119.

and the department was responsible for supplying arms to the new organisation.<sup>121</sup> However, TMT's role was not limited to fighting against EOKA and its ambition to achieve *enosis*.

TMT also adopted *Taksim* (partition) as its official principle and, according to Kızılyürek, with a fanatical and chauvinist approach, the organisation 'convinced' any Turkish Cypriot who would not support *Taksim*.<sup>122</sup> TMT adopted the 'partition' thesis when it was first put forward by the then UK Secretary of State for the Colonies Lennox-Boyd. In this regard, Hitchens reported that,

[i]n 1956 Alan Lennox-Boyd told the House of Commons that a Greek Cypriot demand for union with Greece would be met by a British-sponsored plebiscite for Turks only. If the Turkish Cypriots voted to join Turkey, the island would be partitioned.<sup>123</sup>

Taking steps towards achieving partition, TMT incited violence to divide mixed communities of Greek and Turkish Cypriots.<sup>124</sup> Among the people who suffered most from the terror of TMT were the Turkish members of PEO (Pancyprian Federation of Labour).

A federation for trade unions in Cyprus, PEO had Turkish Cypriot (as well as Greek Cypriot) members and a Turkish branch with its Turkish president. TMT targeted these members facilitating their switch from PEO to *Kıbrıs Türk İşçi Birlikleri Kurumu* (Cyprus Turkish Labour Union Association, KTIBK) and threatened anyone who refused to switch membership with violence.<sup>125</sup> Consequently, an attempt was made to assassinate the president of the Turkish branch of PEO, Mr. Ahmet Sadi Erkurt, who survived the attempt despite suffering serious injuries.<sup>126</sup> To bolster the separation of the communities, the

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<sup>121</sup> *Ibid*, p.119.

<sup>122</sup> Kızılyürek N., *Paşalar, Papazlar: Kıbrıs ve Hegemonya* (Generals, Popes: Cyprus and Hegemony), (Lefkoşa: Khora, 2011) p.47.

<sup>123</sup> Hitchens, op. cit. at p.46.

<sup>124</sup> Bryant R., *Imagining The Modern: The Cultures of Nationalism in Cyprus*, (London: I. B. Tauris, 2004) p.173.

<sup>125</sup> Kızılyürek (2002) op. cit. at pp. 261-264.

<sup>126</sup> *Ibid*, p.264; An A., '45 Yıl Önceki 1 Mayıs Kutlamaları ve Sonrası' (45 Years Ago: May Day Celebration and its Consequences), *Yeni Çağ Gazetesi* (New Age Newspaper), 7 June 2003, access:

leadership of *Kıbrıs Türk Kurumları Federasyonu* (The Federation of Cyprus Turkish Institutions, KTKF) worked in tandem with TMT and implemented separatist policies such as giving Turkish names to villages, urging Turkish citizens to speak Turkish avoiding communication in English or Greek, and finally, and most importantly, forcing Turkish persons to do business only with other Turkish persons.<sup>127</sup>

In addition to Greek Cypriots' campaign for *enosis*, Turkish Cypriots' counter-campaign for *taksim* formed the contours of the anti-colonial struggles against the British. However, the British had a different idea regarding the probable solution to the Cyprus problem. This idea was to engage Turkey's interest against Greece's attempts to internationalise the problem. To the extent that this idea was successfully implemented, the problem remained regional and the solution merely dependent upon satisfying the concerns of mainland Greece and Turkey. Such a solution would, in turn, not only ignore the demands of Cypriot communities but also safeguard the British interests on the island.

### 2.2.3 An Agreement between Greece and Turkey

The economic reliance of the British on Middle Eastern oil rendered Cyprus a crucial place for overseas defence of the oil trade.<sup>128</sup> In addition to this defensive role, the geographical position of the island allowed the western world to monitor the Soviet expansion into the Middle East.<sup>129</sup> Accordingly, while in economic terms, the British could no longer afford to retain sovereign control over the entire island,<sup>130</sup> they, nonetheless, had an interest in retaining at least some control in the region. In other words, a complete relinquishment of the sovereignty over the island would mean losing a base from which

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[http://www.stwing.upenn.edu/~durduran/hamambocu/authors/aan/aan5\\_7\\_2003.html](http://www.stwing.upenn.edu/~durduran/hamambocu/authors/aan/aan5_7_2003.html) (date of access: 10 December 2012).

<sup>127</sup> Kızılyürek (2002) op. cit. at p.248.

<sup>128</sup> O'Malley and Craig, op. cit. at p.3.

<sup>129</sup> *Ibid.*

<sup>130</sup> *Ibid.*, pp. 49-52.

military security to the oil trade can be supplied. In addition, an independent and non-aligned Cyprus might soon come under a threat from the Soviet Russia or might even decide to side with her threatening the southern border of the North Atlantic Treaty Organisation (NATO). In light of these threats, Turkey's involvement in the Cyprus question opened the way for the British to settle the problem without compromising much of her interests in the oil trade and the security of the borders of NATO.

While the practice of self-determination in Cyprus was not viable for the British interests in the Middle East, retaining sovereignty by granting self-government to Cypriots was not accepted by the Greek Cypriot leadership who aspired to *enosis* and did not accept any other solution that would not enable union with Greece. The stalemate between the British and Greek Cypriots was disturbed by the entry of the Turkish demand for partition. Turkey's involvement in the question of Cyprus engendered a stern rejection of *enosis*. Turkey strongly opposed *enosis* on two grounds. Firstly, it was perceived that union with Greece would threaten the well-being of the Turkish community on the island; and secondly, Cyprus as a Greek island would pose a risk to Turkey's southern borders blocking naval access to and from the Mediterranean Sea. Another aspect of the Turkish involvement in the Cyprus problem was that, a solution which did not take into account the Turkish position might drag Turkey into war with Greece. In other words, two NATO countries might declare war against each other thoroughly jeopardising the southern flank of the organisation.

The intertwining of several interests over the island ensured that the Cyprus question could only be settled by finding the middle ground between the Greek demand for *enosis*, the Turkish demand for *taksim* and the British demand to remain on the island. This ground was to emerge from the negotiations between the Greek and the Turkish Prime Ministers who met in Zurich and London in the year of 1959. The sides were to set aside their respective demands for *enosis* and *taksim* by agreeing upon a form of sovereign independence which was to be externally guaranteed by Greece, Turkey, and Britain, and

internally shared among Greek and Turkish Cypriots. The British interests were safeguarded by retaining two sovereign bases on the island. The sharing of power within the state structure of the Republic of Cyprus can only be understood against this background wherein conflicting interests from several parties had to be balanced.

We observed in the first part of this chapter that the 1960 constitution provided for a bi-communal state structure in which the sovereign powers were divided between the Greek and the Turkish communities. Consequently, neither the Greek Cypriot ambition to unite the island with Greece nor the Turkish Cypriot desire to partition the island was achieved. The communities attempted to achieve their anti-colonial aspirations through the activities of their respective illegal paramilitary organisations EOKA and TMT. Although historically the two communities did not engage in violent inter-communal conflict, in the year of 1955 EOKA's attacks hit British auxiliary forces which were manned by Turkish Cypriots.<sup>131</sup> The establishment of TMT in 1957 exacerbated inter-ethnic violence as the targets were chosen specifically on ethnical grounds. O'Malley and Craig reported that on 7 June 1958, the bombing of the Turkish information centre in Nicosia generated 'two months of massacre.'<sup>132</sup>

While it was suspected that the bomb was placed by a Turkish *agent provocateur*, with regard to the ensuing rage of the Turkish Cypriots, O'Malley and Craig noted the following:

After the bombing, hundreds of Turkish Cypriots took to the streets armed with sticks, cudgels and other weapons, and began to attack police cars, burn Greek buildings and loot shops in the old quarter of Nicosia. The tactics bore all the hallmarks of pre-planned concerted action. The violence quickly spread to other towns. The first night's

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<sup>131</sup> Hitchens, op. cit. at p.47; O'Malley and Craig, op. cit. at pp. 35, 36.

<sup>132</sup> O'Malley and Craig, op. cit. at p.61.

clashes left four dead and scores injured, and factories and offices ablaze.<sup>133</sup>

As a consequence of this attack, Grivas ordered ‘a retaliatory onslaught on Turkish Cypriots, particularly those in the police force.’<sup>134</sup> Two years later, the Zurich and London agreements required these communities to share the sovereignty of the same state. In what follows, I shift my attention to the aftermath of the establishment of the Republic of Cyprus and analyse the role conflicting desires and military friction played in the collapse of the constitutional arrangements.

### **2.3. Instigators of the Constitutional Collapse: *Enosis* and *Taksim***

Contemplating the fate of the newly established state, O’Malley and Craig referred to the ‘[c]ritics [who] predicted gloomily that in the new Cyprus, Greek would turn against Turk, right against left, and the island would go down in a sea of blood and hate.’<sup>135</sup> These predictions were regrettably fulfilled in the third year of the Republic. In this section, I analyse the reasons behind the collapse of the constitutional arrangements. This analysis focuses upon the ideas of *enosis* and *taksim*, and the manner in which these ideas affected the communities’ perceptions of the 1960 constitutional set-up. The outcome is that, neither of the communities regarded the 1960 constitution as the ultimate solution to the Cyprus problem. I show that both the Greek and the Turkish communities continued to strive for the respective goals of union with Greece and partitioning of the island; that these actions, in turn, inevitably led to the breakdown of the constitutional order.

While Greek Cypriots demanded self-determination for the purposes of achieving union with Greece, Turkish Cypriots — being suspicious of Greek Cypriots’ negligent demand for *enosis* — campaigned for partition. With the establishment of the Republic of

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<sup>133</sup> *Ibid*, pp. 61, 62.

<sup>134</sup> *Ibid*, p.64, Kyle K., *Cyprus: In Search of Peace*, (London: Minority Rights Group International, 1997) p.8.

<sup>135</sup> O’Malley and Craig, *op. cit.* at p.77.

Cyprus, neither of the demands was met. Article II of the Treaty of Guarantee provided that ‘Greece, Turkey and the United Kingdom [...] undertake to prohibit [...] any activity aimed at promoting, directly or indirectly, either union of Cyprus with any other State or partition of the Island.’ Accordingly, relinquishment of the ambitions for *enosis* and *taksim* could be regarded as the most elemental condition for the proper functioning of the new state.

The relevant question, therefore, is whether the communities were ready to renounce these ambitions in the post-1960 era. Markides argued that they were not:

From the very inception of independence, the Greek Cypriots never concealed their unhappiness with the constitutional setup or their readiness to proceed with its amendment in due time. Some of them, both within and outside the government, considered independence not as a terminal stage but as another step toward the ultimate realisation of Enosis. Much of the legitimacy accorded to Makarios [with his election as the president] was based on the assumption that in reality he had never given up the struggle for union with Greece and that the acceptance of independence was nothing more than a tactical move that would eventually lead toward the incorporation of Cyprus within the Greek nation.

The Turks, fully aware of this state of affairs, remained intransigent, suspicious, unaccommodating, and predisposed to adopt, in regard to constitutional and governmental issues, a rigid posture which tended to divide them even further from their Greek compatriots.<sup>136</sup>

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<sup>136</sup> Markides, *op. cit.* at pp. 26, 27.

The first sign of the continuity of the struggle for *enosis* even after the attainment of independence could be discerned from Makarios' appointment of Greek Cypriots, who had strong EOKA backgrounds, to the Council of Ministers.

Nicos Kranidiotis (who remained under house arrest during the British rule due to his close connection with Grivas) was appointed as the Minister of Foreign Affairs; Andreas Papadopoulos (former EOKA gang leader) was appointed as the Minister of Communications and Works; Tassos Papadopoulos (former EOKA propaganda chief) was appointed as the Minister of Labour; and most significantly, Polykarpos Georghadis (former EOKA commander) was appointed as the Minister for the Interior.<sup>137</sup> The latter and Nicos Sampson (former EOKA gunman and, later on, newspaper publisher) became the foremost advocates of the idea that despite the Zurich and London Agreements *enosis* could still be achieved.<sup>138</sup> According to Hitchens, both men 'were unscrupulous and conspiratorial, strongly marked by mythic ideas about violence and gunplay. For them, and for a number of others, the EOKA struggle was unfinished and the EOKA ranks were not disbanded.'<sup>139</sup> According to Foley and Scobie a faction of EOKA retained a considerable number of weapons even after the establishment of the Republic.<sup>140</sup>

In the above-quoted passage, Markides stated that Turkish Cypriots' reaction to the state of affairs apropos *enosis* was to remain intransigent and suspicious; Foley and Scobie added that, in light of the perceived threat of *enosis*, Turkish Cypriots smuggled in arms from abroad.<sup>141</sup> Kızılyürek, too, wrote that TMT continued its activities of arming and training Turkish Cypriots in the aftermath of the Zurich and London agreements.<sup>142</sup> Similarly, Drousiotis maintained that, instead of dissolving, TMT was reinforced by

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<sup>137</sup> O'Malley and Craig, op. cit. at p.88.

<sup>138</sup> Hitchens, op. cit. at p.52.

<sup>139</sup> *Ibid.*

<sup>140</sup> Foley C., Scobie W.I., *The Struggle for Cyprus*, (California: Hoover Institution Press, 1975) p.161.

<sup>141</sup> *Ibid.*

<sup>142</sup> Kızılyürek (2002) op. cit. at p.251.

weapons and ammunition transferred from Turkey.<sup>143</sup> TMT's post-1960 existence was confirmed by Kılıç whose study revealed that the Special Warfare Department continued to assign a leader to the organisation until 1974.<sup>144</sup> More importantly, Kızılyürek argued that in its post-1960 existence, TMT continued to strive for partition.<sup>145</sup> Two incidents substantiate Kızılyürek's argument.

The first incident was a 'Top Secret' document found in the drawer of a Turkish Cypriot communal leader during the events of 1963; this document identified the reasons for refusing the establishment of the Republic as the ultimate solution to the Cyprus problem.<sup>146</sup> Central to such rejection was the perception that mistrust among the communities necessitated a bi-communal state structure and that such bi-communality could only be maintained by constantly manifesting this mistrust with occasional outbreaks of violence between the communities.<sup>147</sup> It was commonly suspected that the Turkish Cypriot leadership was implicated in the activities of TMT,<sup>148</sup> and that this leadership did not deny the existence of such a document.<sup>149</sup> The second incident was a statement made by a former officer of the Special Warfare Department. Major Tansu<sup>150</sup> confirmed that despite the establishment of the bi-communal Republic, TMT continued its clandestine work for the partitioning of the island and the establishment of a Turkish Cypriot independent state.<sup>151</sup>

During the post-1960 era in which TMT continued its covert existence, Greek Cypriot leadership established its own underground organisation. Named *The National Cyprus Organisation*,<sup>152</sup> another top secret document — the Akritas Plan — defined the

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<sup>143</sup> Drousiotis M., *İlk Bölünme: Kıbrıs 1963-1964* (First Partiton: Cyprus 1963-1964), (translated from Greek to Turkish by Çakıroğlu A.) (Lefkoşa: Galeri Kültür Yayınları, 2008) p.4.

<sup>144</sup> Kılıç, op. cit. at pp. 196, 197.

<sup>145</sup> Kızılyürek (2009) op. cit. at p.17.

<sup>146</sup> *Ibid*, pp. 17, 18.

<sup>147</sup> *Ibid*, p.18.

<sup>148</sup> *Ibid*, p.17.

<sup>149</sup> Billuroğlu A., *Kripto Geldi mi?* (Did Crypto Arrive?), (Lefkoşa: Söylem Yayınları, 2012) pp. 79, 80.

<sup>150</sup> Major İsmail Tansu was the Chief of the Logistics Branch of the Special Warfare Department; in 1956, he was assigned to the task of establishing TMT in Cyprus. Kılıç, op. cit. at p.94.

<sup>151</sup> Kızılyürek (2009) op. cit. at p.17.

<sup>152</sup> Kızılyürek (2005) op. cit. at p.108.

purpose of this organisation. Drafted in 1963, the Plan came to light in 1966 after a Greek local paper published it ‘with the professed intention of exposing the mishandling of the Greek Cypriot ‘national cause’ by Archbishop Makarios.’<sup>153</sup> In terms of its content, the plan devises a method for ‘the final and unalterable national objective which is the full and unconditional application of the right of self-determination.’<sup>154</sup>

As the first step towards achieving this objective, the plan required the persuasion of the international opinion that the Zurich and London agreements have not settled the Cyprus problem in a satisfactory and just manner, and that, it was necessary ‘to remove the unreasonable and unjust provisions of the administrative mechanisms.’<sup>155</sup> The next step of the Plan comprised ‘the amendment of the negative elements of the agreements and the consequent *de facto* nullification of the Treaties of Guarantee and Alliance.’<sup>156</sup> The relevance of the Treaty of Guarantee was that it legitimised external intervention either individually or jointly from Greece, Turkey and/or the United Kingdom to prevent any attempt to unite Cyprus with any other state or partition the island.<sup>157</sup> The relevance of the Treaty of Alliance was that, it legitimised the presence of mainland Greek and Turkish contingents on the island.<sup>158</sup> In the Plan, the abrogation of these treaties was regarded as essential for the people of Cyprus to ‘be able, freely, to express and apply its will.’<sup>159</sup>

The third step of the Plan consisted of the manner in which the probable reactions of Turkish Cypriots to the initial two steps would be dealt with. For the purposes of the Plan, the drafters considered it crucial that any Turkish resistance was immediately met with a Greek counter-attack.<sup>160</sup> In this regard, the need to strengthen the organisation was

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<sup>153</sup> Necatigil, *op. cit.* at p.26.

<sup>154</sup> Akritas Plan, The United Nations, Doc A/33/115 S/1272, 30 May 1978, p.3.

<sup>155</sup> *Ibid*, pp. 3, 4.

<sup>156</sup> *Ibid*, p.5.

<sup>157</sup> Article II, Treaty of Guarantee.

<sup>158</sup> Additional Protocol No. I, Treaty of Alliance.

<sup>159</sup> Akritas Plan, *op. cit.* at p.5.

<sup>160</sup> *Ibid*, p.7.

emphasised.<sup>161</sup> In addition, the Plan stated that ‘[t]he forceful and decisive suppressing of any Turkish effort will greatly facilitate our subsequent actions for further constitutional amendments, and it should then be possible to apply these without the Turks being able to show any reaction without serious consequences for their community.’<sup>162</sup>

For the purposes of this section, the Akritas Plan is important for demonstrating that the Greek ambitions for *enosis* did not subside with the establishment of the Republic of Cyprus. While at the outset, the Plan set the objective as the exercise of unrestricted self-determination, two provisions of the Plan reveal that such an exercise was sought for the proclamation of *enosis*. The first of these provisions was a line of precaution that international opinion may be persuaded more efficiently if the struggle was based on self-determination rather than *enosis*.<sup>163</sup> Although this provision distinguished between *enosis* and self-determination, it did not rule out the former as an option that the people of Cyprus could choose when exercising unconditional self-determination. The second provision related to the occasion in which the Turkish resistance may not be instantly contained and it provided the confirmation that *enosis* was the ultimate aim. Accordingly, the Plan read that ‘[i]n case of the clashes [between Turkish and Greek Cypriots] becoming widespread, we must be ready to proceed immediately through [the second step], *including the immediate declaration of ENOSIS* [...]’<sup>164</sup>

In an interview with Kızılyürek, Glafkos Clerides<sup>165</sup> verified that Ministers Georghadis and Tassos Papadopoulos were involved in the drafting of the Plan, and that the development of the Plan was within Makarios’ knowledge who, in turn, endorsed it.<sup>166</sup> For the purposes of this section, the Plan is significant for demonstrating the Greek Cypriot

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<sup>161</sup> *Ibid.*

<sup>162</sup> *Ibid.*

<sup>163</sup> *Ibid.*, p.5.

<sup>164</sup> *Ibid.*, p.7. [*my emphasis*]

<sup>165</sup> The first Speaker of the House of Representatives.

<sup>166</sup> Kızılyürek N, *Glafkos Clerides: The Path of a Country*, (translated into English by Clerides K.) (Nicosia: Rimal Publications, 2008) pp. 77, 78.

leadership's reaction to the establishment of the Republic. This reaction was one of discontent and it was a shared reaction among the Greek and the Turkish leaderships but for separate reasons. For the former, the cause of discontent was the constitution of the Republic which forbade *enosis*. For the latter, it was the forbidding of *taksim*.

However, as observed above, neither the Greek nor the Turkish Cypriot leaderships, in the post-1960 era, abandoned their ambitions to achieve *enosis* and *taksim* respectively. These ambitions set the atmosphere in Cyprus for a major crisis in the last months of 1963. The emergence of the internal strife after Makarios' thirteen-point proposal to amend the constitution resulted in the *de facto* demise of the bi-communal constitutional arrangements. In other words, in 1963, the Turkish Cypriot community found itself trapped in enclaves with no access to the state structure as provided by the constitution.

## **Conclusion**

This chapter comprised the first part of the case study on the Turkish Cypriot community. The overall purposes of the study are to establish the premise that relations of recognition shape the very being of communities and to expose international community's inflexible approach in conferring legal personality under international law. As the first step of achieving these purposes, in this chapter, I provided a brief account of the constitutional positions and powers granted to the Turkish Cypriot community within the state structure of the Republic of Cyprus. These provisions defined the communities of the island and safeguarded their being through a division of political power.

The constitutional structure presented in this chapter forms the background of the Cyprus conflict and the resultant political impasse that I consider in the next chapter. Turkish Cypriots' struggle for recognition and the consequent existential crisis emanate from losing the share of political power enshrined in the 1960 constitution. My argument is that, this loss and the following struggle for recognition are the outcome of a web of relations which

determines the very being of the Turkish Cypriot community. Thus, in the second part of the chapter, I introduced the parties to the conflict and explored the reasons for the antagonistic relations among them. I identified two incompatible anti-colonial movements as the root causes — the *enosis* movement of the Greek Cypriot community and the *taksim* movement of the Turkish Cypriot community.

Inasmuch as the issue of the decolonisation of the island was settled primarily among the governments of mainland Greece and Turkey — a solution which ostensibly safeguarded against the ambitions of the island communities — the political desires generated by the above-mentioned anti-colonial movements survived and, thus, continued to undermine this settlement. I presented the means of this subversion in the last section of the second part of the chapter by focusing upon the continued armament of the clandestine groups in the new republic, and the placement of ex-chiefs of the *enosis* movement into the ministerial positions in the government. To the extent that these events represented the persistence of communities in their attempt to realise their respective ambitions for *enosis* and *taksim*, this persistence would result in an inter-ethnic armed conflict in the year of 1963.

Through the second part of this chapter, therefore, I presented a web of hostile relations that did not only culminate in the establishment of a state whose constitutional structure was doomed to fail within three years, but also a set of relations which continued to affect the fate of the Turkish Cypriot community for years to come. My concluding argument is that, this network of parties brings to the fore the relational element of coming-into-being for the Turkish Cypriot community, first, as the 1960 constitution defined and safeguarded the existence of the community; second, as these relations continued, in the aftermath of the events of 1963, to determine the fate of Turkish Cypriots by trapping this community in a political impasse. I present these events and the ensuing battle for recognition in the following chapter.

## CHAPTER TWO

### Case Study Part Two: The Cyprus Problem

#### Introduction

In the previous chapter, I examined the anti-colonial movements of the Greek and the Turkish communities of Cyprus to map a network of relations that culminated in the establishment of the Republic of Cyprus. I also referred to the constitutional provisions of this republic to show that the 1960 constitution both defined the communities and shared political power among them to ensure their existence in a balanced but interdependent setup. However, with the events of 1963, this setup ceased to exist occasioning the infamous Cyprus conflict that remains unresolved until today.

In this chapter, I follow up the case study of the Turkish Cypriot community by considering three sets of major events in the history of the Cyprus conflict. The first set of these events is the thirteen-point proposals presented in 1963 by the first president of Cyprus to amend the 1960 constitution and the inter-ethnic conflict these proposals generated. The second set consists of the events of 1974 which included a coup d'état sponsored by mainland Greek junta against the president of the island and the consequent mainland Turkish military intervention on the island. Third set of events are Turkish Cypriot's unilateral declaration of independence in the year of 1983 and international community's non-recognition of this declaration. I show that the outcome of the first set of events was that, Turkish Cypriots were ousted from the positions they occupied within the state structure and were forced to live in enclaves. Consequent to this expulsion, the double military intervention of 1974 brought about the geographical separation of the communities and this separation formed the basis of the unilateral declaration in 1983.

The purpose of recounting these major events is to substantiate the role one's relations to others play in determining one's being and the fact that this determination

ultimately manifests itself as a question of recognition. As I pointed out in the outset of the previous chapter, the case study on the Turkish Cypriot community achieves this purpose in two ways. Firstly, the ongoing Cyprus conflict traps this community in a political impasse. Secondly, this impasse, in turn, poses an existential threat to the very being of the community. To the extent that the international non-recognition of a Turkish Cypriot state comprises the essential aspect of this threat, the case study carries an additional purpose of exposing international law's inability to account for the relational element of coming-into-being. I explain this inability by focusing upon international community's reluctance to respond to the facts that a solution to the Cyprus problem does not solely depend upon the acts of the Turkish Cypriot community, and, in the absence of international provisions to enhance its personality, the community is devoid of any means to reduce its economic dependence to and fend off subsequent political vulnerabilities against Turkey.

The chapter is, thus, divided into four parts. The first part traces the immediate effects of the continued ambitions for *enosis* and *taksim* within the first three years of the Republic. The central focus of this part is on the manner in which these ambitions were manifest in the Greek Cypriot president's thirteen-point proposals and Turkish Cypriots' vehement reactions. Insofar as the Greek Cypriot community perceived these proposals as a viable solution for the functional failures of the bi-communal constitution, Turkish Cypriots understood the proposals as an attempt to get rid of the provisions of the 1960 constitution that particularly ensured the political balance between two communities and, in doing so, safeguarded the existence of Turkish Cypriots. I present the major consequence of the thirteen-point proposals as the almost inevitable descend of the communities into inter-ethnic fighting.

In the second part of the chapter, I follow the ramifications of this armed conflict by considering the exclusion of Turkish Cypriots from state structures and the subsequent round of futile negotiations between the two communities of Cyprus. I present that, due this futility,

the growing tensions between the Greek Cypriot president and mainland Greek junta culminated in the junta-sponsored coup d'état against the president. This coup was trailed by mainland Turkish army's intervention on the island with the pretext of preserving the constitutional order. I show that this intervention effected the geographical division of the communities as Greek Cypriots fled to the south and Turkish Cypriots moved to the northern region of the island which was secured by the Turkish military. Since then, this division and the presence of the intervening army comprise the backdrop of negotiations to solve the Cyprus problem.

In the third part of the chapter, I take into account Turkish Cypriots' unilateral declaration of independence and international non-recognition of this declaration effected by a resolution of the Security Council of the United Nations. I display the background of this declaration as Turkish Cypriots' escape from years of economic isolation and fear of violence in enclaves to the considerable safety of the northern region of the island. The declaration proceeded from another round of unsuccessful negotiations to solve the ever-complicated Cyprus problem and were defended by some scholars as Turkish Cypriots' right to self-determination stemming from their share of sovereignty access to which had been barred since 1963.

In the fourth part of the chapter, I concentrate on the repercussions of the Security Council's resolution under two sub-headings. Under the first of these headings, I consider the effects of non-recognition on trade, travel, and property rights in the unilaterally declared state. Referring to relevant caselaw, I present international courts' focus upon lack of recognition in determining these rights. Under the second heading, I consider economic consequences of non-recognition by taking into account the community's increasing dependence upon Turkey for financial support which, in turn, aggravates Turkish Cypriots' political vulnerability. In the overall scheme of the chapter, therefore, I engage with a number of relations among parties that are involved with the Cyprus problem and assess

these relations' contribution towards the existential crisis faced by the Turkish Cypriot community today. The outcome of the study is that, in practice, recognition becomes a necessary component of establishing oneself as a person of international law, that lacking this constituent element damages one's claim to legal personality. This may even be so, despite the fact that a chain of events can prove that an entity's emergence from a life threatening political impasse may not entirely be in its own hands.

## **Part One**

### **1.1. The Thirteen-Point Proposals**

In the first chapter, I introduced the provisions of the 1960 constitution of the Republic of Cyprus and demonstrated that within the bi-communal state structure, the Turkish Cypriot community were granted a politically equal share of sovereign power. Therein, I also analysed Greek Cypriots' anti-colonial movement against the British and showed that the idea of unification with Greece comprised the motivation for this movement. I presented Turkish Cypriots' reaction to this idea by focusing upon their movement for partition. I took into view that the agreements between Greece and Turkey upon which the new Republic was founded denied both communities the realisation of their anti-colonial ambitions.

The establishment of the Republic of Cyprus in 1960 marked the island's independence from British colonial rule. However, in the previous chapter, I demonstrated that neither the Greek nor the Turkish Cypriot leaderships considered this as the desired form of independence. I displayed the manner in which the ideas of *enosis* and *taksim* continued to respectively shape the leaders' actions even in the aftermath of 1960. In the short-lived history of the bi-communal state structure of the Republic, the influence of these ideas were manifest in two events. First, there was the constitutional crises. Second, these crises instigated an inter-ethnic armed struggle. For the purposes of this part, the outcome

of the crises and the ensuing struggle are significant for demonstrating the ways in which Turkish Cypriots were deprived of their share of sovereign power. Thus, in what follows, I present the escalation of constitutional crises into an inter-ethnic strife. The trajectory of the crises follows a thirteen-point proposal by the Greek Cypriot president to amend the constitution and Turkish Cypriots' rejection of these proposals. While the former thought that the constitution in its current format was unworkable, the latter perceived the proposals as an attempt to cancel constitutional provisions which were essential for the Turkish community's existence.

The crises started off with a prolonged struggle over the implementation of several provisions of the 1960 constitution. Main problematic constitutional issues related to public services, taxes, the army, and separate municipalities.<sup>167</sup> With regard to public services, the dispute arose in relation to the appointment of civil servants. The 1960 constitution set the ratio of Greek and Turkish civil servants at seventy to thirty percent. According to Kyriakides, Turkish Cypriots regarded the implementation of the ratio as necessary for sufficient representation of the Turkish community within the state structure, whereas, in light of the demography of Cyprus (eighteen percent Turkish, seventy-seven percent Greek) Greek Cypriots considered the public service ratio unjust and discriminatory.<sup>168</sup>

The second problem concerned tax legislation. The new Republic did not have a tax law and the constitution allowed for the application of the colonial tax law to be applied until a set deadline.<sup>169</sup> The first aspect of the problem was that the communities could not agree upon the new tax legislation before the deadline.<sup>170</sup> This necessitated an extension of the application of the colonial law; and the second aspect of the problem was that, the

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<sup>167</sup> Kyle K., *Cyprus: In Search of Peace*, (London: Minority Rights Group International, 1997) p.10; Kyriakides S., *Cyprus – Constitutionalism and Crisis Government*, (Philadelphia: University of Pennsylvania Press, 1968) p.77.

<sup>168</sup> Kyriakides, op. cit., pp. 77, 78.

<sup>169</sup> *Ibid*, pp. 83, 84.

<sup>170</sup> *Ibid*, p.84.

communities could not agree upon the duration of this extension.<sup>171</sup> Central to this problem was the constitutional provision that in passing laws about issues of taxation separate majority vote was required in the House of Representatives.<sup>172</sup> Accordingly, the majority vote among the Turkish members of the House would frustrate Greek propositions and vice versa. In light of this deadlock, the President ordered for the collection of taxes under the pre-1960 income-tax law; however, the Constitutional Court rejected the validity of this law rendering the Republic without any means of taxation.<sup>173</sup>

The third constitutional problem was a dispute over the formation of the army. While Greek Cypriots favoured an approach to form the army on ethnically mixed basis, Turkish Cypriots favoured an ethnically separated formation. However, the Turkish opinion did not suggest the formation of two separate armies; instead, in an army of five battalions in which each battalion would consist of three companies, '[t]he Turkish Cypriot position was that the battalions could be mixed. However, on the company level, separation on a bi-communal basis was necessary.'<sup>174</sup> The Turkish argument was that the necessity arose from the difficulty of jointly stationing religiously and linguistically different communities.<sup>175</sup> Following the Turkish line of argument, the Vice-president initially returned the decision of the Council to form armies on a completely mixed basis for reconsideration; and after the Council's insistence on the mixed army, the Vice-President vetoed the decision.<sup>176</sup>

The final constitutional problem arose in relation to the issue of municipalities. While Turkish Cypriots were eager to implement the constitutional provisions for separate municipalities in five largest towns in the Republic,<sup>177</sup> 'Greek Cypriots, fearing separation

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<sup>171</sup> *Ibid*, p.83.

<sup>172</sup> Article 78 (2) of the 1960 Constitution of the Republic of Cyprus.

<sup>173</sup> Ehrlich T., *International Crises and the Role of Law: Cyprus 1958-1967*, (London: Oxford University Press, 1974) p.43; Polyviou P.G., *Cyprus Conflict and Negotiation 1960-1980*, (London: Duckworth, 1980) p.26.

<sup>174</sup> Kyriakides, op. cit. at p.93.

<sup>175</sup> *Ibid*.

<sup>176</sup> *Ibid*.

<sup>177</sup> Article 173(1).

as a step toward partition, objected to the Turkish demands.<sup>178</sup> Similar to the tax problem, communities' failure to reach an agreement on the issue of municipalities prevented the House of Representatives from passing new legislation. Consequently, Greek Cypriots reverted to the Council of Ministers – an institution they numerically dominated – for an order that would enable the establishment of unified Municipal Councils. Turkish Cypriots, in turn, attempted to validate separate Turkish Municipalities by legislating through their communal chamber.<sup>179</sup> The issues were contested in the Supreme Constitutional Court and the Court found that both actions were unconstitutional. Kyriakides emphasised that the tension arising from the bi-communality of the constitution inhered within the Supreme Constitutional Court.<sup>180</sup> The reason for Kyriakides' remark was that the Court reached its decisions by majority vote – the Greek judge dissenting in the case concerning the Council's order and the Turkish judge dissenting in the case concerning the Turkish Chamber's legislation.

By the year of 1963, four major constitutional issues remained unresolved. With regard to the public services, the Turkish community contested the decisions of the Public Service Commission — the body which was in charge of the appointment of public servants.<sup>181</sup> Out of twenty-seven cases, the Supreme Constitutional Court could only hear five before the resignation of the President of the Court in May 1963 prevented any solution to the public services dispute.<sup>182</sup> In relation to the taxation problem, it was observed above that the Court considered it unconstitutional to collect taxes under the pre-1960 legislation. Nonetheless, Greek Cypriots, via the Greek Communal Chamber and ignoring the Supreme Constitutional Court's decision, proceeded to collect taxes under the pre-1960 legislation.<sup>183</sup>

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<sup>178</sup> Kyriakides, *op. cit.* at pp. 94, 95.

<sup>179</sup> *Ibid.*, pp. 100, 101.

<sup>180</sup> *Ibid.* p.102.

<sup>181</sup> *Ibid.*, p.81.

<sup>182</sup> *Ibid.*, p.82.

<sup>183</sup> *Ibid.*, p.92.

The manner in which the decision of the Court was circumvented itself contributed to another constitutional crisis; the neutral judge resigned from his position as the President of the Supreme Constitutional Court of Cyprus.<sup>184</sup> As a result of the Vice-president's veto, the issue of forming an army remained in a deadlock. Finally, following the bi-communal voting in the Supreme Court, the question of municipalities was also trapped in a stalemate.

Amid these constitutional crises and the resultant communal tensions, on 30<sup>th</sup> November, 1963, President Makarios made thirteen proposals to amend the 1960 constitution.<sup>185</sup> Ostensibly, this was an attempt by the President to solve the crises vis-à-vis the implementation of the constitutional provisions. Makarios was proposing to abandon both the President's and the Vice-president's right to veto, to abolish the requirement for separate majorities in the House of Representatives, to establish unified municipalities, to determine by law the number of the Security and Defence forces, and to reset the ratio of employment in the Public Service in accordance with the ratio of the population of Greek and Turkish Cypriots.<sup>186</sup>

There were several opinions on the practicability of the 1960 constitution. According to Polyvios Polyviou the 1960 constitution provided for institutions with rigid and unworkable structures, and created a false inter-communal balance which was 'out of tune both with the real strength of the two communities and with their genuine needs, and [can] only be maintained at the original position by obstructionist and obstinate use of power on

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<sup>184</sup> Reddaway J., *Burdened with Cyprus – The British Connection*, (London: K.Rustem & Bro, and Weidenfield & Nicolson Ltd, 1986) pp. 129, 130.

<sup>185</sup> Necatigil Z. M., *The Cyprus Question and the Turkish Position in International Law*, 2nd Ed. (Oxford: Oxford University Press, 1993) p.24, Crawshaw N., *The Cyprus Revolt: An Account of the Struggle for Union with Greece*, (London: George Allen & Unwin, 1978) p.366; Kyriakides, op. cit. at p.105.

<sup>186</sup> Kyriakides, op. cit. at pp. 105, 106; Polyviou, op. cit. at pp 28, 29; Kyle, op. cit. at p.11; Necatigil, op. cit. pp. 24, 25.

the part of the minority.<sup>187</sup> In Kyriakides' perspective, the basic Articles<sup>188</sup> of the Constitution were the root causes of the rigidity of the constitution:

In essence, the basic Articles reflected the compromising spirit of the Zurich and London agreements and are intended to ensure bicomunal balance. However, the unalterable nature of the basic Articles, made the constitutional life of the Republic extremely rigid.<sup>189</sup>

Finally, O'Malley and Craig opined that, '[t]he complex structure of power-sharing, principally through political vetoes, solidified the division between the [Greek and the Turkish] communities, and failed to overcome the antagonism caused by the fears and aspirations of the two peoples.'<sup>190</sup>

There were, also, opposite views which stressed that a way for the constitution to work could be found. In this regard, Ehrlich wrote the following:

It is tempting to say that the scheme never had any chance of lasting success — that a constitution requiring the ethnic origin of the coroner in a coroner's inquest to be that of the deceased could only fail [...] Despite substantial weaknesses, the settlement did represent an imaginative resolution of many difficult problems. *Given*

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<sup>187</sup> Polyviou, op. cit. at pp. 23, 24.

<sup>188</sup> Article 182 of the Constitution renders the constitutional provisions listed in Annex III as the basic Articles of the constitution which 'cannot, in any way, be amended, whether by way of variation, addition, or repeal.' Annex III provisions include 'the executive final veto, separate majority vote in the House of Representatives, the seventy-thirty ratio in the House of Representatives and the Public Service, the sixty-forty ratio in the Army, and the *Treaty of Alliance*, as well as the *Treaty of Guarantee*.' Kyriakides, op. cit. at p.71.

<sup>189</sup> Kyriakides, op. cit. at p.71.

<sup>190</sup> O'Malley B., Craig I., *The Cyprus Conspiracy: America, Espionage and the Turkish Invasion*, (London: I. B. Tauris, 1999) at p.87.

*patience and a spirit of compromise on each side, it might have worked.*<sup>191</sup>

In addition to Ehrlich, Ernst Forsthoff — the neutral West German judge who presided as the first President of the Supreme Constitutional Court — made the following statement in an interview in the aftermath of his resignation:

[F]rom the moment I commenced my duties I noticed that there were allegations to the effect that the Constitution was not capable of being implemented, that revision was necessary and the like. I faced these allegations with the following thought: Every constitution can have its peculiar problems. There is no constitution in the world which has not got its particular difficulties and problems. This is primarily a question of goodwill. If there is goodwill a constitution can be implemented and this Constitution is capable of being implemented.<sup>192</sup>

Was there goodwill to implement the constitution? In the previous section, we observed that in the aftermath of the proclamation of the Republic, the Greek and the Turkish Cypriot clandestine organisations, which continued to aspire respectively for *enosis* and *taksim*, continued to function. In light of such information, it is difficult to claim that there was any goodwill to implement the constitution.

Instead of such goodwill, however, there was invariable distrust among the community leaders. Therefore, while Greek Cypriots suspected that the Turkish community's demand to implement separate municipalities was a plot to achieve partition, the Turkish Cypriot leadership did not accept that there might be genuine difficulties in

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<sup>191</sup> Ehrlich, op. cit. at p.38. [*my emphasis*]

<sup>192</sup> The above-quoted segment of Forsthoff's interview with the Associated Press on 5 January 1964 is cited in Reddaway, op. cit. at p.130.

implementing the seventy percent to thirty percent ratio of employment in the Public Services. Makarios' thirteen-point proposals were made in a period when persistent crises vis-à-vis the constitution heightened inter-communal tensions and deepened suspicions.

Among the critics who denounced Makarios' timing for the proposals were authors who regarded the 1960 constitution as unworkable. In this regard Polyviou noted the following:

Wholesale amendment of the 1960 constitution, it is believed, would at some point have been essential, but should only have been attempted at a much later stage, only when existing mutual suspicion had been reduced and the confidence of the Turkish Cypriots secured, and additionally only if iron-clad guarantees had at the same time been given that enosis would not be sought and the status of independence would not be endangered.<sup>193</sup>

Under the circumstances surrounding the constitutional crises, it was almost definite that the Turkish Cypriot leadership would be suspicious of and hence reject any proposals which purported to abandon the Vice-president's veto, abolish the requirement for separate majorities and unify municipalities. Accordingly, the Turkish rejection of Makarios' proposals came on 16 December 1963.<sup>194</sup> Vice-President Kuchuk regarded the proposals as part of 'a predetermined policy to abrogate the agreements which had brought about the republic of Cyprus and to create an independent Greek State in which the Turks would be left at the complete mercy of the Greeks.'<sup>195</sup> Five days later, on 21 December, inter-communal conflict broke out.

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<sup>193</sup> Polyviou, *op. cit.* at p.34.

<sup>194</sup> Kyriakides, *op. cit.* at p.107; Necatigil, *op. cit.* at p.25.

<sup>195</sup> Dr Kuchuk quoted in Polyviou, *op. cit.* at p.30; similar references in Kyriakides, *op. cit.* at p.107; and Necatigil, *op. cit.* at p.25.

According to Foley's account, the stimulus for the conflict was provided by an incident in which Greek Cypriot policemen's demands to see identification were refused by some Turkish Cypriots.<sup>196</sup> With the gathering of a crowd that surrounded the policemen, the ensuing argument escalated into firing of shots from both sides, killing two Turkish Cypriots and seriously injuring one policeman.<sup>197</sup> In his account of the same incident, Oberling maintained that the incident was sparked off by the Greek Cypriot *special constables'* attempt to search a woman in the Turkish Cypriot quarter of Nicosia.<sup>198</sup> After the formation of an irritated crowd, '[t]he constables thereupon fired their automatic weapons, nearly cutting the woman and her male escort in half.'<sup>199</sup> The significance of this account lies in Oberling's claim that the *special constables* were 'illegally armed Greek Cypriot civilians [...] hired by [the Minister of the Interior,] Georghadis.'<sup>200</sup>

Another allegation directed at Georghadis was that a day before the attacks on 21<sup>st</sup> December, the Minister of Interior deceived the Turkish Cypriot police force into disarming.<sup>201</sup> In the ensuing events, Greek Cypriots would 'launch a major attack' against Turkish Cypriots.<sup>202</sup> According to Reddaway,

Turks were murdered in their homes, hundreds of Turkish hostages were seized, the fighting quickly spread to other areas in the Island. In the end 103 Turkish villages were partially or completely destroyed, over a thousand houses and shops were destroyed or damaged and many more were looted. Some 25,000 Turkish

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<sup>196</sup> Foley C., *Legacy of Strife: Cyprus from Rebellion to Civil War*, (Middlesex, England: Penguin Books, 1964) p.168; Foley's account is also mentioned in Ehrlich, op. cit. at p.45; Necatigil, op. cit. at p.32; Polyviou, op. cit. at p.34.

<sup>197</sup> Foley, op cit. at p.168.

<sup>198</sup> Oberling P., *The Road to Bellapais: The Turkish Cypriot Exodus to Northern Cyprus*, (New York: Columbia University Press, 1982) p.88.

<sup>199</sup> *Ibid*, p.88.

<sup>200</sup> *Ibid*, p.87.

<sup>201</sup> Reddaway, op. cit. at p.146; Crawshaw, op. cit. at pp. 366, 367; Dodd C., *The History and Politics of the Cyprus Conflict*, (Basingstoke: Palgrave Macmillan. 2010) p.32.

<sup>202</sup> Reddaway, op. cit. at p.146; Crawshaw, op. cit. at p.366; Kyle, op. cit. at p.11.

Cypriots (about a quarter of the total Turkish population) were uprooted from their homes and became refugees.<sup>203</sup>

In his analysis of the 1963-1964 conflict, Reddaway was of the conviction that the Greek Cypriot leadership attempted to put the Akritas plan into effect.<sup>204</sup> As observed previously, the Akritas plan was a blueprint of achieving *enosis* in the aftermath of the proclamation of the Republic. Considered in light of the Plan, Makarios' thirteen-point proposal to change the constitution, the probable formation of Georghadis' special constables and the following attacks against the Turkish Cypriots ostensibly conform to the provisions of the plan. In the aftermath of the internal strife, *enosis*, as devised by the Akritas plan, was not achieved. However, in Makarios' words, the 1960 Constitution was 'dead and buried.'<sup>205</sup>

Despite the fact that TMT continued its clandestine activities consequent to the proclamation of the Republic, and according to Cockburn, the organisation had five thousand trained men at its disposal, the Turkish Cypriot community was considerably outnumbered by the Greek Cypriot forces.<sup>206</sup> Facing the threat posed by these forces, Turkish Cypriots abandoned twenty-four Turkish and seventy-two mixed villages to take refuge in Turkish Cypriot controlled enclaves.<sup>207</sup> In addition, due to concerns for their security, Turkish Cypriot officials, representatives and civil servants had to withdraw from their positions within the state structure.<sup>208</sup> Consequent to this withdrawal, Greek Cypriots gained total control of the government and the House of Representatives, and proceeded to implement Makarios' thirteen-point proposal.<sup>209</sup> In this regard, Kyriakides wrote that '[t]he structural and functional changes of the 1960 Constitution by the Greek Cypriot leadership

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<sup>203</sup> Reddaway, op. cit. at p.146.

<sup>204</sup> *Ibid*, p.147.

<sup>205</sup> President Makarios quoted in Oberling P., *Negotiating for Survival: The Turkish Cypriot Quest for a Solution to the Cyprus Problem*, (New Jersey: The Aldington Press, 1991) p.10.

<sup>206</sup> Cockburn C., *The Line: Women, Partition and the Gender Order in Cyprus*, (London: Zed Books, 2004) p.54.

<sup>207</sup> Kyle, op. cit. at p.12.

<sup>208</sup> Crawshaw N., 'Cyprus: The Political Background,' in Koumoulides J.T.A. (ed), *Cyprus in Transition 1960-1985*, (London: Trigraph, 1986) p.5. Herein referred to as Crawshaw (1986).

<sup>209</sup> Kyriakides, op. cit. at pp. 112, 113.

have been directed toward establishing a unified state with “unfettered” independence.’<sup>210</sup> To the extent that the 1960 constitution provided for a bi-communal state structure, it was now *de facto* dead and buried.

Central to Greek Cypriots’ appropriation of state power was the perception that Turkish Cypriots vacated their positions within the government to stage an insurgence against the state.<sup>211</sup> Certainly, the suspicion that TMT continued its covert existence training men and smuggling arms, and the role played by the Turkish paramilitaries in forming enclaves that seemingly prepared ‘[t]he necessary territorial basis for partition’ provided Greek Cypriots with sufficient pretext.<sup>212</sup> However, Oberling’s report offers a different insight into the acts of the Greek Cypriot leadership:

[...] the Greek Cypriot controlled radio station in Nicosia was unceasingly broadcasting inflammatory propaganda to the effect that the Turkish Cypriots (all of whom were huddling together in their various ghettos) were revolting against the government and had embarked upon a wholesale slaughter of the Greek Cypriot population. These accusations served not only to further encourage Greek Cypriot militancy but also to misinform the outside world as to the true nature of the massacre which was then underway on the island.<sup>213</sup>

Under such pretext, the Greek Cypriot leadership regarded its appropriation of power as legitimate and stipulated that collaboration with Turkish Cypriots was conditional upon their acceptance of the legitimacy of the constitutional amendments.<sup>214</sup>

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<sup>210</sup> *Ibid*, p.115.

<sup>211</sup> *Ibid*.

<sup>212</sup> Kyle, op. cit. at p.12.

<sup>213</sup> Oberling (1982) op. cit. at p.96.

<sup>214</sup> Kyriakides, op. cit. at p.115.

In turn, the Turkish Cypriot leadership argued that their absence from the government and the legislature was due to security reasons,<sup>215</sup> therefore, they were being expelled from the state apparatuses and that, the Greek appropriation of the political power was unconstitutional.<sup>216</sup> To the Turkish Cypriots' considerable dismay, however, international recognition of Makarios' government had not been withdrawn.<sup>217</sup> In fact, on 4<sup>th</sup> March 1964, Resolution 186 of the Security Council of the United Nations asked of 'the *Government of Cyprus* [...] to take all additional measures necessary to stop violence and bloodshed in Cyprus' as if no question of the legitimacy of the Government of Cyprus had arisen due to the atrocities and the resultant Greek Cypriot appropriation of the power.<sup>218</sup>

In addition to amending the constitution, the Greek Cypriot government attempted to enhance its hold on power by bringing oppressive measures against the Turkish Cypriot community. During the period between the years of 1964 and 1967, the Greek government imposed economic sanctions upon the Turkish enclaves.<sup>219</sup> These sanctions were maintained by encircling the enclaves with fortifications, subjecting the imported supplies to rigorous scrutiny, and permitting solely the entry of items which were 'needed for barest survival.'<sup>220</sup> In addition to the economic sanctions, Turkish Cypriots were subjected to restriction of movement (between different enclaves) as a result of the 'harassment and humiliating searches by the Cyprus Police' — the police forces now being entirely formed by Greek Cypriots.<sup>221</sup>

Another significant event vis-à-vis the oppression of the Turkish Cypriot community was the return of Grivas to the island on 14 June 1964 as the commander of the mainland

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<sup>215</sup> Dodd, op. cit. at p.55; Crawshaw (1986) op. cit. at p.5.

<sup>216</sup> Sonyel S.R., *Cyprus: The Destruction of a Republic – British Documents 1960-65*, (Cambridgeshire: The Eothen Press, 1997) pp. 62-66.

<sup>217</sup> Oberling (1991) op. cit. at p.10; Necatigil, op. cit. at p70.

<sup>218</sup> Resolution 186, Security Council, United Nations [S/5575] 4 March 1964. [*my emphasis*]

<sup>219</sup> Cockburn, op. cit. at p.55.

<sup>220</sup> Oberling (1982) op. cit. at p.110.

<sup>221</sup> Crawshaw (1986) op. cit. at p.6.

Greek military contingent on the island.<sup>222</sup> Among the constitutional amendments put into effect by the Greek Cypriot government was the creation of an army called the National Guard.<sup>223</sup> While Grivas was not officially appointed to any position within the new army, Oberling maintained that ‘the old rightist fanatic from Trikomo’ rapidly seized the leadership of the National Guard.<sup>224</sup>

Two of the Grivas-led attacks upon the Turkish enclaves carried much significance in shaping the future of the Cyprus question. The first of these attacks was in August 1964 against the Turkish enclave in the Kokkina region.<sup>225</sup> The significance of this region was that it was the only coastal region under Turkish Cypriots’ control in the northern shore of the island; and hence, it was the only point to which supplies coming from Turkey by the sea route could reach.<sup>226</sup> The National Guard’s offensive against Turkish Cypriots in this region was met by the air raids from Turkey’s air force.<sup>227</sup> With this raid, the mainland Turkish administration was proving its ability to stage a military intervention on the island.

The second of the Grivas-led attacks took place in November 1967. Crawshaw reported that ‘[o]n 15 November, a large force of Greek and National Guard troops, led by Grivas, attacked the Aghios Theodoros/Kophinou enclave.’<sup>228</sup> In light of the events in 1964, the Turkish threat to intervene was taken more seriously. In accordance with the Turkish ultimatum, Grivas was called back to Athens and the excessive mainland Greek troops were withdrawn from the island.<sup>229</sup> In addition, the economic restrictions imposed upon the Turkish enclaves were lifted.<sup>230</sup> Marking a turning point for the four-year long internal

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<sup>222</sup> Oberling (1982) op. cit. at p.115; Kyle, op. cit. at p.13; Article IV of the Treaty of Alliance provides for the establishment of Greek and Turkish military contingents in Cyprus.

<sup>223</sup> The Greek occupied House of Representatives passed the Conscription Law on 1 June 1964 forming the National Guard - Kyriakides, op. cit. at p.113.

<sup>224</sup> Oberling (1982) op. cit. at p.115.

<sup>225</sup> *Ibid*, p.117; Kyle, op. cit. at p.13.

<sup>226</sup> Oberling (1982) op. cit. at p.118.

<sup>227</sup> *Ibid* pp. 118, 119.

<sup>228</sup> Crawshaw (1986) op. cit. at p.6.

<sup>229</sup> Kyle, op. cit. at p.15; Foley C., Scobie W.I., *The Struggle for Cyprus*, (California: Hoover Institution Press, 1975) p.168.

<sup>230</sup> Kyle, op. cit. at p.15, Crawshaw (1978) op. cit. at p.379.

strife, these events would open the way for the commencement of inter-communal negotiations for the settlement of the Cyprus question.

## **1.2. Conclusion**

In this part of the chapter, the focus of the case study was upon the manner in which the bi-communal structure of the 1960 constitution collapsed. In the last section of the previous chapter, I demonstrated that with the establishment of the Republic of Cyprus, the communities did not abandon their respective ambitions for *enosis* and *taksim*. I showed that these ambitions played a central role in the communities' rejection of the bi-communal state structure as the ultimate solution to the Cyprus problem. I presented the outcome of this rejection in the current part by taking into account the constitutional crises that started off as a struggle to implement the given provisions and later transformed into the conflict of the thirteen-point proposals.

The brief account of the constitutional crises presented herein sets the background for Turkish Cypriots' struggles to maintain their communal being. Inasmuch as the 1960 constitution provided for means to safeguard this being, the workings of ideological ambitions and mistrust among the communities resulted in the loss of these safeguards. The significance of this loss for the forthcoming parts of the chapter is that it accentuates the negative effects of international non-recognition of Turkish Cypriots' unilateral declaration of independence. To delineate these effects, in the remaining parts of the case study, I trace Turkish Cypriots' progress from negotiating a solution to the constitutional crises to unilaterally declaring independence. I start this investigation in the next part by focusing upon the inter-communal negotiations that commenced in the aftermath of Greek Cypriots' appropriation of constitutional power.

## Part Two

### Inter-communal Negotiations and Military Interventions

In the history of the Cyprus conflict, the commencement of negotiations between Greek and Turkish Cypriots can be viewed as forming a chronological bridge between two armed struggles — the first being the inter-ethnic fighting of 1963 and the second, back-to-back events of the coup d'état and the military intervention of 1974. The first struggle was the end result of the manifestation of antagonistic political ambitions. The second set of struggles generated from the persistent effects of these ambitions. Therefore, in what follows, I consider the negotiations between the Greek and the Turkish Cypriot leaderships with a particular focus upon the prolonged effects of the idea of *enosis* on these negotiations. The relevance of this focus is threefold. First, Turkish Cypriots' mistrust of the idea played a central role in the futility of negotiations. Second, such futility, in turn, frustrated the junta in charge of government in Greece and occasioned the coup d'état in Cyprus. Third, Turkey staged a military intervention on the island as a reaction to the coup. The events of 1974 resulted in the separation of the populations of the island into Greek southern and Turkish northern regions. This regional division, later, provided the territorial basis for the latter's unilateral declaration of independence.

With the instigation of the Secretary General of the United Nations, representatives of the Greek and the Turkish Cypriot communities met for 'an exploratory first meeting' on 11 June 1968.<sup>231</sup> The first meeting was followed by a period of negotiations that extended from the year of 1968 to 1971. In this period, the sides presented their positions vis-à-vis the Cyprus problem and exchanged proposals for its settlement. However, by the end of 1971 the negotiations reached a deadlock. Writing in this regard, Polyviou stated that '[e]ven when agreement seemed near, one gets the distinct impression that a great gulf of

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<sup>231</sup> Polyviou, *op. cit.* at p.62.

irreconcilable objectives and opposing philosophies divided the parties'.<sup>232</sup> Accordingly, while the Turkish representative 'believed in the fundamentality and continued essential validity of the 1960 constitution' and was prepared to reformulate certain aspects of the constitution on the basis that local autonomy is granted to the Turkish Cypriots.<sup>233</sup> The Greek representative regarded the 1963 constitution as 'functionally broken down' and considered the objective of the negotiations as finding 'a solution to the constitutional aspect of the Cyprus problem in the context of an independent and unitary state.'<sup>234</sup> As a result of their respective positions, the Turkish representative argued for maintaining a bi-communal state structure with 'strict separation of functions between state and communities,'<sup>235</sup> whereas, the Greek representative insisted on a unitary state structure in which '[u]nity had to be taken both in the sense of a basically unified administrative and governmental machine, and in the sense of avoiding arrangements that would force the communities to draw further apart.'<sup>236</sup>

To a considerable extent, the inter-communal conflict had justified the Turkish community's fear of *enosis*. Hence, the Turkish community was suspicious of any solution that did not prohibit *enosis* forever. This was so, despite the fact that the Kophinou event and the resultant threat of intervention from Turkey forced Makarios to reconsider the struggle for *enosis*. In the aftermath of this event, Makarios reached an understanding that '[a] solution by necessity must be sought within the limits of what is feasible, which does not always coincide with the limits of what is desirable.'<sup>237</sup> Defining *enosis* as what is desirable and 'an independent Cyprus' as what is feasible, Makarios was ostensibly abandoning the struggle for uniting the island with Greece.<sup>238</sup>

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<sup>232</sup> *Ibid*, p.87.

<sup>233</sup> *Ibid*, p.89.

<sup>234</sup> Polyviou, op. cit. at p.90.

<sup>235</sup> *Ibid*, pp. 92, 93.

<sup>236</sup> *Ibid*, p.96.

<sup>237</sup> Makarios quoted in Kyle, op. cit. at p.15.

<sup>238</sup> Makarios quoted in Kızılyürek N., *Milliyetçilik Kısılcında Kıbrıs* (Gripped by Nationalism: Cyprus), (İstanbul: İletişim Yayınları, 2002) p.123.

However, according to Kızılyürek's interpretation, the idea of an independent Cyprus did not consist of settling the Cyprus problem by reaching an agreement with the Turkish Cypriot community; instead, an independent Cyprus for Makarios meant a Greek controlled sovereign state in Cyprus.<sup>239</sup> In light of this interpretation, the Turkish representative's opposition to a unitary state can be read as resisting the appropriation of power by Greek Cypriots and the eventual opportunity such appropriation would provide for *enosis*. In terms of the Greek representative's perspective, however, the Turkish emphasis on strict separation of functions between the state and the communities disguised the Turkish ambitions for partition.<sup>240</sup>

The reactivation of talks between the Turkish and the Greek Cypriot representatives took place with the intervention of the Secretary General of the United Nations. The negotiations were resumed on 8 June 1972 with constitutional experts from Greece and Turkey accompanying the Greek and the Turkish Cypriot representatives.<sup>241</sup> The talks between the parties continued for two years until they were interrupted by a coup d'état staged by the National Guard on 15 July 1974, and the ensuing military intervention of Turkey on 20 July 1974. Makarios' above-mentioned change of political direction played a central part in the events of 1974.

Despite Makarios' distinction between what was desirable and what was feasible, the Turkish community remained suspicious of Greek Cypriots' aspiration for union with Greece. However, Markides wrote that '[a]s early as 1965 a public opinion poll showed that most [Greek] Cypriots opted for continued independence' and added that '[t]he apparent reason for this change of mood [from supporting *enosis* to favouring independence] was the constant fear of Turkish invasion.'<sup>242</sup> In addition to the fear of a Turkish invasion, Markides'

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<sup>239</sup> *Ibid.*

<sup>240</sup> Polyviou, *op. cit.* at p.96.

<sup>241</sup> *Ibid.*, p.104.

<sup>242</sup> Markides K.C., *The Rise and Fall of the Cyprus Republic*, (New Haven: Yale University Press, 1977) pp. 76, 77.

analysis revealed several other factors that contributed to the shift in Greek Cypriots' political ambitions. Firstly, he pointed out that '[i]ndependence permitted the development of political organisations that could channel the variety of political interests which formerly were suppressed because of the nationalist struggle.'<sup>243</sup> Secondly, 'greater contact with Greece after independence erased the illusory views entertained by many former ardent enosists vis-à-vis the motherland.'<sup>244</sup> In this regard, Markides drew the reader's attention to the contrasts between mainland Greek and Greek Cypriot political and economic institutions. Accordingly,

[t]he absence of reactionary military movements (with the exception of EOKA) and dictatorships, a recurrent feature of Greek politics, allowed the Cypriots to develop their trade unions, their cooperatives, and a viable merchant class, which after independence contributed significantly to the high standard of living. Furthermore, in Cyprus a dynamic leftist party was allowed to grow unchecked, whereas in Greece the Left was severely suppressed and the party was forced underground. Fears arose that the union of the two countries would have adverse consequences for the Greek Cypriots and might reduce Cyprus to the status of another remote and neglected province of Greece.<sup>245</sup>

Finally, Markides considered the rapid economic growth and the emergence of mass media in the aftermath of the independence as 'secularising agents,' and he commented that '[these agents] break down the insulation of the society from the outside world and accelerate the decline and debunking of cherished traditional values and ideologies.'<sup>246</sup>

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<sup>243</sup> *Ibid*, p.77.

<sup>244</sup> *Ibid*, p.78.

<sup>245</sup> *Ibid*.

<sup>246</sup> *Ibid*, pp. 78, 79.

Two relevant results emerged from the combined effects of the above considered factors. The first was that, as a traditional nationalist ideology, *enosis* did not survive the transformation of the Greek Cypriot society.<sup>247</sup> The second was that, Makarios cooperated with the Communist party AKEL — which was the strongest party in Cyprus — by removing the ban imposed upon the party by the British and by offering the party five seats in the House of Representatives.<sup>248</sup> In turn, AKEL had reasons of its own to support Makarios in the Archbishop's politics of independence since union with Greece would have meant the proscription of the communist party, and would have involved Cyprus within the membership of NATO.<sup>249</sup>

Fading support for *enosis* and the emergence of successful cooperation between Makarios and the communists<sup>250</sup> were not considered favourably by the military regime in mainland Greece. Despite the declining support for *enosis*, there were several means by which the junta could manipulate the internal affairs of Greek Cypriots. First of these means was the presence of officers from mainland Greece in Cyprus which was sanctioned by the Treaty of Alliance.<sup>251</sup> In this regard, Crawshaw wrote that, '[t]he Greek officers were politically an unknown quantity, but in view of the army's irredentist tradition there was the inherent risk that individual officers far from home would use their position to propagate the doctrine of Enosis.'<sup>252</sup> More important than the Greek officers' presence was the secret return of Grivas to the island in 1971.

It was mentioned above that Grivas was called back to Greece in the aftermath of the Kophinou crisis in 1967. Hitchens wrote that in defiance of the agreement reached between Turkey and Greece after the crisis, the Greek junta facilitated Grivas' clandestine return to

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<sup>247</sup> *Ibid*, p79.

<sup>248</sup> *Ibid*, pp. 81, 82.

<sup>249</sup> *Ibid*, p.82.

<sup>250</sup> Makarios won the presidential election in 1968 with 98 percent of the votes against an opposition who advocated Enosis – Markides, *op. cit.* at p.82.

<sup>251</sup> Article IV of the Treaty of Alliance.

<sup>252</sup> Crawshaw (1978) *op. cit.* at p.380.

the island as a part of ‘a broader campaign of subversion’ against Makarios.<sup>253</sup> According to Markides, ‘Grivas remained to his death a fanatical zealot of Enosis and was prepared to torpedo any effort on the part of Makarios to reach an accommodation with the Turks that excluded Enosis.’<sup>254</sup> Finally, the political climate within the Greek Cypriot community was in itself ripe for dissident activities. In this regard Crawshaw stated that,

[t]he toleration of a police force split into political factions since the time of EOKA, the appointment of militant ex-guerrillas to positions of power, the massive importation of arms and their indiscriminate distribution created conditions in which subversion flourished.<sup>255</sup>

By the year of 1969, Markides noted that there were at least five known terrorist organisations which asserted leadership over the struggle for *enosis*; on his arrival, Grivas established a sixth by the name of EOKA B.<sup>256</sup>

In a letter addressed to the President of Greece, Makarios complained that the Greek officers who were attached to the National Guard — it will be remembered that the Guard was under Grivas’ leadership during the Kophinou crisis — were involved in manning and providing materials for EOKA B.<sup>257</sup> In addition, Makarios accused the National Guard of plotting against the state, requested the replacement of Greek officers with ‘military instructors’ for the restructuring of the Cyprus army, and declared his intention to put Cypriot officers in charge of the National Guard.<sup>258</sup> Crawshaw is of the opinion that while the junta entertained the idea of using force to remove Makarios from power as a last option, it was the Archbishop’s ‘determination to purge the National Guard’ that hastened the junta

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<sup>253</sup> Hitchens C., *Hostage to History: Cyprus – From the Ottomans to Kissinger*, (London: Verso, 1997) p.70.

<sup>254</sup> Markides, op. cit. at p.83.

<sup>255</sup> Crawshaw (1978) op. cit. at p.380.

<sup>256</sup> Markides, op. cit. at p.84.

<sup>257</sup> Makarios’ letter to President Ghizikis of Greece, 2 July 1974 – quoted in Crawshaw (1978) op. cit. at p.388.

<sup>258</sup> *Ibid.*

to resort to this option.<sup>259</sup> Thus, on 15 July 1974, the National Guard staged a coup d'état against the Presidency of Makarios in Cyprus.

Despite coming under heavy tank fire in the Presidential Palace, Makarios managed to escape, and via a British base on the island the Archbishop fled the country.<sup>260</sup> Wrongly announcing Makarios' death over the radio, the perpetrators of the coup declared Nicos Sampson as the new president.<sup>261</sup> According to Hitchens, '[t]he junta men banked on their ability to kill Makarios and to offer his cadaver as a symbol of goodwill to Turkey and to the United States. A relatively orderly division of the spoils would then follow, with something for everybody.'<sup>262</sup> Presumably, the junta relied on the notion that in the aftermath of getting rid of Makarios, an agreement on the basis of double *enosis* — which the United States and the NATO officials would appreciate — might be reached with the government of mainland Turkey.<sup>263</sup> However, the National Guard failed at its attempt to capture Makarios. In addition to this failure, the leadership of the coup made a crucial mistake in installing Sampson as the new president of Cyprus.

As was mentioned earlier, Nicos Sampson was a former EOKA gunman and the publisher of a newspaper. Hitchens described him as 'a well-known thug and a killer; a man devoid of education or culture, and [...] a relentless hater of Turks.'<sup>264</sup> Hitchens' description seems well-founded since, during the armed conflict in 1963-1964, Sampson was reported to lead vicious offensives on Turkish Cypriots.<sup>265</sup> In addition, O'Malley and Craig wrote

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<sup>259</sup> *Ibid*, pp. 388, 389.

<sup>260</sup> Foley and Scobie, *op. cit.* at pp. 174, 175.

<sup>261</sup> The major reasons why Sampson was installed as the President were that, before the coup was staged, one of the two foremost leaders of *enosis*, Grivas, had died and the other, Georghadis, had been assassinated.

<sup>262</sup> Hitchens, *op. cit.* at p.83.

<sup>263</sup> I use the phrase 'double *enosis*' to indicate a solution which is based upon the idea of uniting most part of Cyprus with Greece while partitioning the northern coast of the island as a Turkish military base. This idea was put forward by a former Secretary of State of the United States, Dean Acheson, in 1964. Produced in the aftermath of the Kokkina crisis, the plan was officially rejected by Makarios. However, it was favoured by the junta leadership — Grivas, too, was convinced of the strategic importance of appeasing Turkey en route to *enosis* — who used to plan as the basis for reaching an agreement with Turkey. Hitchens, *op. cit.* at pp. 58-65.

<sup>264</sup> *Ibid*, at p.83.

<sup>265</sup> Kyle, *op. cit.* at p.17; O'Malley and Craig, *op. cit.* at p.92; Oberling also noted 'Sampson's long history of violence against the Turkish Cypriot community,' (1991) *op. cit.* at p.11.

that ‘[Sampson] was a convicted EOKA assassin who boasted that he had killed someone for every year of his life.’<sup>266</sup> Furthermore, Oberling noted that, in 1969, Sampson was elected to the House of Representatives at the end of a campaign which called for ‘Death to the Turks.’<sup>267</sup> Finally, quoting Hitchens once again,

[Sampson’s] name alone was enough to send a *frisson* through the Turkish Cypriot quarter, which remembered him from 1963 and which had been frightened by the lurid and violent tone of his newspapers.<sup>268</sup>

Sampson’s propensity for violence manifested itself in the first days of his instalment as the president. In this regard, Cockburn reported that ‘[t]he armed offensive [which was initiated with the coup] continued for some days to purge the island of leftists and democrats, targeting Makarios supporters, members of the Communist Party (AKEL) and [...] Socialist Party (EDEK).’<sup>269</sup> According to Oberling, ‘[m]ore than a thousand Greek Cypriots were killed in less than a week.’<sup>270</sup> While in the first few days of the coup the new regime committed violence solely against Greek Cypriots, Hitchens pointedly remarked that ‘the Turkish Cypriots could not be expected to believe that Sampson was their friend.’<sup>271</sup> Sharing the same disbelief, Turkey staged a military intervention in Cyprus on 20 July 1974.

Justification for the Turkish intervention may be found in the provisions of the Treaty of Guarantee. Article II of the Treaty provided that Greece, Turkey and the United Kingdom ‘recognise and guarantee the independence, territorial integrity and security of the Republic of Cyprus.’ In addition, Article IV of the Treaty asserted that ‘[i]n so far as common or concerned action may not be possible, each of the three guaranteeing Powers reserves the

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<sup>266</sup> O’Malley and Craig, op. cit. at p.92.

<sup>267</sup> Oberling (1991) op. cit. at p.11.

<sup>268</sup> Hitchens, op. cit. at p.84. [emphasis in original]

<sup>269</sup> Cockburn, op. cit. at p.65.

<sup>270</sup> Oberling (1991) op. cit. at p.11.

<sup>271</sup> Hitchens, op. cit. at p.85.

right to take action with the sole aim of re-establishing the state of affairs created by the present Treaty.’ The go-ahead for the military intervention was given by the Turkish Prime Minister after he visited London and was convinced that the British government would not take common action in Cyprus.<sup>272</sup>

With the aim of creating a bridgehead in the northern coastal town of Kyrenia and from there to reach the Turkish enclave in capital Nicosia, the Turkish troops commenced ‘a sea- and air-borne operation’ on 20 July.<sup>273</sup> The immediate effect of the operation was that the Greek junta announced a cease-fire on 22 July. The cease-fire revealed the junta’s incapacity to act against the Turkish intervention. They had misjudged the Turkish threat to invade, were not able to send immediate support to Cyprus, and were not prepared to declare war against Turkey. This total failure marked the end of the junta regime in Greece. On 23 July, the political power in Greece was handed to a civilian government.<sup>274</sup> On 25 July, Foreign Ministers of Britain, Greece and Turkey met in Geneva to agree upon the conditions of a cease-fire.

It was agreed that ‘the areas controlled by the armed forces should not be extended, that all Turkish enclaves occupied by Greek and Greek Cypriot forces should immediately be evacuated and that military and civilian detainees should be exchanged as soon as possible.’<sup>275</sup> On 9 August, a second conference gathered in Geneva which involved the Greek and the Turkish Cypriot representatives. The conference took place in a tense atmosphere due to the fact that neither side to the conflict obeyed the first Geneva agreement; the Turkish army continued to establish new military positions with continuous flow of troops and supplies, and the National Guard still occupied the Turkish enclaves.<sup>276</sup>

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<sup>272</sup> Cockburn, op. cit. at p.66; Crawshaw (1978) op. cit. at p.389.

<sup>273</sup> Crawshaw (1978) op. cit. at p.389.

<sup>274</sup> *Ibid*, p.390.

<sup>275</sup> *Ibid*, p.391.

<sup>276</sup> *Ibid*.

Central to the second conference was the question of future constitutional arrangements for Cyprus. The views presented by the sides resembled the positions they had taken during the pre-1974 negotiations. While the Greek Cypriot representative spoke of a ‘geographical cohesion that held out the spectre of partition,’ the Turkish side demanded ‘a fully fledged system of geographical federation.’<sup>277</sup> The conference reached a deadlock with the Turkish authorities’ rejection of the Greek Cypriot representative’s demand to adjourn for thirty-six hours to consider the proposals.<sup>278</sup> In the aftermath of this deadlock, the Turkish army resumed its southward advance and a cease-fire was ordered on 16 August after almost forty percent of the island came under the Turkish army’s control.<sup>279</sup>

Fearing the oncoming advance of the Turkish army, 180,000 Greek Cypriots fled from their homes in the north to take refuge in the south.<sup>280</sup> In accordance with an agreement, which was reached between the Greek and the Turkish Cypriot representatives, Turkish Cypriots were allowed to cross from south to the Turkish occupied north.<sup>281</sup> The migration of a large number of Turkish Cypriots established the geographical basis for a divided Cyprus. Since 1975, the year in which the sides resumed inter-communal discussions, Greek and Turkish Cypriots continue to negotiate the terms for reuniting the island. In the next part of this chapter, I briefly consider the processes which led to Turkish Cypriots’ unilateral declaration of independence. This declaration was made in the aftermath of yet another round of negotiations. I present the gap between parties’ respective approaches to the Cyprus problem which now included an added complexity of the uprooted populations and occupied territories.

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<sup>277</sup> Polyviou, *op. cit.* at p.172; Crawshaw (1978) *op. cit.* at p.392.

<sup>278</sup> Crawshaw (1978) *op. cit.* at p.393.

<sup>279</sup> *Ibid*; Kyle, *op. cit.* at p.18.

<sup>280</sup> Crawshaw (1978) *op. cit.* at p.395; Kyle, *op. cit.* at p.19.

<sup>281</sup> Kyle, *op. cit.* at p.19, Oberling (1991) *op. cit.* at p.13.

### Part Three

#### The Unilateral Declaration of Independence and International Non-recognition

The Turkish occupied region of Northern Cyprus provided a safe haven for the Turkish Cypriots, who, for a decade, lived in the enclaves under economic isolation and fear of violence. The geographical separation of the communities, however, was not a final solution to the Cyprus problem. The sides resumed inter-communal negotiations in 1975. By demanding the return of the refugees to their homes, the Greek Cypriot proposals were asking for a federal solution which did not involve a geographic separation; as opposed to this, the Turkish Cypriot proposals were calling for ‘a Federal Republic composed of two Federated States, one in the north for the Turkish national community, and one in the south for the Greek national community.’<sup>282</sup>

In *Kıbrıs'ta Federalizm* (Federalism in Cyprus), Kızılyürek and Erhürman wrote that the Greek representative was authorised by President Makarios to negotiate for a federal solution which was based upon several Greek and Turkish cantons.<sup>283</sup> In addition, Kızılyürek and Erhürman reported that the essential aspects of the Greek proposals were the demand for a powerful central government, freedom of movement and acquisition of property throughout the island.<sup>284</sup> These demands contrasted with the Turkish proposal for a bi-zonal federation with a less powerful central government that allowed greater autonomy for the federated states.<sup>285</sup> These divergent positions presented by the sides in 1975 formed the basis of inconclusive negotiations for the next four decades.

In relation to the differences in parties' approach to the problem, Erhürman argued that since the 1970s to present, Greek Cypriots continued to suspect every set of new Turkish Cypriot proposals as promoting two separate states; and similarly, Turkish Cypriots

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<sup>282</sup> Oberling (1982) op. cit. at pp. 200, 201.

<sup>283</sup> Kızılyürek N., Erhürman T., *Kıbrıs'ta Federalizm* (Federalism in Cyprus), (Lefkoşa: Işık Kitabevi, 2009) p.80.

<sup>284</sup> *Ibid*, pp. 80, 81.

<sup>285</sup> *Ibid*, p.81; Oberling (1982) op. cit. at p.202.

considered every set of new Greek Cypriot proposals as envisioning a solution not on the basis of a federal but a unitary state.<sup>286</sup> On the one side of the negotiating table, there was the Turkish Cypriot community that, after a decade of atrocities and economic hardship, was experiencing the relative safety of northern Cyprus. Therefore, one could not expect this community to concede a plan that was not based upon the geographical separation of the Greek and the Turkish communities. On the other side of the negotiating table, there was the Greek Cypriot community that continuously distrusted Turkish Cypriots' ambition for partition. Consequently, it could not be expected from the Greek Cypriot leadership to accept a solution that was based upon the geographical separation of the communities — especially if such a solution meant that the Greek Cypriot refugees of 1974 could not return to their homes.

The credibility of the Greek Cypriots' suspicions considerably increased with the Turkish community's unilateral declaration of independence in the northern part of the island. Between the deadlock of disparate arguments and continued mistrust, Turkish Republic of Northern Cyprus (TRNC) was proclaimed on 15 November 1983. In the following passage, Tamkoç explained the connection between the inter-communal negotiations and the declaration of independence:

Toward the end of 1983, when in the course of intercommunal talks, it became quite apparent that the Greek Cypriot leadership, encouraged and prodded [*sic*] by Greece, was not going to budge from its position in denying the Turkish Cypriot community its right of self-determination the Turkish leaders finally concluded that the time had come for the proclamation of the independence of their State.<sup>287</sup>

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<sup>286</sup> Erhürman T., *100 Soruda Kıbrıs'ta Federasyon* (In 100 Questions: Federation in Cyprus), (Lefkoşa: Işık Kitabevi, 2009) p.32.

<sup>287</sup> Tamkoç M., *The Turkish Cypriot State – The Embodiment of the Right of Self-determination* (London: K. Rustem & Brother, 1988) p.117.

The underlying assumption of Tamkoç was that the Turkish Cypriot community had a right of self-determination and the futility of the talks resulted in the denial of this right.

The idea of Turkish Cypriots' right to self-determination stemmed from the perception that '[this right] was exercised in 1960 jointly by the two communities which were recognised as co-founders of the bi-communal Republic of Cyprus,' that regardless of the numerical gap between the Greek and the Turkish populations, both the communities were signatories to the treaties which established the Republic.<sup>288</sup> Therefore, authors who argued for the legitimacy of the TRNC stressed that with the events of 1963, the constitutional arrangements of the bi-communal Republic of Cyprus were destroyed. Hence, post-1963 Greek administration could not be accepted as the legitimate government of the *bi-communal* Republic.<sup>289</sup> While the proclamation of the TRNC was the outcome of exercising the right recognised by the Zurich and London agreements, the perceived demise of the bi-communal state of the Republic and the inconclusive negotiations were portrayed as the reasons that necessitated such an outcome.

International opinion, however, projected a different perspective. Joseph argued that the United Nations accorded 'an indirect recognition of the legality and the constitutionality of Makarios' "Turkish free" government' by rejecting a claim by the then Vice-President Kutchuk against the legality of the Greek Cypriot delegate at the Security Council in 1964.<sup>290</sup> Kutchuk's argument was that in the absence of the Vice-president and the Turkish ministers from their offices, appropriate constitutional sanctions were not given to the Greek Cypriot delegate.<sup>291</sup> In addition to this, it was presented earlier in the chapter that Resolution 186 (4 March 1964) of the Security Council called upon the 'Government of Cyprus,' which by then functioned as a Greek administration without the participation of the Turkish officials,

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<sup>288</sup> Necatigil, op. cit. at p.222.

<sup>289</sup> Tamkoç, op. cit. at p.114; Oberling (1991) op. cit. at p.16; Necatigil, op. cit. at pp. 223 - 225.

<sup>290</sup> Joseph S. J., *Cyprus: Ethnic Conflict and International Politics*, (Hampshire: Macmillan Press Ltd, 1997) p.100.

<sup>291</sup> *Ibid.*

to act against violence and bloodshed in the island. To a considerable extent, the two incidents mentioned above support the notion that the international community did not regard the Republic of Cyprus as extinct and considered the Greek administration as the legitimate government of Cyprus.

Almost two decades later, the Security Council repeated its view that the Republic of Cyprus was not extinct by calling upon ‘all states to respect the sovereignty, independence, territorial integrity and non-alignment of the Republic of Cyprus.’<sup>292</sup> In accordance with this view, the Council resolved that the Turkish Cypriots’ unilateral declaration of independence ‘is incompatible with the 1960 Treaty concerning the establishment of the Republic of Cyprus and the 1960 Treaty of Guarantee’, and that ‘the attempts to create a ‘Turkish Republic of Northern Cyprus’ is invalid, and will contribute to a worsening of the situation in Cyprus.’<sup>293</sup> The final clause of the resolution called upon ‘all states not to recognise any Cypriot state other than the Republic of Cyprus.’<sup>294</sup>

Thus far in this chapter, I presented Turkish Cypriots’ struggles to maintain their communal being within the context of the constitutional provisions of the Republic of Cyprus. With the events of 1974, the ensuing demographic separation, and the unilateral declaration of independence in 1983, these struggles enter the context of international law. The overall purpose of the case study is to account for recognition as an essential element, in practice, for the very being of a community; to show, as Jan Klabbers submitted, that ‘it is next to impossible for a state to survive without recognition.’<sup>295</sup> Turkish Cypriots’ struggles, until the declaration of 1983, can be interpreted as the community’s attempt to gain recognition from Greek Cypriots as their politically equal partners in the new Republic. Although the initial struggle for recognition took place within the context of domestic law,

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<sup>292</sup> Resolution 541, Security Council, The United Nations, 18 November 1983.

<sup>293</sup> *Ibid.*

<sup>294</sup> *Ibid.*

<sup>295</sup> Klabbers J., *International Law*, (2nd Ed.), (Cambridge: Cambridge University Press, 2017) p.78.

its refusal locked the Turkish community in a constitutional crisis with existential repercussions.

In light of these existential repercussions, Turkish Cypriots internationalised their struggle for recognition. The unilateral declaration of independence can be interpreted as an attempt to safeguard the necessary means to maintain the very being of a community — means which have long been denied to Turkish Cypriots by the futility of inter-communal negotiations. As such, the combined consequences of the constitutional crises and the unresolved negotiations accentuate the impact of international non-recognition upon the existence of the Turkish community. It is against this background that I evaluate international community's approach to exclude the relational element of coming-into-being. In the next part of this chapter, I present this evaluation through an account of the consequences of non-recognition upon the Turkish Cypriot community.

## **Part Four**

### **Existential Consequences of Non-recognition**

#### **4.1. Introduction**

In the final part of the case study, I focus upon the consequences of the Security Council's resolution which called for the non-recognition of the TRNC. I consider these consequences within three different contexts: international trade, international travel, and property ownership. Insofar as these affairs are vital for a community to maintain its being, I highlight the role recognition played in hindering Turkish Cypriots' operations in all of these contexts. I show that such hinderance renders the Turkish community heavily dependent upon economic support from Turkey.

In the latter section of the part, I consider the political reverberations of this economic dependence. I expose international law's inability to provide Turkish Cypriots with necessary means to defend against the ramifications of Turkey's tutelage. I argue that

this inability is rooted in international community' rigid approach to disregard the relational element of existing as an entity under international law. I show that, apropos the Turkish Cypriot community, such disregard is manifest in the failure to take into account a set of relations that have, more than half a century, been generating the existential cul-de-sac.

As noted earlier, the Security Council of the UN reacted to the proclamation of the TRNC with Resolution 541 (1983). This resolution regarded the TRNC as invalid and called for its non-recognition. In the following year, the Council repeated its stance against the TRNC by adopting Resolution 550. Accordingly, the Council '[reiterated] the call upon all States not to recognise the purported State of the "Turkish Republic of Northern Cyprus" set up by secessionist acts and [called] upon them not to facilitate or in any way assist the aforesaid secessionist entity.'<sup>296</sup> Brus et al. reported that the Security Council's call not to facilitate or assist the Turkish Cypriot state did not result in an outright ban on trade or other forms of cooperation with the Turkish Cypriots.<sup>297</sup> Instead, it was argued that, 'the Greek Cypriots who enjoy exclusive access to international forums as the only internationally recognised government of Cyprus, were gradually successful in making trade and other economic relations with Northern Cyprus an unattractive option for other countries.'<sup>298</sup> In what follows, I show that, despite the fact that an outright ban on trade or travel was not occasioned by the relevant resolutions, behind Greek Cypriots' success was the very issue of recognition. In other words, the international perception that the Turkish Cypriot state was not recognised played the central role for denying this community trade, travel, and property rights. I rely upon the existential effects of this perception to affirm recognition as an essential element in achieving and maintaining communal existence.

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<sup>296</sup> Resolution 550, Security Council, the United Nations, 11 May 1984.

<sup>297</sup> Brus M., Akgün M., Blockmans S., Tiryaki S., Van den Hoogen T., Douma W., *A Promise to Keep: Time to End the International Isolation of the Turkish Cypriots*, (İstanbul: Tesev Yayınları, 2008) p.21.

<sup>298</sup> *Ibid*, p.26.

## 4.2. Trade, Travel, and Property Rights

A major hindrance to the Turkish Cypriot trade took place in 1994 when the European Court of Justice ruled that the certificates of origin and phytosanitary certificates issued by Turkish authorities in the northern region of Cyprus could not be accepted by the European Economic Community.<sup>299</sup> The following sentence quoted from the judgment illustrates the central aspect of this decision:

It would be impossible for an importing State to address enquiries to the departments or officials of an entity *which is not recognised*, for instance concerning the contaminated products or certificates that are incorrect or have been interfered with. Clearly only the authorities of the Republic of Cyprus are in a position to take action following complaints connected with the contamination of plant products exported from Cyprus.<sup>300</sup>

While the certificates of origin were necessary for preferential treatment of goods from Cyprus within the European Economic Community, goods such as citrus products and potatoes required additional phytosanitary certificates according to the Plant Health Directive 77/93 of the EEC.<sup>301</sup> Without the preferential treatment, the costs of the Turkish Cypriot agricultural products increased and the competitiveness within the European market was lost.<sup>302</sup>

According to Brus et al., '[u]ntil 1994, the EC [European Community] was the main trading partner of the Turkish Cypriots, with agricultural products — mainly citrus fruits and potatoes — being the major exports'.<sup>303</sup> In addition, it was reported that '[i]n 1994,

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<sup>299</sup> *Regina v Minister of Agriculture, Fisheries and Food* (Case C-432/92) 5 July 1994; [1995] 1 C.M.L.R 569, pp. 608-610.

<sup>300</sup> *Ibid*, Para [63] of the Judgement, p.610. [*my emphasis*]

<sup>301</sup> *Ibid*, p.572.

<sup>302</sup> Hatay M., Mullen F., Kalimeri J., 'Intra-Island Trade in Cyprus: Obstacles, oppositions and psychological Barriers', PCC Paper 2/2008 (Oslo: International Peaces Research Institute, 2008) p.8.

<sup>303</sup> Brus, et al., op. cit. at p.27.

agricultural products corresponded to 48.1 per cent of Northern Cyprus' total export volume with 23.4 per cent of the Turkish Cypriot working population employed in the sector.<sup>304</sup> The loss of competitiveness in the European market meant that the Turkish Cypriot community were now devoid of their economic powerhouse.

Another issue that causes an additional impediment to the economic well-being of the Turkish Cypriot community concerns the sea- and air-ports in northern region of the island. At the centre of this issue, too, is the question of recognition. Since the TRNC is not recognised as an independent state, the decision of the Republic of Cyprus in 1974 to close all the sea- and the air-ports in Northern Cyprus<sup>305</sup> is respected by the international community. An instance which, in this regard, illustrates the international community's attitude took place in the year of 2006 when a north Cyprus based airline made an application to the authorities in the United Kingdom to operate direct flights from London airports to Ercan airport in Northern Cyprus.<sup>306</sup> The reason for the rejection of this application was that 'the Republic of Cyprus had not designated Ercan as a recognised Cypriot airport under the terms of the Chicago Convention.'<sup>307</sup>

A final obstacle to achieving a healthy economy in Northern Cyprus is the lack of certainty in property rights in the northern region. In a report dated March 2006, International Crisis Group recognised this uncertainty as diminishing 'foreign direct investment and private sector development.'<sup>308</sup> The root cause of the ambiguity in property rights can also be traced back to the issue of recognition. As was mentioned earlier, the Turkish intervention of 1974 resulted in the migration of 180,000 Greek Cypriots to the south of the island. Emine Çolak reported that with the provisions of Article 159 of the

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<sup>304</sup> *Ibid*, p.27 – Brus, et al., quoting from Talmon S., 'The Cyprus Question Before the European Court of Justice,' *European Journal of International Law*, 2001, vol. 12, pp. 727-750.

<sup>305</sup> DEKAP and DAÜ-SAM, *Restrictions, Isolations and Vendettas: The Lot of the Turkish Cypriots Since 1963*, (Ankara: DEKAP and DAÜ-SAM, 2007) p.42.

<sup>306</sup> *Ibid*, p.43.

<sup>307</sup> *Ibid*.

<sup>308</sup> International Crisis Group, 'The Cyprus Stalemate: What's Next?' *Europe Report No. 171*, 8 March 2006, p.2.

constitution of the TRNC, ‘the ownership of all property in North Cyprus ‘abandoned’ by Greek Cypriots since February 1975 was deemed to have passed to the TRNC and the Land Registry records were amended accordingly, technically depriving the previous owners of their title according to the domestic law of the North.’<sup>309</sup>

However, the international community’s stance on the issue of recognition of the TRNC played a central role in determining the rights of the previous owners. In the case of *Loizidou v Turkey*, the European Court of Human Rights ruled that,

[i]t is evident from international practice and the various strongly worded resolutions [i.e. Resolution No.541 (1983) and No.550 (1984) of the UN Security Council] that the international community does not regard the “TRNC” as a State under international law and that the Republic of Cyprus has remained the sole legitimate Government of Cyprus [...] Against this background the Court cannot attribute legal validity for purposes of the Convention to such provisions as Article 159 of the fundamental law on which the Turkish Government rely.<sup>310</sup>

The common aspect of the above considered separate instances of economic isolation is the international non-recognition of the TRNC. While the TRNC remains unrecognised, the limited access to external markets, increased costs of transport and uncertainty of title to property continue to repel foreign investment and prevent the development of the private sector. Thus, the Turkish Cypriot economy relies heavily upon an increasingly inefficient public sector.<sup>311</sup> This reliance, in turn, generates existential problems at a different level.

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<sup>309</sup> Çolak E., ‘Property Rights in North Cyprus’, Turkish Cypriot Human Rights Foundation Publication No: 2, April 2012, p.47.

<sup>310</sup> *Loizidou v Turkey*, 18 December 1996 (1997) 23 E.H.R.R. 513, p.527.

<sup>311</sup> International Crisis Group, op. cit. at p.2.

### 4.3. Political Consequences of Turkey's Tutelage

The combined effects of non-recognition and the inefficiency of the public sector render Turkish Cypriots financially dependent upon Turkey and the form of this dependence engender political ramifications.<sup>312</sup> As the financier of the public sector,<sup>313</sup> Turkey assumes the right to manage this sector more efficiently. Such an assumption, however, permits, what may be called, the act of meddling with the internal affairs of the Turkish Cypriot community. In this regard, Dodd commented that, '[i]nitiatives stemming from Turkey to tighten up the conditions of work for civil servants, and the many others on the large public payroll, were greatly resented [by Turkish Cypriots].'<sup>314</sup>

Political consequences also follow from Turkey's military presence in the northern region of Cyprus. In describing the role of the Turkish army in Cyprus, Christos Ioannides wrote that '[s]ince 1974, the TRNC has been totally integrated militarily with Turkey,'<sup>315</sup> and that, '[t]he Turkish army is responsible for both the external and internal security of the TRNC.'<sup>316</sup> The most significant consequence of this responsibility is that, the Turkish Cypriot police force is brought under the command of the mainland Turkish army.<sup>317</sup> Another factor that links the Turkish army to political interference in northern Cyprus is the claim that the youth movement of the mainland Turkish Nationalist Movement Party, also known as the Gray Wolves, are engaging in politically motivated illegal activities in northern Cyprus.<sup>318</sup>

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<sup>312</sup> Brus, et al., op. cit. at p.26; International Crisis Group, op. cit. at p.2.

<sup>313</sup> International Crisis Group reported that '[The Turkish Cypriot] economy has been propped up by direct budgetary aid from Turkey,' op. cit. at p.2.

<sup>314</sup> Dodd C., *Disaccord on Cyprus: The UN Plan and After*, (Cambridgeshire: Eothen, 2004) p.11.

<sup>315</sup> Ioannides C.P., *In Turkey's Image*, (New York: Aristide D. Caratzas, 1991) p.163.

<sup>316</sup> *Ibid.*

<sup>317</sup> *Ibid.*; Dodd (2004) op. cit. at p.11; The Constitution of the TRNC – Part 7, Article 10.

<sup>318</sup> Cyprus Action Network, 'Overall View of Political Oppression in Northern Cyprus', access: <http://www.cypirusaction.org/humanrights/terrorism/longintro.html> (date of access: 27 July 2012); Cyprus Action Network, 'Human Rights Violations in Cyprus Before the Referendum', access: [www.cypirusaction.org/humanrights/south/report.pdf](http://www.cypirusaction.org/humanrights/south/report.pdf) (date of access: 27 July 2012); Keskiner E., 'A Murdered Turkish Cypriot Columnist', 23 Nov 2002, access: <http://www.zcommunications.org/a-murdered-turkish-cypriot-columnist-by-eser-keskiner> (date of access: 27 July 2012).

In his book *Özel Harp Dairesi (Special Warfare Department)*, journalist Ecevit Kılıç revealed that the Grey Wolves formed the civil component of the Special Warfare Department and took part in assassinations and massacres in which the Department was implicated during the 1970s and 1980s in Turkey.<sup>319</sup> The Cyprus Action Network — a human-rights activists group — maintains that since 1974, ‘[t]here has been more than 31 bombings, 10 arsons, 4 gun firings, and 1 murder with political motivations in the Turkish-controlled part of Cyprus’ and that no one has ever been charged for these crimes.<sup>320</sup> Considering the facts that the Special Warfare Department were active in Cyprus via the operations of the TMT, that the Grey Wolves formed a unit of this Department, that the Turkish Cypriot police forces are under the command of the Turkish Army, and that no one was charged for the politically motivated crimes, the claim that the Turkish army interferes in political affairs in the northern part of Cyprus gains more credibility.

In addition to the claims of physical violence, Özkaleli wrote about ‘mental violence’ that has been directed against any person who has been critical of Turkey’s policies for Cyprus.<sup>321</sup> Therefore, in several occasions, political criticism of Turkey resulted in people being detained by the police or losing their jobs, and being branded a ‘traitor’ or ‘a spy for the Greek Cypriot administration.’<sup>322</sup> However, Ioannides considered the presence of the Turkish army as one of the two factors that affect the Turkish Cypriots’ political will. The second of these factors is the ‘legal and political incorporation of Anatolian settlers into the TRNC.’<sup>323</sup>

Hatay informed the reader that in the aftermath of the 1974 war and prior to the establishment of the TRNC, Turkey and the Turkish Cypriot administration ‘facilitated and

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<sup>319</sup> Kılıç E. *Özel Harp Dairesi (Special Warfare Department)*, (İstanbul: Güncel Yayıncılık, 2007) pp. 212–275 (Chapter 9 of the book entitled: Sivil Unsurlar ve Katliamlar (Civil Components and Massacres)).

<sup>320</sup> Cyprus Action Network, ‘Overall View of Political Oppression in North Cyprus’ access: <http://www.cyprusaction.org/humanrights/terrorism/longintro.html> (date of access: 27 July 2012).

<sup>321</sup> Özkaleli U., ‘Annan Planı Öncesinde Kıbrıslı Türklerin Değişen Kimlik Algısı’, in Hasgüler M., Özkaleli M., *Kıbrıs’ta Kimlik ve Değişim (Identity and Change in Cyprus)*, (İstanbul: Alfa, 2012) p.54.

<sup>322</sup> *Ibid.*

<sup>323</sup> Ioannides, op. cit. at p.165.

encouraged an immigration of Turkish nationals from Turkey.<sup>324</sup> While this policy served the purposes of reinforcing the Turkish population and meeting the needs for the establishment of a feasible economy in northern Cyprus,<sup>325</sup> Hatay argued that the ‘influx of Turkish nationals changed the character of the demographic problem in Cyprus as it added a new element to the population ratios that have historically been important for power-sharing arrangements and power struggles on the island.’<sup>326</sup> Approaching the same problem from a different perspective, Ioannides argued that,

[...] Turkish-Cypriot autonomy, which has been eroding steadily since the 1950s, has diminished even further with the legal and political incorporation of the settlers into the TRNC. The consequence of this process has been to eliminate the vestiges of an autonomous Turkish-Cypriot collective will. Indeed, Turkish Cypriots have ceased to have an *identifiable* political will of their own.<sup>327</sup>

While there is a considerable percentage of the population who believe that financial aid from Turkey is not a solution to the economic ailment of the Turkish Cypriot community and that some accuse Turkey of maintaining such dependency for her own interests in Cyprus,<sup>328</sup> the most significant sign of discontent against the current political *status quo* was given by the Turkish Cypriot community in 2004.

In a referendum for the UN sponsored plan to unite the island, 64.9 percent of the participating Turkish Cypriots voted for the implementation of the plan.<sup>329</sup> In other words,

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<sup>324</sup> Hatay M., ‘Is the Turkish Cypriot Population Shrinking?’ PRIO Report 2/2007, (Oslo: International Peace Research Institute, 2007) p.2.

<sup>325</sup> *Ibid*, Hatay quoted from İnanç G., *Büyükkelçiler Anlatıyor: Türk Demokrasisinde Kıbrıs (1970-1991)*, (İstanbul: Türk İş Bankası Kültür Yayınları, 2007) pp. 77-80; Bahçeli T., *Greek-Turkish Relations Since 1955* (London: Westview, 1990) p.111.

<sup>326</sup> Hatay, *op. cit.* at p.3.

<sup>327</sup> Ioannides, *op. cit.* at p.167 [emphasis in original]

<sup>328</sup> Özkaleli, *op. cit.* at p.57.

<sup>329</sup> BBC News, ‘Cyprus Spurns Historic Chance,’ 25 April 2004, access: <http://news.bbc.co.uk/1/hi/world/europe/3656753.stm> (date of access: 25 July 2012).

the Turkish Cypriot community explicitly displayed their intention to solve the problem which has enclosed the community in a political crisis of being since 1963. Once again, however, external relations played a crucial role in determining this community's future. The plan was not enacted due to Greek Cypriots' rejection of the plan in a concurrently held referendum. The principal consequence of this rejection is that a major international effort to resolve the conflict was thwarted prolonging the political impasse that engulfs the Turkish Cypriot community within a crisis of being. Greek Cypriots remain disinclined to solve the constitutional conflict as its outcome helped this community's appropriation of state power. Turkish army remains stationed in Northern Cyprus and the Turkish government continues its project to restructure the public sector. For lack of recognition, Turkish Cypriots have to endure international law's inability to remedy these relational disadvantages.

## **Conclusion**

In the first two chapters of this thesis, I provided a case study of the Turkish Cypriot community to achieve two general purposes. The first purpose was to substantiate the role recognition played in determining the existence of the community. To achieve this purpose, I presented a lengthy account of the events surrounding the establishment of the Republic of Cyprus and the collapse of its constitutional arrangements. The central focus of this account was upon the manner in which Turkish Cypriots' relations with the Greek Cypriot community had an essential impact upon the very being of the former community. Within the domestic context, this manner consisted of the ways in which the Turkish community lost its share of sovereign power under the constitutional set-up of the Republic and were barred from regaining this power through futile inter-communal negotiations.

Within the international context, I focused upon international community's non-recognition of Turkish Cypriots' unilateral declaration of independence. I showed that the results of this non-recognition were the isolation of the Turkish Cypriot community and the

exacerbation of the community's economic dependence upon Turkey. I described the serious political repercussions of this dependence by referring to Turkey's interference with the community's public affairs and the former's continued military presence on the northern region of the island.

The second purpose of the case study was to demonstrate international law's inability to take into account the relational element of coming-into-being. To accomplish this purpose, I relied upon the combined outcomes of domestic negotiations and international non-recognition. I presented that, the loss of sovereign share and economic dependence generated an existential crisis which left this community vulnerable to political manipulation and demographic assimilation. My concluding argument is that, the aforementioned inability stems from international law's disregard of the existential effects which an entity's external relations have upon its being. In other words, the struggles of the Turkish Cypriot community and the resultant threats of oblivion cannot be grasped without the context of this community's relations which include Greek Cypriots, Britain, Greece, and Turkey.

These are relations in which certain rights and obligations that safeguard the being of an entity are either recognised and granted or not recognised and withheld. In relation to the establishment of the Republic of Cyprus, we observed that the respective political ambitions of the Greek and Turkish Cypriot communities were not granted. According to Britain, Greece, and Turkey, the significance of the Cyprus problem lay in preserving regional security and self-interest rather than recognising the wishes of the island's two communities. In relation to the form of independence granted to Cypriots, the Greek community did not recognise the Turkish community as a politically equal partner. In Turkish community's aspiration for partition, too, there was the question of recognising Greek Cypriots as reliable partners.

The relevance of the question of recognition is also manifest in Turkish Cypriots' relations with Greek Cypriots in the aftermath of the ethnic-strife. Regaining constitutional

powers or any other means of survival under the rubric of the Republic of Cyprus, for Turkish Cypriots, is contingent upon negotiating a solution with Greek Cypriots. To the extent, and it has been more than half a century now, that these negotiations constantly prove futile, Turkish Cypriots continue to find themselves economically dependent upon Turkey. This dependence marks another important relation that shapes the being of the community, albeit in an existentially threatening manner. International law's aforementioned disregard of the relational element of coming-into-being relates to turning a blind eye to all of these connections the combined effects of which is to trap Turkish Cypriots in a political impasse.

International law overlooks these effects in two ways. The first is by insisting on the non-recognition of the unilaterally declared state on the northern region of the island. While this insistence may be justified on the basis that the TRNC is an offshoot of Turkey's unlawful occupation of the northern region of the island.<sup>330</sup> It does still ignore the fact that the military occupation is also threatening the very being of the Turkish community. The second way is that, international law fails to provide any alternative means to safeguard the well-being of this community against the repercussions of futile negotiations and Turkey's repressive tutelage. The need for such alternative means could only arise if the relational element of coming-into-being were taken into account, in other words, if the international law took notice of the existential significance of Turkish Cypriots' relations.

Over the course of two chapters, I demonstrated the practical role external relations and recognition played in determining the being of the Turkish Cypriot community. In the next chapter, I question whether the prevalent theories of recognition of states under international law account for this role. Here, I also argued that international community's reaction to the struggles of Turkish Cypriots reflected an oversight of the relational element of existing as an entity. I return to this argument later on in the thesis to criticise international law's approach as a restrictive economy of recognition. The following assessment of the

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<sup>330</sup> Crawford J., *The Creation of States In International Law*, (2nd Ed), (Oxford: Clarendon Press, 2006) p.133.

prevalent theories and the eventual criticism of the international approach, in turn, shape the contours of my overall argument that recognition is imperative for the constitution of subjects under international law.

## CHAPTER THREE

### THEORIES OF RECOGNITION UNDER INTERNATIONAL LAW

#### Introduction

The case study presented in the previous chapter enunciated the central role one's relation to its others plays in determining the very being of a community. The need for recognition emerges as an essential manifestation of this role. However, under international law, such constitutive force is denied to the act of recognition. This denial is rooted in the prominent theoretical perception that recognition amounts to a declarative act by which the recognising party merely makes her political intentions known. My overall argument in this thesis, that recognition is imperative for the constitution of international subjects, has to contend with this prominent perception. To achieve this purpose, in this chapter, I argue that the prevalent theories of recognition of states under international law fail to account for the relational aspect of coming-into-being. I demonstrate that this failure is manifest in the constitutive theorists' perception of recognition as an act of sovereign consent, and in the declarative theorists' conception of international personality on an *ipso facto* basis.

The starting point of my argument is that, the prevalent theories of recognition of states cannot resist the atomistic conception of state sovereignty. Therefore, I commence this chapter with an analysis of the notion of absolute sovereignty. By focusing upon a short historical development of this notion, I demonstrate that the perception of states as absolute entities without any dependencies upon external beings comprises the modern understanding of sovereignty. I argue that this modern understanding is problematic to the extent that it assumes states to exist in a vacuum. In other words, the notion of absolute sovereignty lacks the relational element of coming-into-being; it does not deal with the possibility that relating to another being may be continuously determinative of one's existence. Instead, the modern understanding of sovereignty curbs the existential effects of mutual relation by introducing

the notion of sovereign consent; a sovereign state does not come into existence in an international community which may affect her very being, but as a self-relating entity who has the freedom to give or withhold consent in each of her individual relations and to determine the extent of her external obligations.

In the second part of the chapter, I demonstrate that the aforementioned problematic atomism taints the constitutive theorists' approach to describe the role of recognition. This approach embraces the notion of absolute sovereignty by considering recognition as an act of sovereign consent. An established state cannot be bound by new obligations towards an emerging state unless the former consents by recognising the latter. The outcome is that, the concepts of statehood and international personality are separated; the attainment of the latter is based on the arbitrary and subjective will of the established states; and, in the absence of a central authority to decide upon the question of recognition, international personality is rendered relative to the recognising state. I argue that the constitutive theory does not only produce these practical difficulties, by embracing the notion of absolute sovereignty, it misses the opportunity to account for recognition as a mutually constitutive imperative within the relational element of coming-into-being.

In the third part of this chapter, I argue that the scholars, whose ideas were central to the development of the declarative theory, placed the practical difficulties of the constitutive theory at the centre of their attention. In other words, the ontological question of whether an entity can *be* without a relation to another, or to what extent such a relation would come to constitute the being of both entities, did not occupy the thoughts of the declarative thinkers. Instead, these theorists concentrated upon the subjective arbitrariness of constitutive recognition perceived as a sovereign gesture of consent. I argue that this concentration extends the restrictive effects of the notion of absolute sovereignty into the domain of the declarative theory. Constitutive theorists' perspectives are curtailed by the intention to hold on to the underlying notion of absolute sovereignty of states. In turn, by assuming the

question of recognition to be whether such a curtailed perspective would work in practice, the declarative theorists expand the limiting effects of this underlying notion. A double failure is committed. Neither of the prevalent theories of recognition engages with the relational element of recognition — an element which is imperative for the personality of each entity. This is a double failure which, in turn, warrants a new search for a viable theoretical framework to understand this imperative effect. I present my departure from the prevalent theories of recognition in this chapter and set on a search for a new theoretical framework in the next.

## **Part One**

### **1.1. Absolute Sovereignty of States**

Under international law, states are regarded as sovereign entities. In this regard, Antony Anghie remarked that ‘sovereignty is the foundation of international law.’<sup>331</sup> Richard Joyce added that ‘[c]onventionally, modern sovereignty is considered an exclusive feature of nation-states.’<sup>332</sup> An attribute of this sovereignty is that it is absolute. In this part of the chapter, I focus upon two perspectives on what the notion of absolute may entail for state sovereignty. The first perspective is that states are absolute but only to a certain extent. In this view, the absoluteness of sovereignty is delimited by God or the laws of nature. The second perspective dismisses this limit and renders states absolute in the etymological sense of the word. However, both approaches present veritable problems. The former produces an oxymoron in that absolute state is nevertheless subjected to a source of law ostensibly higher than itself. The latter is implausible to the extent that an absolutely sovereign state comes

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<sup>331</sup> Anghie A., ‘Western Discourses on Sovereignty’ in Evans J., Genovese A., Reilly A., Wolfe P. (eds.), *Sovereignty: Frontiers of Possibility*, (Honolulu: University of Hawai’i Press, 2013) p.21.

<sup>332</sup> Joyce R., ‘Sovereignty After Sovereignty’ in Barbour C., Pavlich G. (eds.), *After Sovereignty: On the Question of Political Beginnings*, (London: Routledge, 2010) p.37.

into being among other absolutely sovereign states and their mutual relations continue to define the very being of each state.

In spite of the inherent problems, the two perspectives mark the progress towards a modern understanding of international law. Throughout this chapter, I argue that this understanding underlies the prevalent theories of recognition with restrictive effects. Grasping the nature of these problems and the manner in which they determine the modern perception of international law is, therefore, essential for illuminating, later in the chapter, the restrictive effects upon and the resultant shortcomings of the prevalent theories. I begin the first section of this part with a focus upon the work of whom Peter Fitzpatrick referred to as ‘the standard source of the modern idea of sovereignty’, namely, Jean Bodin.<sup>333</sup> I, then, move on to consider Thomas Hobbes’ definition of absolute sovereignty. I highlight two factors as relevant in the respective works of Bodin and Hobbes. Firstly, these authors provided an internal account of sovereignty which focused upon the sovereign’s relation with his people.<sup>334</sup> An internal account essentially falls within the domain of constitutional law and lacks a detailed study of sovereign’s relations with other sovereigns. Secondly, even though in their respective works Bodin and Hobbes were less concerned with a sovereign’s external relations, both authors imposed outer limits upon the absolute power of the sovereign by referring to the laws of God and nature. These references, in turn, create a paradox vis-à-vis the absoluteness of sovereignty.

In the second section of this part, I consider the respective works of Hugo Grotius and Emmer de Vattel. These works offer an external view on the notion of absolute sovereignty by applying the notion within the context of law of nations. Grotius’ work marks

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<sup>333</sup> Fitzpatrick P., ‘What are Gods to Us Now?: Secular Theology and the Modernity of Law’, *Theoretical Inquiries in Law* 8, 2007, p.168.

<sup>334</sup> Here I rely upon Wheaton’s distinction between internal and external sovereignties: ‘Internal sovereignty is that which is inherent in the people of any State, or vested in its ruler, by its municipal constitution or fundamental laws [...] External sovereignty consists in the independence of one political society, in respect of all other political societies. It is by the exercise of this branch of sovereignty that the international relations of one political society are maintained, in peace and in war, with all other political societies. Phillipson C., *Wheaton’s Elements of International Law*, (5th Ed.), (London: Stevens and Sons Limited, 1916) p.35.

the gradual secularisation of the notion of sovereignty as the paradoxical necessity to rely upon an external force diminishes. Vattel's thoughts on the given subject completes this secularisation and, thus, removes the paradox of the overarching power of God. The central tenet of Vattel's thought is sovereignty defined as a state's absolute freedom and independence from all externalities. The purpose of my reference to Vattel's work is to show that insofar as the first paradox is removed, a second is generated. I will use this second paradox, later in the chapter, as the basis of my critical assessment of the prevalent theories of recognition of states.

## **1.2. Absolute (Internal) Sovereignty: Bodin and Hobbes**

Bodin defined sovereignty as 'the absolute and perpetual power of a commonwealth.'<sup>335</sup> Elaborating upon the notion of absoluteness, Bodin remarked that '[...] sovereignty given to a prince subjected to obligations and conditions is properly not sovereignty or absolute power.'<sup>336</sup> One may perceive such sovereignty as an 'unbound entity,' 'an absolute law-making entity that does as it pleases, without restraint.'<sup>337</sup> The difficulty of this perception is, however, manifest when viewed in light of 'the fact that sovereigns do not exist in isolation, that they inhabit a universe which includes other sovereigns.'<sup>338</sup> Amidst a group of sovereigns 'acting as one pleases' presents a rather limited opportunity; based on the absoluteness of its sovereignty a state cannot, for instance, act upon its own volition to invade another state's territory. Such an act would, clearly, impinge upon the other state's absolute sovereignty.

An important point is to be discerned from the above-mentioned difficulty. Within the context of relations among states, absolute sovereignty has to be qualified. Contrary to

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<sup>335</sup> Bodin J., *On Sovereignty – Four chapters from the Six Books of The Commonwealth*, (Cambridge: Cambridge University Press, 1992) p.1.

<sup>336</sup> *Ibid*, p.8.

<sup>337</sup> Barbour and Pavlich, op. cit. at p.4.

<sup>338</sup> Angie, op. cit. p.19.

his initial emphasis on the unconditionality of the absolute power of the sovereign, Bodin also accepted that certain stipulations are, in fact, attached to the exercise of this power. However, these stipulations were not derived from a comparison of several sovereign states. Instead, Bodin referred to the law of God or nature as the source of obligations which bound the absolute power of sovereign entities.<sup>339</sup> Reference to Bodin's argument on these obligations is relevant to demonstrate that even 'the standard source of the modern idea of sovereignty' accepted that 'absolute' power of the sovereign cannot entirely be absolute.

Bodin narrated a dialogue which took place in the aftermath of the death of the Great King of Tartary. The purpose of this dialogue is to illustrate the role of the conditions attached to the absolute powers of the sovereign. The dialogue takes place between the people – who chose the new king among the deceased's sons or nephews – and the new king. After seating the newly elected king on to the throne, the people would say:

“We beg you, and also wish and bid you, to reign over us.” The king then says, “If that is what you want of me, you must be ready to do as I command, and whom I order killed must be killed forthwith and without delay, and the whole kingdom must be entrusted to me and put into my hands.” The people answers, “So be it.” Then the king, continuing, says, “The word that I speak shall be my sword,” and all the people applaud him.<sup>340</sup>

The absolute aspect of the sovereign power is demonstrated with reference to the most brutal of acts — the killing of someone. The king's power is unlimited to the extent that he can demand that someone be killed, and this vicious act must be carried out instantly. The rest of the inauguration ritual, however, goes on to show that the king takes 'absolute' power subject to the law of God. The procession continues with getting hold of the king from the

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<sup>339</sup> Bodin, *op. cit.* at p.8.

<sup>340</sup> *Ibid.*

height of the throne and seating him on a lowly bench on the ground. This is followed by the king's acknowledgement of God with which the people remind him that good governance will have his every wish granted, whereas the opposite would result in being stripped of all his power so that 'even this bench on which you sit will not be left to you.'<sup>341</sup> Finally, the elected person will be raised back on to the throne and acclaimed as the new king. This exchange between the people and the new king, according to Bodin, marked a power that is absolute and sovereign, 'for it has no other condition than what is commanded by the law of God and of nature.'<sup>342</sup>

Despite the absence of the word 'absolute', Hobbes's account of sovereignty is similar to Bodin's conception of the term as it also suggests the accumulation of unqualified power to the person of the sovereign. In Hobbes's formulation, sovereign is the one who carries the person of the commonwealth.<sup>343</sup> Sovereignty is, thus, established by the unification of the multitude under the authority of one man to whom the multitude would 'confer *all* their power and strength.'<sup>344</sup> Hobbes further elaborated this conferral by referring to the submission of the will and judgment of everyone to the will and judgment of the sovereign.<sup>345</sup> Since, according to Hobbes, the sovereign bears each person of the multitude and forms a single will out of a plurality of voices, this formulation is represented with the figure of the great Leviathan; defined also as the mortal god, Leviathan would ostensibly have the unrestrained sovereign power to maintain and defend the peace of the commonwealth.<sup>346</sup>

As Fitzpatrick informs us, 'in Leviathan Hobbes sets the domain of this mortal god distinctly and self-sufficiently apart from the religious', that is to say, from the Immortal

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<sup>341</sup> *Ibid.*

<sup>342</sup> *Ibid.*

<sup>343</sup> Hobbes T., *Leviathan*, (Oxford: Oxford University Press, 1996) p.114.

<sup>344</sup> *Ibid.* [*my emphasis*]

<sup>345</sup> *Ibid.*

<sup>346</sup> *Ibid.*

God.<sup>347</sup> However, this self-sufficiency does not necessarily warrant an unchecked power. Subjects' obedience to the sovereign ceases with the failure of the latter in upholding the laws of nature, particularly, that of every man's right to protect himself.<sup>348</sup> In Hobbes's words, 'subjects owe to sovereigns, simple obedience, in all things, wherein their obedience is not repugnant to the laws of God.'<sup>349</sup> Hobbes thought of the laws of nature as one of three different ways God asserted his laws and one which could be discerned by 'the natural dictates of right reason.'<sup>350</sup> Hobbes described the first law of nature as 'a general rule, found out by reason, by which man is forbidden to do, that, which is destructive of his life, or taketh away the means of preserving the same.'<sup>351</sup> Following this first rule, people's establishment of the commonwealth and the sovereign's use of absolute power therein becomes conditional upon the need to maintain peace and defend against other people.<sup>352</sup>

An alternative interpretation of absoluteness, in Hobbes's account, focuses upon sovereign's independence from persons from within the commonwealth; thus, 'the sovereign is not subject to the command of any other person.'<sup>353</sup> Such an interpretation ostensibly opens up the possibility of a particular type of unlimited absoluteness:

It could be argued that since the sovereign is only answerable to God and is also in a position (vis-à-vis its subjects) to decide what God's demands are, this subjection has no real effect on its absolute temporal authority.<sup>354</sup>

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<sup>347</sup> Fitzpatrick P., 'Leveraging Leviathan', in Barbour and Pavlich (eds.), *After Sovereignty: On the Question of Political Beginnings*, (London: Routledge, 2010) p.13.

<sup>348</sup> Hobbes, op.cit. at p.147.

<sup>349</sup> *Ibid*, p.235.

<sup>350</sup> *Ibid*, pp. 236, 237.

<sup>351</sup> *Ibid*, p.87.

<sup>352</sup> *Ibid*, p.115

<sup>353</sup> Joyce R., *Competing Sovereignties*, (London: Routledge, 2013) p.49.

<sup>354</sup> *Ibid*, p.52; in terms of the sovereign's decision on what God's demands are, Joyce is referring to Hobbes T., *Leviathan*, (London: Penguin, 1968) p.333.

Granted this absolute temporal authority, nothing would seem to stand in the way of the mortal God exercising its extensive supremacy.<sup>355</sup> Despite this supremacy, however, Richard Joyce argued that in Bodin's and Hobbes's accounts what we witness 'is not absoluteness in and of itself.'<sup>356</sup> Joyce explained that in these accounts, sovereignty 'relies on something other to it, in this case God, to justify its power.'<sup>357</sup> This reliance renders it impossible, in theory, to conceive a form of sovereignty which can genuinely be absolute. Joyce added that, in practice too, the commonwealth's claim to absolute temporal sovereignty would even be open to contest as a result of states' collisions with the Church in deciding what God's demands are.<sup>358</sup>

With these inherent doubts as to the attainability of authentic absoluteness in Bodin's and Hobbes' respective works two factors are relevant. The first factor is that, the focus of these accounts remains upon the establishment of sovereignty from an internal perspective. As Kinji Akashi remarked, 'Hobbes' discussions on the state of nature, and 'law' and 'right' therein, deal mainly with the establishment of a state by individual natural persons and not with the state of nature among states.'<sup>359</sup> That is to say, Hobbes (and we can also add Bodin here too) offers 'no resolved way in which the being-in-this-world of this mortal god could be constitutively comprehended.'<sup>360</sup> The second factor is that, even if one tries to comprehend the sovereignty of the commonwealth from an external perspective by taking into account commonwealth's relations with other states, one encounters an obstinate persistence upon the very same problematic notion of absoluteness. In what follows, I shift my attention to the works of Hugo Grotius and Emer de Vattel to demonstrate the manner

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<sup>355</sup> Fitzpatrick P., 'Legal Theology: Law, Modernity and the Sacred,' *Seattle University Law Review*, Vol.32, 2009, 321, pp. 329, 330.

<sup>356</sup> Joyce (2013) op. cit. at p.52.

<sup>357</sup> *Ibid.*

<sup>358</sup> *Ibid.*

<sup>359</sup> Akashi K., 'Hobbes's Relevance to the Modern Law of Nations,' *Journal of the History of International Law*, 2, 2000, 199-219, p.201.

<sup>360</sup> Fitzpatrick (2009) op. cit. at p.329.

in which, at the level of conceiving the law of nations, the notion of *absolute* sovereignty continues to play a central role.

### 1.3. Absolute (External) Sovereignty: Grotius and Vattel

Hugo Grotius is commonly regarded as the progenitor of modern and secular perception of international law.<sup>361</sup> For the purposes of this chapter, the significance of this perception is twofold. Firstly, an assessment of state sovereignty from the external perspective, which takes into account sovereign states' relations to each other, can be conducted through Grotius' account of international law. In other words, the account provides an insight into what being in this world with other sovereigns may entail for the very notion of absolute sovereignty of a state. Secondly, Grotius' secularist approach provides an opportunity to understand how this notion survives within the modern understanding of international law and does so by circumventing the limits of laws of God and nature. In what follows, therefore, I introduce Grotius' concept of international law with an emphasis upon the latter's notion of state sovereignty and this notion's effect upon the development of the concept of the law of nations.

Grotius divided the subject of sovereignty into common and particular, and elucidated this division by referring to the structure of the body.<sup>362</sup> Body of an animal is capable of seeing and this makes the body the common subject of seeing. As the body sees through the eyes, which constitute particular parts of the body, the particular subject of seeing is, therefore, the eyes. Following this logic of the body, Grotius maintained that the common subject of sovereignty was the state and the particular subject of sovereignty was

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<sup>361</sup> Covell C., *The Law of Nations in Political Thought: A Critical Survey from Vitoria to Hegel*, (Basingstoke: Palgrave Macmillan, 2009) p.27; Fitzpatrick P., 'Latin Roots: The Force of International Law as Event' in Johns, F., Joyce R., and Pahuja S., (eds.) *Events: The Force of International Law*, (Abingdon: Routledge, 2011) pp. 43, 44; Weststeijn A., 'Provincializing Grotius: International Law and Empire in a Seventeenth-Century Malay Mirror' in Koskenniemi M., Rech W., Fonseca M.J. (eds.), *International Law and Empire: Historical Explorations*, (Oxford: Oxford University Press, 2017) p.21.

<sup>362</sup> Grotius H., *The Rights of War and Peace*, Book I (Indiana: Liberty Fund Inc., 2005) p.259.

the person or persons which exercised the sovereign power within the state.<sup>363</sup> This is a power which is supreme and hence, the acts of the one who exercises these powers ‘are not subject to another’s power, so that [these acts] cannot be made void by any other human will.’<sup>364</sup> Thus far, the notion of supremely sovereign state resembles the internal accounts of Bodin’s and Hobbes’s absolute sovereignty. The question remains as to what happens to this supreme power once we start to consider its relations with other supreme powers. Grotius’ perception of the law of nations hints at a certain answer.

Grotius classified the law or rights of nations as a form of voluntary right which drew its authority from human will as opposed to divine determination.<sup>365</sup> Therefore, at the very outset, the law of nations did not, in Grotius’ ostensibly secular perspective, amount to some form of hierarchically superior right as an ordainment of God, a dictate of reason, or a rule of nature with a capacity to delimit the supreme power of the sovereign states. Instead of comprising a restrictive burden upon the absolute sovereignty of states, international law derived its authority from the will of these states.<sup>366</sup> The posited volition of the states becomes the instrumental power in establishing the law of nations; and custom, understood as ‘continual use’ throughout time, comprises the manner in which this volition is manifested.<sup>367</sup> Inasmuch as the international law may set the context of being-in-this-world for the sovereign states, this context is thus composed of the voluntary behaviour of the states.

In addition to providing an opportunity to assess the repercussions of being-in-this-world upon the notion of absolute sovereignty of states, Grotius’ account of international law also aids us in understanding how this notion survives within the modern perception of international law and does so by circumventing the limits of laws of god and nature. Moving

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<sup>363</sup> *Ibid.*

<sup>364</sup> *Ibid.*

<sup>365</sup> *Ibid.*, p.162.

<sup>366</sup> *Ibid.*, p.163.

<sup>367</sup> *Ibid.*

from Bodin's and Hobbes' internal perspective on sovereignty to Grotius' external (or what could also be called the international) approach, the necessity of relying upon an outside power ostensibly disappears. I referred, above, to Joyce's comments that state sovereignty does not amount to 'absoluteness in and of itself' and that reliance upon God was necessary for this sovereignty to establish its power.<sup>368</sup> Grotius' perspective on the *particular* subject of sovereignty resembles the respective internal accounts of Hobbes and Bodin. The king, as this particular subject, according to Grotius, is obliged to observe the laws of nature, god, and nations.<sup>369</sup> Whereas, any form of reliance upon god is missing from the external level of sovereign relations. At this level we are concerned with the law of nations which derives its authority from the common subjects of sovereignty, that is to say, from the states. The significant feature of this derivation is that it lacks any reference to the limiting power of god. The secularism of Grotius' approach to international law is relevant here; rights of nations are voluntary rights of human will and not of any form of divine will.

Given Grotius' distinction between particular and common subjects of sovereignty, it may be assumed that different rules apply within the internal and the external domains of sovereignty. This assumption would readily lead one to the conclusion that the absolute power of the sovereign can be retained at the external level, since the context of this level is set by the secular law of nations which derived its authority from the voluntary behaviour of the sovereign states. However, through a closer inspection of Grotius' statements, doubts may be raised in relation to the above-mentioned assumption and the ensuing conclusion. Firstly, the metaphor Grotius used to elucidate the distinction between particular and common subjects of sovereignty does not invoke a definite separation between these two subjects. The eyes are a part of the body; hence both the body and the eyes do the seeing.

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<sup>368</sup> Joyce (2013) op. cit. at p.52.

<sup>369</sup> Grotius, op. cit. at p.300.

Secondly, the possibility of such a separation is further diluted by Grotius' reference to the commonality of the law of nations.

Law of nations, Grotius noted, derived its authority 'from the will of all, *or at least many*, nations.'<sup>370</sup> Grotius offered the following explanation for this reservation: 'I say *of many*, because there is scarce any Right found, except that of Nature, which is also called the Right of Nations, common to all Nations.'<sup>371</sup> The emphasis is placed upon the perceived fact that law of nature is also common — and even more common than that of law of nations — to all nations. This emphasis, in turn, renders it difficult to reach an unequivocal variation between an internal form of sovereignty subject to laws of god and nature, and an external form of sovereignty subject only to laws of nations. Despite this difficulty, Grotius' account of the law of nations demonstrated that the modern understanding of international law would centre upon the volition of sovereign states with much diminished role for the laws of god, if not for the laws of nature. For a clearer departure from the bounds of the law of nature, one would have to wait for Emer de Vattel's description of international law.

Writing in the eighteenth century, Vattel witnessed the manner in which international relations developed in the aftermath of the Treaty of Westphalia in 1649. According to Martti Koskenniemi 'the Peace of Westphalia in 1649 laid the basis for an agnostic, procedural international law whose merit consisted in its refraining from imposing any external normative ideal on the international society. The objectives of that society would now arise from itself and not from any religious, moral or political notions of the good given externally to it.'<sup>372</sup> Vattel's formulation of Law of Nations provides a preeminent account of the post-Westphalian modern international law. For the purposes of this chapter, the focus

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<sup>370</sup> *Ibid*, pp. 162, 163. [*my emphasis*]

<sup>371</sup> *Ibid*, p.163.

<sup>372</sup> Koskenniemi M., 'What Is International Law For?' in Evans M.D. (ed.), *International Law*, (3<sup>rd</sup> Ed), (Oxford: Oxford University Press, 2010) p.33.

is upon the way in which Vattel devises the notion of ‘absolute’ sovereignty of states without the overarching dominion of the law of nature or God.

Inasmuch as Vattel’s conception of sovereignty can be distinguished from those of Bodin, Hobbes or Grotius, the starting point of the former’s thought also features the familiar notions of the state of nature and laws derived from this state:

Nations being composed of men naturally free and independent, and who, before establishment of civil societies, lived together in the state of nature, – nations or sovereign states are to be considered as so many free persons living together in the state of nature.<sup>373</sup>

Therefore, to the extent that the sovereign states exist within the state of nature, the laws of that nature ostensibly bind these states. Vattel expressed this thought in the following way.

As men are subject to the laws of nature [...] the entire nation, whose common will is but the result of the united wills of the citizens, remains subject to the laws of nature, and is bound to respect them in all her proceedings.<sup>374</sup>

However, Koskenniemi informs the reader that, Vattel stands out from his pre-modern predecessors such as Hobbes and Grotius by regarding natural law as ‘originally intended to be applicable between individuals’ and thus, devising a new form of law that is applicable to the relations between states.<sup>375</sup>

Vattel achieved the distinction between laws applicable to individuals and to states by recognising that individuals and the states form different types of subjects and that, the application of the law of nature to different subjects should yield different results.

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<sup>373</sup> Vattel E., *The Law of Nations*, (Indianapolis: Library Fund Inc., 2008) p.68.

<sup>374</sup> *Ibid.*

<sup>375</sup> Koskenniemi M., *From Apology to Utopia: The Structure of International Legal Argument*, (Cambridge: Cambridge University Press, 2005) p.113; Vattel, op. cit. at pp. 68, 69.

A state or civil society is a subject very different from an individual of the human race: from which circumstance, pursuant to the law of nature itself, there result, in many cases, very different obligations and rights; since the same general rule, applied to two subjects, cannot produce exactly the same decisions, when the subjects are different; and a particular rule which is perfectly just with respect to one subject, is not applicable to another subject of quite different nature. There are many cases, therefore, in which the law of nature does not decide between state and state in the same manner as it would between man and man.<sup>376</sup>

In Vattel's view, the law of nations, 'as a distinct science', consists of the 'the art of thus applying [the law of nature] with a precision founded on right reason' to the states as a different form of subject.<sup>377</sup> In spite of the fact that the starting point in Vattel's thought is the law of nature, it is the application of this law as a separate law of nations which detached Vattel's thought from the works of previously examined authors. In what follows, I briefly present Vattel's formulation of the law of nations and show how this formulation rejected any external normative restrictions upon the sovereignty of states.

Vattel's account of the law of nations consists of two concepts — the 'necessary' and the 'voluntary' laws of nations.<sup>378</sup> *Necessary* law of nations conceptualises the manner in which the law of nature is applied to the states.<sup>379</sup> This consists of the application of two general laws of the society of nations. The first law is that 'each nation is bound to contribute everything in her power to the happiness and perfection of all the other.'<sup>380</sup> The second

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<sup>376</sup> Vattel, op. cit. at p.69.

<sup>377</sup> *Ibid.*

<sup>378</sup> *Ibid.*, p.70.

<sup>379</sup> *Ibid.*

<sup>380</sup> *Ibid.*, p.73.

general law is that ‘each nation should be left in the peaceable enjoyment of that liberty which she inherits from nature.’<sup>381</sup>

Although Vattel initially acknowledged the necessary law of nations as immutable and absolutely binding upon nations,<sup>382</sup> the combination of the first and the second laws of the society suggests otherwise, leading Vattel to remark that,

[a]s a consequence of that liberty and independence, it exclusively belongs to each nation *to form her own judgment* of what her conscience prescribes to her, – of what she can or cannot do, – of what is proper or improper for her to do: and of course *it rests solely with her to examine and determine* whether she can perform any office for another nation without neglecting the duty which she owes to herself.<sup>383</sup>

This statement demonstrates the shift away from the natural law perspectives of Hobbes and Bodin wherein the sovereignty of the prince was subjected to the external normative restraints of the law of nature or God. In Vattel’s thought, however, the necessary law of nations produces a system in which even the general dictates of the law of nature are subjected to the judgment of the concerned state.

Vattel’s description of the *voluntary* law of nations follows from the right of judgment afforded to the states within the context of necessary law of nations. Accordingly, Vattel explained that,

[e]ach nation formulates that she has justice on her side in every dispute that happens to arise: and it does not belong to either of the parties interested, or to other nations, to pronounce a judgment on

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<sup>381</sup> *Ibid*, p.74.

<sup>382</sup> *Ibid*, p.70.

<sup>383</sup> *Ibid*, p74. [*my emphases*]

the contested question. The party who is in the wrong is guilty of a crime against her own conscience: but as there exists a possibility that she may perhaps have justice on her side, we cannot accuse her of violating the laws of society.<sup>384</sup>

According to Vattel, this is due to the notion that opposing any nation with open force violates the very liberty of that particular state, and as a result, threatens the most basic tenet of the natural society.<sup>385</sup> Therefore, all nations are presumed to consent to ‘suffer certain things to be done, though in their own nature unjust and condemnable.’<sup>386</sup> Vattel concluded that rules which are construed from this consent are the voluntary law of nations.<sup>387</sup>

Central to such an understanding of law of nations is the absolute sovereignty of the nation-states which Vattel constructed as follows: ‘[e]very nation that governs itself, under what form soever, *without dependence* on any foreign power, is a sovereign state.’<sup>388</sup> Vattel further described that,

[...] all men inherit from nature a perfect liberty and independence, of which they cannot be deprived without their own consent. In a state, the individual citizens do not enjoy them fully and absolutely, because they have made a partial surrender of them to the sovereign. But the body of the nation, the state, remains *absolutely* free and independent with respect to all other men, all other nations, as long as it has not voluntarily submitted to them.<sup>389</sup>

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<sup>384</sup> Vattel, op. cit. at p.76.

<sup>385</sup> *Ibid.*

<sup>386</sup> *Ibid.*

<sup>387</sup> *Ibid.*

<sup>388</sup> *Ibid.*, p.83. [*my emphasis*]

<sup>389</sup> *Ibid.*, p.68. [*my emphasis*]

In the conceptions of Bodin and Hobbes, the ambiguity of absolute sovereignty of commonwealth was apparent from the fact that the sovereignty of the prince was subjected to external laws. Breaking away from this tradition, Vattel's modern conception of absolute sovereignty of the state did not feature a predominant kingdom of God or obligatory rules of nature. This ostensibly renders the sovereignty of the state definitely absolute. For the purposes of this chapter, two features of this definitely absolute sovereignty are relevant. First, despite his departure from previous views on state sovereignty, Vattel's conception is also riddled with ambiguities. Second, even with these ambiguities, Vattel's idea of absolute sovereignty underpins the prevalent theories of recognition of states under international law. I conclude this part of the chapter by pointing out the problematic aspect of Vattel's account of absolute sovereignty and demonstrate the manner in which this account underpins the prevalent theories in the next part.

The difficulty generated by Vattel's account of absolute sovereignty pertains to the fact that states come into being in an international community. Not only that becoming a person of this community entails relating to other persons within the community, it does also require that international rules and regulations apply to states as subjects. Peter Fitzpatrick asked the relevant question here:

To begin at the beginning, how do these sovereign states, quite 'independent of all the others' come to be 'in the first place'? They come to be through being recognised in and by international law. Which immediately plunges us into circularity and a seeming inconsequence with the nation state creating an international law which creates it.<sup>390</sup>

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<sup>390</sup> Fitzpatrick (2011) *op. cit.* at p.44.

If coming-into-being cannot take place quite independent of all the other states, one must think that the absoluteness of state sovereignty is, in fact, unattainable. This impossibility can be demonstrated by focusing upon either side of the ‘seeming inconsequence’ of states creating international law or *vice versa*. If one focuses upon the first dimension wherein entities depend upon meeting the criteria of statehood provided by international law to become sovereigns, such *dependence*, in itself, diminishes the *absoluteness* of the attained sovereignty. Secondly, even if one focuses solely upon the dimension that ‘states create international law’, such creation necessitates collaboration among states which, again, tends to diminish absoluteness of sovereignty.

Vattel’s approach focused primarily on the second dimension. His formulation of the ‘positive law of nations’ consisted of voluntary, customary and conventional laws.<sup>391</sup> Absolute sovereignty of the state underlay all three forms of law as each set of laws were deduced, according to Vattel, from the wills of the nations.<sup>392</sup> However, beneath every form of international law, one can discover another aspect which contradicts the notion of truly absolute sovereignty. Within the context of the voluntary law of nations there is the *need to presume* consent in order to avoid interfering with the liberty of any nation. Vattel defined the customary law of nations as ‘[c]ertain maxims and customs consecrated by long use, and observed by nations in their mutual intercourse with each other as a kind of law.’<sup>393</sup> And the conventional law of nations or of treaties was defined as ‘several engagements into which nations may enter.’<sup>394</sup> The latter forms of international law, therefore, testify to the fact that international community is not made up of individual entities of absolute non-relation to others. States relate to each other whether by long use or even by deciding to or not to enter into a new convention.

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<sup>391</sup> Vattel, op. cit. at p.78.

<sup>392</sup> *Ibid.*

<sup>393</sup> *Ibid*, p.77.

<sup>394</sup> *Ibid.*

The definite ambiguity of Vattel's notion of absolute sovereignty, thus, pertains to the wilful blindness towards the ways in which such relations actually determine the very being of states. Vattel seemed to acknowledge the necessity of relations between states through his views on the need to presume consent. However, he did not consider these relations as constitutive or determinative of statehood. Statehood, in Vattel's view, remained what I would tentatively call atomic, that is to say, capable of singular existence. On the one hand, it is difficult to understand how, without such capability, states can be absolutely free and independent. On the other, the need to enter into relations contradicts such capability. Despite the evident contradiction, I will show in the next part of this chapter that, the resultant notion of sovereign consent underlay the constitutive theory of recognition.

#### **1.4. Conclusion**

So far in this chapter, I traced the historic development of the concept of absolute sovereignty of states through the works of Bodin, Hobbes, Grotius and Vattel. I presented that in their respective works, Bodin and Hobbes conceived of state sovereignty as absolute. I showed that their conceptions provided the person of the sovereign with ostensibly unlimited power. However, the scope of this unrestricted power extended only so far as to include independence of the sovereign from other persons or obligations within the state. Contrasted to this internal lack of restraint, both Bodin and Hobbes subjected their absolute sovereigns to external normative powers of God or nature. Next, I demonstrated that Grotius' account of international law did not feature such an external normative restriction upon the sovereignty of states. The focus of this demonstration was upon Grotius' perception of the law of nations as voluntary rights which drew their authority from human, and not divine, will.

Grotius' views on international law marked a departure from internal considerations of sovereignty of states by contemplating this sovereignty within the realm of states'

international relations. He argued that posited volition of states constituted, within this external realm, the laws of nations. By deriving the authority of international law from the wills of states, Grotius ostensibly circumvented the external normative force of God and/or nature upon state sovereignty. However, this circumvention was achieved only to a certain extent as Grotius remained somewhat ambivalent in relation to the continuing effects of the law of nature upon states and their international relations. This ambivalence prevented Grotius from perceiving states as absolutely sovereign. For such a perception, I shifted my attention to Vattel's thoughts on international law.

I presented above that Vattel's perception of the law of nations centred upon the independence of the sovereign state from all external relations. Such independence did not only ensure that state sovereignty is absolute, it did also form the basis for the conception of international law as the product of states' sovereign consent. Among the four scholars whose ideas on state sovereignty I presented in this part of the chapter, only Vattel's thought purportedly achieved what Joyce regarded above as 'absoluteness in and of itself' for the notion of state sovereignty. However, this achievement is contested by Fitzpatrick who argued against the attainability of absolute independence within the context of states' relation to international law. Inasmuch as the will of the states creates international law, international law sets the legal definition of statehood and accords rights together with obligations to entities who meet these criteria. One certain outcome of this, as Fitzpatrick called it, 'seeming inconsequence' is that states do find themselves in forms of relations both with international law and, under the rubric of this law, with other states.

The central argument of my thesis is that, such relations are mutually constitutive and continuously determinative of the very being of international subjects. This argument necessitates a relevant evaluation of the prevalent theories of recognition of states under international law. In what follows, I analyse the underlying effects of Vattel's notion of absolute sovereignty upon these prevalent theories. In light of these effects, I will argue that

the constitutive and the declarative theories fail to ask the conceptual question of the role one's relation to its others plays in establishing the international personality of each subject. This failure, in turn, forms the basis of my search, later in the thesis, for a theory of recognition which will accommodate such a role.

## **Part Two**

### **2.1. Introduction**

The issue of recognition under international law proves to be one of the most challenging topics upon which no easy conclusion may be reached. In the preface of his book, *the International Law of Recognition*, Chen stated that 'the problem of recognition is, by general agreement, one of the most perplexing problems of international law.'<sup>395</sup> Kelsen added to that concern by stating that both in theory and practice, the question remains unsolved and that 'hardly any other question is more controversial, or leads in the practice of states to such paradoxical situations.'<sup>396</sup> Lauterpacht also seemed to share a similar concern:

There are only very few branches of international law which are of greater, or more persistent, interest and significance for the law of nations than the question of Recognition of States, of Governments and of Belligerency. Yet there is probably no other subject in the field of international relations in which law and politics appear to be more closely interwoven.<sup>397</sup>

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<sup>395</sup> Chen T-C., *The International Law of Recognition*, (Edited by L.C. Green) (London: Stevens & Sons Limited, 1951) p. xiii.

<sup>396</sup> Kelsen H., 'Recognition in International Law Theoretical Observations', 35 *American Journal of International Law*, 1941, p.605.

<sup>397</sup> Lauterpacht H., *Recognition in International Law*, (Cambridge: Cambridge University Press, 1947) p. v.

Noting that recognition is ‘assuredly the most politicised’ aspect of statehood, Klabbers pointed out the lack of certainty of what is recognised as the source of confusion surrounding the topic of recognition.<sup>398</sup> One can recognise either a state or a government; recognition of a government is further divided into recognition of its legality or its *de jure* or *de facto* existence.<sup>399</sup>

In the overall thesis, I rethink the role of recognition vis-à-vis the constitution of international subjects. As the issue of international personality is intrinsically linked with the notion of statehood, my focus is set upon the question of recognition of states rather than governments. The parameters of the debate on this type of recognition are established by the constitutive and the declarative theories. In this part of the chapter, I critically engage with these theories. The purpose of this engagement is to demonstrate that an extension of the parameters of the debate is necessary. I base this necessity upon the repercussions of Vattel’s notion of absolute sovereignty upon the prevalent theories of recognition.

To achieve the set purpose, in what follows, I introduce the thoughts of the proponents of theories of recognition and delineate the role Vattel’s aforementioned notion played in shaping these theories. In the narrowest sense, the constitutive theory maintains that a new community’s recognition as a state is constitutive of that community’s legal personality under international law. I present this theory by referring to separate works of Lassa Oppenheim, Hersch Lauterpacht, and Hans Kelsen. Inasmuch as there are notable divergences in their views, the works of these eminent scholars help us understand the principal aspects of the constitutional theory: that the act of recognition is legally constitutive of a newly emerging state’s international personality; that this act operates as a form of consent by which established states agree to be bound by rights or obligations

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<sup>398</sup> Klabbers J., *International Law*, (2nd. Ed.), (Cambridge: Cambridge University Press, 2017) p.78.

<sup>399</sup> *Ibid.*

towards the new entity; that without recognition, statehood can be separated from international personality; that the lack of a central authority under international law to determine personality necessitates such a state-centric approach to recognition.

In contrast to the constitutive theory, the declaratory theory asserts that the recognition of a new state is only of declaratory value which conveys no constitutive legal effect. Proponents of this theory whose works I consider in this part include William Edward Hall, Sir John F. Williams, and Thi-Chiang Chen. The fundamental features of the declarative theory which I discern from the works of the aforementioned scholars are the following: the declarative theory rejects the subjective and ostensibly arbitrary approach to the determination of international personality; this rejection extends to the separation of statehood from international personality; as a result of the latter rejection, states are deemed *ipso facto* subjects of international law basing the criteria of personality, in turn, upon the objective test of statehood; the *ipso facto* basis of international personality does also circumvent the lack of a central authority needed to determine statehood or personality under international law.

I conclude this part by arguing that neither of these theories accommodates recognition as a constitutive imperative whereby mutual acts of relating to one another constructs each entity's international personality. Firstly, I argue that this failure is manifest in the constitutive theory's perception of recognition as sovereign consent. Under the influence of Vattel's problematic notion of absolute sovereignty, such perception produces an arbitrary and impractical test of international personality which is contingent upon the subjective will of established states. Secondly, I argue that the declarative theorists prolong the effects of the notion of absolute sovereignty by restricting their critical engagement to the constitutive theory's subjective test of international personality. Therefore, both the

prevalent theories fail to probe the conceptual question of the role one's relation to its other plays in establishing the international personality of each subject.

## 2.2. Constitutive Theory

To begin with one of the most eminent advocates of the constitutive theory, Lassa Oppenheim's views on the relevance of recognition was based upon the possibility of a distinction between statehood and international personality:

It is generally agreed that a new State before its recognition cannot claim any right which a member of the Family of Nations has towards other members [...] There is no doubt that statehood itself is independent of recognition. International law does not say that a State is not in existence so long as it is not recognised, but it takes no notice of it before its recognition. Through recognition only and exclusively a State becomes an International Person and a subject of International Law.<sup>400</sup>

A newly emerging entity could become a *state* without recognition; however, the new state would not become a *subject* of international law unless recognition was accorded to her. This distinction relied on the notion that the international law was applicable within the community of *civilised* states — in other words, within the Family of Nations.<sup>401</sup> Since international law was not applicable outside this family, entities could still qualify as states but not as subjects of international law.

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<sup>400</sup> Oppenheim L., *International Law*, vol. I., *Peace*, (1<sup>st</sup> Ed.), (London: Longman, 1905) pp. 109, 110.

<sup>401</sup> *Ibid*, pp. 3, 10-12.

In order to become subjects of international law, therefore, new states had to enter into this family. Oppenheim suggested that entry into the Family of Nations was a matter of attaining a certain level of civilisation:

There are States in existence, although their number decreases gradually, which are not, or not fully, members of that family because their civilisation, if any, does not enable them and their subjects to act in conformity with the principles of International Law.<sup>402</sup>

The act of recognition marked the approval of a newly emerging states' entry into the realm of international law: 'Recognition is the act through which it becomes apparent that an old State is ready to deal with a new State as an International Person and a member of the Family of Nations.'<sup>403</sup> A new state whose level of civilisation had improved might be accepted into the domain of International Law as a member of the Family. Since the Family lacked a central authority, recognition was awarded by each member state. Oppenheim noted that 'recognition by one State is not at all binding upon other States, so that they must follow suit' but that, 'no new State has by International Law a right to demand recognition.'<sup>404</sup>

Writing in 1905, Oppenheim presented a Christian-Eurocentric perspective of International Law. According to this perspective the Christian States of Europe were the original members of the Family of Nations and the Christian colonies of these states comprised the next group to enter the Family.<sup>405</sup> In Oppenheim's view, only the Turkish Empire and Japan constituted the non-Christian and non-European members of this Family.<sup>406</sup> In terms of the applicability of international law today, one can maintain that,

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<sup>402</sup> *Ibid*, p.109.

<sup>403</sup> *Ibid*, p.110.

<sup>404</sup> *Ibid*, pp. 110, 111.

<sup>405</sup> *Ibid*, pp. 32, 33.

<sup>406</sup> *Ibid*.

such a Christian and Eurocentric view is obsolete. This is also evident in the discontinued use of the criterion of ‘civilisation’ in achieving international personality.

Dismissing the requirement of civilisation as part of the criteria of statehood, Brownlie declared that ‘[this requirement] is usually omitted from enumerations of criteria and is redolent of the period when non-European states were not accorded equal treatment by the European Concert and the United States.’<sup>407</sup> In addition, Crawford informs the reader that the criterion of ‘civilisation’ may be subjective and discriminatory and that, any consideration of civilisation should be regarded as a ‘certain minimum of order and stability’ in relation to the governments of the new entity.<sup>408</sup> The subjective aspect of Oppenheim’s account of recognition is manifest in his view that ‘recognition by one State is not at all binding upon other States.’<sup>409</sup> This view suggests that a newly emerging state may be recognised by certain members of the Family of Nations as a subject of International Law, whereas for other members, who would prefer to withhold recognition, the new entity may not become a subject of international law. The subjective aspect of recognition is also noticeable in Oppenheim’s suggestion that the old State may accord recognition to the new State on condition that a certain set of criteria is met.<sup>410</sup> Since an old State’s recognition of a new one is not binding upon other members of the Family, there arises the possibility of many varying sets of criteria being enforced upon the new state by other members. This possibility, in turn, defies any objective test for international personality.

The idea that ‘one state’s recognition is not binding upon another state’ also reveals the underlying concept of sovereignty of states in Oppenheim’s thought. This idea conforms to the assertion that sovereign states are not bound by any obligations unless they voluntarily

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<sup>407</sup> Brownlie I., *The Principles of Public International Law*, (7<sup>th</sup> Ed.), (Oxford: Oxford University Press, 2008) p.75.

<sup>408</sup> Crawford J., *Creation of States in International Law*, (2<sup>nd</sup> Ed.), (Oxford: Clarendon Press, 2006) p.92.

<sup>409</sup> Oppenheim, op. cit. at p.111.

<sup>410</sup> *Ibid.*

consent to be so. Vattel, in his conceptualisation of the absolute sovereignty of the states, was quoted in the first part of this chapter stating that ‘[...] the body of the nation, the state, remains absolutely free and independent with respect to all other men, all other nations, as long as it has not voluntarily submitted to them.’<sup>411</sup> Oppenheim’s above-quoted statement that ‘[r]ecognition is the act through which it becomes apparent that an old State is ready to deal with a new State as an International Person and a member of the Family of Nations’ can also be viewed in this light.<sup>412</sup> Becoming a member of the Family of Nations is concomitant with observing relevant rules and regulations in one’s relation to other members. In order for the sovereign member states of this Family to be bound by such observations, consent must be accorded to the new member. Recognition, in Oppenheim’s formulation can, thus, be interpreted as the sovereign gesture which indicates the consent of the member states.

Another problematic aspect of Oppenheim’s thought is his distinction between statehood and personhood under international law. The Christian and the Eurocentric perspective on civilisation marked Oppenheim’s measure of personhood under international law. A state could not become a subject of international law unless the required level of civilisation was first achieved. Today, however, a comparatively more objective understanding prevails. In contemporary textbooks of international law, legal personality is not defined through the notion of ‘Europe’s civilised Empires’ but with reference to statehood in general. In *International Law*, Shaw stated that ‘[d]espite the increasing range of actors and participants in the international legal system, *states* remain by far the most important legal persons [...]’<sup>413</sup> In addition, in *Principles of Public International Law*, Brownlie suggested that ‘[i]t is the *states* and organisations [...] which represent the normal

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<sup>411</sup> Vattel, op. cit. at p.68.

<sup>412</sup> Oppenheim, op. cit. at p.110.

<sup>413</sup> Shaw M. N., *International Law*, (6<sup>th</sup> Ed.), (Cambridge: Cambridge University Press, 2008) p.197. [my *emphasis*]

types of legal person on the international plane.<sup>414</sup> If international law provides rights and duties for states, it becomes much difficult to justify Oppenheim's idea that certain entities, which satisfy the criteria of *statehood*, may not benefit from these rights. The second proponent of the constitutive theory, whose thoughts I consider next, enters the debate from the angle of this difficulty.

In his book, *Recognition in International Law*, Hersch Lauterpacht sternly rejected the distinction between statehood and international personality:

The distinction [between statehood and international legal personality] seems to be of little value. There is, in law, no substance in the assertion that a community is a State unless we attach to the fact of statehood rights and competencies, within the internal or international sphere, which international law is ready to recognise. It seems irrelevant to predicate that a community exists as a State unless such existence is treated as implying legal consequences.<sup>415</sup>

Despite refusing to differentiate between statehood and international personality, Lauterpacht was of the view that recognition is constitutive of statehood. Lauterpacht explained that '[to] recognise a community as a State is to declare that it fulfils the conditions of statehood as required by international law.'<sup>416</sup> Lauterpacht's theory of recognition is distinguished from Oppenheim's approach by the former's perception of the act of recognition as 'the impartial fulfilment of a legal duty.'<sup>417</sup>

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<sup>414</sup> Brownlie, op. cit. at p.58. [*my emphasis*]

<sup>415</sup> Lauterpacht, op. cit. at pp. 38, 39.

<sup>416</sup> Lauterpacht H., 'Recognition of States in International Law', *The Yale Law Journal*, Vol. 53, 1944, 385-458, p. 385.

<sup>417</sup> *Ibid.*

Furthermore, the notion of fulfilling a legal duty sets Lauterpacht's thought apart from the declarative theory in which recognition is considered as an act of political declaration. Therefore, Lauterpacht noted that,

[o]nce we have assimilated the idea that recognition is not primarily a manifestation of national policy but the *fulfilment of an international duty*, we shall have removed the principal objection to the acceptance of the view that recognition marks the rise of the international rights and duties of the State.<sup>418</sup>

The initial problem with this assertion is that, when one considers the nature of an obligation, one reaches the inevitable conclusion that it must be owed to a *person*. In terms of a duty to recognise under international law, this duty is ostensibly owed to the newly emerging state. However, Lauterpacht is quoted above stating that, it is by the act of recognition that a new state acquires international rights and duties — that is to say, it is with the act of recognition that a state becomes a *person* of international law. Accordingly, simple logic dictates that it is not possible to reconcile the idea that a duty could be owed to a *person* which has not yet attained that *personhood*.

Lauterpacht seemed to be aware of this contradiction as he attempted to justify the duty to recognise by reallocating the person to whom this duty was owed. Thus, Lauterpacht maintained that this duty may be owed to the *international community* rather than the newly emerging unrecognised state:

In the first instance, as the established States act in this matter on behalf of the international community, they may be deemed to owe *to that community* a duty of recognition notwithstanding the fact that

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<sup>418</sup> Lauterpacht (1947) op. cit. at p.63. [*my emphasis*]

the substantive right is not yet fully vested in the beneficiary directly concerned.<sup>419</sup>

The problematic aspect of owing an international legal duty to a person who has not attained personhood may thus be avoided. However, the idea of owing a duty to the international community has its own practical concerns.

In a critical analysis of Lauterpacht's theory of recognition under international law, Josef Kunz declared that there are no norms of a right or a duty to recognise under 'positive' international law.<sup>420</sup> Accordingly, Kunz suggested that Lauterpacht's argument for an international legal duty to recognise is 'a mere postulate *de lege ferenda*.'<sup>421</sup> A recent example is the partial recognition of Kosovo's unilateral declaration of independence. A decade since the declaration of independence on 17 February 2008, one hundred and fifteen countries recognised Kosovo as an independent state.<sup>422</sup> The countries that withhold recognition involve Serbia — the country from which Kosovo unilaterally declared independence — Spain, India, Brazil and two permanent members of the United Nations' Security Council, namely, Russia and China. Despite the fact that the International Court of Justice, in its advisory opinion, declared that 'the adoption of the declaration of independence of 17 February 2008 did not violate general international law'<sup>423</sup> and that Kosovo already acquired membership of international organisations such as the International Monetary Fund<sup>424</sup> and the World Bank,<sup>425</sup> the lack of 'organised international

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<sup>419</sup> *Ibid*, p.74. [*emphasis in original*]

<sup>420</sup> Kunz J.L., 'Critical Remarks on Lauterpacht's "Recognition in International Law"', 44 *American Journal Of International Law*, 1950, p.718.

<sup>421</sup> *Ibid*.

<sup>422</sup> Republic of Kosovo – Ministry of Foreign Affairs: <http://www.mfa-ks.net/?page=1,259> (access: 09 January 2018).

<sup>423</sup> International Court of Justice, Accordance with international law of the unilateral declaration of independence in respect of Kosovo, (22 July 2010) para.122, p.43.

<sup>424</sup> For a list of members of IMF: <http://www.imf.org/external/np/sec/memdir/members.aspx#K> (date of access: 24 Oct 2011).

<sup>425</sup> For a list of members of the World Bank: <http://www.worldbank.org/en/about/leadership/members> (date of access: 09 Jan 2018).

machinery to enforce any obligation to recognise' means that Kosovo is only recognised by certain members of the United Nations as an independent state and that, there is no normative means by which Russia and China — as permanent members of the Security Council — and other non-recognising states can legally be held accountable for their non-recognition.

In addition to there being no international norms by which such non-recognising states can be held accountable, there is also the lack of an international body for systematic enforcement of a so-called duty to recognise.<sup>426</sup> Lauterpacht's attempt, therefore, to construct a comparatively more objective test of recognition based on an international obligation falls short of meeting the normative and the administrative requirements. Furthermore, the concept of duty to recognise contradicts the underlying notion of absolute sovereignty of states. We observed above that Oppenheim thought of recognition as an act of sovereign consent towards newly emerging states, as a sign of an established state's readiness to be bound by rights and duties towards the new state. At a certain level, Lauterpacht's views on recognition resemble this sovereign-consent oriented approach. Quoted above, Lauterpacht remarked that 'recognition marks the rise of the international rights and duties of the State.'<sup>427</sup> If rights and duties necessarily follow from the act of recognition, one can argue that it is the notion of sovereignty of states, the fact that sovereign states are not bound by rights and duties unless they consent, which generates this necessity. The idea that states meet a certain obligation when recognition is accorded, however, contradicts the very sovereign aspect of such consent.

Next, I consider Hans Kelsen's views on constitutive effects of recognition. For the purposes of this section, Kelsen's approach is relevant in two ways. Firstly, Kelsen's theory of recognition is set against Oppenheim's notion of sovereign consent and Lauterpacht's

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<sup>426</sup> Kunz, *op. cit.* at p.718.

<sup>427</sup> Lauterpacht (1947) *op. cit.* at p.63.

concept of duty to recognise. Thus, Kelsen's theory presents an alternative approach to recognition with its focus falling upon the decentralised aspect of international law. Secondly, even though it is set against the notion of sovereign consent, the underlying element of absolute sovereignty of states can also be detected in Kelsen's theory. This detection, in turn, allows me to draw the conclusion that absolute sovereignty of statehood is the determining factor in the respective approaches of the eminent scholars considered in this section of the chapter.

Kelsen began his theory on recognition by drawing a distinction between a community's natural and legal existence:

Before recognition, the unrecognized community does not legally exist vis-à-vis the recognizing state. Only by the act of recognition does it come legally into existence in relation to the recognizing state. Only its legal existence, its existence as judged by international law, not its "natural" existence, is of importance in the province of that law [...] Its legal existence is identical with its existence as a state, i.e. as a subject of international law.<sup>428</sup>

Kelsen circumvents Oppenheim's problematic separation of statehood and international personality by distinguishing between two stages of existence for a community, namely, natural and legal existences. Statehood and international personality can, therefore, be achieved concurrently in the latter stage where recognition is accorded. Despite this circumvention, however, Kelsen's view paralleled Oppenheim's perception that international personality of an emerging entity is relative to the recognising state.

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<sup>428</sup> Kelsen, *op. cit.* at p.608.

Notwithstanding this parallelism, Kelsen did not follow Oppenheim in justifying the legally constitutive effect of recognition as an act of sovereign consent. Former's justification was based upon the decentralised nature of international law:

General international law is primitive law, and, like every primitive law, highly decentralized. Unlike the technically developed national law, it does not institute special organs authorized to establish in a legal procedure the existence of concrete facts as determined by law in order that the consequences also prescribed by the law may be attached to these facts. General international law leaves these functions to the interested parties.<sup>429</sup>

In other words, the act of recognition does not amount to sovereign consent but to the establishment of the fact that any given community has satisfied the criteria of statehood and has come into existence as a *legally existing* state.<sup>430</sup>

Comparable to Lauterpacht's views on this topic, Kelsen disagreed with the separation of statehood from international personality and used recognition as a means of ascertaining whether an entity met the relevant criteria of statehood. Contrasting with the former's approach, however, the latter opposed the idea of an international obligation to recognise:

Such an obligation, however desirable, is not stipulated by positive international law. Existing states are only empowered – they are not obliged – to perform the act of recognition. Refusal to recognise the existence of a new state is no violation of general international law

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<sup>429</sup> *Ibid*, p.607.

<sup>430</sup> *Ibid*, p.608.

and thus constitutes no violation of the right of any other community.<sup>431</sup>

By rejecting the concept of an international duty to recognise, Kelsen evaded the aforementioned contradiction inherent in Lauterpacht's thought. Sovereign states cannot come under a duty to create further duties towards a newly emerging state; such an obligation conflicts with the very nature of sovereignty. Inasmuch as this rejection circumvents the stated contradiction, my contention is that, it also affirms the underlying effect of absolute sovereignty in Kelsen's theory of recognition. This effect can clearly be detected in Kelsen's theory in two ways.

Firstly, according to Kelsen, each state retains the power to recognise and is absolutely free to decide whether to use this power or not. This freedom can be deduced from Kelsen's emphasis on the point that non-recognition will not amount to any violation of international law. Thus, Kelsen's formulation of the power to recognise complies with the very notion of absolute sovereignty of states. Secondly, the states are not only free to make the decision whether to recognise, but the individual use of this power will only bind the recognising state vis-à-vis the recognised entity. As Kelsen noted, '[b]y the legal act of recognition the recognised community is brought into legal existence *in relation to the recognising state*, and thereby international law becomes applicable to the relations between these states.'<sup>432</sup> In Kelsen's formulation of international legal relations, one can detect the influence of Vattel's discourse on absolute sovereignty. We observed in the previous section of this chapter that Vattel regarded every state as 'absolutely free and independent with respect to all other men, all other nations, as long as it has not voluntarily submitted to them.'<sup>433</sup> Therefore, even if he shunned Oppenheim's conception of recognition as

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<sup>431</sup> *Ibid*, p.610.

<sup>432</sup> *Ibid*, p.609. [*my emphasis*]

<sup>433</sup> Vattel, op. cit. at p.68.

sovereign consent, the notion of absolute sovereignty of states did come to determine Kelsen's approach to the question of recognition too.

In this section of the chapter, I briefly presented the thoughts of three eminent proponents of the constitutive theory of recognition. The purpose of this section was to analyse these views in light of Vattel's notion of absolute sovereignty of states. I demonstrated that Oppenheim, Lauterpacht, and Kelsen agreed upon the legally constitutive effect of recognition, however, diverged on the manner in which such constitution was effected. In all considered views, recognition marked the beginning of international legal personality and the ensuing flow of rights and obligations. The problematic aspect of this common view is that it reflects the subjective criteria of international personality which depends upon individual relations of recognition. I referred to Lauterpacht's attempt to resolve this problem by introducing the idea of an international duty to recognise and the way in which his attempt contradicted (and, in turn, were undermined by) the notion of absolute sovereignty of states. My overall argument in this section was that, the constitutive theorists' subjective and relational take on recognition was the outcome of the underlying effect of Vattel's notion of absolute sovereignty of states. I argued that this effect was manifest in the central themes of the constitutive theory: that the states are not bound by any obligations towards a new entity unless they consent, that recognition constitutes such consent. While Lauterpacht's endeavour to justify this consent by means of an international duty offended the very nature of sovereignty. I demonstrated that Oppenheim's and Kelsen's respective thoughts on recognition conformed to Vattel's idea that states are absolutely free and independent from each other. In the following section, I shift my attention to the declarative theory and probe this theory's reaction to the limiting influence of the notion of absolute sovereignty.

### 2.3. Declarative Theory

Compared to the constitutive theory, the declarative theory is the predominantly accepted view among scholars of international law. I begin this section by introducing the central elements of the latter through the works of eminent scholars such as William Edward Hall, Sir John F. Williams, and Thi-Chiang Chen. These elements include the rejection of the divide between international personality and statehood; the idea that attainment of statehood, *ipso facto*, constitutes international personality; and the claim that recognition merely has evidentiary (and, therefore, not constitutive) value. My argument is that, in its approach, the declarative theory addresses solely the *practical* difficulties of the constitutive theory and, in doing so, fails to deal adequately with the relational element of coming-into-being in the international community. Even though it solves some of these practical problems, the declarative theory's refusal to accord constitutive value to recognition leaves the conceptual question of the role one's relation to its other plays in establishing the international personality of each subject unanswered.

To begin at the beginning, in his work entitled *Treatise on International Law*, Edward Hall declared that,

[s]tates being the persons governed by international law, communities are subjected to law [...] from the moment, and from the moment only, at which they acquire the marks of a state. So soon [...] as a society can point to the necessary marks, and indicates its intention of conforming to law, it enters of right into the family of states, and must be treated in conformity with law.<sup>434</sup>

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<sup>434</sup> Hall W.E., *Treatise on International Law*, (4<sup>th</sup> Ed), (Oxford: Clarendon Press, 1895), p.21.

In this statement, three major tenets of the declarative theory can be highlighted. Firstly, by referring to states' subjection to international law, Hall ostensibly rejected the constitutive theorists' perception that rights and obligations bound states on a relative basis. Secondly, the division between statehood and international personality is dismissed as marks of statehood simultaneously entitle an entity to international personality. Thirdly, this entitlement is 'of right' meaning recognition may not play any constitutive role in attaining international personality.

However, Hall did not dismiss recognition outright as an entirely irrelevant act; he acknowledged the relational aspect of coming-into-being, and, rather confusingly, found a role for the act of recognition therein:

Theoretically a politically organised community enters of right, as was before remarked, into the family of states and must be treated in accordance with law, so soon as it is able to show that it possesses the marks of a state. The commencement of a state dates nevertheless from its recognition by other powers; that is to say, from the time at which they accredit ministers to it, or conclude treaties with it, or in some other way enter into such relations with it as exist between states alone.<sup>435</sup>

In other words, a new state comes to be through her relations with other states, and these are relations of recognition. Even though Hall considered statehood to be attained as of right when the necessary criteria is met, his emphasis on the role of recognition raises the following question. Why would such an act of recognition not be considered as constitutive? Hall answered this question by drawing a very thin line between constitutive and evidentiary

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<sup>435</sup> *Ibid*, p.87.

recognition: '[...] although the right to be treated as a state is independent of recognition, recognition is the *necessary evidence* that the right has been acquired.'<sup>436</sup>

In contrast to Hall's emphasis on the evidentiary value of recognition, Sir John F. Williams sternly maintained that recognition is impertinent to the question of statehood and international personality. Williams' views on the topic is built upon an uncompromising rejection of the distinction between statehood and international personality; Williams thought it an erroneous act of reasoning to claim that older states have the prerogative over younger states, which can only be equal to the older ones in terms of statehood and therefore as subjects of international rights and duties, to decide whether the latter should attain international personality.<sup>437</sup> Therefore, according to Williams,

[...] once the fact that a State is civilised is established to the satisfaction of the general sense of mankind, or otherwise apparent, that State becomes *ipso facto* a subject of International Law. The positivist definition of International Law, as a whole, does not, as a matter of logic, require an express assent by all or the majority of existing states as a condition *sine qua non* of the existence of a new international person.<sup>438</sup>

One can identify two major problems with Williams' quote. Firstly, as we observed in the section on the constitutive theory, the measure of civilisation is an obsolete test for statehood. Secondly, despite the claim that an express assent is not an essential condition for international personality, there remains the need for someone or in some way to establish that a state is civilised. If one is, therefore, to replace the criterion of civilisation with the modern criteria of statehood, the question raised by the second problem would still be

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<sup>436</sup> *Ibid.* [my emphasis]

<sup>437</sup> Williams J.F., 'Recognition', Transactions of the Grotius Society, Vol. 15, *Problems of Peace and War*, 53, 1929, p.55.

<sup>438</sup> *Ibid.*, p.56.

relevant: in what manner does an entity satisfy ‘the general sense of mankind’ about meeting the criteria of statehood?

The same problem is ostensibly unresolved in Ti-chiang Chen’s account of statehood and international personality. In this account, too, meeting the criteria of statehood is the essential element in concurrently attaining international personality. Thus, Chen wrote that,

[t]he source of rights and duties of an entity in international law is the fact of its actual supremacy within a specified area of territory over a specified portion of humanity, which enables it to exert physical pressure on all those who may choose to disregard its rights.

This fact is the basis of international law.<sup>439</sup>

However, to the extent that he regarded factual existence of state supremacy as the foundation of international law, Chen failed to show how this existence is established. Similar to Williams’ approach, Chen’s engagement with the notion of recognition is only to dismiss it as an act which separates statehood from international personality. Accordingly, Chen stressed that ‘[w]hen [states] exist in fact, their right and duties flow *automatically* through the operation of the law.’<sup>440</sup> Insofar as it is perceived to hinder this automatic flow, recognition will merely amount to a declaration of the recognising state’s intention to treat the new states in accordance with law and establish political relations with these states.<sup>441</sup>

In his contemplations on the question of recognition, Brierly followed a line of argument similar to Chen’s. The former claimed that ‘[a] state may exist without being recognised, and if it does exist in fact, then, whether or not it has been formally recognised by other states, it has a right to be treated by them as a state.’<sup>442</sup> With this claim the

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<sup>439</sup> Chen, op. cit. at p.3.

<sup>440</sup> Ibid p.4. [*my emphasis*]

<sup>441</sup> *Ibid.*

<sup>442</sup> Brierly J.L. *The Law of Nations*, (6<sup>th</sup> Ed.), (Edited by Sir H. Waldock), (Oxford: Oxford University Press, 1963) p.139. [*emphasis in original*]

overbearing intention, again, is to safeguard against recognition's potential to prevent states from instantly acquiring international personality. Brierly's definition of the function of recognition should also be viewed in light of this overbearing intention:

The primary function of recognition is to *acknowledge* [...] the independence of the body claiming to be a state, and to *declare* the recognising state's readiness to accept the normal consequences of that fact, namely the usual *courtesies* of international intercourse.<sup>443</sup>

Such a declarative function would, in turn, thwart the constitutive approach which enabled states to exist without international personality until after they were recognised as subjects of international law.

Compared to Chen's and Brierly's respective approaches to the question of recognition, Malcom Shaw used a different terminology to reach the same result. According to Shaw,

[r]ecognition is constitutive in a *political* sense, for it marks the new entity out as a state within the international community and is *evidence* of acceptance of its new *political* status by the society of nations. This does not imply that the act of recognition is legally constitutive, because rights and duties do not arise as a result of the recognition.<sup>444</sup>

Antonio Cassese also adopted a similar approach to Shaw by regarding recognition as '*politically* important in that it *testifies* to the will of the recognising States to initiate international interaction with the new State.'<sup>445</sup> In addition to agreeing upon the political, as opposed to the legal, effect of recognition, Shaw and Cassese appeared to be of the same

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<sup>443</sup> *Ibid*, p.139. [*my emphases*]

<sup>444</sup> Shaw, *op. cit.* at p.447. [*my emphases*]

<sup>445</sup> Cassese A., *International Law*, (2<sup>nd</sup> Ed.), (Oxford: Oxford University Press, 2005) p.74. [*my emphases*]

opinion on the *evidential* value of recognition too. On this value, Cassese offered a lucid explanation: ‘in a community lacking any central authority responsible for formally passing judgment on legally relevant situations, the attitude of single States acquires considerable weight as evidence for, or against, the existence of new legal subjects.’<sup>446</sup>

Three major principles can be highlighted from the works of the authors considered in this section which shape the declarative approach. Firstly, the division between statehood and international personality is rejected; therefore, international rights and duties automatically flow from an entity’s attainment of statehood. Secondly, in light of this rejection, recognition loses its value as the act which determines a new state’s accession to international personality; thus, recognition is deemed to lack any legally constitutive effect. Finally, recognition is a declarative act which clarifies the political intent of the recognising state. Such an act merely has an evidential value. Stefan Talmon interpreted this evidentiary value as ‘the *status-confirming* effect’ of recognition which ‘only corroborates the objective legal situation, i.e. the existence of a State.’<sup>447</sup> Crawford offered a similar interpretation: ‘Recognition is an institution of State practice that can resolve uncertainties as to status and allow for new situations to be regularised. That an entity is recognised as a State is evidence of its status [...]’<sup>448</sup> The declarative logic can, therefore, be summed up in the following way. There is the fact: Entity A meets the criteria of statehood. Then there is the confirmation or the evidence of the fact: State B recognises Entity A as a new state. However, the fact is ostensibly sufficient, without any confirmation, for the automatic flow of international rights. Hence, the conundrum is that, if the fact is entirely sufficient, why the need for the evidentiary value of recognition? Otherwise, if the fact has to be established in some manner, why dismiss recognition as declaratory?

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<sup>446</sup> *Ibid.*

<sup>447</sup> Talmon S., ‘The Constitutive Versus the Declarative Theory of Recognition: *Tertium Non Datur?*’ *British Yearbook of International Law*, Vol. 75, Issue 1, 2005, p.107.

<sup>448</sup> Crawford, *op. cit.* at p.27.

Mathew Craven's analysis of the declarative theory can help us understand the causes of this conundrum. The starting point for Craven is the manner in which the prevalent theories of recognition treat the *status* and *relation* elements of statehood. The declarative approach keeps these elements separate; therefore, the status of statehood must be attained distinctly prior to being able to take part in legal relations with other states.<sup>449</sup> Criteria of statehood is the objective measure of status, whereas, recognition is a way of relating to another entity. What proves to be problematic is the attempt to establish the status outside of the context of relation. Craven explains that,

[t]he difficulty with the declarative position is that it seeks to maintain both the idea that the creation of States is rule-governed, and that the conferral or withholding of recognition is an essentially political and discretionary act. To postulate the existence of a rule, but then deny it any ground for being applied is to rely rather heavily upon the self-executory character of formal rule.<sup>450</sup>

As Emmanuelle Tourme-Jouannet pointed out, recognition is not only essential for the establishment of individual identities but also for collective identities and that 'these identities are determined in part by their relationships with others.'<sup>451</sup> The perceived 'self-executory character' of the criteria of statehood is problematic to the extent that it excludes this essentially relational construction of status.

## Conclusion

The declarative theory presents an attempt to overcome the major practical difficulties of the constitutive theory. In the first part of this chapter, I outlined Vattel's

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<sup>449</sup> Craven M., 'Statehood, Self-Determination, and Recognition' in Evans M.D. (ed.), *International Law*, (4th Ed.), (Oxford: Oxford University Press, 2014) p.238.

<sup>450</sup> *Ibid.*

<sup>451</sup> Tourme-Jouannet E., 'The International Law of Recognition', *The European Journal of International Law*, Vol. 24, No.2, 2013, 667-690, p.670.

notion of absolute sovereignty of states and underlined the problematic aspect of perceiving states as absolutely free and independent from all externalities. In the second part of this chapter, I argued that the problematic perception of state sovereignty underlay the constitutive theorists' understanding of recognition as an act of sovereign consent. Based on this understanding, established states could only be obliged to observe the rights of a new state if the former consented to this obligation. The outcome of the understanding was that the attainment of international personality depended on the arbitrary and subjective will of the established states. This outcome, in turn, necessitated a distinction between statehood and international personality. International personality of a newly emerging entity, therefore, could relatively exist for the recognising states and not for the ones that did not recognise.

The declarative theorists rejected the distinction between international personality and statehood by deeming the legal criteria of the latter as the objective test for the former. Meeting the requisite criteria for statehood was sufficient for the automatic flow of rights and duties associated with international personality. Insofar as the rejection of the distinction between statehood and international personality solved some procedural difficulties of the constitutive approach, it did not, however, engage with this approach's failure to grasp the relational basis of coming-into-being. For the constitutive theorists, recognition becomes a powerful tool in the hands of the established, or, as it were, 'civilised' states and is used to determine new entries into a distinct family of nations. If, according to the proponents of the constitutive theory, recognition is merely an individual act of sovereign consent. For the proponents of the declarative theory, it is a status-confirming act or of merely evidentiary value. In neither approach, thus, mutual relations of recognition are considered as an imperative which continuously determine the identities of involved groups.

Responding to the declarative theory's basic principle that states come into being by the very *fact* that they acquire the qualities of statehood irrespective of recognition, Fitzpatrick wrote that,

[...] common assurance to contrary, facts do not speak for themselves. They come to be through various performative modes endowing them with operative existence. This could be an observational mode, for instance – a recognition of the existence of the facts through the way in which they are observed. It depends upon recognising what, as it were, comes to it factually. But this ability, as Derrida has it, is of the law itself: the incipient relation to ‘nonlaw’ is ‘in law’. What is involved here becomes not just the ‘declaratory’ observation of some factual evidence. What is involved is also a ‘constitutive’ legal decision responding to a legal claim, with both decision and claim being based on legal criteria relating to whether an entity is to be endowed with the requisite legal personality to participate in an international legal system.<sup>452</sup>

Although the arguments on the status-confirming aspect or the evidentiary value of recognition may be understood as *performative modes* which endow facts with *operative existence*, the declarative theorists sternly rejected the outcome of this mode as legally constitutive.

Viewed within the context of Vattel’s notion of absolute sovereignty and its underlying effect upon the constitutive theory, the declarative theorists’ aforementioned rejection merely enhances the problematic atomism of state sovereignty which does not take into account the fact that states, as international subjects, exist within a community and this existence is constantly shaped by mutual relations. Inasmuch as the case study presented in the previous two chapters demonstrates existential effects of an entity’s relations with the external world, I showed, in this chapter, that the prevalent theories of recognition failed to

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<sup>452</sup> Fitzpatrick (2011) op. cit. at p.45.

account for such relational determination of the very being of international subjects. In order to seek a viable theoretical framework in which one can account for the relational element of coming-into-being, I turn my attention, in the next chapter, to Hegel's theory of recognition.

## CHAPTER FOUR

### HEGEL'S THEORY OF RECOGNITION

#### Introduction

The atomistic conception of absolute sovereignty, that the sovereignty of states can be established and maintained independently of their external relations, affects the question of recognition in two major ways. Firstly, following this conception, the constitutive theorists thought of recognition as a sovereign act of consent without which obligations towards new entities would not be binding upon already established states. Secondly, by reacting to the constitutive theorists' arbitrary and subjective test of international personality, the declarative theorists perceived recognition as a political act devoid of any legally constitutive effect. In their respective approaches, each group, therefore, failed to ask the conceptual question of other's role in establishing the international personality of each subject.

The focus of this conceptual question is upon the relational element of coming-into-being; it is upon the mutuality of this relation and how this mutuality may continuously determine the very being of each entity. To take such an element into account, in turn, requires a departure from the aforementioned atomistic perception of sovereignty. In other words, and contrary to Vattel's view, states cannot be 'quite free and independent from all other nations.' The problematic aspect of such atomism can be solved by locating state sovereignty in a communal existence which safeguards equality of each sovereign as well as their distinct freedom and independence. To achieve this solution, the role of recognition has to be rethought outside the boundaries set by the prevalent theories which I considered

in the third chapter; that is to say, recognition must be reconceived as a constitutive imperative but one that rests on elements of mutuality and flux.

In this chapter, I achieve this reconception by turning to Hegel's theory of recognition as presented in the latter's *Phenomenology of Spirit*.<sup>453</sup> My argument is that, with his approach to the notion of recognition, Hegel provided the conceptual framework for an intersubjective system wherein the constitution of each subject depends upon its relations with others and that these relations, in turn, enhance the particular freedom and independence of each subject. My intention is to apply Hegel's theory of recognition to the construction of subjects under international law. This application, however, is faced with two major difficulties. Firstly, *Phenomenology* is a treatise on the attainment of absolute knowledge and, as such, in this work, Hegel traced the development of natural consciousness into the scientific truth of knowledge. Adaption of the notion of recognition as presented in the *Phenomenology* requires abstracting this notion from a disparate context with ensuing challenges. Secondly, Hegel directly engaged with the question of recognition of states under international law in his *Elements of the Philosophy of Right*.<sup>454</sup> Consequently, bidding to apply Hegel's theory of recognition to the issue of international personality I must, first, explain why the Hegelian approach I undertake in this chapter relies upon the *Phenomenology* rather than the more obvious source indicated in the *Philosophy of Right*.

Thus, I begin the first part of this chapter by introducing the views Hegel presented on recognition and statehood in his *Philosophy of Right*. I, then, draw upon Rose Parfitt's work to evaluate the influence of these views upon the constitutive theory of recognition. This evaluation locates Hegel's thoughts within the context of failures I associated with the constitutive theory in the previous chapter. In other words, I argue that Hegel's take on recognition and statehood as expounded in his *Philosophy of Right* is undermined by ideas

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<sup>453</sup> Hegel G.W.F., *Phenomenology of Spirit*, (trans. A.V. Miller), (Oxford: Oxford University Press, 1977).

<sup>454</sup> Hegel G.W.F., *Elements of the Philosophy of Right*, (ed. Wood A.W., trans. Nisbet H.B.), (Cambridge: Cambridge University Press, 1991).

such as membership of a distinct family of nations and an ambivalent duty to recognise entities as new states. It is in light of these flaws that, in the second part of the chapter, I turn to the *Phenomenology of Spirit* and introduce Hegel's thoughts on the act of recognition which marks the coming-into-being of self-conscious subjects.

As mentioned earlier, the main challenge of relying upon the *Phenomenology* is that it is a treatise on the nature of absolute knowledge. Inasmuch as the account of recognition comprises the mutually constitutive movements of two subjects that have to rely upon this mutuality to come into being, in the *Phenomenology* this is presented as an account of consciousness' transformation into self-consciousness. In the second part of the chapter, therefore, I demonstrate this transformation by tracing consciousness' development through several stages. A close scrutiny of these stages is necessary to ascertain the inner dynamics of the dialectical movements which culminate in the act of recognition. I, then, follow the progress of the Hegelian subject into the famous saga of lordship and bondsman. I show that this saga sets the context in which the struggle for recognition materialises. However, the outcome of this struggle is not the clear construction of two independent subjects but the enslavement of one of the parties by the other. I show that this enslavement produces a particular type of truth that pertains to the independence of self-consciousness.

Two questions, then, become relevant for my attempt to account for the imperative role recognition plays for the constitution of subjects under international law. The first is whether the inner dynamics of the dialectical movements can be adapted, on an *ad hoc* basis, to describe such a role. The second question is whether the saga of lordship and bondsman sets any contextual repercussions for such an adaptation. In the third part of the chapter, I answer the first question in the affirmative by referring to the works of authors who adapted the theory of recognition for similar purposes. I consider Axel Honneth's works on the constitution of moral subjects; I refer to Charles Taylor's ideas on the construction of cultural identities; and introduce Costas Douzinas' notion of the legal subject. I engage with

the second question and the probable reverberations of lordship and bondsman in the next chapter.

## **Part One**

### **International Law and Recognition in Hegel's *Philosophy of Right***

In this part of the chapter, I briefly introduce Hegel's ideas on recognition of states under international law as presented in the latter's *Elements of the Philosophy of Right*. The purpose of referring to this particular work is twofold. Firstly, I show that Hegel's thoughts can be interpreted as an early constitutive approach to recognition. To support this interpretation, I draw upon the manner in which Hegel's views influenced later proponents of the constitutive theory. Secondly, I argue that these views also anticipated some of the difficulties which I related to the constitutive approach in the previous chapter. One particular problem, which I bring to the fore in this part, is the ambivalence in Hegel's approach to the possibility of a duty to recognise. Based on this ambivalence, I conclude the part by arguing that the shortcomings of the account of presented in the *Philosophy of Right* necessitates a turn to Hegel's *Phenomenology of Spirit*.

According to Hegel, the system of right comprises the domain in which freedom is actualised.<sup>455</sup> In the *Elements of the Philosophy of Right* Hegel presented the structuring of this domain through three parts: abstract right, morality, and ethical life.<sup>456</sup> In the first part, free will attains an objective, external existence. This existence is turned inwards, and hence, becomes subjective within the domain of morality. Finally, in ethical life, freedom is actualised by the unification of universal external freedom of abstract right and particular subjective good of morality.<sup>457</sup> The realisation of this freedom is effected through three different spheres of ethical life; these, according to Hegel, are the spheres of family, civil

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<sup>455</sup> Hegel (1991) op. cit. at §4, p.35.

<sup>456</sup> *Ibid*, §33, p.62.

<sup>457</sup> *Ibid*.

society, and the state.<sup>458</sup> Hegel's ideas on recognition of states under international law is, therefore, located within the last sphere of the final domain of system of right.

Hegel defined the state as 'the actuality of the ethical Idea.'<sup>459</sup> The ultimate purpose of the state is to attain a substantial unity wherein 'freedom enters into its highest right.'<sup>460</sup> There are three decisive elements of the state as the ethical Idea. The first is that, in its immediate existence, a singular state is a 'self-related organism.'<sup>461</sup> The second element relates to state's relation to other states; this relation marks international law.<sup>462</sup> Finally, there is a third factor which connects the external relations of states under international law; this last factor is defined as 'the spirit which gives itself actuality in world history.'<sup>463</sup> The focus of this part of the chapter is upon the second element wherein Hegel clarified the form of these external relations and the role of recognition therein.

Hegel's perception of international law resembles Grotius' and Vattel's positivist approaches which I considered in the previous chapter. Thus, according to the former, international law 'applies to the relations between independent states' and this law's existence 'depends on [states'] distinct and sovereign wills.'<sup>464</sup> The prevalence of the notion of absolute sovereignty is inherent to Hegel's thoughts, too, as he deemed the nation state as 'the absolute power on earth.'<sup>465</sup> Inasmuch as each state is regarded as sovereign and independent in relation to other states, the absoluteness of this independence is blurred by Hegel's remark that each state has 'a primary and absolute entitlement' to be recognised by other states.<sup>466</sup> This entitlement hints at the constitutive force of one's relations with its others. However, instead of presenting this relation as an imperative, Hegel regarded the

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<sup>458</sup> *Ibid*, §157, pp. 197, 198.

<sup>459</sup> *Ibid*, §257, p.275.

<sup>460</sup> *Ibid*, §258, p.275.

<sup>461</sup> *Ibid*, §259, p.281.

<sup>462</sup> *Ibid*.

<sup>463</sup> *Ibid*, §259, p.282.

<sup>464</sup> *Ibid*, §330, p.366.

<sup>465</sup> *Ibid*, §331, p.366.

<sup>466</sup> *Ibid*, §331, pp. 336, 337.

entitlement to recognition as ‘purely formal.’<sup>467</sup> The idea of pure formality, in turn, renders Hegel’s take on the role of recognition under international law rather ambivalent.

Hegel explained that the existence of a state is contingent upon its content, that is to say, ‘its constitution and present condition.’<sup>468</sup> In other words, ‘the legitimacy of a state, and more precisely [...] of the power of its sovereign, is a purely *internal* matter.’<sup>469</sup> These definitions parallel Bodin’s and Hobbes’ respective conceptions of sovereignty which I considered in chapter three. However, contrary to these authors’ singular focus upon the internal element of sovereignty, Hegel also paid attention to its external element. Thus, Hegel argued that ‘[w]ithout relations with 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.’<sup>470</sup> The ambivalence in Hegel’s thoughts on recognition and international law is manifest in two ways. Firstly, recognition is regarded by Hegel as an absolute entitlement which ensures individuality of a state but even as such, it is deemed to be purely formal. Secondly, sovereignty and the legitimacy of a state is derived from its constitution, but this legitimacy needs to be externally supplemented by recognition from other states.<sup>471</sup>

Ambiguities pertaining to Hegel’s conception of recognition under international law can be interpreted as anticipating difficulties which would later occupy the minds of the constitutive theorists. One such difficulty relates to the possibility of a duty to recognise; even though he wrote of an *absolute entitlement* to be recognised, Hegel understood that the act of recognition cannot be obligatory as this act depended ‘on the perception and will of the other state.’<sup>472</sup> Such dependence is also an indication of the relative aspect of international personality as each state will have to determine whether to recognise a newly

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<sup>467</sup> *Ibid.*, §331, p.367.

<sup>468</sup> *Ibid.*

<sup>469</sup> *Ibid.*

<sup>470</sup> *Ibid.*

<sup>471</sup> *Ibid.*

<sup>472</sup> *Ibid.*

emerging entity. Despite these difficulties, however, Parfitt argued that ‘a number of factors came together to give Hegel’s theory [of recognition] a special traction, encouraging the constitutive theory to become predominant from the 1860s.’<sup>473</sup>

Parfitt listed three factors. The first factor consisted of the seventeenth and eighteenth century revolutions which occasioned the emergence of new states.<sup>474</sup> The second factor was ‘the gradual transformation of the ‘international’ from an inter-dynastic into an inter-state jurisdictional space.’<sup>475</sup> Parfitt explained that these two factors were followed by the constitutive theorists’ prominent emphasis on international subjects’ prerogative to determine whether they would be bound by rights and duties towards newly emerging entities.<sup>476</sup> Parfitt listed the advancement of European imperialism as the third factor and linked this factor to the advent of the notion of civilisation as the measure of international personality.<sup>477</sup> In the previous chapter, I considered the consequences of these factors within the context of the constitutive theory’s failure to account for recognition as a mutually constitutive act. I argued that this failure stemmed from the perception of recognition as a sovereign act of consent with which membership of the so-called civilised family of nations was granted to newly emerging states.

Inasmuch as Hegel’s take on recognition and international law in the *Philosophy of Right* influenced the proponents of the constitutive theory in a much later age, the difficulties pertaining to the former’s approach were not resolved in the latter’s theories. These difficulties necessitate a turn to the *Phenomenology of Spirit*. The purpose of this turn is to abstract an apt theoretical framework to account for the mutually constitutive aspect of recognition — a framework which would circumvent the aforementioned difficulties. In

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<sup>473</sup> Parfitt R., ‘Theorizing Recognition and International Personality,’ in Orford A., Hoffman F., (eds.), *The Oxford Handbook of the Theory of International Law*, (Oxford: Oxford University Press, 2016) pp. 586, 587.

<sup>474</sup> *Ibid.*, p.587.

<sup>475</sup> *Ibid.*

<sup>476</sup> *Ibid.*

<sup>477</sup> *Ibid.*

what follows, I commence the search for such a framework by introducing a brief account of the transformation of consciousness to self-consciousness in the first four chapters of the *Phenomenology*.

## **Part Two**

### **Recognition in Hegel's *Phenomenology of Spirit***

#### **2.1. Introduction**

As I mentioned in the introduction of this chapter, two major obstacles lay in the way of utilising Hegel's ideas on recognition as presented in the *Phenomenology* to account for the constitution of subjects under international law. The first obstacle was Hegel's direct engagement with the question of recognition within the context of international law in his *Elements of the Philosophy of Right*. However, as I demonstrated above, this engagement dragged one back into the unresolved issues of the constitutive theory — the very issues I try to overcome in this thesis. Insofar as the reappearance of these issues necessitate a turn to the *Phenomenology*, the content of this work presents the second obstacle. The treatise details Hegel's development of cognitive knowledge into scientific truth of absolute knowledge. In other words, the notion of recognition features in a section among consciousness' lengthy progress into self-consciousness and has no ostensible connection with statehood or international law. Therefore, the question remains as to whether Hegel's ideas can be abstracted from the context of *Phenomenology* and adapted for the aforementioned *ad hoc* purposes.

The purpose of this part of the chapter is to locate the notion of recognition within the initial chapters of the *Phenomenology*. To achieve this purpose, I trace the numerous moments of consciousness' transformation into self-consciousness. The starting point is the primary stages of consciousness, namely, sense-certainty, perception, and understanding. I follow these moments with consciousness' evolution into self-consciousness. This evolution

takes place over three further stages: desire, recognition, and the dialectic of lordship and bondsman. Each stage sets out the components of the dialectical movement that culminates in the act of recognition. I show that this movement occurs essentially over a triad of phases in which two contradictory positions are overcome in a third moment, that each overcoming encompasses the reconciliation of universal and particular elements, and that this reconciliation engenders a unity which, at the level of self-consciousness, safeguards freedom and independence of different subjects.

Before I endeavour to outline the complex transformation of consciousness into self-consciousness, reference to the overall objective of the *Phenomenology* is necessary to establish the setting and the method of this transformation. At the outset of the *Phenomenology of Spirit* Hegel asked whether consciousness can grasp Absolute through cognition. Absolute is defined as the whole; this whole corresponds to the truth which has its existence as a scientific system.<sup>478</sup> Hegel's answer was informed by a departure from the presupposition that there is a gap between cognition and Absolute.<sup>479</sup> In Hegel's opinion, separating cognition from Absolute results in a peculiar distinction between two types of truths.<sup>480</sup> The initial truth is that of Absolute. This is the truth that Science aims to achieve. The second truth emerges from cognition. Hegel argued that while as a result of the above-mentioned presupposition cognition may not be able to grasp Absolute, it, nevertheless, is able to comprehend 'other kinds of truth.'<sup>481</sup> A semblance is, therefore, created when two modes of knowledge (that is to say, scientific and cognitive) appear side-by-side; this is a semblance from which Science, in its quest to achieve true knowledge, must liberate itself.<sup>482</sup> However, according to Hegel, this liberation could not take the form of a mere rejection of

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<sup>478</sup> Hegel (1977) op. cit. at pp. 3, 11; Hegel G. W. F., *Encyclopedia of the Philosophical Sciences in Basic Outline: Part I: Science of Logic*, (Cambridge: Cambridge University Press, 2010) p.299; Magee G. A., *The Hegel Dictionary*, (London: Continuum, 2010) p.19.

<sup>479</sup> Hegel (1977) op. cit. at p.47.

<sup>480</sup> *Ibid*, pp. 47, 48.

<sup>481</sup> *Ibid*.

<sup>482</sup> *Ibid*, p.48.

cognitive knowledge as ‘an ordinary way of looking at things’ or the form of an appeal ‘to the signs [within cognitive knowledge] which point in the direction of Science.’<sup>483</sup> In the first form, Science assures its mode of knowledge by taking no account of cognitive knowledge. However, this assurance may not mean that the semblance is extinguished since cognitive knowledge will also be assuring its mode of knowledge by not taking any account of Science.<sup>484</sup> In the second form, Science will be appealing to an inferior form of itself since the signs (to which Science appeals) exists within the initially rejected (in other words, what has been regarded by Science as the untrue) mode of knowledge.<sup>485</sup>

Therefore, in Hegel’s perspective, the quandary which is generated by the semblance necessitated ‘an exposition of how knowledge makes its appearance’ — an exposition Hegel undertook in the overall scheme of the *Phenomenology of Spirit*.<sup>486</sup> With this exposition, the initial question of whether consciousness can grasp the absolute assumes a slightly different form: which one of the two modes of knowledge is the true knowledge? In other words, the second question is a question about the truth of knowledge. However, since truth corresponds to the absolute, what remains at issue is still the knowledge of the absolute: which one of the two modes of knowledge is the knowledge of the absolute? Given that the separation of phenomenal knowledge from the knowledge of the absolute results in the above-mentioned semblance, Hegel’s answer begins with merging the two types of knowledge. Hence, instead of presupposing a gap between cognition and the absolute, natural consciousness becomes the point from which consciousness elevates itself to the position of science.<sup>487</sup>

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<sup>483</sup> *Ibid*, pp. 48, 49.

<sup>484</sup> *Ibid*, p.49.

<sup>485</sup> *Ibid*.

<sup>486</sup> *Ibid*.

<sup>487</sup> *Ibid*, p.50.

In order to trace the progress of consciousness into science Hegel employed an intricate method. At the basis of this method is the distinction between the notions of *being-for-another* and *being-in-itself*. The former notion corresponds to knowledge:

Consciousness simultaneously *distinguishes* itself from something, and at the same time *relates* itself to it, or, as it is said, this something *exists* for consciousness; and the determinate aspect of this *relating*, or of *being* of something for a consciousness, is *knowing*.<sup>488</sup>

In *The Science of Logic*, Hegel defined the latter notion ‘not [as] being in general but [as] being with reference to itself *in contrast* to its reference to the other [...]’<sup>489</sup> In *Hegel: Texts and Commentary*, Kaufmann read this definition to mean ‘taken by itself, apart from its relations to other matters, or, in effect, considered superficially.’<sup>490</sup> In the introduction to the *Phenomenology*, *being-in-itself* is given several names: *essence*, *truth*, or *the True*.<sup>491</sup> Therefore, the truth of knowledge is tested by measuring whether *being-for-another* (i.e. knowing) corresponds to *being-in-itself* (i.e. the truth).

However, this test is not to be depicted as Science setting a criterion for the investigation of the knowledge of natural consciousness for Hegel argued that this criterion inheres in knowledge.<sup>492</sup> In other words, the distinction between *being-for-another* and *being-in-itself* is inherent to consciousness:

[...] the distinction between the in-itself and knowledge is already present in the very fact that consciousness knows an object at all. Something is *for it* [i.e. for consciousness] the *in-itself*; and knowledge,

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<sup>488</sup> *Ibid*, p.52. [*emphasis in original*]

<sup>489</sup> Hegel (2010) op. cit. at p.92. [*emphasis in original*]

<sup>490</sup> Kaufmann W., *Hegel: Texts and Commentary*, (Indiana: University of Notre Dame Press, 1977) p.31.

<sup>491</sup> Hegel (1977) op. cit. at pp. 52, 53.

<sup>492</sup> *Ibid*, p.53.

or the being of the object for consciousness, is, *for it*, another moment. Upon this distinction, which is present as a fact, the examination rests. If the comparison shows that these two moments [that is to say, the moments of being-in-itself and being-for-another] do not correspond to one another, it would seem that consciousness must alter its knowledge to make it conform to the object.<sup>493</sup>

The alternation of the knowledge of the object, however, does not conclude the test. On the contrary, a change in the knowledge necessitates a change in the object ‘for [the object] essentially belonged to this knowledge.’<sup>494</sup> This necessity, in turn, reveals that ‘what [consciousness] previously took to be the *in-itself* is not an *in-itself*, or that it was only an *in-itself for consciousness*.’<sup>495</sup>

The result of this revelation is that a new object emerges which is different from the first object. In this regard, Hegel wrote that ‘[i]nasmuch as the new true object issues from it, this *dialectical* movement which consciousness exercises on itself and which affects both its knowledge and its object is precisely what is called *experience*.’<sup>496</sup> Through each experience, which occasions the emanation of a new true object, consciousness enters into a new pattern; and in this pattern essence (or, the truth of the object) is different from the previous pattern of consciousness. According to Hegel, this difference ‘guides the entire series of the patterns of consciousness in their necessary sequence.’<sup>497</sup>

This sequential progress, in turn, enables the comprehension of the whole system of consciousness; therefore, experience of consciousness becomes the method by which natural consciousness elevates itself to the scientific truth of knowledge (or, to absolute

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<sup>493</sup> *Ibid*, p.54. [*emphases in original*]

<sup>494</sup> *Ibid*.

<sup>495</sup> *Ibid*. [*emphases in original*]

<sup>496</sup> *Ibid*, p.55. [*emphases in original*]

<sup>497</sup> *Ibid*, p.56.

knowledge).<sup>498</sup> In what follows, I present the sequential progress of this elevation within the first four chapters of the *Phenomenology*. Therefore, the presentation starts off with the primary phase of sense-certainty but is limited to the phase in which self-consciousness attains the truth of its independence. It is in this latter phase where one finds Hegel's notion of recognition.

## 2.2. Consciousness: Sense-Certainty, Perception, and Understanding

The first pattern of consciousness which Hegel considered in the *Phenomenology* is sense-certainty. This pattern corresponds to the immediate knowledge of the object: 'I, *this* particular I, am certain of *this* particular thing' and within this certainty the truth of the object 'contains nothing but the sheer being of the thing' and '[c]onsciousness, for its part, is [...] only as a pure 'I'.<sup>499</sup> In other words, Hegel explained that 'the 'I' does not have the significance of a manifold imagining or thinking; nor does the 'thing' signify something that has a host of qualities.'<sup>500</sup> However, a close reflection upon the distinction between the I and the object will reveal that the certainty of the object is actually mediated: 'I have this certainty through something else, viz. the thing; and it, similarly is in sense-certainty through something else, viz. through the 'I'.<sup>501</sup> Furthermore, when the truth of the object is tested in language — that is to say, when one utters 'I am certain of this tree' or expresses this certainty in the form of 'Now is night' or 'Here is a house' — the initially presumed *pure being* of the object reveals itself to be in fact a *universal*.<sup>502</sup> That is to say, in sense-certainty, the truth of the object resides in the immediate expression of what *This* object, *Here* and *Now*, is; and Hegel showed that the notions of This, Here and Now are actually universals

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<sup>498</sup> *Ibid.*

<sup>499</sup> *Ibid.*, p.58. [*emphases in original*]

<sup>500</sup> *Ibid.*

<sup>501</sup> *Ibid.*, p.59.

<sup>502</sup> *Ibid.*, p.60.

which are permanent and self-preserving, and are indifferent to what happens in them: now is night, but in another moment, now is day, or here is a tree but if one turns around, here is a house.<sup>503</sup>

The same analysis applies to consciousness which initially appears as a pure I: “I, *this* ‘I’, see the tree and assert that ‘Here’ is a tree; but another ‘I’ sees the house and maintains that ‘Here’ is not a tree but a house instead. Both truths have the same authentication [...]; but the one truth vanishes in the other.”<sup>504</sup> Therefore, consciousness comes to realise that universal is, in fact, the true content of sense-certainty. With this realisation consciousness enters into a new pattern. This new pattern, in which consciousness *takes up* the object as it is in truth, that is to say, as a universal, is called perception.<sup>505</sup> In perceiving its object, consciousness ‘confine[s] itself to a pure apprehension of [its object].’<sup>506</sup> Since the truth of the object is universality, consciousness, therefore, apprehends a *self-identical* object; ‘for in the universality [...] *otherness* itself is immediately present for [consciousness], though present as what is *null* and superseded.’<sup>507</sup>

However, through its progression from perception to the next pattern, consciousness learns that, contrary to the initial presumption, the truth of the object is actually burdened by an opposition.<sup>508</sup> In order to demonstrate this affliction, Hegel provided an analysis of the object as it expresses itself to perception; this expression takes the form of a thing with many properties.<sup>509</sup> Following on from the previous pattern, universal should remain as the truth of the object. The way in which this universality is expressed in an object with many properties is through, what Hegel called, an indifferent Also:

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<sup>503</sup> *Ibid.*

<sup>504</sup> *Ibid.*, p.61.

<sup>505</sup> Miller, as the translator of the *Phenomenology*, specified in a note that “[t]he German for ‘to perceive’ is *wahrnehmen* which means literally ‘to take truly’” – *Ibid.*, p.66.

<sup>506</sup> *Ibid.*, p.70.

<sup>507</sup> *Ibid.* [*emphases in original*]

<sup>508</sup> *Ibid.*, p.76.

<sup>509</sup> *Ibid.*, p.67.

This salt is a simple Here, and at the same time manifold; it is white and *also* tart, *also* cubical in shape, of a specific gravity etc. All these many properties are in a single simple ‘Here’, in which, therefore, they interpenetrate [...] And, at the same time, without being separated by different Heres, they do not affect each other in this interpretation [...] [S]ince each [property] is itself a simple relating of self to self it leaves the others alone, and is connected with them only by the indifferent Also.<sup>510</sup>

Similar to the indifferent Now and Here, the *indifferent Also* is a universal. Nonetheless, if one regards each property of the thing merely as self-relating, this would render the properties indeterminate since, according to Hegel, properties ‘are only determinate in so far as they *differentiate* themselves from one another, and *relate* themselves to *others* as to their opposites.’<sup>511</sup>

As a result of this necessary opposition, however, the thinghood of the object will be unfeasible for it would mean that the essential element of thinghood — the unity, the simple togetherness of its properties — will be absent.<sup>512</sup> Therefore, the truth of the object cannot merely be an indifferent unity as per *Also* but it must also be a determinate unity in which different properties can relate to each other as opposite without falling out of the abstract universal medium of indifferent *Also*; Hegel called this unity *One* and explained it as ‘the moment of negation; [...] simply a relation of self to self [which] excludes an other.’<sup>513</sup>

However, as self-relating negation, *One* will counter the initial presumption that otherness is null and superseded in the object. In this regard, Hegel wrote that,

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<sup>510</sup> *Ibid*, pp. 68, 69. [*emphases in original*]

<sup>511</sup> *Ibid*, p.69. [*emphases in original*]

<sup>512</sup> *Ibid*, pp. 68, 69.

<sup>513</sup> *Ibid*.

[t]he Thing is posited as being *for itself*, or as the absolute negation of all otherness, therefore as purely *self*-related negation; but the negation that is self-related is the suspension of *itself*; in other words, the Thing has its essential being in another Thing.<sup>514</sup>

Having its essence in the other contradicts the former perception that the object's essence is universality. In discovering this contradiction, consciousness elevates itself into a new pattern in which 'the universality splits into the extremes of singular individuality and universality.'<sup>515</sup>

In this new pattern and in accordance with the above-quote, consciousness comes to the understanding that what it is encountering as an object is 'a being-for-self that is burdened with a being-for-another.'<sup>516</sup> The two modes of being which are contained in a single unit form an *unconditioned absolute universality*.<sup>517</sup> This new type of universality is a deviation from the earlier self-identical universality the truth of which was assumed in perception and later contradicted in understanding.

Therefore, consciousness "learns that the truth intended by the thesis of the 'thing with properties' is not the 'thing with properties' but rather force and the play of forces."<sup>518</sup> Norman explained this pattern as the better grasp of the 'dynamic inter-relation of opposites.'<sup>519</sup> Therefore, what Hegel called Force is the movement which sustains this dynamic interrelation: independent 'matters' of the indifferent *Also* proceed to the unity of the object and this unity, in turn, reveals the diversity within the object — a diversity, which,

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<sup>514</sup> *Ibid*, p.76. [*emphasis in original*]

<sup>515</sup> *Ibid*.

<sup>516</sup> *Ibid*, p.77.

<sup>517</sup> *Ibid*.

<sup>518</sup> Gadamer H., *Hegel's Dialectic: Five Hermeneutical Studies*, (New Haven: Yale University Press, 1976) p.37.

<sup>519</sup> Norman R., *Hegel's Phenomenology A Philosophical Introduction*, (London: Sussex University Press, 1976) p.39.

in a circular fashion, reduces back into the unity.<sup>520</sup> Hegel distinguished between Force *proper* and the *expression* of Force.<sup>521</sup> Thus, every segment of the above-mentioned interrelation corresponds to an expression of Force; whereas, in their circular movement, each of these segments disappears into Force proper. In other words, in itself, Force is proper; and reflected out of itself, Force becomes its expression, and in dialectical fashion, Force is reflected back into itself from its expression.<sup>522</sup> However, in expressing itself, Force remains with itself; ‘Force has *expressed itself*, and what was supposed to be something else soliciting it is really Force itself.’<sup>523</sup> Furthermore, ‘[w]hat appears as an ‘other’ and solicits Force, both to expression and to a return into itself, directly proves to be *itself Force*.’<sup>524</sup>

In the previous patterns the Truth was grasped in the form of antitheses such as the universal and the particular. With the *play* of Forces, these antitheses are eliminated. This elimination leads to what Hegel called an inner truth and

[w]ithin this *inner truth*, as the *absolute universal* which has been purged of the *antithesis* between the universal and the individual and has become the object of *Understanding*, there now opens up above the *sensuous* world, which is the world of *appearance*, a *supersensible* world which henceforth is the *true* world.<sup>525</sup>

The opening up of a supersensible world marks the split between previous patterns of consciousness (i.e. sense-certainty and perception) and Understanding. Within the context of these previous patterns consciousness concerned itself with the appearance of the object. At the level of sense-certainty, consciousness searched for truth in an object which I grasped

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<sup>520</sup> Hegel (1977) op. cit. at p.81.

<sup>521</sup> *Ibid.*

<sup>522</sup> *Ibid.*

<sup>523</sup> *Ibid.*, p.83. [*emphasis in original*]

<sup>524</sup> *Ibid.* [*emphasis in original*]

<sup>525</sup> *Ibid.*, p.87.

through my senses. In the stage corresponding to perception, consciousness directed its search on to an object which I perceived as the thing with its properties. In the phase of Understanding, however, with the realisation of the play of Forces, attention is paid not to the appearance of the object but to something that is beyond this appearance.

By doing away with the above-mentioned antitheses, play of Forces amounts to an absolute flux.<sup>526</sup> According to Hegel, the only thing that inheres within this flux is ‘*difference* as a *universal* difference, or as a difference into which the many antitheses have been resolved.’<sup>527</sup> This difference constitutes the law of Force; hence, what Hegel called the supersensible world is, in fact, ‘an inert realm of laws.’<sup>528</sup> In Gadamer’s reading, the law of Force corresponded to ‘the law of nature, the one law fully explaining all phenomena and ultimately dominating the realm of mechanics, [which] emerges as the truth of the object under investigation.’<sup>529</sup> Kainz agreed with this reading to the extent that ‘[l]aw as universality *should* be able to subsume and completely transform the determinate aspects found within appearance.’<sup>530</sup> However, law contains a defect which precludes this total subsumption. In Hegel’s words,

[w]hat seems to be defective in [law] is that while it does contain difference, the difference is universal, indeterminate. However, in so far as it is not law in general, but *a* law, it does contain determinateness; consequently, there are indefinitely *many* laws. But this plurality is itself rather a defect; for it contradicts the principle of the Understanding for

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<sup>526</sup> *Ibid*, p.90.

<sup>527</sup> *Ibid*, p.90. [*emphases in original*]

<sup>528</sup> *Ibid*.

<sup>529</sup> Gadamer, op. cit. at p.42.

<sup>530</sup> Kainz H. P., *Hegel’s Phenomenology, Part I: Analysis and Commentary*, (Alabama: The University of Alabama Press, 1976) p.76. [*emphasis in original*]

which, as consciousness of the simple inner world, the True is the implicitly universal *unity*.<sup>531</sup>

Since the falling of many laws into one law may result in each law losing its specificity, Hegel referred to the notion of *universal attraction* to achieve the above-mentioned unity of laws.<sup>532</sup> According to Kainz, '[t]he law of universal attraction has great importance, insofar as it represents the final step in the effort to unify and universalize and control the unstable flux of the world of appearance.'<sup>533</sup> Thus, in order to grasp the true meaning of universal attraction, Hegel warned that '[this attraction] must [...] be grasped in such a way that in it, as what is absolutely simple or unitary, the differences present in law as such themselves return again *into the inner world as a simple unity*.'<sup>534</sup> This simple unity is supposed to be 'the inner necessity of the law' whereby the law is presented in a dual mode; firstly 'as law in which the differences are expressed as independent moments;' and secondly as Force 'which absorbs the differences themselves of what attracts and what is attracted.'<sup>535</sup>

Nonetheless, upon closer inspection, it is revealed that the necessity to distinguish between two modes of law does not fall within the object. In other words, it is consciousness who reaches this distinction.<sup>536</sup> One of the examples Hegel gave for the elaboration of the objective emptiness of this necessity is the law of electricity. While simple electricity is Force, the law of electricity is that it is composed of positive and negative charges; '[b]ut that electricity as such should divide itself in this way is not in itself a necessity. Electricity, as simple Force, is indifferent to its law — to be positive and negative.'<sup>537</sup> In light of this

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<sup>531</sup> Hegel (1977) op. cit. at p.91. [*emphases in original*]

<sup>532</sup> To point out the specificity of each law, Hegel gave the example of the law of a stone falling and the law of the movement of heavenly bodies. While both of these laws relate to something moving in midair, regarding these laws as one based on this common aspect would diminish the unrelated characters each law has. *Ibid*, p.91.

<sup>533</sup> Kainz, op. cit. at p.77.

<sup>534</sup> Hegel (1977) op. cit. at p.92.

<sup>535</sup> *Ibid*.

<sup>536</sup> *Ibid*, p.94.

<sup>537</sup> *Ibid*, p.93.

indifference, the above-mentioned necessity falls into understanding. In other words, it is consciousness that acquires a conceptual understanding of implicit difference (while, in itself, the object (i.e. electricity) remains indifferent).<sup>538</sup> Hegel called this process explanation.<sup>539</sup>

The importance of the process of explanation is that it initially consists of tautological developments. Kainz summarised these developments in the following way:

It is true to say that law is distinct from force, since the Understanding is *distinguishing* law from force. But the statement here is a mere tautology [...] It is also true that an electrical *force* creates a unity of opposites just as the *law* regulating electricity creates such a unity of opposites. But here again, we have a tautology [...] Thus we see that the vacillation of understanding as to whether force and law are identical or distinct leads, one way or the other, to tautological process.<sup>540</sup>

Within the movement of explanation, however, these tautological processes are cancelled. For instance, in view of the indifference inherent in electricity, the difference posited by understanding is cancelled. In Hegel's words, '[w]hat is present here is not merely bare unity in which no difference would be posited, but rather a movement in which a distinction is certainly made but, because it is no distinction, is again cancelled. In the process, then, of explaining, the to and fro of change which before was outside of the inner world and present only in the appearance, has penetrated into the supersensible world itself.'<sup>541</sup> In other words, manifested as explanation, consciousness grasps change within Understanding. This change

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<sup>538</sup> *Ibid*, p94

<sup>539</sup> *Ibid*.

<sup>540</sup> Kainz, op. cit. at p.78. [*emphases in original*]

<sup>541</sup> Hegel (1977) op. cit. at p.95.

contradicts the earlier law of Force which at the moment of entry into the supersensible world consciousness perceived as universal unity. This contradiction reveals a second supersensible world that Hegel called the inverted world.<sup>542</sup> In this new world, ‘the act of thinking about the phenomenal world [i.e. the world of appearance] becomes not just a unification of sense data but a constant infusion of ‘movement’ and dynamic opposition into that which is understood.’<sup>543</sup>

With regard to the first supersensible world, it was mentioned earlier that it is an inner world which goes beyond the appearance.<sup>544</sup> With the inversion of this initial supersensible world, one either reverts back to the world of appearance or to (what may also be called) an outer world. Therefore, an ostensible contradiction or antithesis among the first and the second supersensible worlds appear. Nonetheless, Hegel informed the reader that ‘such antitheses of inner and outer, of appearance and the supersensible, as of two different kinds of actuality we no longer find here.’<sup>545</sup> If such antitheses are maintained, Understanding would regress into Perception whereby it will exit the inner world and will try to grasp appearance; and the remaining inner world would exist in the imagination.<sup>546</sup> As opposed to this regression, Hegel cautioned that ‘we have to think pure change, or think antitheses within the antithesis itself, or contradiction.’<sup>547</sup> To think pure change or contradiction, in turn, requires an opposition in which the other is immediately present.<sup>548</sup> Such opposition is present in the inverted world:

[...] the [second] supersensible world, which is the inverted world, has  
at the same time overreached the other [i.e. the first supersensible] world

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<sup>542</sup> *Ibid*, p.96.

<sup>543</sup> Kainz, op. cit. at p.79.

<sup>544</sup> Hegel (1977) op. cit. at p.87.

<sup>545</sup> *Ibid*, p.98.

<sup>546</sup> *Ibid*.

<sup>547</sup> *Ibid*, p.99.

<sup>548</sup> *Ibid*.

and has it within it; it is *for itself* the inverted world, i.e. the inversion of itself; it is itself and its opposite in one unity.<sup>549</sup>

As this unity, the inverted world corresponds to what Hegel called infinity or the absolute Notion.<sup>550</sup> Having this infinity as its object, consciousness enters into a new phase.

### 2.3. Self-consciousness: Desire, Recognition, and Lordship and Bondsman

This new phase is the accurate realm of truth. Remembering from earlier assertions, truth was the notion which corresponded to the object. Therefore, consciousness having *infinity* as its object meant that the object of consciousness corresponds to the *absolute* notion. As observed earlier in the inverted world (hence, within the notion of infinity) differences are tautological and are, thus, cancelled. Consequently, Hegel wrote that, ‘[s]ince this Notion of infinity is an object for consciousness, the latter is consciousness of a difference that is no less immediately cancelled; consciousness is for its own self, it is a distinguishing of that which contains no difference, or self-consciousness.’<sup>551</sup> While as a result of this act of distinguishing, self-consciousness becomes an object of consciousness, this new object does not yet amount to ‘the cognition of what consciousness knows in knowing itself.’<sup>552</sup> In order to achieve this cognition, the identity of self-consciousness must become unequivocal to itself.

A certain antithesis between the notions of being and essence inhibits this ambiguity. This antithesis arises from the fact that, at the initial stage of self-consciousness, consciousness has a double object; the first of these objects is the immediate object which

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<sup>549</sup> *Ibid.* [*emphasis in original*]

<sup>550</sup> *Ibid.*, pp. 99, 100.

<sup>551</sup> *Ibid.*, p.102.

<sup>552</sup> *Ibid.*, p.103.

emerges from sense-certainty and perception; this object has *being* as otherness.<sup>553</sup> The second object is the recently acquired self-consciousness which Hegel further described as ‘the reflection out of being of the world of sense and perception, and *essentially* the return from otherness.’<sup>554</sup> However, despite being a unity which supersedes otherness, at this early stage the second object appears only as the opposite of the first. In order for its identity to become explicit for itself, self-consciousness must go through the removal of this opposition.

This removal is effected by the notion of Desire. In this regard, Hegel wrote that ‘self-consciousness is Desire in general.’<sup>555</sup> Desire corresponds to the destruction of the independent object, that is to say, the destruction of the being that self-consciousness encounters in otherness.<sup>556</sup> This destruction is the manner in which self-consciousness becomes certain of the nothingness of the other and achieves a true certainty of itself.<sup>557</sup> With the satisfaction of Desire, however, self-consciousness becomes aware of the independence of the consumed object.<sup>558</sup> In Hegel’s words,

Desire and the self-certainty obtained in its gratification, are conditioned by the object, for self-certainty comes from superseding this other: in order that this supersession can take place, there must be this other. Thus self-consciousness, by its negative relation to the object, is unable to supersede it; it is really because of that relation that it produces the object again, and the desire as well.<sup>559</sup>

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<sup>553</sup> *Ibid*, p.105.

<sup>554</sup> *Ibid*. [*my emphasis*]

<sup>555</sup> *Ibid*.

<sup>556</sup> *Ibid*, p.109.

<sup>557</sup> *Ibid*; Hyppolite J., ‘Self-Consciousness and Life: The Independence of Self-Consciousness’ in O’Neil J. (ed.) *Hegel’s Dialectic of Desire and Recognition*, (Albany: State University of New York Press, 1996) p.69.

<sup>558</sup> Hegel (1977) op. cit. at p.109.

<sup>559</sup> *Ibid*.

The independence of the consumed object necessitates that the satisfaction of self-consciousness must come not from the negation of the object through Desire but from the object negating itself within itself for self-consciousness.<sup>560</sup> However, inasmuch as the object is *self-negating* and *independent*, it contains the features of consciousness.<sup>561</sup> Defining the other as consciousness, in turn, reveals that self-consciousness is, in fact, not Desire — that is to say, the satisfaction of self-consciousness is not achieved by negating the other object. Instead, '[s]elf-consciousness achieves its satisfaction only in another self-consciousness.'<sup>562</sup>

Hegel further elaborated upon the shift from Desire to another self-consciousness by maintaining that '[s]elf-consciousness exists in and for itself when, and by the fact that, it so exists for another; that is, it exists only in being acknowledged.'<sup>563</sup> It is only as a result of such interdependent existence that the unity of self-consciousness in its otherness becomes explicit for the subject.<sup>564</sup> Furthermore, with this unity, the previously-mentioned opposition between the essential 'I' and the being of the 'object' is finally removed: 'A self-consciousness, in being an object [for another self-consciousness], is just as much 'I' as 'object'.'<sup>565</sup> Subsequent to this removal, self-consciousness attains the experience of Spirit which Hegel defined as 'the unity of the different independent self-consciousnesses which, in their opposition, enjoy perfect freedom and independence: 'I' that is 'We' and 'We' that is 'I'.'<sup>566</sup> Hegel called *the unity of self-consciousness in its otherness* — i.e. the unity which leads to the experience of Spirit — the process of Recognition.<sup>567</sup>

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<sup>560</sup> *Ibid.*

<sup>561</sup> *Ibid*, p.110.

<sup>562</sup> *Ibid.*

<sup>563</sup> *Ibid*, p.111.

<sup>564</sup> *Ibid*, p.110.

<sup>565</sup> *Ibid.*

<sup>566</sup> *Ibid.*

<sup>567</sup> *Ibid*, p.111.

Explained in simpler terms, recognition is the process by which subject attains its identity or personality. This attainment, however, does not take place on an isolated basis, and is, rather, contingent upon subject's relations with other subjects. This contingency results in the above-mentioned formulation of *'I that is 'We' and 'We' that is 'I'*. Within the context of this formula, self-conscious subject does not only come to be, but also enjoys freedom and independence. The formula lends itself to certain contemporary theories on the constitution of subjects and different identities. Parfitt, whose work I considered above, highlighted Hegel's formulation of self-consciousness as the underlying element of the latter's thoughts on the personality of states.<sup>568</sup> Before I introduce contemporary abstractions of Hegel's theory of recognition, however, a reference must be made to the final stage of the Hegelian subject's progress wherein truth of independent self-consciousness is achieved.

Inasmuch as Hegel wrote of a unity wherein freedom and independence is secured, the road towards this unity begins with self-consciousness acting upon its desire. As we observed above, this desire corresponds to self-consciousness' impulse to attain certainty through negating the other. Attempting such negation against another self-consciousness, both subjects find themselves in a life and death struggle against each other. The outcome of the progress of recognition is, therefore, determined by this struggle. The famous dialectic of lordship and bondsman comprises the section in which this struggle occurs and resolves in the independence of a particular type of self-consciousness. In what follows, I introduce this dialectic by tracing the steps that lead up to the struggle and the manner in which this struggle is concluded.

The process of Recognition is initiated when self-consciousness encounters another self-consciousness. Consequent to this encounter, self-consciousness comes out of itself; in

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<sup>568</sup> Parfitt, op. cit. at pp. 585, 586.

other words, it loses itself.<sup>569</sup> However this is not a definite loss since what self-consciousness encounters as its other is also self-consciousness. Therefore, self-consciousness ‘finds itself as an *other* being.’<sup>570</sup> In terms of trying to become certain of itself, of its truth, self-consciousness had to supersede its otherness; however, in superseding its otherness, self-consciousness comes to find itself in this otherness and therefore, what it supersedes is in fact its own self.<sup>571</sup> Thus, by completing the supersession, self-consciousness effects a return into itself.<sup>572</sup> As Desire, self-consciousness had to consume the object to attain self-certainty. In its encounter with another self-consciousness, however, self-consciousness faces an object which has an independent existence and thus cannot consume this object for its own purposes. The independence of the object necessitates that in order to effect the above-mentioned supersession, the object must also act in a similar manner. Hence, we have two self-consciousnesses where,

[e]ach is for the other the middle term, through which each mediates itself with itself and unites with itself; and each is for itself, and for the other, an immediate being on its own account, which at the same time is such only through this mediation. They *recognize* themselves as *mutually recognizing* one another.<sup>573</sup>

In order for there to be a middle term between self-consciousnesses, they must first split into extremes as a result of which they come to oppose each other; Hegel noted that initially this split manifests itself as the inequality of the two self-consciousnesses in which one becomes recognised, and the other merely recognising.<sup>574</sup>

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<sup>569</sup> Hegel (1977) op. cit. at p.111.

<sup>570</sup> *Ibid.* [emphasis in original]

<sup>571</sup> *Ibid.*

<sup>572</sup> *Ibid.*

<sup>573</sup> *Ibid.*, p.112. [emphasis in original]

<sup>574</sup> *Ibid.*, pp. 112, 113.

It has been presented above that, at the level of Desire, self-consciousness maintained its self-certainty by negating the object. It is with this negation that self-consciousness proves its non-attachment to any other existence or life.<sup>575</sup> As a result of this negation, self-consciousness attains the pure abstraction of being-for-self; in other words, it becomes certain of itself. However, this certainty is disturbed when self-consciousness encounters another self-consciousness: in this encounter, '[e]ach is indeed certain of its own self, but not of the other, and therefore its own self-certainty still has no truth.'<sup>576</sup> We have observed earlier that, in order to attain this truth, self-consciousnesses must go through the process of recognition. That is to say, each self-consciousness must become the middle term for its other in achieving pure abstraction of being-for-self. Nonetheless, at the level of Desire, as also observed above, this pure abstraction is achieved through showing that consciousness is not attached to any form of existence or life. Therefore, in the initial encounter between two self-consciousnesses, the presentation of pure abstraction does not directly manifest itself as the process of recognition. Instead, it manifests itself as a life-and-death struggle in which each self-consciousness stakes its own life in seeking the death of the other.<sup>577</sup>

With the above-mentioned struggle, Hegel introduced the notions of freedom and independence. Accordingly, one cannot gain freedom without staking one's own life and '[t]he individual who has not risked his life may well be recognized as a person, but he has not attained to the truth of this recognition as an independent self-consciousness.'<sup>578</sup> However, if the 'trial by death' is to end with the death of either one of the subjects, this death will amount to 'the natural negation of consciousness, negation without independence, which thus remains without the required significance of recognition.'<sup>579</sup> In the contrary

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<sup>575</sup> *Ibid*, p.113.

<sup>576</sup> *Ibid*.

<sup>577</sup> *Ibid*.

<sup>578</sup> *Ibid*, p.114.

<sup>579</sup> *Ibid*.

scenario, where both subjects survive, instead of natural negation, *abstract* negation takes place. Hegel described the latter as an act ‘which supersedes in such a way as to preserve and maintain what is superseded, and consequently survives its own supersession.’<sup>580</sup> Central to an act of abstract negation is the understanding that life is as essential for self-consciousness as attaining pure self-certainty or being-for-self.<sup>581</sup> The survival of both subjects, however, results in a failure to split into opposite extremes where each consciousness would want to attain pure being-for-self.<sup>582</sup> The ensuing extremes are unopposed and this outcome causes the above mentioned middle term to collapse leading to a relation in which ‘the two [self-consciousnesses] do not reciprocally give and receive one another back from each other consciously, but leave each other free only indifferently, like things.’<sup>583</sup>

With the collapse of the middle term and the following relation ‘there is posited a pure self-consciousness, and a consciousness which is not purely for itself but for another, i.e. is a merely *immediate* consciousness, or consciousness in the form of *thinghood*.’<sup>584</sup> While the former consciousness belongs to lord, the latter belongs to bondsman; the former ‘is the independent consciousness whose essential nature is to be for itself, the [latter] is the dependent consciousness whose essential nature is simply to live or to be for another.’<sup>585</sup> Lord and bondsman depict the inequality by which one self-consciousness becomes the recognising and the other becomes the recognised.

However, following the development of the relation between lord and bondsman, Hegel reached a conclusion that ‘the *truth* of the independent consciousness is [...] the servile

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<sup>580</sup> *Ibid*, pp. 114, 115.

<sup>581</sup> *Ibid*, p.115.

<sup>582</sup> *Ibid*, p.114.

<sup>583</sup> *Ibid*.

<sup>584</sup> *Ibid*, p.115. [*emphases in original*]

<sup>585</sup> *Ibid*.

consciousness.<sup>586</sup> Central to this conclusion is the notion that lord's recognition is one-sided and unequal.<sup>587</sup> One-sidedness of this recognition emerges from lord's relation to bondsman. Existing *for itself* requires that one's existence is mediated through another consciousness and for lord this other consciousness is that of bondsman.<sup>588</sup> However, as this other consciousness, bondsman is dependent upon an independent thing; therefore, lord's relation to another consciousness consists of a double relation in which lord relates 'to a *thing* as such, the object of desire, and to the consciousness for which thinghood is the essential characteristic.'<sup>589</sup> It is lord's power over the thing which holds the other consciousness in bondage.<sup>590</sup> However, as desire, lord cannot absolutely negate an *independent* thing; in order to achieve this, lord must interpose the bondsman between the thing and himself.<sup>591</sup> As self-consciousness, bondsman also relates himself to the independent thing; nevertheless, due to the independence of the thing, this relation cannot also manifest itself as absolute annihilation of the object. Instead, bondsman's negative relation to the thing manifests itself as work and by working on the thing bondsman takes away its independence.<sup>592</sup> For his pure enjoyment, it is this dependent aspect of the thing which lord takes.

The double relation provides lord with two moments from which he derives recognition through another consciousness. In the first relation, lord encounters the consciousness which works on his object of desire, and in the second relation, lord encounters the consciousness which has a dependent existence. As opposed to lord's essential and independent consciousness, encountered consciousnesses are unessential and dependent. Lord's 'essential nature is to exist only for himself; he is the sheer negative power

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<sup>586</sup> *Ibid*, p.117. [*emphasis in original*]

<sup>587</sup> *Ibid*, p.116.

<sup>588</sup> *Ibid*, p.115.

<sup>589</sup> *Ibid*. [*emphasis in original*]

<sup>590</sup> *Ibid*.

<sup>591</sup> *Ibid*, p.116.

<sup>592</sup> *Ibid*.

for whom the thing is nothing.<sup>593</sup> Contrary to lord's essentiality, bondsman's nature is to exist for another. For bondsman, the thing is independent and his relation to it is manifested as work and not as sheer negative power. Therefore, it is the inequality between lord and bondsman that renders the recognition, which lord derives from the above mentioned two moments, one-sided and unequal. Consequently, this asymmetrical recognition denies lord the truth of himself; in other words, he cannot attain certainty of *being-for-self* for 'his truth is in reality the unessential consciousness and its unessential action.'<sup>594</sup>

In light of lord's failure to attain self-certainty, Hegel argued that, ultimately, the truth of independent consciousness is the servile consciousness of bondsman.<sup>595</sup> It is through bondsman's experience of the fear of death (that is to say, the fear of absolute lord) that this truth becomes implicit in servitude. Hegel explained that,

[i]n that experience [bondsman] has been quite unmanned, has trembled in every fibre of its being, and everything solid and stable has been shaken to its foundations. But this pure universal movement, the absolute melting-away of everything stable, is the simple, essential nature of self-consciousness, absolute negativity, *pure being-for-self*, which consequently is *implicit* in this consciousness.<sup>596</sup>

In order to attain self-certainty, bondsman must become conscious of this implicit truth. It is through his work on the thing that bondsman will acquire this consciousness. By working on the object, bondsman gives it form and shape; therefore, his negative relation to the object renders it permanent.<sup>597</sup> This permanence is lacking in lord's negative relation to the object. This is due to the fact that, lord's relation to the object is manifest as desire and over this

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<sup>593</sup> *Ibid.*

<sup>594</sup> *Ibid*, p.117.

<sup>595</sup> *Ibid.*

<sup>596</sup> *Ibid.*

<sup>597</sup> *Ibid*, p118

object of desire lord retains the sheer power of negation (i.e. consumption, cancellation, annihilation); thus, acting upon this power merely produces a *transient* satisfaction.<sup>598</sup> While for lord, the thing is only an object by which he drives ephemeral satisfaction, for bondsman, it is ‘desire held in check’ – i.e. it is a formative activity which produces permanence.<sup>599</sup> This formative activity, then, is the *negative middle term* in the relation between bondsman and the object. As such, this activity will not only render the object permanent but the implicit pure *being-for-self* of the bondsman will also become permanent.<sup>600</sup> Therefore, ‘in fashioning the thing, [bondsman] becomes aware that being-for-self belongs to *him*, that he himself exists essentially and actually in his own right.’<sup>601</sup> In other words, bondsman realises that ‘in his work [...] he acquires *a mind of his own*.’<sup>602</sup> This realisation corresponds to the truth of independent self-consciousness and brings the section on lordship and bondsman to a close.

## 2.4. Conclusion

In the overall scheme of the *Phenomenology*, Hegel presented the development of cognitive knowledge into the truth of absolute knowledge. In this development, Hegel assigned major significance to self-consciousness as, according to him, one’s entry to the realm of truth is marked by this type of consciousness. In the preceding section, I followed the progress of consciousness through its initial sense-certainty of here and now towards its transition to self-consciousness. The patterns of consciousness consisted of sense-certainty, perception, and understanding. I showed that the transition from consciousness to self-consciousness marked a shift towards achieving *self-certainty*. Therefore, subject turns to

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<sup>598</sup> *Ibid.*

<sup>599</sup> *Ibid.*

<sup>600</sup> *Ibid.*

<sup>601</sup> *Ibid.*

<sup>602</sup> *Ibid*, p.119. [*my emphasis*]

himself and has his consciousness as his object. For the overall scheme of my thesis, this transition has a twofold significance. Firstly, it is at this juncture that Hegel introduced the process of recognition. Secondly, the primary setting for self-certainty is an encounter between two subjects and it is within subjects' relation to one another that Hegel constructed his notions of freedom and independence.

The transition from sense- to self-certainty is initiated by the subject's encounter with another independent being. We observed that in consciousness, subject engages with an object which has being as otherness. This is an immediate object which emerges as a result of sense-certainty and perception. In self-consciousness, however, subject turns his attention from this immediate object and becomes conscious of his own self. With this turn, subject supersedes the otherness which was encountered in consciousness. The major prerequisite of this supersession is that subject encounters another self-conscious subject. The reason for this prerequisite is that the supersession of otherness takes place within a process of recognition. Hyppolite explained this in the following:

I am a self-consciousness only if I gain for myself recognition from another self-consciousness and if I grant recognition to other. This mutual recognition, in which individuals recognize each other, creates the element of spiritual life – the medium in which the subject is an object to itself, finding itself completely in the other yet doing so without abrogating the otherness that is essential to self-consciousness.<sup>603</sup>

Finding one's own self in the other is, in effect, to recognise that, similar to one's own self, the other is also a self-consciousness. Through this recognition, what I find in the other is,

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<sup>603</sup> Hyppolite J., *Genesis and Structure of Hegel's Phenomenology of Spirit*, (Evanston: Northwestern University Press, 1974) p.166.

in fact, the very same of what I am. Therefore, it is not through a process of abrogation that otherness is superseded but through recognising one's own self in the other. Hence, through mutual recognition, each subject has as its object the self or the 'I'. As observed above, Hegel called this the unity of self-consciousness in its otherness.

As Hyppolite noted, the unity of self-consciousnesses in its otherness forms the element of spiritual life. In *The Hegel Dictionary*, Magee explained that Hegel used the word *Spirit* to refer to 'a unique form of consciousness possessed by human beings.'<sup>604</sup> This unique form is self-consciousness and this type of consciousness is manifest in human beings' ability to know themselves.<sup>605</sup> This ability separates humans from animals to the extent that, in contrast to other animals, human beings can reflect upon, comprehend and somewhat restrain their instincts and drives.<sup>606</sup> In consciously acting upon instincts and desires, human beings shape their own nature and this shaping fundamentally corresponds to human freedom.<sup>607</sup> The above mentioned unity of self-consciousnesses forms the element of spiritual life for the reason that in this unity 'different independent self-consciousnesses [...] enjoy perfect freedom and independence.'<sup>608</sup> Therefore, with the transition from consciousness to self-consciousness, Hegel's initial cognitive venture towards absolute knowledge takes a societal turn. It is through the process of recognition that subjects attain self-consciousness. The significance of this process is that subject's relation to its other becomes an existential necessity. This necessity, in turn, weaves an inter-subjective fabric unto which Hegel conferred the notions of freedom and independence. In what follows, I consider the ways in which Hegel's notions of recognition and self-consciousness, as

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<sup>604</sup> Magee, op. cit. at p.226.

<sup>605</sup> *Ibid.*

<sup>606</sup> *Ibid.*

<sup>607</sup> *Ibid.*

<sup>608</sup> Hegel (1977) op. cit. at p.110.

presented above, were utilised by contemporary thinkers to account for different forms of subjects.

## **Part Three**

### **3.1. Introduction**

In the previous part of the chapter, I introduced Hegel's notion of recognition as presented in the latter's *Phenomenology of Spirit*. The overall purpose of introducing this notion was to seek an apt theoretical framework to account for the constitution of subjects under international law. The obvious challenge for this search is that the *Phenomenology* exhibits the development of cognitive knowledge into the scientific truth of absolute knowledge. A consequence of this orientation is that, recognition marks the coming-into-being of self-conscious subjects. The relevant issue is the extent to which Hegel's notion of self-consciousness can be adapted for the aforementioned purpose.

A second issue relates to the dialectic of lordship and bondsman. Hegel's theory of recognition may be interpreted as an intersubjective unity which ensures freedom and independence. However, this interpretation is contingent upon working out the repercussions of lordship and bondsman upon the process of recognition. In the previous part, I demonstrated that this process develops into a life and death struggle and culminates in the enslavement of one of the parties. This enslavement, in turn, results in a particular type of self-consciousness accomplishing truth of independence. Above, we observed that this particular type is that of servile consciousness. An evaluation of the effects of lordship and bondsman on the notion of recognition would, therefore, necessitate an assessment of the servility of this consciousness.

In what follows, I present works of three authors who adapted Hegel's theory of recognition to account for three different forms of subjects. The purpose of this presentation is twofold. Firstly, it demonstrates successful abstractions of the notion of recognition from the specific context of the *Phenomenology*. Secondly, it shows that each author had to engage with the question of lordship and bondsman in the due course of these abstractions. I begin with Axel Honneth's work on the constitution of the moral subject, then, move on to Charles Taylor's idea of the cultural subject, and finalise the part by referring to Costas Douzinas' notion of legal personality.

### **3.2. Axel Honneth: Recognition and Moral Ordering**

In *Redistribution or Recognition?* Axel Honneth engaged in a debate with Nancy Fraser on the question of the conceptualisation of justice in contemporary social theory. Within the context of this debate Honneth devised a moral ordering of society and argued that this order was built on relations of recognition. In this section, I briefly present the structure of Honneth's moral order and demonstrate the role Hegel's theory of recognition played therein. Next, I consider Honneth's approach to the dialectic of lordship and bondsman. Between two of his works, Honneth's approach changes from dismissing the dialectic as devoid of any moral force to regarding the dialectic as an elementary experience of morality.

According to Honneth, the question of justice centres upon the verification of subjects' experiences of injustice within societies.<sup>609</sup> His starting point is the social-theoretical premise 'that every society requires justification from the perspective of its members to the extent that it has to fulfil a number of normative criteria that arise from deep-

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<sup>609</sup> Fraser N., Honneth A., *Redistribution or Recognition? A Political-Philosophical Exchange*, (London: Verso, 2003) p.126.

seated claims in the context of social interaction.’<sup>610</sup> A moral order underlies this premise in which subjects have moral expectations from the society and, in turn, moral implications of institutional procedures shape subjects’ convictions of the legitimacy of the political decisions of the society.<sup>611</sup>

At the very heart of Honneth’s argument is the understanding that the moral order consists of ‘a fragile structure of graduated relations of recognition.’<sup>612</sup> Within the context of the bourgeois-capitalist society Honneth identified three distinct spheres of recognition; in each sphere, mutual recognition of associated values helps to determine the very being of individuals in the society.<sup>613</sup> These spheres respectively correspond to three normative principles — love, the equality principle, and the achievement principle.<sup>614</sup> In turn, each normative principle is associated with separate forms of inter-personal relations.

Love is the basic principle of intimate relationships where, through acts of mutual affection and concern, people begin to consider themselves as ‘individuals with their own needs.’<sup>615</sup> Equality is the underlying principle of legal relations which consist of mutual grant of rights and ascription of duties; in this form of relation, people gradually perceive themselves as legal persons who share same amount of individual autonomy with all other persons within the society.<sup>616</sup> The achievement principle underlies ‘loose-knit social relations’ in which contention for jobs and professions help persons perceive themselves as ‘subjects possessing abilities and talents that are valuable for society.’<sup>617</sup>

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<sup>610</sup> *Ibid*, p.129.

<sup>611</sup> *Ibid*.

<sup>612</sup> *Ibid*, pp. 136, 137.

<sup>613</sup> *Ibid*, p.142.

<sup>614</sup> *Ibid*, p.143.

<sup>615</sup> *Ibid*, p.142.

<sup>616</sup> *Ibid*.

<sup>617</sup> *Ibid*.

Honneth explained that the element of morality pertains to recognition due to ‘individuals’ willingness to reciprocally restrict their own spheres of liberty.<sup>618</sup> Therefore, ‘individuals’ claim to the intersubjective recognition of their identity [...] is built into social life from the very beginning as a moral tension.<sup>619</sup> This moral tension seeps through each sphere of societal setup ensuring ‘a minimal normative consensus.’<sup>620</sup> However, in *the Struggle for Recognition*, Honneth argued that the sketches of a theory, wherein ‘communicative relations between subjects [were] conceived as something that in principle [preceded] individuals,’ could only be found in Hegel’s earlier Jena writings.<sup>621</sup> According to Honneth, Hegel abandoned this pursuit in the *Phenomenology* by focusing upon the ‘stages of the self-mediation of individual consciousness.’<sup>622</sup> Thus, the dialectic of lordship and bondsman connected the struggle for recognition ‘to the experience of the practical acknowledgement of one’s labour.’<sup>623</sup> Insofar as this connection served ‘the sole function of the formation of self-consciousness,’ Honneth was of the view that the idea of a moral ordering of the society was lost in Hegel’s later work.<sup>624</sup>

However, Honneth changed some of his views on Hegel’s notion of self-consciousness as presented in the *Phenomenology* by arguing, later on, that the attainment of self-consciousness marked ‘an experience that is moral in an elementary sense.’<sup>625</sup>

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<sup>618</sup> Honneth A., *Struggle for Recognition: The Moral Grammar of Social Conflicts*, (Cambridge: Polity Press, 1995) p.42.

<sup>619</sup> *Ibid*, p.5.

<sup>620</sup> *Ibid*, p.42.

<sup>621</sup> *Ibid*, p.29. One of Honneth’s main references here is Hegel’s Jena lectures on the *Philosophy of Spirit*. These lectures were translated into English by Leo Rauch in *Hegel and the Human Spirit*. Hegel’s *Philosophy of Spirit* preceded both the *Phenomenology* and *the Elements of the Philosophy of Right*. As such, some aspects of the former work anticipate Hegel’s thoughts on recognition in the latter treatises. Therefore, in the *Philosophy of Spirit* Hegel wrote about recognition and notions such as desire, work/labour, being-for-self, the ‘I’, and the spirit. He also wrote about recognition and its relation to notions of love, family, possession, right, and ethical life. Hegel further developed the first set of notions in the *Phenomenology* and the second set in the *Philosophy of Right*. In light of these developments, one can read *Philosophy of Spirit* as an earlier sketch of ideas which later branched into two connected systems of thought. Rauch L., *Hegel and the Human Spirit: A Translation of the Jena Lectures on the Philosophy of Spirit (1805-6) with Commentary*, (Detroit: Wayne State University Press, 1983).

<sup>622</sup> Honneth (1995) op. cit. at p.29.

<sup>623</sup> *Ibid*, p.62.

<sup>624</sup> *Ibid*.

<sup>625</sup> Honneth A., *The I in We: Studies in the Theory of Recognition*, (Cambridge: Polity, 2012) p.15.

Honneth traced this elementary morality to ‘the encounter between two subjects [wherein] a new sphere of action is opened in the sense that both sides are compelled to restrict their self-seeking drives as soon as they encounter each other.’<sup>626</sup> In other words, Honneth interpreted the section on Desire as injecting an element of morality into self-consciousness rescuing this notion from Honneth’s aforementioned criticism that self-consciousness marked an individualistic self-mediation. Thus, Honneth remarked that ‘the specific morality of human intersubjectivity begins at this early stage [of Desire]’ and in the form of subject’s ‘reflexive reaction to the perception of the other.’<sup>627</sup>

Despite the fact that Honneth reviewed his ideas on the notion of self-consciousness, this review did not involve the dialectic of lordship and bondsman. Above we observed that, in the *Phenomenology*, the section on Desire highlighted the subject’s need to encounter another subject. Insofar as the purpose of this encounter is to achieve mutual recognition, we also observed that once the subject meets another subject, this meeting transformed into a life and death struggle the outcome of which led to lordship and bondsman. Honneth’s renewed take on the notion of self-consciousness involves the encounter and the idea of mutual recognition but somewhat omits its outcome which ties servile consciousness to labour. In what follows, I present Charles Taylor’s approach to the theory of recognition which assigns lordship and bondsman a historical significance.

### 3.3. Charles Taylor: Recognition and Identity

In his essay entitled *the Politics of Recognition*, Charles Taylor probed the link between politics of identity and demands for recognition in the contemporary social

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<sup>626</sup> *Ibid.*

<sup>627</sup> *Ibid.*

theory.<sup>628</sup> While, at the outset, Taylor acknowledged Hegel's influence on this link, he traced the emergence of the discourse of recognition and identity to a period which precedes Hegel's work, a period wherein a major change in the social perception of the concept of identity took place. According to Taylor, this change made 'the modern preoccupation with identity and recognition inevitable.'<sup>629</sup> Hegel's theory of recognition is, in turn, highlighted as a significant contribution to the above-mentioned change.

Taylor differentiated between two changes which brought about the connection between recognition and identity. First change occurred with the collapse of social hierarchies whereby the notion of honour was replaced by a modern notion of dignity.<sup>630</sup> Taylor employed the former notion 'in the ancien régime sense in which it is intrinsically linked to inequalities,' the latter is 'used in a universalist and egalitarian sense, where we talk of the inherent dignity of human beings, or of citizen dignity.'<sup>631</sup> In Taylor's view, coupled with the underlying principle that every human being shares it, 'the concept of dignity is the only one compatible with a democratic society.'<sup>632</sup> In turn, it is this compatibility that renders modes of equal recognition, by means of which the above mentioned dignity is manifest, vital for democratic cultures.<sup>633</sup>

The second change corresponded to a new perception of individual identity that is developed in the eighteenth century; in this regard Taylor wrote about 'an individualized identity, one that is particular to me, and that I discover in myself.'<sup>634</sup> This change is, then, joined with the ideal of authenticity which, as Taylor explained, consists of being true to

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<sup>628</sup> Taylor C. 'Politics of Recognition' in Taylor C., *et.al.*, *Multiculturalism*, (Amy Gutmann (Ed.)), (New Jersey: Princeton University Press, 1994).

<sup>629</sup> *Ibid*, p.26.

<sup>630</sup> *Ibid*.

<sup>631</sup> *Ibid*, p.27.

<sup>632</sup> *Ibid*.

<sup>633</sup> *Ibid*.

<sup>634</sup> *Ibid*, p.28.

one's own self and one's own particular way of being.<sup>635</sup> Furthermore, Taylor elucidated that

[b]eing true to myself means being true to my own originality, which is something only I can articulate and discover. In articulating it, I am also defining myself. I am realizing a potentiality that is properly my own. This is the background understanding to the modern ideal of authenticity, and to the goals of self-fulfillment and self-realization in which the ideal is usually couched.<sup>636</sup>

As he acknowledged that the ideal of authenticity is also an outcome of the dissolution of the hierarchical society, Taylor also noted that, in order to understand its significance for identity and recognition an essential feature of human existence must be taken into account.<sup>637</sup>

This feature is the *dialogical* character of human life, that 'we define our identity always in dialogue with, sometimes in struggle against, the things our significant others want to see in us.'<sup>638</sup> However, such definition of identity contradicts the above-mentioned self-definition of one's own being, which is central to the ideal of authenticity, if the latter definition was to be interpreted narrowly. In light of this contradiction, Taylor wrote that

[...] my discovering my own identity doesn't mean that I work it out in isolation, but that I negotiate it through dialogue, partly overt, partly internal, with others. That is why the development of an ideal of

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<sup>635</sup> *Ibid.*

<sup>636</sup> *Ibid*, p.31.

<sup>637</sup> *Ibid*, pp. 31, 32.

<sup>638</sup> *Ibid*, pp. 32, 33 – Taylor used the phrase '*significant others*' to indicate 'others who matter to us' (i.e. others with whom we enter into an interaction), the phrase is borrowed from Mead G.H., *Mind, Self, and Society* (Chicago: University of Chicago Press, 1934).

inwardly generated identity gives a new importance to recognition. My own identity crucially depends on my dialogical relations with others.<sup>639</sup>

In the overall scheme of Taylor's argument, therefore, a newly emerging discourse on dignity and a novel ideal of authenticity condition subjects' desires for recognition. Connected with the notion of individualised identity and the dialogical nature of human beings, these two conditions effectuate the link between demands for recognition and identity politics, and forge a politics of equal recognition.<sup>640</sup>

Further probing the meaning of the politics of equal recognition, Taylor suggested that each of the above-mentioned socio-theoretical changes ascribed different meanings to equal recognition; as the change from honour to dignity resulted in a politics of universalism, the modern understanding of the notion of identity gave rise to a politics of difference.<sup>641</sup> Thus, within the politics of universalism, recognition is oriented towards equal dignity of all citizens.<sup>642</sup> Taylor explained that, underlying the notion of equal dignity is 'the idea that all humans are equally worthy of respect,' and that 'what commanded respect in us was our status as rational agents, capable of directing our lives through principles.'<sup>643</sup> It is this 'universal human potential' that politics of universalism recognised and acted upon through the equalisation of rights and entitlements.<sup>644</sup>

To some extent, the concept of universal human potential also forms the foundation of the politics of difference. However, instead of interpreting it as a general capacity for rational action, politics of difference defines this human potential as the ability to form and determine one's own individual (and cultural) identity.<sup>645</sup> This type of interpretation brings

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<sup>639</sup> Taylor, op. cit. at p.34.

<sup>640</sup> *Ibid*, p.35.

<sup>641</sup> *Ibid*, pp. 37, 38.

<sup>642</sup> *Ibid*, p.37.

<sup>643</sup> *Ibid*, p.41.

<sup>644</sup> *Ibid*, p.37.

<sup>645</sup> *Ibid*, p.42.

to the fore the criticism that in universal application of rules and regulations, the politics of universalism may be ‘blind to the ways in which citizens differ.’<sup>646</sup> This criticism is, then, followed by the charge that politics of universalism ‘negates identity by forcing people into a homogeneous mould that is untrue to them.’<sup>647</sup> In an attempt to counter this homogenisation, politics of difference lays emphasis on the recognition of distinct identities of individuals and groups, and claims that within the politics of universalism ‘it is precisely this distinctness that has been ignored, glossed over, assimilated to a dominant or majority identity.’<sup>648</sup> The former’s attempt may be interpreted as a call for positive discrimination that would compensate for the assimilation of minority groups. For the latter, however, this call contravenes the principle of non-discrimination which underlies the universal recognition of the dignity of every human being.<sup>649</sup>

In order to gain an improved insight into the charge of homogeneity, in the third part of his essay, Taylor traced the emergence of the concept of equal dignity. It is also in this part that he located and assessed Hegel’s input into the theory of recognition. As observed earlier, the notion of equal dignity marked a departure from the notion of honour which had been the conceptual basis for pre-modern social hierarchies. In order to demonstrate this departure, Taylor focused upon Rousseau’s various considerations of the notion of esteem. The first of these considerations is the conceptual connection Rousseau made between social hierarchy and other-dependence.<sup>650</sup> This connection relies on interpreting the notion of other-dependence as craving for other’s esteem and/or good opinion; understood as such, esteem corresponds to ‘intrinsically differential’ treatment which is, in turn, associated with the traditional conception of honour.<sup>651</sup>

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<sup>646</sup> *Ibid*, p.39.

<sup>647</sup> *Ibid*, p.43.

<sup>648</sup> *Ibid*, p.38.

<sup>649</sup> *Ibid*, p.43.

<sup>650</sup> *Ibid*, p.45.

<sup>651</sup> *Ibid*.

However, Taylor drew readers' attention to Rousseau's description of potentially good societies in which the notion of esteem assumed a different role. Taylor quoted a passage from Rousseau's *Considerations on the Government of Poland* about Greek games to demonstrate this role:

Successful contestants in Greek games were crowned amidst applause from all their fellow-citizens – these are the things that, by constantly re-kindling the spirit of emulation and the love of glory, raised Greek courage and Greek virtues to a level of strenuousness of which nothing existing today can give us a remote idea – which, indeed, strikes modern men as beyond belief.<sup>652</sup>

As opposed to his earlier views on depending on others' opinions, in this passage Rousseau highlighted the significance of glory and public recognition — i.e. two notions for which others' opinions are central. Taylor argued that the difference between earlier and later forms of opinions is contextual, that in the festivals, games, or recitations, there is a 'total lack of differentiation or distinction between different classes of citizens' and Taylor moved on to associate this context with balanced reciprocity:

A perfectly balanced reciprocity takes the sting out of our dependence on opinion, and makes it compatible with liberty. Complete reciprocity, along with the unity of purpose that it makes possible, ensures that in following opinion I am not in any way pulled outside myself. I am still "obeying myself" as a member of this common project or "general will." Caring about esteem in this context is compatible with freedom

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<sup>652</sup> *Ibid*, pp. 47, 48 – quoting from Rousseau J., *Considerations on the Government of Poland*, (trans. Wilmoore Kendall) (Indianapolis: Bobbs-Merill, 1972) p.8.

and social unity, because the society is one in which all the virtuous will be esteemed equally and for the same (right) reasons.<sup>653</sup>

Consequently, within the framework of equality, reciprocity, and unity of purpose, the notion of esteem is rescued from an honour-oriented meaning which underlies hierarchical society; this rescuing, in turn, marks the dawn of the age of dignity.<sup>654</sup>

Hegel's input into this new age, according to Taylor, was his emphasis on the essentiality of reciprocal recognition for the full development of human beings.<sup>655</sup> In his reading of Hegel's account of the life-and-death struggle which ends in lordship and bondage, Taylor rediscovered the crucial flaw in the conception of honour within the context of social hierarchies. He argued that,

[i]t is flawed because it cannot answer the need that sends people after recognition in the first place. Those who fail to win out in the honour stakes remain unrecognized. But even those who do win are more subtly frustrated, because they win recognition from the losers, whose acknowledgement is, by hypothesis, not really valuable, since they are no longer free, self-supporting subjects on the same level with the winners.<sup>656</sup>

Taylor contended that the above-mentioned flaw can only be circumvented within 'a regime of reciprocal recognition among equals' and he noted that, in parallel with Rousseau's notion of unity of purpose, Hegel conceptualised this society with the notion of "the 'I' that is 'We' and 'We' that is 'I'."<sup>657</sup>

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<sup>653</sup> Taylor, op. cit. at p.48.

<sup>654</sup> *Ibid*, p.49.

<sup>655</sup> *Ibid*, p.50.

<sup>656</sup> *Ibid*.

<sup>657</sup> *Ibid*.

In the previous section, we observed that Axel Honneth regarded the dialectic of lordship and bondsman as limiting the scope of recognition to the notion of labour. To the extent that in his later work, Honneth reinterpreted self-consciousness as an elementary form of morality, his criticism of the dialectic remained unchanged. In Charles Taylor's perspective, however, lordship and bondsman corresponded to the historical period of honour-oriented hierarchical societies. The dialectic was regarded by Taylor as an indication of the essential defect in these types of societies. As such an indication, the effect of lordship and bondsman upon the theory of recognition is transient. In other words, as Taylor argued, these effects were circumvented with the turn of the age which brought in new terms of recognition and identity.

Taylor applied the theoretical framework of recognition, which is informed both by the politics of universalism and of difference, to the issues of different cultures.<sup>658</sup> This application entailed perception of identity as cultural and understood recognition as essential for the survival of such cultural groups especially in multicultural societies.<sup>659</sup> Next, I shift my attention from Taylor's notion of cultural subjects to Douzinas' take on the constitution of legal subjects. Douzinas' work exemplifies an alternative way of abstracting Hegel's theory of recognition and provides a different interpretation of lordship and bondsman's effect upon this theory.

### **3.4. Costas Douzinas: Recognition and Legal Rights**

In his essay 'Identity, Recognition, Rights or What Can Hegel Teach Us About Human Rights?' Costas Douzinas utilised Hegel's theory of recognition to present a critical approach to the notions of legal subjects and human rights. For the purposes of this chapter,

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<sup>658</sup> *Ibid*, p.64.

<sup>659</sup> *Ibid*.

the significance of this critical approach is twofold. Firstly, Douzinas derived the notion of identity from Hegel's conception of self-consciousness as presented in the *Phenomenology*. Secondly, Douzinas applied the process of recognition to the constitution of legal subjects. In what follows, I present Douzinas' perception of the subject as one who constructs his/her identity as self-plus-other. Then, I move on to consider the manner in which Douzinas applied this perception to account for the role of recognition in the constitution of subjects of legal rights.

Douzinas argued against 'liberal theory's impoverished view of the subject as a closed and monological entity and, of the social bond as an atomocentric collection of individuals whose relations to each other are external, superficial, and interest driven.'<sup>660</sup> In Douzinas' observation, this impoverished view gave rise to a presumption that,

rights express, uphold, and guarantee pre-existing characteristics, their task typically being to promote free will. The characteristics, elements, and traits of human personality exist prior to rights and other public institutions, which are treated as tools facilitating the public expression of pre-formed and complete selves.<sup>661</sup>

In his attempt to rebut this presumption, Douzinas argued for 'the constitutive role of rights in building human identity.'<sup>662</sup> The underlying premise of Douzinas' argument is that, contrary to the liberal perception of identity as closed and monological, the concept of identity is dialogical and dynamic.

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<sup>660</sup> Douzinas C., 'Identity, Recognition, Rights or What Hegel Teach Us About Human Rights?', *Journal of Law and Society*, vol. 29, No3, September, 2002, p.379.

<sup>661</sup> *Ibid*, p.379; Douzinas C., Geary A., *Critical Jurisprudence: The Political Philosophy of Justice*, (Oxford: Hart Publishing, 2005) p.179.

<sup>662</sup> Douzinas (2002) *op. cit.* at p.380.

Douzinas employed Hegel's theory of recognition to demonstrate this premise. The starting point is that, in the *Phenomenology*, the determination of the self occurs within 'a continuous struggle to overcome the foreignness of the other.'<sup>663</sup> Douzinas presented this struggle in three stages. The first stage consists of the initial encounter between the self and the other in which the desiring self attempts to gain immediate satisfaction through the negation of the object; this attempt, in Douzinas' reading, results from the 'delusion of self-sufficiency under which the difference from others is absolute and must be negated through the arrogation of absolute sovereignty.'<sup>664</sup> The second stage corresponds to self's acceptance of its dependence on the other but also its attempt to externalise this dependence: '[t]he two consciousnesses know they need the other's desire and recognition but believe that they can forgo or force it through exclusion, marginalisation or subjugation of the other.'<sup>665</sup> The second stage refers to the relation between lord and bondsman in which the manifest desire is considered by Douzinas to be narcissistic.<sup>666</sup>

However, first two stages are overtaken by a third wherein mutual recognition takes place; Douzinas elaborated that,

[in the third stage] the other is accepted both in her identity and her difference from self and, as a result, self discovers himself as integrally related to the other. The other's recognition and desire allows self to see himself reflected in another self and create *a nexus of links and dependencies* that affect all aspects of both selves. Recognition works if it is mutual. I must be recognized by someone I recognize as human; I must reciprocally know myself in another.<sup>667</sup>

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<sup>663</sup> *Ibid*, p.384.

<sup>664</sup> *Ibid*.

<sup>665</sup> *Ibid*.

<sup>666</sup> *Ibid*.

<sup>667</sup> *Ibid*. [*my emphasis*]

It is in light of this nexus that Douzinas reproached the liberal philosophy for attempting to venerate the individual by refuting human beings' dependence on the world and spuriously obliterating indications of otherness.<sup>668</sup> The result of this attempt is the false impression of self-identity which, in Douzinas' view, can be evinced in law's promotion of 'the idea that self stands at the centre of the world, fully in control of himself, clear about his motives and in possession of his rights, which allow him to enter into instrumental relations.'<sup>669</sup> In stark contrast to the liberal philosophy is Hegel's notion of self-consciousness which is defined as 'the unity of oneself in one's other-being.'<sup>670</sup> In other words, 'self-consciousness both negates the split between self and other and preserves it; and as a result of this sublation, self becomes 'an amalgam of self and otherness, of sameness and difference.'<sup>671</sup> Consequently, identity becomes a dynamic concept in which self is never equal to self but always to a self-plus-other.

Douzinas' next move was to probe the link between subjects and legal rights. After perceiving the notion of identity as self-plus-other, Douzinas devised a constitutive role for recognition vis-à-vis the construction of legal subjects. To devise this role, Douzinas relied upon Hegel's idea of ethical life as presented in the latter's *Philosophy of Right*. In what follows, first, I briefly introduce the idea of ethical life, and, then, consider Douzinas' argument on recognition and legal subjects. I show that this argument centres upon a critique of the abstract personality of legal subjects, and that, in Douzinas' view, recognition of rights contributes to the realisation of this abstract personality.

As we observed at the outset of this chapter, in his *Philosophy of Right*, Hegel formulated a system of right which traced the development of will through three separate domains. We observed that these domains are abstract right, morality, and ethical life.

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<sup>668</sup> *Ibid*, p.385; Douzinas C., *The End of Human Rights*, (Oxford: Hart Publishing, 2000) pp. 270, 271.

<sup>669</sup> Douzinas (2002) op. cit. at p.385.

<sup>670</sup> *Ibid*, p.386.

<sup>671</sup> *Ibid*, p.385.

Therefore, it is in the last domain that the previous two stages of the will are united. Hegel offered a definition and the significance of the notion of will for his theory of right in the following:

The basis of right is the *realm of spirit* in general and its precise location and point of departure is the will; the will is *free*, so that freedom constitutes its substance and destiny and the system of right is the realm of actualized freedom, the world of spirit produced from within itself as second nature.<sup>672</sup>

In the domain of abstract right, will corresponds to the notion of personality which has an immediate external existence; in the domain of morality, the external existence is reflected into itself to arrive at what Hegel called the subjective will. Freedom is, therefore, actualised by the unity of the external existence with the internal reflection. As noted above, this unity takes place within ethical life which, in itself, is further divided into three separate spheres: family, civil society, and state.<sup>673</sup>

Douzinas used the spheres of ethical life to demonstrate the constitutive role of rights in the construction of identity. Comparable to Honneth's approach considered above, Douzinas understood three spheres of ethical life as constituted by three separate stages of recognition. Recognition through relations of love and affection comprises the sphere of family, legal recognition is the building block of the civil society, and full recognition is achieved in the culmination of ethical life in the state.<sup>674</sup>

With regard to the issue of legal recognition, Douzinas brought Hegel's notion of legal personality under particular focus. Douzinas explained that this type of personality

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<sup>672</sup> Hegel (1991) op. cit. at §4, p.35.

<sup>673</sup> For a brief overview of the entire system of right see Hegel (1991) op. cit. at §33, p.62.

<sup>674</sup> Douzinas (2002) op. cit. at p.384.

‘expresses self’s ability to remove itself from family, social and cultural background, from all determinations that make it a concrete human being and to become abstract, indeterminate.’<sup>675</sup> Furthermore, he added that,

[t]he legal person negates all the contingencies of existence, race, sexuality, colour or religion and acquires an individualistic, negative, and private concept of self. The negation of what makes self real opens the possibility of negating others and of creating a sphere of privacy, where the person is free to act without external impositions and to reject the offers and advances of others. The will of the legal person is negative; it relates to others through excluding them.<sup>676</sup>

While this negative aspect of the will corresponds to personal freedom which Douzinas deemed ‘the great achievement of modernity’ he also noted that legal personality remains abstract.<sup>677</sup> Douzinas argued that in order to understand legal rights’ contribution to the process of recognition we need to realise that it is the ascription of these rights which ‘enables the abstract personality to acquire specific characteristics, to objectify itself.’<sup>678</sup>

One example that can demonstrate this objectification is Hegel’s perception that individual wills of persons become objective in the possession, use and alienation of property.<sup>679</sup> Emphasising the role of property rights in maintaining a legal relationship in which recognition of my possession by others is conditional upon my reciprocation of this recognition, Douzinas commented that,

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<sup>675</sup> *Ibid*, p.387.

<sup>676</sup> *Ibid*, p.388.

<sup>677</sup> *Ibid*.

<sup>678</sup> *Ibid*.

<sup>679</sup> Hegel (1991) op. cit. at §46, p.77.

[p]roperty therefore leads to a form of interpersonal recognition, a type of intersubjectivity achieved through the medium of the object; others recognize me by acknowledging and respecting the existence of my will in the thing.<sup>680</sup>

The contractual relationship is the specific context in which reciprocal recognition takes place. In this regard, Hegel wrote that ‘[t]hat kind of property of which the aspect of existence or externality is no longer merely a thing but contains the *moment* of a will (and hence the will of another person) comes into being through contract.’<sup>681</sup> Therefore, Douzinas commented that through contractual relations ‘contractors not only exchange objects but they also recognize each other as separate and free and as possessors of rights and duties — in and through contract they constitute one another as subjects.’<sup>682</sup> In light of the examples of property and contract, Douzinas noted that

[t]he imperative of rights is to be a person and to respect others as persons. In recognizing rights, the law gives the person dignity and by upholding contracts it makes dignity actual in the world. The interpersonal relation of right offers recognition of what is universal in every particular and a desire for the most abstract form of law.<sup>683</sup>

While the contribution of rights to the progress of recognition is, hence, established, Douzinas used the same framework — i.e. the legal recognition of universality — in pointing out two major shortcomings of this contribution.

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<sup>680</sup> Douzinas (2002) op. cit. at p.389.

<sup>681</sup> Hegel (1991) op. cit. at §72, p.104. [*my emphasis*]

<sup>682</sup> Douzinas (2002) op. cit. at p.389.

<sup>683</sup> *Ibid*, p.390.

The first of these is the formalism of the law, that is to say ‘the lack of concern for the material circumstances that allow the realisation of rights.’<sup>684</sup> The second is the “abstraction, the recognition of a non-substantial, a thin personality.”<sup>685</sup> In light of these deficiencies Douzinas emphasised that ‘[r]ights formalize and stabilize identities by recognizing and enforcing *one* type of reciprocal recognition.’<sup>686</sup> Therefore, Douzinas’ conclusion is that ‘[a] complete identity cannot be based on the universal characteristics of law but on the continuous struggle for the other’s unique desire and concrete recognition.’<sup>687</sup> Nevertheless, within this struggle, ‘the avoidable misrecognitions, the myriad instances of mismatch between self-image of an individual or group and the identity of law and rights allow them to project, make law a necessary but inadequate and defective partner in the struggle for identity.’<sup>688</sup>

To sum up, Douzinas began his argument with the concept of identity which he derived from Hegel’s notion of self-consciousness. This conception rejected the liberal theory’s atomocentric take on the subject. Instead, Douzinas argued that the subject is always a self-plus-other. This argument accorded a constitutive role to Hegel’s theory of recognition and regarded lordship and bondsman as a narcissistic form of desire. This type of desire had to be overcome en route to achieving full identity. Douzinas also showed the manner in which the theory of recognition played a role in the construction of subjects of legal rights. Intersubjective aspect of mutual recognition enabled Douzinas to argue against the abstract personality of the legal subject. According to this argument, the abstract personality could only be actualised through recognition of individual’s legal rights.

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<sup>684</sup> *Ibid*, p.397.

<sup>685</sup> *Ibid*.

<sup>686</sup> *Ibid*, p.404. [*my emphasis*]

<sup>687</sup> *Ibid*, p.405.

<sup>688</sup> *Ibid*.

## Conclusion

At the outset, I set the purpose of this chapter as the overcoming of the problematic aspect of the atomistic perception of sovereignty. In the previous chapter, I derived this perception from Vattel's notion of absolute sovereignty and its restrictive effects upon the prevalent theories of recognition. My argument, therein, was that, both the constitutive and the declarative theories failed to ask the conceptual question of other's role in establishing the personality of international subjects. In order to circumvent this failure, in this chapter, I introduced Hegel's theory of recognition. Turning to Hegel's theory served two purposes. Firstly, it enabled rethinking the role of recognition outside the boundaries set by the prevalent theories. Secondly, it presented recognition as a constitutive imperative based on elements of mutuality and flux.

However, the Hegelian turn for an apt theoretical framework also posed certain challenges. Firstly, one encounters two prominent versions of this theory in different works of Hegel. One of these versions was presented in the *Philosophy of Right* and featured Hegel's ideas on recognition within the context of international law. The other version was introduced in the *Phenomenology*, however, it featured ideas on the elevation of cognition to the level of absolute knowledge. In the first two parts of this chapter, I considered these two variations respectively. The overall orientation of the chapter is towards the adaptability of the latter version, on an *ad hoc* basis, to account for the constitution of subjects under international law.

This orientation, however, posed the second challenge: to what extent and in what manner could one abstract a theory of recognition from a phenomenological treatise on the appearance of absolute knowledge in this world? I dealt with this challenge in the final part of the chapter. Therefore, the structure of the chapter comprised the following. In the first part, I introduced Hegel's theory of recognition as presented in his *Philosophy of Right* and

demonstrated that this work anticipated the failures of the constitutive theorists in a later age. In the second part of the chapter, I departed from these views by focusing upon the theory of recognition in the *Phenomenology*. I took up the contextual challenge posed by this latter treatise in the third part of the chapter by referring to works of three scholars who adapted Hegel's theory of recognition to explain the constitution of different forms of subjects.

Inasmuch as Hegel was of the view that external recognition was needed to supplement the internal sovereignty of a state, in the first part of the chapter, I showed that his ideas on this necessity remained somewhat ambivalent. In Hegel's view, recognition was an absolute entitlement, yet this entitlement was contingent upon the will of each and every state. Furthermore, as a constitutive supplement, recognition remained purely formal. I argued that the equivocal approach presented in the *Philosophy of Right* foretold the problems pertaining to the constitutive theory which I considered in the previous chapter. Based on the connection between Hegel's thoughts in the *Philosophy of Right* and the ideas of the constitutive theorists, in the second part of the chapter, I moved on to an alternative perspective on the notion of recognition. This alternative stance was presented by Hegel in the *Phenomenology of Spirit*.

The primary obstacle this move engendered was contextual. In the initial section of the second part, I traced consciousness' development through three stages of sense-certainty, perception, and understanding. I followed this progress, in the second section, with consciousness' transformation into self-consciousness via the notions of desire, recognition, and the dialectic of lordship and bondsman. Insofar as Hegel provided a theoretically detailed definition of the act of recognition in the *Phenomenology*, this act did not take place within the realm of international law. In other words, an *ad hoc* utilisation of the theory of

recognition depended upon the abstraction of this theory from the framework of the *Phenomenology* and the examination of probable repercussions of this abstraction.

I offered examples of such abstractions in the final part of this chapter by referring to the respective works of Honneth, Taylor, and Douzinas. Central to the thoughts of these scholars was the idea that the intersubjective element of Hegelian recognition provided a viable theoretical basis for the construction of subjects on a mutual basis. According to Honneth, the moral order of a society is constructed upon spheres of mutual recognition. In Taylor's perspective, groups establish their cultural identities through a struggle for recognition informed by the politics of universality and of difference. Finally, and contrary to the atomocentric perception of liberal theory, Douzinas argued for the construction of legal subjects through mutual recognition of legal rights. In Douzinas' view, such recognition transforms the abstract person of rights into an actual legal subject.

In addition to presenting successful employment of Hegel's theory of recognition, reference to these scholars brought another obstacle to the fore, that one needs to deal with the repercussions especially of the dialectic of lordship and bondsman upon the theory of recognition. I showed that Honneth's approach to this problem was ambiguous. Initially, Honneth thought that in the *Phenomenology* Hegel abandoned of the societal structure of ethical life for the individualistic development of self-consciousness. Later on, however, Honneth perceived the notion of self-consciousness as comprising an elementary sense of morality. However, this perception did not include a re-evaluation of the repercussions of lordship and bondsman. In Taylor's perspective, lordship and bondsman presented a stage among the historical development of the concept of identity. This stage demonstrated the flaw in honour-oriented hierarchical societies. Thus, a modern understanding of identity was built open the overcoming of such societies.

Douzinas understood lordship and bondsman as a narcissist mode of desire that, similar to Taylor's approach above, one had to surpass in order to achieve full identity. Compared to Honneth's unclear approach, Taylor and Douzinas respectively acknowledged the challenge of lordship and bondsman upon the theory of recognition and thought of this challenge as surmountable. I conclude this chapter by arguing that, inasmuch as this challenge may be surmountable, Douzinas and Taylor presented inadequate accounts of its repercussions. Reading the works of these scholars, one could interpret the effect of lordship and bondsman as having no trace upon the act of recognition. Despite his fleeting engagement with the subject matter, however, Honneth highlighted that lordship and bondsman oriented self-consciousness towards the notion of labour. Similarly, one can also recall the fact that the struggle for recognition culminates in the independence of servile consciousness which is gained not through mutual recognition but via the bondsman's relation with the thing upon which he/she labours. These concerns render the idea of prevailing over lordship, without any traceable or residual effects upon recognition, less viable.

The issue of such effects brings us back to one of the two questions I asked at the beginning of this chapter. Can we employ Hegel's theory of recognition by extracting this theory from the context of the *Phenomenology*? I answered this question in the affirmative by providing several examples of such application in the third part of the chapter. The next question was whether the saga of lordship and bondsman set any contextual repercussions for these applications. We observed above that the respective works of Honneth, Taylor, and Douzinas lack the detailed engagement necessary for an adequate answer to this question. In the next chapter, therefore, I take into account Kojève's lectures on Hegel's thought. For the purposes of my thesis, the significance of these lectures lies in the fact that Kojève placed lordship and bondsman at the epicentre of his interpretation of Hegel's philosophy. Shifting

the focus onto these lectures, in turn, provides me with the opportunity to give a sufficient answer to the aforementioned question.

## CHAPTER FIVE

### LORDSHIP AND BONDSMAN: THE END OF HISTORY

#### Introduction

In the *Phenomenology of Spirit*, the transformation of consciousness into self-consciousness commences with the notion of desire, develops through mutual recognition, is followed by a life and death struggle, and finally culminates in the relation between lordship and bondsman. This transformation is aimed at achieving the truth of independent consciousness. According to Hegel, only bondsman is capable of attaining this truth. He does so by holding desire in check and by labouring upon the object which is later consumed by the lord. In the previous chapter, I argued that the theory of recognition can be extracted from the context of the *Phenomenology* for *ad hoc* purposes. I supported this argument by referring to several authors who successfully utilised this theory to explain the formation of different types of subjects. However, I also maintained that these references were deficient in their treatment of the repercussions of the dialectic of lordship and bondsman upon the notion of recognition. Taylor and Douzinas respectively regarded the dialectic as a transient stage that could be overcome with no residual effects. Honneth merely acknowledged the dialectic's orientation towards the notion of labour, however, failed to contemplate the consequences of this orientation.

It is in light of these inadequate engagements with lordship and bondsman that, in this chapter, I present a more detailed scrutiny of the dialectic and its consequences on the act of recognition. The primary reference for this scrutiny is Alexandre Kojève's anthropogenetic account of human reality. Kojève based this account on Hegel's theory of recognition. Inasmuch as acts of desire and recognition are constitutive of subjects within this reality, Kojève was of the view that, the reality is generated by the struggle between lord and bondsman. For the purposes of this chapter, Kojève's approach provides a valuable

insight into the ways in which lordship and bondsman may come to affect the intersubjective system of recognition. Two features of this insight are particularly relevant to my attempt to abstract a theory of recognition from the context of the *Phenomenology*.

The first feature is Kojève's interpretation of the struggle between lord and bondsman as teleological. As the generator of human reality, the struggle creates both freedom and history, however, it does so with an ultimate purpose. The manner in which this eventual goal is achieved comprises the second feature. To the extent that the struggle generates reality, the final objective is attained when the clash between lord and bondsman ceases to exist. Kojève read this cessation as a form of reconciliation which is reached by the creation of the homogenous and the universal state. These teleological and state-centric insights into the effects of the dialectic of lordship and bondsman, in turn, pose significant challenges to my aim to derive a theoretical framework, from the context of the *Phenomenology*, for the constitution of subjects under international law. How could one extract a theory of recognition if the scope of such theory is limited to a certain historical progress with a specific telos? Furthermore, in Kojève's perspective, the homogenous and the universal state comprises this telos. The state-centrism of this end-goal, thus, drags us back to the problem I tried to circumvent in the third chapter: How could one resolve the problems associated with the state-centrism of the prevalent theories under international law by adapting a notion of recognition which ostensibly has a similar orientation?

I present my engagement with these questions by dividing this chapter into two parts. In the first part, I introduce Kojève's anthropogenetic account of human reality. As I mentioned earlier, the struggle between lord and bondsman is at the epicentre of this reality. Thus, Kojève's work renders intelligible reverberations of this struggle on the theory of recognition. In order to highlight the essential role the idea of reconciliation plays vis-à-vis these effects, I supplement my reference to Kojève's work with an allusion to Francis Fukuyama's end-of-history thesis. I demonstrate that, in respective works of Kojève and

Fukuyama, the resolution of the struggle between lord and bondsman corresponds to the reconciliation of the notion of society with the notion of individual. In other words, in the first part of this chapter, I show that underlying the aforementioned problems of teleological historicism and state-centrism is the perception that the reconciliation between lord and bondsman is possible.

In the second section of the first part, I endeavour to tackle these problems by arguing against the possibility of such reconciliation. For this argument, I rely upon Fredric Jameson's contention that a synthesis of the notions of society and individual never takes place in Hegel's thoughts. In order to substantiate this contention, I take a detour into Hegel's interpretation of Sophocles' play *Antigone*. I demonstrate that, in Hegel's perspective, the characters of the play represented separate ethical powers that were in conflict with each other. I, then, rely upon Jameson's reading of this conflict and the ensuing double-tragedy of the play as the impermanence of ethical orders or social forms. According to Jameson, the society as an ethical order (or the Spirit which represents this order) is comprised of flowing moments and, as such, is subject to continuous change. Thus, Jameson's interpretation helps one to perceive the struggle between lord and bondsman as irresolvable, at least, not in the sense that Kojève and Fukuyama respectively predicted. This perception, in turn, enables the departure from Kojève's teleological insight into the constitution of the homogenous and the universal state.

In the second part of the chapter, I argue that the continuity of moments, that make up the dialectic and result in constant change, pertains not only to Hegel's notion of social forms but also to his theory of recognition. The intention of this argument is to return to the question at hand: how could one extract a theory of recognition if the scope of such theory is limited to a certain historical progress with a specific telos? By relying upon Jameson's work, one can react to the specific telos Kojève had in mind; therefore, one could contend that a homogenous and universal state, as a domain of reconciliation between the society

and the individual, never existed in Hegel's thought. Nevertheless, this contention does not necessarily mean that the theory of recognition lacks any other possible telos. Understood as a process serving any specific end renders recognition a difficult notion to extract for *ad hoc* purposes. In the last part of this chapter, therefore, I present Hegel's idea of recognition as a concept which accommodates constant change and encompasses a continuous flow of moments that defy any ultimate object or aim.

The main point of reference for such conception is Jean-Luc Nancy's interpretation of Hegel's notions of negativity and self. Central to the former's interpretation is the perception of negativity — i.e. the elementary notion of recognition — as restless. The restlessness, in turn, informs Nancy's understanding of the notion of self not only as constitutively dependent upon its relation to an other, but also as something that is constantly determined and re-determined by this relation. Expressed in different terms, Nancy's work presents the idea of a subject which is always in flux. The act of recognition, empowered by restless negativity, ceaselessly creates this subject of change and difference. My argument is that, understood as such, recognition does not only resist any teleological outcome, it renders *becoming* an imperatively relational and continuous matter.

Nancy drew extensively upon Hegel's preface to the *Phenomenology* to elucidate the conceptual features of the notions of self and negativity. Therefore, I begin the third part of this chapter with a brief introduction to the preface. This introduction focuses upon Hegel's definition of Absolute both as Substance and as Subject. This definition underlies the scientific system of truth presented in the *Phenomenology*. By perceiving Absolute as Subject, Hegel endowed the former notion with the power of the negative, that is to say, with the power to know itself. Inasmuch as such definition of the Absolute underlies the cognitive turn in Hegel's thought, it also provides a broader understanding of the ways in which negativity works. Next in this part, I move on to demonstrate Nancy's incorporation of this understanding vis-à-vis the concepts of desire and recognition. This incorporation

produces an enriched notion of self that circumvents both the teleological restrictions and the idea of a subject that is complete-in-itself.

In the section on Nancy's thought, I initially focus upon the concept of restlessness. I demonstrate the way in which Nancy derived this concept from Hegel's definition of Absolute as Subject. Following this derivation, I show the connection between the notion of a restless Subject and the self-conscious subject of mutual recognition. For this connection, I shift my focus upon Nancy's perception of the subject as *becoming*. I demonstrate that this perception locates subject within a mediated moment that overcomes immediate notions of being and nothingness. Here, I explain that Nancy relied upon Hegel's logical concepts to elucidate the coming-into-being of the subject through its negative movements and that this elucidation augmented the constitutively imperative role one's relation to its other has. I conclude the chapter by recapitulating that the limiting effects of Kojève's teleological and state-centric interpretation of lordship and bondsman can be surmounted by understanding the Hegelian subject as embodying the restless power of negativity. This embodiment, in turn, situates the subject within a constant state of becoming that accommodates the imperative aspect of one's continuous relation to its other and highlights the aptness of Hegel's notion of recognition for the aforementioned *ad hoc* purposes.

## **Part One**

### **1.1. Introduction**

As I pointed out at the outset of this chapter, the purpose of turning to Kojève's reading of Hegel's work is to accentuate the effects of the dialectic of lordship and bondsman on the theory of recognition. To achieve this purpose in this part, I present Kojève's step-by-step incorporation of the relation between lord and bondsman into his notion of human reality. The first step is to understand this reality as one that centres upon notions of desire and recognition. Kojève distinguished between two different types of desire, namely, animal

and human, and argued that, through mutual recognition, the latter is capable of existing in a social reality. The construction of this reality begins with the separation of two forms of desire by means of a life and death struggle and continues through three stages of the aforementioned dialectic. I show that, according to Kojève, these three stages contribute to the generation of history and freedom.

In the latter section of this part, I present Kojève's thesis on the end-of-history as the outcome of this generation. This thesis suggests that the reconciliation of the struggle between lord and bondsman leads to the establishment of the homogenous and the universal state. I refer to Fukuyama's utilisation of this thesis to further underscore the role of this reconciliation. I show that Fukuyama adapted the thesis to argue that, in contemporary times, such reconciliation is exclusively and most sufficiently provided in the liberal democratic state, that this state marks the end of history. After demonstrating that Kojève's and Fukuyama's respective approaches restrict the use of recognition to particular contexts, I move on to counter this restriction by arguing against the perceived reconciliation of the society and the individual. I begin this move by introducing, in the conclusion of this part, Jameson's argument that, the idea of such reconciliation is a misplacement of Hegel's thoughts on the concept of society. Central to this argument is the idea that societies are in a perpetual flux which resists a teleological end to the progress of history. This idea, in turn, informs my argument, in the final part of this chapter, that such continuous change also pertains to the notion of recognition.

I begin the section on Kojève with a note on the alternative use of the terms *lordship* and *bondsman*. In the previous chapters of the thesis, I referred to the parties of the dialectical struggle as lord and bondsman. These references reflected the translation provided in Hegel's *Phenomenology* which I extensively quoted in the previous chapter. In the English translation of Kojève's works, however, these parties are referred to as *master*

and *slave*. The alternative usage is extensive in the field of studies on Hegel.<sup>689</sup> In order to refrain from altering lengthy quotes from Kojève, hereon, I will be referring to both lord and bondsman, and master and slave without intending any variation in the meaning of the terms.

## 1.2. Kojève's Reading of Hegel

Kojève's reading of Hegel's theory of recognition is anthropocentric. This means that Kojève interpreted the link between Hegel's notions of desire, recognition and self-consciousness as reflecting humans' endeavour to achieve freedom and historicity. The principal reference for Kojève's anthropogenetic approach is the first chapter of his *Introduction to the Reading of Hegel* wherein he asserted outright that '[m]an is Self-Consciousness.'<sup>690</sup> This type of consciousness, according to Kojève, entails an essential distinction between humans and animals; therefore, in contrast to animals, humans are conscious of themselves, of their human reality and dignity.<sup>691</sup> Central to Kojève's reading of Hegel's notion of self-consciousness, and fundamental to the above-mentioned distinction is Kojève's conviction that humans possess an anthropogenetic Desire.<sup>692</sup>

As observed in chapter four of this thesis, according to Hegel, Desire (that is to say, the act of negation, destruction or consumption of the encountered object) formed the initial, but, nonetheless, inadequate attempt to achieve self-certainty; and, out of necessity which arises from the conditioning of the independent object, Desire had to give way to Recognition as the sole means of achieving this certainty. Kojève interpreted this transition by distinguishing between human (or, as already mentioned, anthropogenetic) Desire and animal Desire:

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<sup>689</sup> One can refer to Chapter 3 of Cole A., *The Birth of Theory*, (Chicago: The University of Chicago Press, 2014) for a discussion on the translation of *der Herr* and *der Knecht* as master/slave, lord/bondsman, and lord/serf.

<sup>690</sup> Kojève A., *Introduction to the Reading of Hegel: Lectures on the Phenomenology of Spirit*, (Ithaca: Cornell University Press, 1969) p.3.

<sup>691</sup> *Ibid.*

<sup>692</sup> *Ibid*, p.6.

Human Desire, or better still, anthropogenetic Desire, produces a free and historical individual, conscious of his individuality, his freedom, his history, and finally, his historicity. Hence, anthropogenetic Desire is different from animal Desire (which produces a natural being, merely living and having only sentiment of life) in that it is directed, not toward a real, “positive,” given object, but toward another Desire.<sup>693</sup>

To further explicate the meaning of directing a Desire toward another Desire, Kojève wrote the following:

[...] in the relationship between man and woman, for example, Desire is human only if the one desires, not the body, but the Desire of the other; if he wants “to possess” or “to assimilate” the Desire taken as Desire — that is to say, if he wants to be “desired” or “loved” or, rather, “recognised” in his human value, in his reality as a human individual.<sup>694</sup>

To achieve recognition of his/her human value or his/her human reality, individuals must do away with their animal desires. The consequences of this conditionality are twofold. Firstly, according to Kojève, the act of recognition requires the existence of ‘a multiplicity of Desires’ rendering human reality social.<sup>695</sup> Underlying the sociality of human reality is, however, the need to enter into a life and death struggle — the very method with which persons can do away with their animal desires.

Kojève’s anthropocentric interpretation of Hegel’s thought marks the life and death struggle as the essential moment which distinguishes human desire from animal desire. Therefore, the former integrated the latter’s dialectic of master and slave as the constructive

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<sup>693</sup> *Ibid.*

<sup>694</sup> *Ibid.*

<sup>695</sup> *Ibid.*, pp. 5, 6.

element of human reality. This integration stands in stark contrast to Taylor's and Douzinas' works wherein master and slave constituted a fleeting stage within the development of social reality. Kojève's approach entails reading the struggle between master and slave as the generator of human reality. Accordingly, Kojève noted that,

[...] in his nascent state, man is never simply man. He is always, necessarily, and essentially, either Master or Slave. If the human reality can come into being only as a social reality, society is human — at least in its origin — only on the basis of its implying an element of Mastery and an element of Slavery, of autonomous existences and dependent existences.<sup>696</sup>

The separation of human desire from animal marks the central aspect this human social reality. Therefore, for a person to be considered human, his/her human Desire must overcome his/her animal Desire.<sup>697</sup> Since '[a]ll the Desires of an animal are in the final analysis a function of its desire to preserve its life,' the overcoming of such desire takes the form of risking one's own '(animal) life for the sake of his human Desire.'<sup>698</sup>

Kojève derived the stages of the construction of human reality from a division of the dialectic of master and slave into three notions. These are the notions of *action* (or activity), *absolute negating-negativity*, and *dialectical negation*. Kojève's deliberation on each notion provides a detailed insight into the manner in which the dialectic affects Hegel's theory of recognition particularly when the theory is used to account for constitution of subjects. In order to clearly establish this effect, in what follows, I present Kojève's construction of human reality with the corresponding notions. Afterwards, I derive on the dialectic's effect on the theory of recognition to discuss the theory's limits and the ways to overcome these

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<sup>696</sup> *Ibid*, pp. 8, 9.

<sup>697</sup> *Ibid*, pp. 6, 7.

<sup>698</sup> *Ibid*, p.7.

limits for an *ad hoc* utilisation of the theory for the purposes of accounting for subjects under international law.

The first of the aforementioned notions, *activity*, relates to the initiation of the life and death struggle that results in lordship and bondsman. According to Kojève's interpretation, the first encounter between two persons involves an act whereby each person tries to assert his/her absolute and autonomous reality.<sup>699</sup> Such an assertion is necessary to transform the subjective certainty of each person's reality into an objective reality which others also recognise.<sup>700</sup> The concept of action (or activity) corresponds to the transformation of 'the (natural and human) world in which one is not recognised into a world in which this recognition takes place.'<sup>701</sup> Therefore, action forms the basis upon which recognition takes place, and according to Kojève, '[t]his action — essentially human, because humanising and anthropogenetic — will begin with the act of imposing oneself on the first other man one meets.'<sup>702</sup> This act of imposition, in turn, results in 'a fight to the death between two beings that claim to be men, a fight for pure prestige carried for the sake of recognition by the adversary.'<sup>703</sup>

The notion of *absolute negating-negativity* is important for grasping why the fight for recognition is, initially, a fight to death. In the opening encounter, what is important for one party is the establishment of his/her objective reality through recognition from another. While it is the need for this recognition that initiates the fight, it is the same need that determines one's dependence upon the other. Thus, Kojève explained that,

[i]n the beginning, as long as he is not yet actually recognized by the other, it is the other that is the end of his action; it is on this other, it

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<sup>699</sup> *Ibid*, p.11.

<sup>700</sup> *Ibid*.

<sup>701</sup> *Ibid*.

<sup>702</sup> *Ibid*.

<sup>703</sup> *Ibid*, pp. 11, 12.

is on recognition by this other, that [man's] human value and reality depend; it is this other that the meaning of his life is condensed. Therefore, he is outside of himself. But his own value and his own reality are what are important to him, and he wants to have them in himself. Hence, he must overcome his other-being.<sup>704</sup>

To put the process of recognition into order and perspective, the starting point for Kojève is human reality's emergence from animal reality. This emergence is occasioned by risking one's animal reality. The aim of this risk is to achieve recognition of one's human reality from another. The concept of action underlies this aim. That is to say, one needs to transform the natural and/or the given world to achieve recognition. The first step towards this transformation is to impose oneself upon another. This imposition, in turn, reveals that one's human reality is contingent upon another. The outcome of this contingency is that one becomes outside of oneself and needs to overcome this otherness in order to attain objective certainty. According to Kojève, this act of overcoming takes place in two steps.

The first step is to realise that human reality emerges from animal reality. Hence, Kojève noted that, while,

[...] in the beginning [of the encounter,] he sees in the other only the aspect of an animal. To know that this aspect reveals a human reality, he must see that the other also wants to be recognised, and that he, too, is ready to risk, to deny, his animal life in a fight for the recognition of his human being-for-self.<sup>705</sup>

The second step, therefore, is to provoke the other into starting the fight for pure prestige. However, '[...] having done this, he is obliged to kill the other in order not to be killed

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<sup>704</sup> *Ibid*, p.13.

<sup>705</sup> *Ibid*.

himself.<sup>706</sup> Absolute negating-negativity corresponds to the killing of the other. Kojève followed Hegel's thought in conceding that absolute negation (that is to say, the death of one of the parties in the fight) will do away with the truth that was supposed to issue from the fight.<sup>707</sup> Therefore, the process of recognition must involve another form of negation as a result of which the subject can objectively ascertain his/her human reality. Hegel called this other form 'negation coming from consciousness.'<sup>708</sup> In Kojève's reading, this negation is referred to as the dialectic overcoming of the above-mentioned otherness:

[...] it does the man of the Fight no good to kill his adversary. He must overcome him dialectically. That is, he must leave him life and consciousness, and destroy only his autonomy. He must overcome the adversary only insofar as the adversary is opposed to him and acts against him. In other words, he must enslave him.<sup>709</sup>

As opposed to absolute negation, dialectical overcoming will preserve the other that is overcome. However, such overcoming will also entail the enslavement of one of the parties.

Recognised reality is not yet achieved within the conditions of enslavement. According to Kojève 'real and true man is the result of his inter-action with others; his I and the idea he has of himself are *mediated by recognition* obtained as a result of his action. And his true autonomy is the autonomy that he maintains in the social reality by the effort of that action.'<sup>710</sup> At the stage corresponding to dialectical overcoming of the other, aforementioned mediation by recognition is not attained. In order to reach such mediation, Kojève incorporated the remaining part of the dialectic of lord and slave into his construction of human reality. This incorporation entails Kojève's interpretation of respective positions of

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<sup>706</sup> *Ibid.*

<sup>707</sup> *Ibid.*, pp. 13, 14.

<sup>708</sup> Hegel G.W.F., *Phenomenology of Spirit*, (trans. A. V. Miller), (Oxford: Oxford University Press, 1977) §188, p114.

<sup>709</sup> Kojève, op. cit. at p.15.

<sup>710</sup> *Ibid.*, p.15. [*my emphasis*]

the lord and the slave. According to him, the position of Hegel's master is 'an existential impasse.'<sup>711</sup> The reason for this position is that, while lord enjoys mastery over slave, this enjoyment does not amount to the truth of independent consciousness since lord is recognised by slave — that is to say, by someone who is not recognised by lord. Therefore, slave's recognition of lord remains insufficient and tragic for the latter.<sup>712</sup>

In stark contrast to the existential impasse of the lord, Kojève noted the following about the slave's position:

[t]he complete, absolutely free man, definitely and completely satisfied by what he is, the man who is perfected and completed in and by this satisfaction, will be the Slave who has overcome his Slavery. If idle Mastery is an impasse, laborious Slavery, in contrast, is the source of all human, social, historical progress. History is the history of the working Slave.<sup>713</sup>

Clearly, servile consciousness is the truth of independent consciousness because slave labours and it is the very act of labouring which generates human reality and historical progress. Therefore, Kojève argued that,

[t]he future and History [...] belong not to the warlike Master, who either dies or preserves himself indefinitely in identity to himself, but to the working Slave. The Slave, in transforming the given World by his work, transcends the given and what is given by that given in himself; hence, he goes beyond himself, and also goes beyond the Master who is tied to the given which, not working, he leaves intact. If the fear of death, incarnated for the Slave in the person of the

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<sup>711</sup> *Ibid*, p.19.

<sup>712</sup> *Ibid*.

<sup>713</sup> *Ibid*, p.20.

warlike Master, is the *sine qua non* of historical progress, it is solely the Slave's work that realises and perfects it.<sup>714</sup>

According to Kojève, slave acquires an attribute which drives the historical progress. This acquisition marks Kojève's historical contextualisation of Hegel's work. The first consequence of this contextualisation is that Kojève situated the dialectic of master and slave within his broader interpretation of man's struggle against nature. Secondly, the historical contextualisation led Kojève to construe Hegel's theory of recognition within the confines of a telos.

Consequent to reaching the conclusion that the slave's labour drives historical progress, Kojève did not abandon the struggle between lordship and bondsman. Instead, he placed this struggle within man's overall struggle against nature. In relation to Kojève's anthropogenetic approach, man's struggle against nature corresponds to the condition that persons have to overcome their animal desires to attain human reality. This condition lends itself to the notion that human reality is generated via the transformation of a given natural reality. According to Kojève, therefore,

[...] universal history, the history of the interaction between men and of their interaction with Nature, is the history of the interaction between warlike Masters and working Slaves. Consequently, History stops at the moment when the difference, the opposition, between Master and Slave disappears [...]<sup>715</sup>

In Kojève's reading, the opposition disappears when the synthesis of master and slave is achieved; this achievement consists of the inception of the 'whole Man, the Citizen of the universal and homogenous State created by Napoleon.'<sup>716</sup> Thus, incorporation of the dialectic of master and slave into the conception of history entails the sectioning of historical

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<sup>714</sup> *Ibid*, p.23.

<sup>715</sup> *Ibid.*, p.43.

<sup>716</sup> *Ibid*, p.44.

evolution into three segments each of which are respectively determined by the existence of master, slave, and the ultimate overcoming of both.<sup>717</sup> However, this ultimate overcoming marks the moment when history stops.

Kojève's anthropogenetic approach located recognition at the centre of man's creation as a free and historical subject who emerges from his animal reality and progresses into a human reality. Nevertheless, Kojève trapped this creation within the teleological end of the universal and the homogenous state. In other words, the subject *is* if he/she is the citizen of the Napoleonic state. Therefore, the effect of the dialectic of master and slave upon the theory of recognition is to set the context in which coming-into-being of the subject is conditioned. This effect is problematic vis-à-vis the purpose I set at the outset of this chapter: How could one utilise Hegel's theory of recognition on an *ad hoc* basis to account for the constitution of subjects under international law if the dialectic of master and slave sets a teleological limit upon its function?

My answer to this question is that it is possible to overcome such a limit. I present my answer in three steps. First, I show that underlying Kojève's reference to the Napoleonic state is what Fredric Jameson called the 'stereotypical struggle between the individual and society.'<sup>718</sup> In other words, I demonstrate that Kojève's idea of the termination of the struggle between master and slave is contingent upon the reconciliation of what Kojève portrayed as the struggle between the society and its individual members. Second, I introduce Fukuyama's adoption of Kojève's end-of-history thesis to draw comparisons between these authors' approaches and clarify the manner in which such societal reconciliation may be achieved. Finally, I present Jameson's challenge to Fukuyama's work that such reconciliation never takes place within Hegel's thought. I conclude that, relying

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<sup>717</sup> *Ibid*, pp. 44, 45.

<sup>718</sup> Jameson F., *The Hegelian Variations: On the Phenomenology of Spirit*, (London: Verso, 2010) p.78.

upon Jameson's work, one can begin to overcome the teleological limit exerted upon the theory of recognition through Kojève's reading of Hegel's philosophy.

### 1.3. Reconciliation Between the Society and the Individual

According to Kojève, the struggle between master and slave develops into a struggle between society and the individual. The reason for this development is given in different human values master and slave respectively constitute. In relation to the value master creates, Kojève noted the following.

The Master constitutes his human value in and by the risk of his life [...] The human value constituted by the Fight [to death in risking one's life] is essentially universal, "impersonal." And that is why the Masters' State, which recognises a man only to the extent that this man risks his life for the State in a war for prestige, recognises only the purely universal element in man, in the citizen.<sup>719</sup>

Whereas, the human value created by the working slave's existence is particular:

*Bildung*, the educative formation of Worker by Work, depends on the concrete conditions in which the work is carried out, conditions that vary in space and are modified in time as a function of this very work. Therefore it is by Work, finally, that the differences between men are established, that the "particularities," the "personalities," are formed.<sup>720</sup>

The synthesis which overcomes both the master and the slave, and terminates the struggle between them is, thus, the synthesis of the universal and the particular elements of human values.

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<sup>719</sup> Kojève, op. cit. at p59.

<sup>720</sup> *Ibid.*

Underlying Kojève's insistence that Napoleon's state marks the end of history is the belief that this state offers the means by which the aforementioned synthesis takes place. Two moments of recognition are relevant to this synthesis. The first is the recognition of individuals' particularity by all — and 'by all' here refers to 'Universality incarnated in the State.'<sup>721</sup> The second recognition comes from the Particular wherein individuals recognise the 'universal value of the State.'<sup>722</sup> Hence, it is mutual recognition or reconciliation between individuals and the state (or society) which brings an end to the struggle between master and slave. By adopting Kojève's end-of-history thesis, Francis Fukuyama merely changed the focus upon the historical epoch — as his arguments are premised upon the liberal democratic state — but retained the same conclusions.

Central to Fukuyama's thesis is the concept of rational recognition which he defined as 'recognition on a universal basis in which the dignity of each person as a free and autonomous human being is recognised by all.'<sup>723</sup> Following Kojève, Fukuyama associated this form of recognition with the resolution of the 'internal conflict of the master-slave relationship.'<sup>724</sup> While it is the resolution of this conflict that marks the end of history, Fukuyama's claim was that such resolution is achieved within the liberal state; thus, '[t]he liberal state [...] is rational because it reconciles [...] competing demands of recognition on the only mutually acceptable basis possible, that is, on the basis of the individual's identity as a human being.'<sup>725</sup>

According to Fukuyama, recognition of individuals as human beings underlies the universal and homogenous aspect of the liberal state. Thus, Fukuyama argued that,

[t]he liberal state must be universal, that is, grant recognition to all citizens because they are human beings, and not because they are

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<sup>721</sup> *Ibid*, p.58.

<sup>722</sup> *Ibid*.

<sup>723</sup> Fukuyama F., *The End of History and the Last Man*, (London: Penguin, 1992), p.200.

<sup>724</sup> *Ibid*.

<sup>725</sup> *Ibid*, p.201.

members of some particular national, ethnic, or racial group. And it must be homogenous insofar as it creates a classless society based on the abolition of the distinction between masters and slaves.<sup>726</sup>

In Fukuyama's perspective, the means by which the liberal state achieves this abolition is the establishment of popular self-government:

Popular self-government abolishes the distinction between masters and slaves; everyone is entitled to at least some share in the role of master. Mastery now takes the form of promulgation of democratically determined laws, that is, sets of universal rules by which man self-consciously masters himself. Recognition becomes *reciprocal* when the state and the people recognise each other, that is, when the state grants its citizens rights and when citizens agree to abide by the state's laws.<sup>727</sup>

Similar to Kojève's above-considered approach, Fukuyama placed reciprocal recognition at the very centre of the coming-into-being of the citizens as subjects. In similar vein, his formulation of the modern liberal democracy as the universal and homogenous state contributes to the problem I identified above vis-à-vis my approach to use recognition on an *ad hoc* basis.

In both Kojève's and Fukuyama's separate utilisations of the theory of recognition, the dialectic of master and slave provides the ultimate context in which reciprocal recognition is achieved. Such context is set by a final act that, as these authors claimed, reconciles the dialectical struggle. I explained above that, for the utilisation of Hegel's theory to account for the constitution of subjects under international law, such teleological

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<sup>726</sup> *Ibid*, pp 201, 202.

<sup>727</sup> *Ibid*, p.203. [*emphasis in original*]

contextualisation constitutes a significant restriction. In order to overcome this constraint, I take into account Fredric Jameson's critique of the end-of-history thesis.

At the centre of my attention is Jameson's book *The Hegel Variations* wherein the author provided a concise interpretation of Hegel's *Phenomenology*. For the purposes of this section, the relevance of Jameson's work lies in the author's rejection, at the outset of the book, of the teleological perception of the notion of Absolute Spirit.<sup>728</sup> This rejection sets Jameson's interpretation apart from Kojève's and Fukuyama's above-considered approaches. Therefore, in what follows, I rely on the Jameson's work to problematise the teleological aspects of the latter authors' historical contextualisation of Hegel's theory of recognition. Two notions — class struggle and reconciliation — are key to this problematisation. In what follows, I present Jameson's critical engagement with these notions and move on to suggest ways in which the dialectic's restrictive effect upon the theory of recognition can be overcome.

As we observed above in relation to Fukuyama's work, class struggle ceases to exist within the liberal democratic state. Termination of this struggle, in Fukuyama's perspective, is derived from the reconciliation of the struggle between master and slave. In his attempt to argue that Hegel's thought, as presented in the *Phenomenology*, does not comprise a closed system with a specific telos, Jameson contested the idea that class struggle does effectively come to an end within the liberal democratic state. He distinguished between two forms of class struggle. These are socio-cultural and economic forms. Based on this distinction, Jameson argued that while Kojève foretold an end to history with the realisation of the universal and homogenous state, this foretelling can only be associated with the emergence of a classless society 'only if "class" is grasped as a purely social concept and redefined around the notion of recognition.'<sup>729</sup>

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<sup>728</sup> Jameson, op. cit. at p.1.

<sup>729</sup> *Ibid*, p.76.

Jameson identified the social concept of class struggle as a mass cultural mentality.<sup>730</sup> He explained that a new socio-cultural form emerged with the disappearance of the feudal aristocracy in Europe and that this form was democratic ‘not so much in the sense in which each individual is henceforth recognised but rather by virtue of that *demand* of each subject for equal recognition and that egalitarian hatred of special privileges [...]’<sup>731</sup> In other words, to the extent that liberal democratic states accommodate individuals’ demands for equal recognition, the struggle for the attainment of a certain level of social-class is resolved. However, in Jameson’s perspective, this resolution should not be attributed to the termination of class struggles at the economical level ‘or [to] the emergence of some new kind of radical-democratic impulse on the political level.’<sup>732</sup> The possibility of the continuation of the class struggle at the economic or political level is, thus, a formidable charge against Fukuyama’s use of the notion of a classless society.

Nevertheless, the distinction between the economic and socio-cultural aspects of class struggle is not unnoticed in Fukuyama’s work. Fukuyama argued that the universal and homogenous state rests on two pillars; while the first of these pillars is the struggle for recognition, the second pillar consists of economics.<sup>733</sup> Recognition of the economic aspect of the struggle, however, does not dispel the aforementioned possibility of the continuation of the class struggle. In this regard, Fukuyama provided a self-defeating reason by considering capitalism as the appropriate form of economics that befits the second pillar.<sup>734</sup> The suitability of capitalism is premised upon its provision of necessary economic development which ‘demonstrates to the slave the concept of master, as he discovers he can master nature through technology, and master himself as well through the discipline of work

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<sup>730</sup> *Ibid*, p.77.

<sup>731</sup> *Ibid*, pp. 76, 77. [*emphasis in original*]

<sup>732</sup> *Ibid*, p.77.

<sup>733</sup> Fukuyama, op. cit. at p.204.

<sup>734</sup> *Ibid*.

and education.<sup>735</sup> As a consequence of better education of societies, Fukuyama explained that '[o]ld class barriers are broken down in favour of a general condition of equality of opportunity.'<sup>736</sup> Albeit, this type of opportunity may fall short of meeting Jameson's charge that there may not be an end to class struggle. In this regard, Fukuyama conceded that due to economic status or education, new classes will emerge.<sup>737</sup>

In Fukuyama's perspective, reconciliation of the struggle between lordship and bondsman marks the end of the class struggle. However, in light of Fukuyama's aforementioned concedes and Jameson's distinction between two types of classes, doubts may be raised as to the viability of such reconciliation. These doubts can be extended to cover Kojève's work too. This extension can be achieved by taking into account Jameson's contention against the utilisation of the idea of reconciliation 'in terms of the stereotypical struggle between the individual and society.'<sup>738</sup> In what follows, I examine whether Hegel intended reconciliation — as read by Kojève and Fukuyama — to comprise the ultimate object of the dialectic between master and slave. I rely upon Jameson's interpretation of Hegel's notion of society to argue that such reconciliation never takes place in Hegel's thought. This argument paves the way for dismissing the teleological repercussions of the dialectic upon the theory of recognition.

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<sup>735</sup> *Ibid*, p.205.

<sup>736</sup> *Ibid*.

<sup>737</sup> *Ibid*. In addition to Jameson's charge, Ralph Miliband, in his essay 'Fukuyama and the Socialist Alternative,' argued that Fukuyama's own admission of economic inequality of the contemporary capitalist society is not only detrimental to the latter's argument that such a society 'uniquely satisfies the desire for recognition that [Fukuyama] locates at the heart of the historical process' (p.109). Miliband also argued that, by not considering economic aspects of the contemporary capitalist democracies, such as domination and exploitation of workers, Fukuyama blinded himself to possible alternatives — specifically, for Miliband, that of socialist democracy — which may radically alter such economically unequal conditions and/or foster constant struggle against such conditions as opposed to bringing an end to history through the reconciliation of the struggle. Miliband R., 'Fukuyama and the Socialist Alternative', *New Left Review*, I/193, May-June 1992, pp. 108-113.

<sup>738</sup> Jameson, op. cit. at p.78.

#### 1.4. Antigone's Intervention

According to Jameson, the idea of reconciliation is commonly derived from interpreting Hegel's notion of the experience of Spirit.<sup>739</sup> As we saw in the previous chapter, this experience comprises the process of Recognition.<sup>740</sup> In Hegel's words, this process consists of 'the unity of the different independent self-consciousnesses which, in their opposition, enjoy perfect freedom and independence: 'I' that is 'We' and 'We' that is 'I'.<sup>741</sup> In Jameson opinion, to formulate this process as the reconciliation of the subject's individuality with the universal would be 'a starkly oversimplified formula with which it would be best to remain unsatisfied.'<sup>742</sup> The cause of Jameson's dissatisfaction is the association of Hegel's idea of the We 'with some reified entity imagined to be the social totality.'<sup>743</sup> In Fukuyama's thought this reified entity appears to be the universal liberal state which reconciles competing demands of recognition.<sup>744</sup> Jameson's contention against relying on the notion of society as the locus of reconciliation is based upon identifying a notion other than the society as the universal.<sup>745</sup> The reason for this contention, Jameson stressed, is that Hegel's thoughts on Sophocles' *Antigone* testifies to a certain irreconcilable singularity which not only distinctly contrasts with any notion of societal reconciliation but also renders a teleological reification impossible.<sup>746</sup>

In what follows, I analyse Hegel's engagement with Sophocles' *Antigone* to establish the impossibility of Kojève's (and consequently Fukuyama's) teleological reification.<sup>747</sup> The purpose of establishing this impossibility is to overcome the restrictive

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<sup>739</sup> *Ibid.*

<sup>740</sup> Hegel (1977) op. cit. at pp. 100, 111.

<sup>741</sup> *Ibid*, p.110.

<sup>742</sup> Jameson, op. cit. at p.78.

<sup>743</sup> *Ibid.*

<sup>744</sup> Fukuyama, op. cit. at pp. 201, 202.

<sup>745</sup> Jameson, op. cit. at p.78.

<sup>746</sup> *Ibid*, pp. 78, 79.

<sup>747</sup> *Antigone* is a play written by Sophocles on the tragedy that befalls Creon's kingdom after the king punishes his niece, Antigone, for breaking his decree. Antigone acts against the laws of the state by burying her brother Polynices for whom, based on the charges of treason, Creon had forbidden any acts of burial or mourning. Relying on eternal and unwritten laws of the gods which dictate the burial of every man according to requisite rituals, Antigone breaks the decree and is, therefore, sentenced to be locked away in a live tomb by the king.

repercussions of the dialectic of master and slave upon the theory of recognition. In order to achieve this purpose, firstly, I introduce the main elements of Hegel's reading of *Antigone*. At the outset, these elements comprise the conflict of two ethical powers — those of the state and the family — represented by the characters of Creon and Antigone. Secondly, I take into account contrasting interpretations from Judith Butler and Frederic Jameson of the end result of this conflict. By distinguishing the latter's view from that of the former, I differentiate between an approach which complies with Kojève's teleological reification and another which circumvents it.

Hegel offered a sustained engagement with Sophocles' above-mentioned play in his *Aesthetics*.<sup>748</sup> The context of this engagement is the former's study of Greek tragedy as a genre of dramatic poetry. According to Hegel, the setting for Greek tragedy is the heroic age; this is an age in which 'the universal ethical powers have not been explicitly fixed as either the law of the land or as moral precepts and duties.'<sup>749</sup> Hegel noted that in the absence of such fixedness, Greek tragedy presented a variety of ethical powers 'in original freshness as the gods who either oppose one another in their own activity or appear themselves as the living heart of free human individual.'<sup>750</sup> In relation to the characters of Greek tragedy, such ethical ordering manifested itself as the individual pathos which compelled the protagonists into conflictual opposition with each other.<sup>751</sup> Hegel explained that,

[t]he individuals animated by this pathos are not what we call characters in the modern sense of the word, but neither are they mere

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Following this sentence, Antigone commits suicide by hanging herself. Consequently, Haemon, the son of Creon and to whom Antigone was betrothed, takes his own life by stabbing himself. Following his son's self-destruction, Queen Eurydice also takes her own life leaving King Creon lamenting the tragedy visited upon his kingdom due to his obstinate insistence to go against the unwritten laws of gods. Sophocles, *The Three Theban Plays: Antigone. Oedipus the King, Oedipus at Colonus*, (trans. R. Fagles), (New York: Penguin Classics, 1984).

<sup>748</sup> Hegel G.W.F., *Aesthetics: Lectures on Fine Art Volume II*, (trans. T. M. Knox), (Oxford: Clarendon Press, 1975) p.1208.

<sup>749</sup> *Ibid.*

<sup>750</sup> *Ibid.*, p.1209.

<sup>751</sup> *Ibid.*

abstractions. They occupy a vital central position between both, because they are firm figures who simply are what they are, without any hesitating recognition of someone else's pathos, and therefore [...] lofty, absolutely determinate individuals, although this determinacy of theirs is based on and is representative of a particular ethical power.<sup>752</sup>

According to Hegel, in *Antigone*, Sophocles presented tragedy's major conflict which 'is that between the state, i.e. ethical life in its spiritual universality, and the family, i.e. natural ethical life.'<sup>753</sup> While Creon, who, in Hegel's words, 'honours Zeus alone, the dominating power over public life and social welfare,' presents the former ethical power; Antigone, 'who honours the bond of kinship, the gods of the underworld,' presents the latter.<sup>754</sup> Hegel consistently extended this ethical allusion to *Antigone* in the *Philosophy of Right* as well as the *Phenomenology of Spirit*. In the latter, he relied on Antigone's definition of tacit and unerring laws of the gods: 'They are not of yesterday or today, but everlasting/Though where they came from, none of us can tell.'<sup>755</sup> Hegel referred to the section of the play where Antigone revealed to Creon that she broke the king's decree by burying Polynices. In this section, Antigone asserted that, by doing so, she was complying with justice which is associated with 'gods dwelling beneath the earth,' 'the great unwritten, unshakable traditions' as opposed to Creon's (who Antigone calls 'a mere mortal') edict which lacks any force to override laws ordained by gods.<sup>756</sup>

In the *Phenomenology*, Hegel's explicit reference to Antigone's definition of the law of gods precedes the section on ethical world where Hegel considered the confrontational ethical powers of Human and Divine laws. In this section, Hegel eschewed overt allusion to

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<sup>752</sup> *Ibid*, pp.1209, 1210.

<sup>753</sup> *Ibid*, p.1213.

<sup>754</sup> *Ibid*.

<sup>755</sup> Hegel (1977) op. cit. at §437, p.261.

<sup>756</sup> Sophocles, op. cit. at p.82.

Sophocles' play; however, his definition of the laws resembled the above-mentioned character-study he presented in the *Aesthetics*. Therefore, Human law corresponds to the ethical power of the State (i.e. the actual ethical community); whereas, this power finds its antithesis in the Divine law at the centre of which is the Family as the natural ethical community.<sup>757</sup> In the *Philosophy of Right*, Hegel was less covert about the *Antigone* connection when he offered remarks on the difference of sexes. In his perspective, man 'has his actual substantial life in the state;' whereas, woman 'has her substantial vocation in the family, and her ethical disposition consists in this piety.'<sup>758</sup> According to Hegel, Sophocles presented this piety in *Antigone* as

[...] primarily to be the law of woman, [...] the emotive and subjective substantiality [...] as the law of the ancient gods and of the chthonic realm as eternal law of which no one knows whence it came, and in opposition to the public law, the law of the state — an opposition of the highest order in ethics and therefore in tragedy and one which is individualised in femininity and masculinity in the same play.<sup>759</sup>

Therefore, throughout his engagement with and allusions to *Antigone*, Hegel laid the emphasis upon the conflictual opposition of ethical powers as embodied within the individual pathos of Creon and Antigone. These conflicting powers were presented by Hegel as several dichotomies: universal/natural ethics, state/family, human/divine, public/eternal law, and, finally, as shown in the above indented quote, law of masculinity/femininity.

Following this brief introduction to Hegel's interpretation of *Antigone*, I shift my attention to the conflictual opposition of ethical powers and evaluate the repercussions of

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<sup>757</sup> Hegel (1977) op. cit. at §§ 447 - 450, pp. 267, 268.

<sup>758</sup> Hegel G.W.F., *Elements of the Philosophy of Right*, (ed. A.W. Wood, trans. H.B. Nisbet), (Cambridge: Cambridge University Press, 1991) §166 R, p.206.

<sup>759</sup> *Ibid*, §106 R, pp. 206, 207.

this opposition on Kojève's and Fukuyama's end-of-history theses. The evaluation takes into account the question on the perpetuity of the opposition between ethical powers. In order to answer this question, I consider two separate analyses of Hegel's reading of *Antigone*. The first of these analyses is from Judith Butler who is critical of Hegel's confinement of Antigone to roles inside the realm of divine or eternal laws. Butler's perspective is suggestive of the termination of the ethical opposition to the benefit of the public law of the state. I contrast this perspective with Frederic Jameson's reading wherein the perpetuity of the opposition is not only affirmed but is also interpreted to apply to and therefore perpetuate societal conflicts — conflicts which Kojève and Fukuyama hastened to conclude with a certain reconciliation.

In *Antigone's Claim*, Butler provided an analysis of Hegel's take on *Antigone* wherein the former criticised the latter for helping 'to usher [Antigone] off [the] stage into her living tomb.'<sup>760</sup> Central to Butler's critical approach to Hegel's reading is the way in which the latter developed the opposition between the laws of the state and of the gods. Butler demonstrated that in this development Antigone's stance is transformed into the *unconscious* and the *nonexisting* aspects of public law.<sup>761</sup> This transformation, Butler argued, comprised not an ethical opposition as Hegel claimed to exist between two conflicting ethical powers but Antigone's surrender to the laws of the state. The possibility of such a surrender ostensibly supports Kojève's thesis that there may be a teleological end to the conflict between master and slave.

Butler's notion of the unconscious and the nonexisting emerges from her assessment of the position Antigone is deemed by Hegel to occupy against public law. Expanding upon Hegel's distinction between public and eternal laws (i.e. the laws of the state and the divine law), Butler noted that, 'the one who acts according to the law, where the law is always

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<sup>760</sup> Butler J., *Antigone's Claim Kinship Between Life and Death*, (New York: Columbia University Press, 2000) p.39.

<sup>761</sup> *Ibid.*, p.27ff.

*either* human *or* divine but *not both*, is always blind to the law that is disobeyed at that instant.<sup>762</sup> Therefore, with her attempt to obey the laws ordained by gods, Antigone stakes a claim which renders her blind to human/public law. Butler demonstrated that for Hegel, Antigone's claim as an 'act that grounds itself in a law that counts as no law within the realm of [public] law' constitutes her as the unconscious, or the nonexistent.<sup>763</sup> Therefore, the former questioned whether the law Antigone is obedient to is to be considered as 'law beyond law, beyond conceptualisation, which makes her act and her defence in speech appear as nothing other than a breaking of law, a law that emerges as the breaking of law;' or whether 'this is a law that defies conceptualisation and that stands as an epistemic scandal within the realm of [public] law.'<sup>764</sup>

In light of these questions, Butler's suggestion is that for Hegel '[Antigone's law] is a legality of what does not exist and of what is unconscious, not a law of the unconscious but some form of demand that the unconscious necessarily makes on law, *that which marks the limit and condition of law's generalisability*.'<sup>765</sup> Therefore, instead of what Hegel initially expressed as conflictual opposition between two ethical powers, Butler's reading of Antigone's position reveals the role of this tragic character only as a limit on the general application of public law. The view that this limit may not be read as conflictual opposition is suggested by Butler in her expression that '[Antigone] exists for Hegel at the limit of the publicly knowable and codifiable.'<sup>766</sup> Butler reached this conclusion by probing Hegel's emphasis on Antigone's statement about the everlasting aspect of law of gods whose origins cannot be known.<sup>767</sup> Concerned with unambiguously identifying these laws which Hegel considered as unwritten Butler posed the following question:

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<sup>762</sup> *Ibid*, p.31. [*emphasis in original*]

<sup>763</sup> *Ibid*, p.32.

<sup>764</sup> *Ibid*, p.33.

<sup>765</sup> *Ibid*, p.33. [*my emphasis*]

<sup>766</sup> *Ibid*, p.39.

<sup>767</sup> *Ibid*, p.38.

[i]ndeed, what kind of law would it be? A law for which no origin can be found, a law whose trace can take no form, whose authority is not directly communicable through written language.<sup>768</sup>

The irrecoverability of the laws Antigone refers to ostensibly enhances the character's status as the unconscious aspect of the public law. This aspect is the reason why Butler interpreted the position of the character as being at the limit of — and, therefore, not quite in conflictual opposition to — public law and what may be publicly intelligible.

Another aspect of Hegel's approach to *Antigone* which Butler read as starkly contrasting with the idea of opposition between ethical powers is the former's interpretation of Antigone as representing kinship in her conflict with Creon who, in turn, represented the state. In this regard Butler explained that

[Hegel] insists that the conflict between them is one in which kinship must give way to state authority as the final arbiter of justice. In other words, Antigone figures the threshold between kinship and the state, a transition in the *Phenomenology* that is not precisely *Aufhebung*, for Antigone is surpassed without ever being preserved when ethical order emerges.<sup>769</sup>

The idea that as representing kinship Antigone is to yield to state authority contributes to Butler's doubt regarding the existence of ethical opposition between the two tragic characters of the play. Butler contrasted Antigone's surrender to state authority with Hegel's notion of sublation and suggested that Antigone's eclipse by the state authority does not take place within Hegel's usual formula of sublation where the sublated entity is not wholly obliterated but preserved. One may draw two possible conclusions from Butler's suggestion. First of these is that, Hegel's notion of *Aufhebung* (i.e. sublation) does consist of some form

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<sup>768</sup> *Ibid.*

<sup>769</sup> *Ibid.*, pp. 4, 5. [*emphasis in original*]

of opposition. Second, if Antigone is indeed eclipsed by the state and hence furtherance of the opposition between ethical powers is obliterated, such a result may lend support to Kojève's (and consequently Fukuyama's) thesis that the emergence of the universal and homogenous state signals the end of history.

Butler's interpretation, therefore, does not rule the notion of *Aufhebung* out as a source of conflict or struggle within Hegel's thought. Kojève did rely on this notion at a certain stage of his interpretation of Hegel's thought, nevertheless, the former did not read *Aufhebung* to engender *perpetual* opposition. Kojève referred to this notion when he commented upon the notion of dialectical negation in relation to the life and death struggle of two consciousnesses. However, in Kojève's perspective, the purpose of this negation was limited to the role of sustaining the lives of the parties involved in the struggle. This limit is discernible from Kojève's failure to consider *Aufhebung* (sublation or dialectical negation) as a pervasive element of Hegel's philosophy. Instead, the former's focus remained upon historicising, and, in order to do so, reconciling the struggle between master and slave without paying much attention to the dialectical factor of this struggle, that is to say, the continuity of *Aufhebung* within the development of the relation between lord and bondsman.

The perpetual pervasiveness of sublation emerges from Jameson's reading of Hegel's thoughts on Antigone. Jameson's interpretation differs from that of Butler on one essential point upon which he construed the aforementioned perpetuity. Jameson is of the conviction that Hegel attached equal significance to both Antigone and Creon.<sup>770</sup> This conviction contrasts with Butler's view that Hegel helped to usher off and thereby surpass Antigone without preserving any of the ethical values this character presented in the play. Fundamental to Jameson's insistence upon the attachment of equal value to each ethical position is the notion that, dissimilar to Butler's view, there is no end to the opposition

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<sup>770</sup> Jameson, op. cit. at p.79.

between Antigone and Creon. In order to highlight this notion, Jameson drew attention to the tragic aspect of the play.

Thus, central to Jameson's interpretation of Hegel's thoughts on *Antigone* is the tragic aspect of the play which is manifest not only in the banishment of Antigone into the live tomb but also in the loss of family members Creon suffers as a result of his decision to banish Antigone. Hegel's thoughts, as presented in his *Aesthetics*, on the characters of Greek tragedy may be quoted in support of Jameson's belief that there is no end to the opposition between the characters. Remarking upon the individual pathos which impel characters into conflict with each other, Hegel wrote about a 'collusion of equally justified powers and individuals.'<sup>771</sup> More significantly, the equality of Antigone and Creon is ostensibly retained in the *Phenomenology*, where human and divine laws emerge as distinct ethical substances into which Spirit, as ethical order, is divided.<sup>772</sup> Furthermore, echoing the conclusion of Sophocles' play, Hegel contemplated that the opposition between these substances will destroy the ethical order.<sup>773</sup>

Jameson read this destruction as 'the mortality of social forms' whereby society is initially brought into being by the opposition which later tears it apart.<sup>774</sup> Jameson defined this dialectical process as a 'process of flux and *perpetual transformation* and fission.'<sup>775</sup> The perpetually transformative aspect of the dialectic, in turn, underlies the notion of irreconcilable singularity. As mentioned earlier in this chapter, Jameson employed this notion to contest the idea of societal reconciliation noting that '*Antigone* testifies to the existence of problems that cannot be solved, and as such utterly invalidates the myth of Hegel as a teleological thinker.'<sup>776</sup> In other words, by drawing upon Hegel's reading of

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<sup>771</sup> Hegel (1975) op. cit. at p.1212.

<sup>772</sup> Hegel (1977) op. cit. at §§ 444, 445, p.266.

<sup>773</sup> *Ibid*, §445, p.266.

<sup>774</sup> Jameson, op. cit. at p.83.

<sup>775</sup> *Ibid*, p.85. [*my emphasis*]

<sup>776</sup> *Ibid*, p.79.

*Antigone*, Jameson dismissed the central tenet of Fukuyama's utilisation of Kojève's thesis on the end of history. The societal resolution which is supposed to be attained as an outcome of the cessation of the struggle between master and slave is, therefore, a misconception.

### 1.5. Conclusion

In the previous chapter I introduced Hegel's theory of recognition as presented in the latter's *Phenomenology of Spirit*. I showed that this theory was situated within Hegel's account of consciousness' transformation into a self-conscious subject. In other words, the context of recognition was comprised by cognition's elevation to scientific truth of absolute knowledge. I referred to respective works of Honneth, Taylor, and Douzinas to demonstrate that the theory can be abstracted from this context to account for the constitution of different forms of subjects. However, I identified a problem vis-à-vis these authors' transient engagement with the dialectic of lordship and bondsman. Neither of the authors ostensibly considered the effects of dialectic to have traceable effects upon the theory of recognition. This problematic informed the purpose of this chapter.

Therefore, in the first part of this chapter, I referred to Kojève's reading of Hegel's thought to present an account of human reality that placed the struggle between lord and bondsman at its centre. This placement, in turn, provided the opportunity to assess whether the dialectic had any residual effects upon the act of recognition. I identified two effects. The first was the historical contextualisation of the process of recognition. The second was the teleological perception of this historicism which understood recognition as a progress aimed towards the attainment of the universal and the homogenous state. In order to circumvent the limiting effects of the dialectic of master and slave, I relied upon Jameson's assessment that a particular notion of reconciliation underlay Kojève and Fukuyama's respective theses on the end-of-history. Jameson contested the idea of a reified social totality in Hegel's thought by referring to the latter's interpretation of *Antigone*. In Jameson's

perspective, Hegel's take on the tragic aspect of the play marked the mortality of social forms. Therefore, neither the Napoleonic state nor the liberal democratic state could amount to a reified totality in which the struggle between master and slave ceases.

Insofar as Jameson identified the dialectical process as continuous moments of constant change, his perception of social forms dismisses one particular type of telos for the act of recognition, but it does not elucidate whether this act would culminate in any other form of ultimate objective. In other words, the process of recognition did not stop at Napoleon's state as history moved on from that particular type of societal form. In addition, the class struggle, which is associated with the struggle between lord and bondsman, did not cease to exist. Jameson's focus, therefore, remained upon dismissing the end-result of the process. This result-oriented focus can be justified with reference to Jameson's overall attention to the notion of class struggle. In his book *The Hegel Variations*, Jameson's principal concern was whether the Hegelian struggle for recognition can illuminate classic forms of class struggle.<sup>777</sup> Following this concern, Jameson thematised the master and slave saga as a class struggle which, in light of the above-mentioned incompleteness, would eventually coincide with the struggle for recognition.<sup>778</sup> Compared to Jameson's approach, my main aim lies in the constitutive potential of the notion of recognition for the coming-into-being of subjects. To a certain extent Jameson rescued this notion from the teleological bounds of the resolution of the struggle between master and slave by arguing that the Hegelian dialectic is a perpetual process. Furthermore, Jameson noted that Hegel's watchword in this regard was negativity.<sup>779</sup> However, he offered neither a detailed analysis of this watchword nor an explanation of how the word may bring about this perpetuity.

In the next part of this chapter, I argue that the perpetual flux pertains not only to Hegel's notion of society but to the very process of recognition. The purpose of this

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<sup>777</sup> *Ibid.*

<sup>778</sup> *Ibid.*

<sup>779</sup> *Ibid.*, p.80.

argument is twofold. Firstly, it establishes the process of recognition as a continuous flow of transformative movements. These movements, in turn, defy any general telos and render extraction of recognition from the context of the *Phenomenology* less problematic. Secondly, understanding recognition as ceaseless movements of alteration and change provides an insight into the type of subject produced by these movements. In stark contrast to Kojève's citizen of the Napoleonic state, the primary feature of this subject is that it is not complete-in-itself, that its determination is contingent upon subject's ongoing relations with its others.

## **Part Two**

### **2.1. Introduction**

In this part of the chapter, I rely upon Jean-Luc Nancy's work to argue that the above-mentioned perpetual flux pertains to Hegel's theory of recognition. The primary reference for this argument is Nancy's book entitled *Hegel: The Restlessness of the Negative* wherein Nancy contemplated Hegel's notions of negativity and self.<sup>780</sup> By grasping negativity as restless, Nancy presented the idea of self not only as constitutively dependent upon its relations with others but also as something that is constantly redefined by these relations. In the overall scheme of my thesis, the significance of Nancy's conception of self is twofold. Firstly, this conception overcomes the teleological constraints Kojève's interpretation levied upon Hegel's theory of recognition. Hence, it opens the way for the utilisation of this theory to account for the constitution of subjects under international law. Secondly, insofar as Nancy's conception highlights recognition as a constitutive imperative, it does also provide an enriched understanding of the subject. Later in the thesis, I use this improved perception to return to my critique of the prevalent theories of recognition and the concept of statehood.

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<sup>780</sup> Nancy JL., *Hegel: Restlessness of the Negative*, (trans. J. Smith, S. Miller), (Minneapolis: University of Minnesota Press, 2002).

However, to begin at the beginning, a detour into Hegel's preface to the *Phenomenology of Spirit* is necessary as Nancy drew extensively upon this preface to elucidate the conceptual features of negativity and self. Therefore, I begin this part of the chapter by introducing the preface. This introduction focuses upon Hegel's preliminary explanation of the relation between notions of Truth, Absolute, and Spirit. An important aspect of the relation between Truth and Absolute is that the latter has the ability to attain the former. Hegel endowed the Absolute with this capability by defining Absolute as both Substance and Subject. I pointed out in the introduction to this chapter that, this definition underlies the scientific system of truth presented in the *Phenomenology*. As Subject, Absolute acquires the power of the negative, that is to say, it acquires the power to know itself. To the extent that this acquisition underlay the cognitive turn in Hegel's thought, it also provided Hegel with the opportunity to explain the manner in which negativity functioned forcing Absolute through several stages of the Spirit. My brief introduction to Hegel's preface to the *Phenomenology*, therefore, outlines the progress of Absolute as Subject through the stages of immediate intuition, Understanding, and Spirit as absolute knowledge.

The purpose of the second section of this part is to present Nancy's conception of self as restless negative. To achieve this purpose, first, I demonstrate the manner in which Nancy interpreted *restlessness* as the essential feature of negativity and derived this characteristic from Absolute's ability, as Subject, to conceive itself. Then, I show that Nancy relied upon Hegel's formulation of the notion of Absolute as Subject to incorporate the idea of restlessness into the very constitution of the self. The conception of self as restless negative, in turn, achieves two goals. First, this conception defies any ultimate purpose; self is restless and, as such, neither does it begin nor end. Second, self is therefore defined as always *becoming*, hence, always in relation with others — relations which constantly determine the very being of both parties involved.

## 2.2. Hegel's Preface to the *Phenomenology*

The preface to the *Phenomenology* consists of the preparatory remarks on the connections between the notions of Truth, Absolute, and Spirit. Therein, Hegel concerned himself with the subject-matter of philosophical expounding of truth. His argument was that philosophy explains truth through actual cognition of the processes which make up the whole.<sup>781</sup> Through such cognition, Hegel wrote that, philosophy 'can lay aside the title of 'love of knowing' and be *actual* knowing.'<sup>782</sup> To attain such actualisation of knowledge, Hegel explained that '[t]he true shape in which truth exists can only be the scientific system of such truth.'<sup>783</sup> Scientific systematisation of truth would not only 'bring philosophy closer to the form of Science' but it would also mean that 'truth has only the Notion [Concept] as the element of its existence.'<sup>784</sup> Therefore, in what follows, I briefly introduce Hegel's exposition of Absolute as the notion which achieves such scientific systematisation of truth.

The starting point is to grasp Hegel's usage of the term Concept and understand the manner in which this term leads to the division of Absolute into Substance and Subject. Next, I trace Absolute's movements as Subject towards the attainment of Truth. These movements, in turn, reveal the very nature of Absolute as Spirit. This nature consists of Absolute's use of the power of negative to form oppositions and supersede these oppositions. As we observed in the previous chapter, such progressive movements form the basis of consciousness' development (through notions of sense-certainty and understanding) to self-consciousness (via notions of desire and mutual recognition). However, the preface sheds a different light on this process by revealing that it culminates in the manifestation of the Substance as Subject. This manifestation marks the very structural feature of Absolute, and,

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<sup>781</sup> Hegel (1977) op. cit. at §3, p.2.

<sup>782</sup> *Ibid.*, §5, p.3. [*emphasis in original*]

<sup>783</sup> *Ibid.*

<sup>784</sup> *Ibid.*, §5, pp. 3, 4. In *The Hegel Dictionary*, Magee, noted that 'older translations of [Hegel's works] render *der Begriff* as 'the Notion.' (London: Continuum, 2010), p.69. A. V. Miller's rendering of the *Phenomenology* (i.e. the copy from which I cite throughout the thesis) is among these older translations. More recently, di Giovanni's Cambridge Hegel Translations of Hegel's *Science of Logic* uses the word 'Concept'. (Cambridge: Cambridge University Press, 2010) p.507. Herein, I will use the word Concept.

as such, it also brings to the fore the notion of negative which enables such a feature to be acquired in the first place.

In *A Hegel Dictionary*, Inwood explained that '[t]he noun *Begriff* means both 'concept' and 'conception', especially in the sense of 'ability to conceive.'<sup>785</sup> Therefore, to state that truth exists as concept is to suggest that truth can be mentally grasped or comprehended. Hegel contrasted the idea of grasping the whole with the idea of intuition wherein truth exists as divine substance, as God, which manifests itself as 'intuition' or 'immediate knowledge of the Absolute, religion or being.'<sup>786</sup> Hegel argued that such intuition rejects the idea that truth can be comprehended; instead, the Absolute is 'to be felt and intuited' wherein 'the differentiations of the [Concept]' are suppressed and 'the feeling of essential being' is restored.<sup>787</sup> Hegel was of the opinion that intuition of the Absolute can only provide edification, which he described as '[wanting] to shroud in a mist the manifold variety of [one's] earthly existence and of thought, in order to pursue the indeterminate enjoyment of this indeterminate divinity.'<sup>788</sup> According to Hegel, Science demanded insight; therefore, mere edification of intuitive Absolute did not befit Science.<sup>789</sup> Therein lay the need for Hegel to set on a philosophical expounding of a scientific system of truth in the *Phenomenology*.

Hegel took the first step in this exposition by departing from what he regarded as monochromatic formalism of contemporary science.<sup>790</sup> This formalism consists of applying a 'single inert form to whatever [the knowing subject] encounters, and dipping the [encountered] material into this placid element from outside.'<sup>791</sup> What Hegel referred to as the placid element is the universal Idea; the application of this formula comprises the

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<sup>785</sup> Inwood M., *A Hegel Dictionary*, (Oxford: Blackwell Publishers, 1992) p.58.

<sup>786</sup> Hegel (1977) op. cit. at §6, p4. [*emphasis in original*]

<sup>787</sup> *Ibid*, §§ 6, 7, pp. 4, 5.

<sup>788</sup> *Ibid*, §7, p.5.

<sup>789</sup> *Ibid*, §9, p.5.

<sup>790</sup> *Ibid*, §15, p.9.

<sup>791</sup> *Ibid*.

cognition of universal Idea in everything regardless of the distinct and determinate aspects of each encountered material.<sup>792</sup> While through this formalism contemporary science ‘display[s] a great expanse of [content],’ Hegel remarked that this is ‘merely a boring show of diversity.’<sup>793</sup> There are three reasons for the tediousness of this diversity.

Firstly, the monochromatic formalism consists of ‘the shapeless repetition of one and the same formula.’<sup>794</sup> The universal Idea is externally applied to diverse material, and this external application renders it shapeless. In other words, because it is regarded as external, one cannot conceive of a universal Idea which can spontaneously assume different shapes of materials on its own accord. Therefore, a shapeless universal cannot quite account for the differentiation of the actual material. Secondly, through the external application of the same formula one ‘only arrives at the differentiation of [the encountered] material since this has been already provided and is by now familiar.’<sup>795</sup> In other words, what is really arrived at is not actual differentiation but the cognition of the same (and therefore, familiar) universal Idea in everything. Finally, the shapeless repetition and external provision of this formula entails that the universal Idea consists of a non-actual form, which, according to Hegel, amounts to ‘the undoing of all distinct, determinate entities.’<sup>796</sup>

The major issue, for Hegel, was the interpretation of this shapeless, externally provided, familiar and non-actual formalism as the Absolute. The problematic aspect of this interpretation is that any notion of universality, which is to result from a shapeless and non-actual form and is to be attributed to the Absolute, can only remain abstract.<sup>797</sup> Hegel explained the scientific repercussions of attributing abstract universality to the Absolute in the following passage:

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<sup>792</sup> *Ibid.*, §§ 15, 16, pp. 8, 9.

<sup>793</sup> *Ibid.*, §15, p.8.

<sup>794</sup> *Ibid.*

<sup>795</sup> *Ibid.*, §15, p.9.

<sup>796</sup> *Ibid.*, §16, p.9.

<sup>797</sup> *Ibid.*

[d]ealing with something from the perspective of the Absolute consists merely in declaring that, although one has been speaking of it just now as something definite, yet in the Absolute, the  $A=A$ , there is nothing of the kind, for there all is one. To pit this single insight, that in the Absolute everything is the same, against the full body of articulated cognition, which at least seeks and demands such fulfilment, to palm off its Absolute as the night in which, as the saying goes, all cows are black — *this is cognition naïvely reduced to vacuity*.<sup>798</sup>

It is in light of this cognitive reduction that Hegel departed from the perception of truth as substantial knowledge — that is to say, the immediate (or intuitive) knowledge of the Absolute or perception of God as one Substance.

Against this problematic reduction, Hegel presented the solution of ‘grasping and expressing the True, not only as Substance, but equally as Subject.’<sup>799</sup> If the True was to remain solely as Substance, universality in itself (i.e. thought as thought) would amount to the very same simplicity of undifferentiated, and unmoved substance.<sup>800</sup> Hegel added that, even if ‘thought does unite itself with the being of Substance, and apprehends immediacy or intuition as thinking, the question is still whether this intellectual intuition does not again fall back into inert simplicity, and does not depict actuality itself in a non-actual manner.’<sup>801</sup> To break with this inert simplicity, the True must also be capable of actualising itself; by grasping True as Subject, Hegel provided the means for this capability.

Hegel explained that, Subject is ‘pure, simple *negativity*, and is for this very reason the bifurcation of the simple.’<sup>802</sup> As pure negativity, the Subject

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<sup>798</sup> *Ibid.* [my emphasis]

<sup>799</sup> *Ibid.*, §17, p.10.

<sup>800</sup> *Ibid.*

<sup>801</sup> *Ibid.*

<sup>802</sup> *Ibid.*, §18, p.10. [my emphasis]

is the doubling which sets up opposition, and then again the negation of this indifferent diversity and of its anti-thesis (the immediate simplicity). Only this self-restoring sameness, or this *reflection in otherness within itself*— not an original or immediate unity as such — is the True. It is the process of its own becoming, the circle that presupposes its end as its goal, having its end also as its beginning; and only by being worked out to its end, is it actual.<sup>803</sup>

The significance of the Subject is not limited to its pure negativity. With the introduction of the Subject, Hegel effected a cognitive turn which enabled him to comprehend Absolute. Therefore, in his view, Absolute was no longer to be regarded as *God as one Substance* or as an immediate unity the intuitive knowledge of which led to abstract universality. Such Absolute exists only in essence (that is to say, exists only in itself) and therefore, cannot attain an actual form. Whereas, according to Hegel, ‘[t]hat the True is actual only as system, or that Substance is essentially Subject, is expressed in the representation of the Absolute as Spirit.’<sup>804</sup>

Hegel explained that Spirit is Substance to the extent that it is essence which has being in itself; however, in addition to this, Spirit is also Subject which relates itself to itself thereby becoming determinate, or in other words, existing for itself.<sup>805</sup> Hence, ‘[t]he spiritual alone is actual.’<sup>806</sup> To regard Absolute as Spirit circumvents the problematic aspect of regarding God as one Substance. In the latter perspective, Absolute consisted of abstract universality; and hence, it had to be intuited. In *The Hegel Dictionary*, Magee noted that ‘Spirit refers to the unique form of consciousness possessed by human beings. Unlike all other animals, human beings are capable of self-consciousness or self-awareness: we are the

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<sup>803</sup> *Ibid.* [my emphasis]

<sup>804</sup> *Ibid.*, §25, p.14.

<sup>805</sup> *Ibid.*

<sup>806</sup> *Ibid.*

beings who are able to know ourselves.’<sup>807</sup> As Spirit, Absolute circumvents the problem of abstract universality by attaining actuality. More significantly, taking into account Spirit’s attribute of self-awareness, Absolute becomes comprehensible. This comprehensibility corresponds to Hegel’s aim to bring philosophy closer to the form of Science by rendering it actual knowing.

In order to achieve this self-awareness, Hegel explained that, the Spirit must mature into that which knows itself as Spirit; such knowledge corresponds to Spirit recognising the pure Concept as the objective element of its own existence.<sup>808</sup> Hence, Hegel wrote that, ‘[t]he Spirit that, so developed, knows itself as Spirit, is Science; Science is its actuality and the realm which [Spirit] builds for itself in its own element.’<sup>809</sup> Since Spirit’s element is consciousness, Hegel indicated that the major philosophical task is to demonstrate the elevation of this consciousness to the level of Science; the level (or in Hegel’s words, the ground and soil) of Science is ‘[p]ure self-recognition in absolute otherness.’<sup>810</sup> *Phenomenology of Spirit* describes the progress of self-consciousness towards achieving that level and thereby, actualising Science. In its simplest form, Hegel described this progress as ‘[t]he task of leading the individual from his uneducated standpoint to knowledge.’<sup>811</sup>

Hegel defined the single individual as an ‘incomplete Spirit, a concrete shape in whose whole existence *one* determinateness predominates, the others being present only in blurred outline.’<sup>812</sup> This single individual is contrasted with the universal World Spirit which ‘[has taken] upon itself the enormous labour of world-history.’<sup>813</sup> Hegel wrote that, ‘[t]his past existence is the already acquired property of universal Spirit which constitutes the Substance of the individual, and hence, appears externally to him as his inorganic nature.’<sup>814</sup>

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<sup>807</sup> Magee, op. cit. at p.226.

<sup>808</sup> Hegel (1977) op. cit. at §25, p.14.

<sup>809</sup> *Ibid.*

<sup>810</sup> *Ibid.*, §26, p.14.

<sup>811</sup> *Ibid.*, §28, p.16.

<sup>812</sup> *Ibid.* [*emphasis in original*]

<sup>813</sup> *Ibid.*, §29, p.17.

<sup>814</sup> *Ibid.*, §28, p.16.

Through education, the individual will pass through the formative stages of universal Spirit ‘by devouring his inorganic nature, and taking possession of it for himself.’<sup>815</sup> Hegel noted that, ‘regarded from the side of universal Spirit as substance, this [passing through] is nothing but [universal Spirit’s] own acquisition of self-consciousness, the bringing-about of its own becoming and reflection into itself.’<sup>816</sup>

For the individual, the first aspect of this formative education is to break away from the familiarity of the acquired property of the universal Spirit. Thus, Hegel explained that,

[t]he commonest way in which we deceive either ourselves or others about understanding is by assuming something as familiar [...] Subject and object, God, Nature, Understanding, sensibility, and so on, are uncritically taken for granted as familiar, established as valid, and made into fixed points for starting and stopping. While these remain unmoved, the knowing activity goes back and forth between them, thus moving only on their surface.<sup>817</sup>

Knowing activity exists this back and forth movement through Understanding. The latter is defined by Hegel as ‘the most astonishing and mightiest of powers, or rather the absolute power.’<sup>818</sup> Understanding’s prowess results from its ability to detach concrete objects or ideas from what circumscribes these objects, and its ability to separate them from the context to which they are bound and wherein they are actual.<sup>819</sup> This ability arises from Understanding’s embodiment of ‘the tremendous power of the negative.’<sup>820</sup> Therefore, Understanding is the act of separation (Hegel also used the word ‘dissolution’) effected by the negative. Hegel explained that, ‘what is thus separated and non-actual is an essential

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<sup>815</sup> *Ibid.*

<sup>816</sup> *Ibid.*, §28, pp. 16, 17.

<sup>817</sup> *Ibid.*, §31, p.18.

<sup>818</sup> *Ibid.*, §32, p.18.

<sup>819</sup> *Ibid.*, §32, p.19.

<sup>820</sup> *Ibid.*

moment; for it is only because the concrete divides itself, and make[s] itself into something non-actual, that it is self-moving.<sup>821</sup>

Since separation is an act of Understanding which leads to self-movement, knowing activity cannot be contained within the above-mentioned to and fro movement. However, as much as separation creates its own sphere of freedom, it also consists of non-actuality. Hegel defined this non-actuality as death.<sup>822</sup> Understanding demands that

[...] the life of Spirit is not the life that shrinks from death and keeps itself untouched by devastation, but rather the life that endures it and maintains itself in it. It [Spirit] wins its truth only when, in utter dismemberment, it finds itself [...] Spirit is this power only by looking the negative in the face and tarrying with it.<sup>823</sup>

This demand cannot be met by Beauty for, in Hegel's perspective, Beauty is without strength.<sup>824</sup> The Spirit, as Subject, has this power and with it, through the work of Understanding, Spirit gives the actual, the concrete, or the determinate object an existence in consciousness; however, as Hegel wrote, '[t]he fact that the object represented becomes the property of pure self-consciousness, its elevation to universality in general, is only one aspect of formative education, not its fulfilment.'<sup>825</sup> Understanding requires that the Subject separates the object from the context wherein it is actual. With the power of the negative, Subject meets this requirement; the object gains a non-actual existence within consciousness, that is to say, Subject thinks about the object, therefore, the object exists in thought. But this non-actual existence is only one facet of the formative education.

As observed above, the aim of this education is to raise the individual spirit from his uneducated standpoint to knowledge. In order for it to attain the point of knowledge, it is not

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<sup>821</sup> *Ibid*, §32, p.18.

<sup>822</sup> *Ibid*, §32, p.19.

<sup>823</sup> *Ibid*.

<sup>824</sup> *Ibid*.

<sup>825</sup> *Ibid*, §33, p.19.

sufficient for the Spirit to think, and thereby, create a separate sphere of freedom wherein the object becomes the property of consciousness. As such property, these thoughts remain fixed to the 'I' — i.e. the Subject, the power of the negative — which constitutes their substance and element of existence.<sup>826</sup> I think, and in doing this, I attach objects to my consciousness making them its property; remained as fixed properties of consciousness, however, thoughts lack spiritual life.<sup>827</sup> Hegel wrote that '[t]houghts become fluid when pure thinking, this inner immediacy, recognises itself as a moment or when the pure certainty of self abstracts from itself.'<sup>828</sup> In other words, initially, I think without realising that what I am doing is thinking. Later on, I can withdraw from this state of self-certainty by realising that I am actually committing a momentous act that is thinking. This realisation amounts to the abandonment of the permanency of self-positing. That is to say, thoughts are the property of my consciousness; but as such, they are also Concepts which 'are only now what they are in truth, self-movements, circles, spiritual essences, which is what their substance is.'<sup>829</sup> Thoughts, as Concepts, attain spiritual life by breaking away from the fixity of the I; therefore, 'I' no longer constitutes the substance of thoughts. In attaining spiritual life, Concepts become pure essences.<sup>830</sup>

The act of breaking away from the fixity of the I, however, does not amount to the exclusion of the Subject or consciousness from the self-movement of the Concept. It is the development of consciousness which corresponds to the understanding that Concepts are capable of this self-movement and as such, are spiritual substances. In attaining such understanding, cognitive activity engages itself with the substantial aspect of the Spirit. It is as a result of this cognitive engagement that Hegel indicated that the 'movement of pure

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<sup>826</sup> *Ibid.*, §33, p.20.

<sup>827</sup> *Ibid.*

<sup>828</sup> *Ibid.*

<sup>829</sup> *Ibid.*

<sup>830</sup> *Ibid.*, §34, p.20.

essences constitute the nature of scientific method in general.<sup>831</sup> In their connectedness, the contents of these Concepts necessarily expand into what Hegel called ‘an organic whole.’<sup>832</sup> Expressed in other words, as essentially constitutive of Spiritual substance, Concepts, in total, make up the very Substance that is the Spirit. In its development, and the resultant understanding of Concepts, consciousness begins to gain knowledge of this organic whole. Therefore, the notion of absolute knowledge can only be attained when consciousness completes its development by concluding the entire movements of the Concept.

According to Hegel, consciousness ‘contains the two moments of knowing and objectivity negative to knowing.’<sup>833</sup> To have these two moments amounts to a ‘disparity which exists in consciousness between the ‘I’ [of knowing] and the substance which is its object.’<sup>834</sup> The phenomenology of Spirit is concluded when Substance shows itself to be essentially Subject.<sup>835</sup> It will be remembered that, philosophy is set on a course of actual knowing when True is grasped not only as Substance but also as Subject. Another aspect of this actual knowing is to represent Absolute as Spirit. It is in this representation that Hegel formulated the grasping of the True as Substance and Subject. Hence, the Spirit, or the absolute knowledge, occurs when Substance manifest itself as Subject.

For this manifestation to occur, however, the above-mentioned disparity inherent in consciousness must be bridged; it must be manifested that the I of knowing is the same as the substance which is the object of its knowing. In clearer terms, the Spirit (as the Subject, or I) must become an object (Substance) to itself. Absolute must be presented in cognitive terms; that is to say, as that type of consciousness which is peculiar to human beings. The reason for this is that, human consciousness embodies the power of negativity. This is the very power which sets up oppositions and then negates these by returning into itself. In other

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<sup>831</sup> *Ibid.*

<sup>832</sup> *Ibid.*

<sup>833</sup> *Ibid.*, §36, p.21.

<sup>834</sup> *Ibid.*, §37, p.21.

<sup>835</sup> *Ibid.*

words, the negative is the ‘movement of becoming an other to itself, i.e. becoming an object to itself and of suspending this otherness.’<sup>836</sup> Negative is what ‘appears at first as a disparity between the ‘I’ and its object;’ however, it is also the very power that enables the Spirit to overcome this disparity by becoming an object to itself, and therefore, the Substance showing itself to be essentially the Subject.<sup>837</sup>

In the previous chapter, we encountered similar movements wherein oppositions were established and later negated in relation to the notions of desire and mutual recognition. Precisely, Hegel’s definition of self-consciousness as Desire corresponded to the certainty which arose from the explicit affirmation of the nothingness of the encountered other; satisfaction of such Desire, therefore, necessitated that the self consumes, destroys or supersedes the other.<sup>838</sup> In other words, Desire hurled the self out of itself and onto an other demanding for its satisfaction the supersession of the other; this supersession was, then, followed by ‘the reflection of self-consciousness [back] into itself.’<sup>839</sup> According to Butler’s interpretation of this three-step moment, ‘desire signifies the *reflexivity* of consciousness, the necessity that it become other to itself in order to know itself.’<sup>840</sup> Brady and Schirato elaborated upon Butler’s notion of reflexivity in the following:

This is how, for Hegel, the reflexive subject is formed: desire moves consciousness outside of itself to form a relation with the world-as-difference, which in turn reflects and demonstrates both the limits of subject (I can only know myself through reference to the process of mediation and connectedness with the other),

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<sup>836</sup> Hegel (1977) op. cit. at §36, p.21.

<sup>837</sup> *Ibid*, §37, p.21.

<sup>838</sup> *Ibid*, §174, p.109.

<sup>839</sup> *Ibid*, §176, p.110.

<sup>840</sup> Butler J., *Subjects of Desire: Hegelian Reflections in Twentieth-Century France*, (New York: Columbia University Press, 1987) p.7. [*my emphasis*]

and its conditions of being (I continue to exist and know myself by way of my relation to difference).<sup>841</sup>

Jean-Luc Nancy seemed to share Butler's views vis-à-vis the necessity such desire generated. Thus, according to the former, too, '[t]he self must come from the other, and it is in this coming, as this coming, that it has to be "self" [...] This necessity makes desire.'<sup>842</sup> While Butler identified such necessity as reflexive, Nancy associated this requirement with the notion of restlessness of negativity. Nancy derived this notion from Hegel's definition of Absolute as Subject. In what follows, I present this derivation and the manner in which it occasioned the grasping of self as *becoming*.

### 2.3. Nancy: Restlessness of Negative and Self as Becoming

In this section, my engagement with Nancy's work centres upon the latter's reading of Hegel's preface to the *Phenomenology*. My intention in presenting this reading is to highlight two significant notions that Nancy developed; these are the *restlessness of negative* and *self as becoming*. To achieve this purpose, I begin this section by introducing Nancy's interpretation of Hegel's conception of Absolute as Subject. I show that this interpretation informs Nancy's idea of a restless subject which transforms the given world. The resultant possibility of restless transformation, in turn, helps me enhance my argument against Kojève's thesis on the end-of-history.

Next, I present Nancy's perception of self as becoming. I demonstrate that this perception, too, benefits from the formulation of Absolute as Subject, that Nancy understood the notion of self as a moment between logical concepts of *being* and *nothingness*. By incorporating the feature of restlessness into this moment, Nancy was able to stress upon the ontological significance of self's constitutive correlation with its others. I demonstrate the

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<sup>841</sup> Brady A., Schirato T., *Understanding Judith Butler*, (London: Sage Publications Ltd, 2011) p.14.

<sup>842</sup> Nancy (2002) op. cit. at p.61.

manner in which Nancy connected the logical aspects of Absolute to the notions of Desire and Recognition, and how this connection produced an improved understanding of the concept of Subject. This is a subject which, encompassing a restless self, is always in flux, always constitutively dependent upon its relation to others.

Nancy began his reading of Hegel's preface by noting that 'Hegel is the inaugural thinker of the contemporary world.'<sup>843</sup> The former explained this contemporary world as 'a world of separation and of pain, a world whose history is of one atrocity after another' wherein 'the movement of a transcendence that would raise [this world] toward a supreme signification' is lost.<sup>844</sup> This definition rested upon a distinction between two forms of Absolute. The first is a lifeless exteriority of a supreme God which comprises the identity of meaning and, as such, signifies the beyond of death.<sup>845</sup> It is this type of transcendental and, therefore, abstract supreme signification that is lost within the contemporary world. The other is Hegel's notion of Absolute equipped with absolute negativity which, in contrast to the aforementioned abstract God, 'appears to constitute all experience of this world and its consciousness of itself.'<sup>846</sup>

In simple terms, according to Nancy, the Hegelian Absolute constituted the contemporary world. Three notions that pertain to Absolute, in turn, illuminate the nature of this world. These notions are  $A=A$ , Concept, and Subject. Hegel's deviation from the formula of  $A=A$  marks the relational capacity of this contemporary world. The word absolute conjoins Latin words *ab* and *solutum* that are respectively translated into English as 'free' and 'from' rendering the meaning of the word 'unrelated' — in the sense that it is free from relation.<sup>847</sup> Remarking on this meaning, Nancy noted that

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<sup>843</sup> *Ibid*, p.3.

<sup>844</sup> *Ibid*.

<sup>845</sup> *Ibid*.

<sup>846</sup> *Ibid*, p.4.

<sup>847</sup> Mautner T., *The Penguin Dictionary of Philosophy*, (2nd Ed.), (London: Penguin Books, 2005) p.2.

[t]he absolute must be the absolute of its own absoluteness, or not be at all. In other words: to be absolutely alone, it is not enough that I be so; I must also be alone being alone — and this of course is contradictory. The logic of the absolute violates the absolute. It implicates it in a relation that it refuses and precludes by its essence. This relation tears and forces open [...] the “without relation” from which the absolute would constitute itself.<sup>848</sup>

One can attest that, this violent logic is at work in Hegel’s rejection of the formula of A=A or of God as one Substance. Absolute cannot be equal to itself, cannot be self-identical. It has to be something other than itself, has to be capable of coming out of itself. Thus, Absolute must relate.

The notion of Concept gives a certain direction to the contemporary world’s ability to relate. In the previous section of this part, I referred to the German noun *Begriff* and explained that Hegel’s use of the notion of Concept conveyed the meaning of Absolute’s ability to conceive itself. Nancy interpreted this ability as the contemporary world’s capacity to effectuate itself.<sup>849</sup> This capacity ties in with Nancy’s previous distinction between two forms of Absolute; it is in a world which can conceive and grasp itself that an external God is too abstract to be identified as meaning. The remaining piece of the puzzle is to figure out how the contemporary world conceives itself. This is when the third notion comes into play.

Contemporary world conceives itself as Subject. This subject is not merely the self-conscious being which emerges from mutual recognition. It is, also, the Subject which carries all the features of Absolute. In this regard, Nancy wrote that,

Hegel takes it upon himself to think how the obscure knowing wherein this world undergoes itself is knowing of the self as non-

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<sup>848</sup> Nancy JL., *The Inoperative Community*, (Minnesota: University of Minnesota Press, 1991) p.4.

<sup>849</sup> Nancy (2002) op. cit. at p.5.

given relation, or infinite relation: how, consequently, what (or the one whom) he names subject is revealed in this relation, and how the subject constitutes and liberates itself in the dimension and according to the logic of the negation of the 'given' in general.<sup>850</sup>

In other words, as Absolute, Subject acquires the power of negation, of infinite transformation. Such acquisition would entail situating the subject in

[a] world of movement, of transformation, of displacement, and of *restlessness*, this world that is in principle and structurally outside itself, this world where nature does not subsist but steps out of itself into work and into history, this world where the divine does not subsist but exhausts itself beyond all its figures.<sup>851</sup>

Although there is a historical element to this world, it is not to be understood in terms of Kojève's idea of history capable of coming to a teleological end. In fact, in Nancy's view, the Subject, whose thought or consciousness embodies restlessness, indicates otherwise.

Nancy argued that Absolute, as a restless Subject, has two major features: it does not have any beginning nor does it have any end.<sup>852</sup> In Absolute's continuous movement, 'everything has already begun: that there will therefore be no foundation, that the course of the world will not be stopped in order to be recommenced.'<sup>853</sup> Likewise, there will not be any end for 'all is equally already finished.'<sup>854</sup> However, this termination should not be understood as the end of history. Rather, it signifies the finitude of the presentation of the Absolute in determined figures.<sup>855</sup> What could, therefore, be considered as finished in the

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<sup>850</sup> *Ibid*, p.4.

<sup>851</sup> *Ibid*, p.6. [*my emphasis*]

<sup>852</sup> *Ibid*, pp. 8, 9.

<sup>853</sup> *Ibid*, p.8.

<sup>854</sup> *Ibid*.

<sup>855</sup> *Ibid*.

contemporary world is the finite figure of a supreme being as Absolute. According to Nancy's interpretation, Absolute corresponded to 'the full and complete actuality of the infinite that traverses, works, and transforms the finite.'<sup>856</sup>

Insofar as Absolute is a Subject who traverses and transforms the given world, this Subject is restless. The restlessness of the Subject is derived from the condition that the logic of the Absolute demands that Absolute cannot cease to relate to itself and therefore to something other than itself. One major consequence of this restlessness is that, contrary to Kojève's and Fukuyama's respective interpretations we cannot locate this Subject at the end of history. In other words, the notion of restless negative conforms neither to a beginning nor to an end. A closer inspection of the notion is, nevertheless, necessary to sufficiently establish the connection between the Subject of Absolute and subjects which emerge from the struggle for recognition.

The task is to demonstrate the prevalence of restless negative in Hegel's theory of recognition. Nancy achieved this task by developing the idea of self through the notion of *becoming*. Thus, in what follows, I trace this development. I begin with an introduction to Hegel's derivation of *becoming* as a mediated moment among the immediate notions of *being* and *nothingness*. Next, I show that this mediated moment is peculiar to what Hegel called sublation, a particular form of negation which preserves what is negated. Then, I refer to Nancy's perception that sublation pertains to the notion of self. Nancy's work, therefore, helps us understand what *becoming* entails for the idea of self. Starting with the initial mediation between *being* and *nothingness*, Nancy demonstrated self's emergence as *becoming* and its development into the notion of *desire*. By drawing a link between becoming and desire, I show that Nancy was able to highlight the imperatively constitutive aspect of subject's relations to its others within the context of Hegel's theory of recognition.

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<sup>856</sup> *Ibid*, p.9.

One must turn to Hegel's *The Science of Logic* to grasp the logical argument underlying his distinction between the *immediacy* of the notion of being and the *mediational* aspect of the notion of becoming. In this treatise, Hegel explained pure being in the following:

[i]n its indeterminate immediacy [pure being] is equal only to itself and also not unequal with respect to another; it has no difference within it, nor any outwardly. If any determination or content were posited in it as distinct, or if it were posited by this determination or content as distinct from an other, it would thereby fail to hold fast to its purity. It is pure indeterminateness and emptiness.<sup>857</sup>

The definition quoted above underlies Hegel's objection to perceiving God or the Absolute as immediate which is to be intuited, as opposed to an Absolute which actualises itself through cognition. The intuition of God as an original and immediate being is problematic not only by way of such intuition distancing philosophy from a form of Science wherein it can become actual knowing as argued by Hegel in the preface to the *Phenomenology*.<sup>858</sup> It is also problematic for the reason that, as observed in the indented quote above, a pure, indeterminate, and immediate being which has no difference or content both within and outside of itself can only be regarded as emptiness.

Elsewhere, Hegel argued against considering this empty and abstract notion of being as the beginning of science or philosophy:

Being can be determined as 'I=I', as the *absolute indifference* or *identity*, etc. In the need to begin with something absolutely *certain*, i.e. the certainty of oneself, or with a definition or intuition of the *absolutely true*, these and other similar forms can be regarded as

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<sup>857</sup> Hegel G.W.F., *The Science of Logic*, (trans. G. di Giovanni), (Cambridge: Cambridge University Press, 2010a) p.59.

<sup>858</sup> Hegel (1977) op. cit. at §§ 5, 6, pp. 3, 4.

what must be the first. However, insofar as *mediation* is already present within each of these forms, they are not truly the first.<sup>859</sup>

In simpler terms, '[m]ediation means to have gone from a first to a second and to emerge from something differentiated.'<sup>860</sup> Within the context of the mediation of being, this second is nothingness. Hegel asserted that '[b]eing, the indeterminate immediate is in fact *nothing*, and neither more or less than nothing.'<sup>861</sup> Therefore, *pure nothingness* is also 'simple equality with itself, complete emptiness, complete absence of determination and content; lack of all distinction within.'<sup>862</sup> As this complete emptiness, both being and nothing are devoid of any meaning. We can intuit or think these notions and these acts would bestow some sort of meaning upon them; however, this meaning would result from the distinction, which these acts would effect, between pure being/nothingness and the being/nothingness that acquire a concrete existence within our intuition or thought.<sup>863</sup> Thus, immediate pure being or nothingness (which essentially amount to the same emptiness) cannot be regarded as absolute meaning or truth.

For this absolute truth, one must consider the ways in which this mediation inherent to the notions of being and nothingness is effected. According to Hegel, therefore, truth 'is neither being nor nothing, but rather that being has passed over into nothing and nothing into being.'<sup>864</sup> In light of this act of passing into another, one must also take into account Hegel's assertion that 'pure being is a *pure abstraction* and thus the *absolutely negative* which, when likewise taken immediately, is *nothing*.'<sup>865</sup> Thus, the act of passing over entails that being 'immediately vanishes in its opposite,' that is to say, it vanishes into nothing, and

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<sup>859</sup> Hegel G.W.F., *Encyclopedia of the Philosophical Sciences in Basic Outline Part I: Science of Logic*, (trans. K. Brinkmann, D.O. Dahlstrom), (Cambridge: Cambridge University Press, 2010b) pp. 136, 137. [*emphasis in original*]

<sup>860</sup> *Ibid*, p.137.

<sup>861</sup> Hegel (2010a) op. cit. at p.59. [*emphasis in original*]

<sup>862</sup> *Ibid*.

<sup>863</sup> *Ibid*.

<sup>864</sup> *Ibid*, pp. 59, 60.

<sup>865</sup> Hegel (2010b) op. cit. at p.139. [*emphases in original*]

*vice versa*.<sup>866</sup> This immediate vanishing is the mediational movement of *becoming*: ‘a movement in which the two [i.e. being and nothing] are distinguished, but by a distinction which has just as immediately dissolved itself.’<sup>867</sup> As opposed to the immediate emptiness of each notion, becoming creates a mediated and, therefore, determined unity of being and nothingness; it is within this unity that both these notions *are*.<sup>868</sup> However, ‘*they are*, but as vanishing, only as *sublated*.’<sup>869</sup>

From the preliminary concepts of logic, Hegel was able to derive the notion of sublation. This notion is the manifestation of the negative inherent to being and nothing in the peculiar form of negation which has a dual meaning. In Hegel’s words, ‘[t]he German “*aufheben*” (‘to sublata’ in English) has a twofold meaning in the language: it equally means “to keep,” “to preserve,” and “to cause to cease,” “to put an end to.”’<sup>870</sup> However, as Nancy highlighted, this cancelling does not amount to a return to nothing; *nothing* is immediate, whereas, ‘to sublata is [...] to mediate.’<sup>871</sup> For the purposes of this part of the chapter, the significance of the notion of sublation lies in its relation to the idea of self; in Nancy’s words, ‘sublation ceaselessly functions, accelerates, and tightens its functioning right at the level of the *self* and, in a certain way, as if it informed ipseity, or better, the process of the ipseity of the *self* itself.’<sup>872</sup>

The next step is to ascertain the repercussions of the notion of sublation upon the concept of self. Nancy achieved this by incorporating the idea of self into the moments of *becoming* and commenced this incorporation by distinguishing between self and immediate being. Thus, Nancy argued that self is not being, but, rather,

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<sup>866</sup> Hegel (2010a) op. cit. at p.60.

<sup>867</sup> *Ibid.*

<sup>868</sup> *Ibid.*, p.80.

<sup>869</sup> *Ibid.*

<sup>870</sup> *Ibid.*, pp. 81, 82.

<sup>871</sup> Nancy JL., *The Speculative Remark (One of Hegel’s Bons Mots)*, (California: Stanford University Press, 2001) p.45.

<sup>872</sup> *Ibid.*, p.39. [*emphasis in original*]

self means being unto the *ordeal* of being. Being that has nothing to found itself, to sustain itself, or to fulfil itself is being posited naked in its identity with the logos — its naked substance identical to its absolute freedom [...]<sup>873</sup>

Self cannot be *being* which remains at rest. Instead, it is related to what is immanent to being; the ordeal, Nancy explained, ‘is that of immanence.’<sup>874</sup> We already observed above that according to Hegel, inherent to pure being are notions of immediacy, indeterminacy and emptiness. In other words, what is immanent to the notion of being is the very notion of nothing. The self is, therefore, the ordeal which pertains to this immanent relation between being and nothing.

Hegel called this ordeal *becoming* wherein being vanished into nothing and vice versa. Regarding the relevance of this disappearance vis-à-vis the notion of self, Nancy offered the following interpretation.

Being rests in itself, and this rest itself awakens and unsettles it: at rest, it feels itself lose its sense of being. In truth, it has already lost it. The simple position of being is privation of sense, but it is as privation that sense first manifests itself.<sup>875</sup>

Pure being, as pure negativity, cannot rest in itself. It is restless and, as such, it wakes up into a feeling of loss. Taking into account the notion of becoming wherein being vanishes into nothing, this loss can be attributed to the disappearance. What disappears is being’s feeling of sense for the reason that, through becoming, sense progresses into nothing.

Since, self, according to Nancy, is being unto the ordeal of being and this ordeal consists of the privation of sense;

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<sup>873</sup> Nancy (2002) op.cit. at p.55. [*my emphasis*]

<sup>874</sup> *Ibid.*

<sup>875</sup> *Ibid.*

self therefore means sense left to its own devices, sense that makes itself sense, not by a recourse, but by an infinite return to the same, to this other-sameness that is all that offers itself. Self is therefore first of all what finds itself as nothingness. Rigorously: self is what does not find itself. Self is negation of self, negativity for itself.<sup>876</sup>

However, if the Subject is self as pure negativity and becoming entails negation of self, what would this negation entail for the subject? Would it mean that subject kills or consumes itself? Nancy explained that, '[t]he subject does not negate itself as someone who commits suicide. It negates itself in its being; it *is* this negation.'<sup>877</sup>

The constitution of self comprises this negation. Thus, self must be restless and devoid of any beginning and end. Furthermore, self, or the subject into which it develops, cannot be immediate. The being which self negates is immediate. As the effectivity of the restless negative, self is mediated. Imperative to this mediation is the other. To follow the last quote from Nancy,

[the subject] negates itself in its being; it *is* this negation, and thus does not return to itself. Self is precisely without return to self; self does not become what it already is: becoming is being outside of self — but such that this outside, this ex-position, is the very being of the subject.<sup>878</sup>

By negating it, self finds itself outside of being. In relation to the notion of becoming, we know that being vanishes into nothing. Therefore, this outside signifies self finding itself as nothing, or, in other terms, self not finding itself. However, this outside position does also constitute the very being of the subject. What underlies this constitution is that in the ex-position, self finds an other.

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<sup>876</sup> *Ibid*, p.56.

<sup>877</sup> *Ibid*, p.57. [*emphasis in original*]

<sup>878</sup> *Ibid*. [*emphasis in original*]

This finding is significant to the extent that, as Nancy wrote, ‘[t]he concretion of negativity begins with the other.’<sup>879</sup> In other words, the subject comes into being with the other; that, the other is the very constitutive element of the subject and vice versa. Nancy explained this imperative in the following.

The self that negates itself, instead of coming back to itself, throws itself into the other, and wills itself as other. This is why the other is not second, does not come after [...] The one does not begin: it begins *with* the other.<sup>880</sup>

The effect of this conjoined beginning is the dissolution of the given-ness of the other and it is this dissolution which, in turn, signifies the concretion of negativity. To the extent that the other — as would be the case in mutual recognition — is also a self ‘that would have, all to itself, the subsistence that I lack,’ my self-negation would throw me onto some other identical self.<sup>881</sup> Hence, this throw results in self finding itself in the other. According to Nancy, the effect of this result is that ‘[t]he other posited as a consistent and given exteriority is precisely what is negated in the very movement of the negation of the self.’<sup>882</sup>

Nancy interpreted the negation of the given exteriority as self’s appropriation of the other.<sup>883</sup> However, this appropriation is not synonymous with the enslavement of the other. Instead, Nancy emphasised that ‘[t]he relation with the other, precisely to the extent that it is appropriation, is appropriation of the negativity out of which this relation comes.’<sup>884</sup> Thus,

[n]egativity dissolves the given-other, not in order to restore it to a self that has precisely been shattered in itself, but in order to make it a nongiven-other: to make it the other which, as *my* other, is the

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<sup>879</sup> *Ibid.*

<sup>880</sup> *Ibid.* [*emphasis in original*]

<sup>881</sup> *Ibid.*, pp. 57, 58.

<sup>882</sup> *Ibid.*, p.58.

<sup>883</sup> *Ibid.*

<sup>884</sup> *Ibid.*

infinite alterity, in me, of the self itself, or what is in itself the infinite alteration of the self.<sup>885</sup>

The significance of this alterity is twofold. Firstly, it underlies the very notion of self-consciousness. Secondly, in doing so, it provides a clearer insight into the function of the notion of desire vis-à-vis the constitution of the subject.

According to Nancy, '[i]f self-consciousness kept itself within the immediate immobility of "I=I," it would not even be consciousness.'<sup>886</sup> The immediate immobility is that of the notion of being. Self, as pure negativity, is restless, and, as such, we can recall that it unsettles being by awakening it. This awakening is interpreted by Nancy as 'the concrete awakening of the I [which] is its awakening to the world and by the world — the world of *alterity* in general.'<sup>887</sup> The onset of this waking up is generated by self's encounter with the other. This encounter does not only concretise negativity; in doing so, it establishes the infinite alterity of the self. Without this alterity, the self is the selfsame I=I; in order to reach this alterity, self needs the other. This is the necessity which, according to Nancy, makes desire;

Desire is the necessity of consciousness: it is the necessity that the unity of consciousness come and become for consciousness itself.

Desire is therefore less the tension of a lack, and the projection of a satisfaction that would annul it, than it is the tension of the coming of the other as the becoming of the self.<sup>888</sup>

Earlier we observed that Butler called this necessity the reflexivity of consciousness.<sup>889</sup> In Butler's perspective, the Hegelian notion of desire 'is understood as or stands in for the reflexive consciousness, whereby consciousness seeks to know and comprehend itself

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<sup>885</sup> *Ibid.* [emphasis in original]

<sup>886</sup> *Ibid.*, p.60.

<sup>887</sup> *Ibid.* [my emphasis].

<sup>888</sup> *Ibid.*, p61.

<sup>889</sup> Butler (1987) op. cit. at p.7.

through the mediation of otherness.<sup>890</sup> By considering the role of desire within the context of Hegel's logical concept of becoming, Nancy provided a clearer insight into whence this necessity arises.

Self is neither being nor nothing. It is the movement between these two notions, namely, it is becoming. The *modus operandi* of this movement is restless negativity which effects the vanishment of being into nothing and vice versa. The movement which is constitutive of self pushes it outside of itself onto an other; hence, Nancy remarked that 'becoming and the other are indissociable.'<sup>891</sup> Nancy's interpretation that 'one begins *with* the other,' therefore, underlies the viability of self-consciousness. It is an imperative that the constitution of the subject has to involve the other. Otherwise, the self that develops into the *self-conscious I* would, instead, eternally remain the self-same being that I=I suggests. Thus, the necessity of desire, of mediation through otherness, arises from the very fact that Hegel conceived Absolute not as a supreme being, an immediate unity which is identical to itself or is comprised of a selfsame substance. Instead, Absolute is a Subject capable of movement and mediation, without any beginning or end, and finally, it is comprised of the restless negative.

## Conclusion

I concluded the fourth chapter by arguing that Honneth's, Taylor's, and Douzinas' respective works effectively demonstrated the manner in which one can successfully utilise Hegel's theory of recognition to account for the constitution of different forms of subjects. However, I also maintained that the dialectic of lordship and bondsman may have certain repercussions for the act of recognition and that aforementioned scholars' scrutiny of the dialectic were rather brief. The failure to provide a detailed engagement with the question

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<sup>890</sup> Brady and Schirato, *op. cit.* at p.14.

<sup>891</sup> Nancy (2002) *op. cit.* at p.61.

of lordship and bondsman informed the purpose of the current chapter. Therefore, I began this chapter with a focus on Kojève's anthropocentric account of human reality. The significance of this account lay in the insights Kojève offered into the probable effects of lordship and bondsman upon the intersubjective system of recognition.

I presented Kojève's idea of human reality by first considering the latter's differentiation between animal and human desires. Kojève incorporated the life and death struggle as the means to achieve this differentiation and identified the outcome of this achievement as the recognition of one's human desire. This form of desire and ensuing recognition, according to Kojève, were the building blocks of human reality wherein humans generated freedom and history. Lord, bondsman, and the struggle between the two marked the historical stages of this reality. Thus, Kojève claimed that the reconciliation of the conflict between lord and bondsman comprised the end of history. Such an end would be attained with the establishment of the universal and the homogenous state — in Kojève's perspective, this being the Napoleonic state.

I identified two serious repercussions in Kojève's interpretation of Hegel's work. The first of these was that Kojève thought of the progress of recognition, therefore the development of human reality, as oriented towards an ultimate purpose. Secondly, this teleological direction was given a final destination in the shape of a homogenous and universal state. In light of these two problematic consequences, I asked two relevant questions. Could one extract a theory of recognition from the *Phenomenology* if the scope of such a theory is limited to a certain historical progress with a specific telos? Could one resolve the problems associated with the state-centrism of the prevalent theories of recognition under international law by adapting a notion of recognition which ostensibly had a similar orientation?

My first attempt was to seek a solution to the problem of the specific telos of the Napoleonic state. By referring to Fukuyama's adoption of Kojève's thesis, I, initially,

demonstrated that the telos may vary according to times. Fukuyama thought that the end was achieved with the liberal democratic state. Then, I highlighted that in both Kojève's and Fukuyama's separate works, the fulfilment of the telos relied upon the reconciliation of the struggle between lord and bondsman. My second attempt was to show that by problematising this notion of reconciliation, one may dismiss the state-centric orientation. I relied upon Jameson's critique of Fukuyama's work to achieve this dismissal.

Jameson argued against the reification of a presumed social totality which he thought was prevalent to Fukuyama's idea of reconciliation. Jameson's argument was based upon the mortality of social forms in Hegel's thoughts. This argument necessitated a detour into Hegel's reading of Sophocles' play *Antigone*. Jameson was of the view that Hegel's interpretation of the opposition between and the ensuing tragedies of ethical characters of the play suggested the perpetual flux of social forms. This flux, in turn, defied any form of definite reification. I relied upon Jameson's contention to argue that the challenge, at least, of a state-centric telos may thus be overcome. My following argument was that, in order to unburden the theory of recognition from any form of teleological purpose, one had to prove that the perpetual flux pertains to this theory too.

I turned to Nancy's interpretation of Hegel's thought to demonstrate that perpetual flux also pertained to the theory of recognition. The starting point of this interpretation was Nancy's perception of the element of negativity as restless. Nancy drew upon Hegel's notion of Absolute to link the power of the negative to the concept of Subject. Empowered as such, the restless Subject had two major features: it did not have a beginning, nor did it have an end. So far, Nancy's interpretation suggested a way out of the teleological constraints of Kojève's reading. What remained to be achieved was to demonstrate that the Subject (as Absolute) was connected to the self-conscious subject of mutual recognition. My argument was that, Nancy achieved this connection with the notion of *becoming*. According to Nancy's reading of this notion, negative moments between logic's preliminary concepts of

being and nothingness comprised the idea of self. In other words, self was a mediated concept that encompassed the restless negative. Hegel called this mediation *sublation* and this particular type of negation, which preserved whatever it overcame, generated desire. Nancy captured the relation between self, sublation, and desire by the maxim that *one begins with the other*. Similar to (Absolute as) Subject which defied the formula of  $A=A$ , self-conscious subject of desire and mutual recognition was not to conform to  $I=I$ . Subject *is* as it moves out of itself and encounters an other for the very reason that subject cannot be immediate, that it is necessary for it to go through the mediation of otherness.

In the introduction to this chapter, I asked two questions that were related to the challenge of extracting a theory of recognition from the context of the *Phenomenology*. One of the questions was whether one could circumvent the issues related to the prevalent theories of recognition I considered in the third chapter by relying upon a theory of recognition which ostensibly had a similar orientation. Throughout this chapter, I attempted to answer this question by demonstrating that Hegel's theory of recognition did not have a state-centric orientation. My reference to Jameson's work helped me dismiss reconciliation as an ultimate objective of the dialectic of master and slave. This dismissal, in turn, solved the problem of Kojève's idea of the homogenous and the universal state.

However, a second challenge was presented by the other question which tested the viability of abstracting a theory with teleological restrictions. Insofar as the reference to Jameson dismissed a particular type of telos (i.e. the Napoleonic state, or the liberal democratic state) it did not adequately rule out the possibility of a definite end-purpose to the dialectic. I turned to Nancy's work to overcome this challenge. Nancy perceived self as a restless subject which is always in flux and is always *becoming*. This perception highlighted one's relation to its other not only as constitutively imperative, but also as a set of continuous moments that does not come to rest. The significance of this highlight is twofold. First, it shows that the perpetual flux pertains to the theory of recognition and, in

turn, renders this theory less difficult to extract from the context of *Phenomenology* for *ad hoc* purposes. Second, the specific outcome of the process of recognition starkly contrasts with Vattel's understanding of subject as absolute, closed, and complete-in-itself.

Overall, in this chapter, I engaged with the issue of reconciliation of the struggle between lords and bondsman, and the resultant end-of-history theses. The challenges posed by the dialectic of lordship and bondsman, however, are not limited to Kojève's and Fukuyama's respective approaches presented here. As will be remembered from the previous chapter, Hegel's idea of truth of independence was to be found in servile consciousness. This was the type of consciousness which held desire in check and laboured on the object consumed by the lord. Kojève touched upon the idea of labour within the concept of history but subsumed this idea under the notion of reconciliation of the struggle between master and slave. In the next chapter, I follow upon the probable effects of lordship and bondsman by offering an analysis of the relation between servile consciousness and the theory of recognition. The aforementioned comparison between Nancy's notion of a subject in flux and Vattel's idea of states as absolute persons is relevant to the analysis I offer in the next chapter.

## CHAPTER SIX

### RESTRICTIVE ECONOMY OF RECOGNITION

#### Introduction

In the fourth chapter of the thesis, I introduced Hegel's theory of recognition by tracing the development of consciousness through stages of sense-certainty and understanding, and by presenting consciousness' transformation into self-consciousness via the notions of desire and mutual recognition. The purpose of this introduction was to present an apt theoretical framework to account for recognition as a constitutive imperative for the coming-into-being of international subjects. I also pointed out that Hegel's idea of mutual recognition culminated in a life-and-death struggle which produced the dialectic of lordship and bondsman. I argued that a successful abstraction of an applicable theoretical framework depended on overcoming the repercussions of this dialectic vis-à-vis the theory of recognition.

In the fifth chapter, I relied upon Kojève's interpretation of Hegel's work to identify two obstacles against the *ad hoc* utilisation of the latter's theory. Firstly, the struggle between lord and bondsman marked a historical progress towards a teleological end. Secondly, this end was ostensibly reached by the establishment of the homogenous and the universal state. Central to Kojève's interpretation was the understanding that the conflict between lord and bondsman could be reconciled. My attempt to overcome the aforementioned obstacles was, thus, premised upon contesting this reconciliation. Nancy's notion of a restless negative assisted this attempt in two major ways. First, endowed with the power of negative, Nancy showed that the subject never begins, nor does it ever end; thus, the subject is conceived as always *becoming*, rendering its relation to its other as imperatively constitutive. Second, such a subject is not complete-in-itself and its very being is constantly determined and re-determined by its relations.

Nancy's idea of a subject that is in perpetual flux refutes Kojève's reading which contained Hegel's theory of recognition within the telos of the homogenous and the universal state. One can also show this containment to be misconceived as Hegel concluded the section on the dialectic of lordship and bondsman with an entirely different accomplishment than the Napoleonic state. The section ended with the notion of servile consciousness attaining truth of independent consciousness. In the previous chapter, the challenge set by Kojève's reading led to the conception of a particular form of subject. As well as rebutting the idea of an end-purpose, this form of subject provides the means to counter Vattel's perception of the personality of states as absolutely sovereign, as completely closed-in-itself, and in no need of any relations. The next challenge is set by Hegel's conclusion to the segment on master and slave.

Thus, in this chapter, I evaluate the possible repercussion of servile consciousness upon the theory of recognition. In this regard, I identify servile consciousness as the product of a restrictive economy imposed upon the process of recognition. I demonstrate that the effect of this economy is to circumscribe the outcome of recognition to the production, reproduction, and circulation of one particular form of subject; and that this subject does not readily match Nancy's perpetually changing subject of *becoming*. For the overall purposes of the thesis, the relevance of this restricted economy is twofold. Firstly, in order to grasp the economy, one has to scrutinise the connection between the notions of death and negativity in Hegel's thought and this scrutiny, in turn, provides a critical insight into the functioning of recognition. I rely upon this insight to draw an analogy between the restricted economy of Hegelian discourse on recognition and the failure of the prevalent theories which I considered in the third chapter of this thesis. Secondly, insofar as the critical insight reveals the manner in which Hegel's particular utilisation of the notion of negative affects the outcome of recognition, this insight also exposes the potential of Hegel's thought to transgress this inhibited outcome.

In other words, attempting to figure out the effects of servile consciousness, I focus upon critiques of Hegel's works to unveil recognition as a repetitive process with a predetermined outcome. I argue that this process informs the shortcomings of the aforementioned prevalent theories but that inherent to this process is, also, the very means to surpass these shortcomings. These are the means with which a general economy of recognition can be attained to generate a subject more akin to Nancy's idea of *becoming*. Similar to the previous chapter, the departure point of the arguments I present herein is, once again, Alexandre Kojève's reading of Hegel's thoughts. The focus is on Kojève's essay entitled 'The Idea of Death in the Philosophy of Hegel.'<sup>892</sup> The central argument Kojève advanced in the essay is that Hegel's work comprises a philosophy of death. This argument presents one with the opportunity to examine the relation between notions of death and negativity in Hegel's thought and understand the manner in which Hegel utilised the latter notion to contain the end product of recognition.

Therefore, I commence the first part of this chapter by introducing Kojève's thoughts on Hegel's philosophy of death. These thoughts are premised upon Kojève's familiar notion of man's struggle against nature. I demonstrate that Kojève understood this struggle as *essence versus existence* and drew upon Hegel's definition of Truth as Subject and Substance to define key elements of man's existence in and against nature. This existence presents a challenge similar to the division Kojève's approach disclosed in the previous chapter regarding human and animal forms of desire. Thus, for man to exist in a humanised reality, he must not only risk his life to dispose his animal desire, but he must, as I show in this chapter, also encounter death and become conscious of his own mortality. This consciousness is not only gained against animal desire but also as a transformative element

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<sup>892</sup> Kojève A., 'The Idea of Death in the Philosophy of Hegel', in Keenan D.K. (editor), *Hegel and Contemporary Continental Philosophy*, (Albany: State University of New York Press, 2004).

which separates *man the subject* from *nature the substance*. The significance of Kojève's work lies in the elaboration of the type of negation that achieves such transformation.

In the second part of the chapter, I take into account George Bataille's critique that subterfuge and servility are inherent to this transformation. I show that the critique is premised upon Bataille's understanding that Hegel withheld the power of negative to serve the purposes of absolute knowledge. In order to reach this understanding Bataille contrasted Hegel's interpretation of the link between notions of death and negation with the former's conception of a novel form of Sovereignty. The disparity between Hegel's interpretation and Bataille's conception exposes the alteration the idea of negation goes through in man's attempt to gain consciousness of his own death. Bataille understood that only a subterfuge can help one gain such consciousness and that the consequence of this subterfuge, in Hegel's thought, was to limit the absolute power of negative. According to Bataille, this limitation pertained to the very process of recognition and the ensuing struggle for life and death.

In the third part of the chapter, I rely upon Jacques Derrida's work to elaborate the effects of subterfuge upon the process of recognition. I show that Derrida grasped these effects as a restricted economy which confined the outcome of recognition to the production, reproduction and circulation of a particular form of subject. I demonstrate the manner in which Derrida contrasted Hegel's notion of lordship to Bataille's idea of Sovereignty to distinguish between two ways of utilising the notion of death. While Hegel shunned absolute negation or death in the life-and-death struggle, Bataille showed that such negation was capable of transgressing the limits of the Hegelian discourse on knowledge. According to Derrida, Hegel's evasion of the idea of actual death and its unlimited notional scope amounted to a restricted economy of lordship; this was an economy which held desire in check and preferred servile labour to produce absolute knowledge, but was, nevertheless, blind to what lay beyond this knowledge.

I conclude the chapter by arguing that the idea of a restrictive economy of recognition is applicable to the prevalent theories of recognition of states under international law, that the constitutive and the declarative theories commit a similar error in remaining blind to what lies beyond the discourse of absolute sovereignty of states. This argument, however, does not depart from the premise I defended throughout this thesis that Hegel's notion of recognition offers an apt theoretical framework to account for the coming-into-being of international subjects. Thus, I supplement the aforementioned argument by drawing upon the transgressive potential of negation to argue that a general economy of recognition is possible and, indeed, achievable within the very own means of Hegel's theory. This is a new economy that does not only overcome the servile discourse of lordship but also accommodates Nancy's notion of subjects of *becoming*.

## **Part One**

### **Kojève reads Hegel again: A Philosophy of Death**

In this part of the chapter, I present Kojève's engagement with the notion of death in Hegel's philosophy. The purpose of this presentation is to lay the groundwork for the critique of the notion of servile consciousness later in the chapter. Therefore, in the current part, I focus upon Kojève's perception that the idea of death is central to the construction of human reality. I already introduced a set of Kojève's thoughts on this type of reality in the preceding chapter. The difference between two sets of thoughts on the same topic is marked by Kojève's argument that this reality is conditional upon man's consciousness of his own mortality. Thus, here, I present this conditionality and its manifestation within the human reality through Kojève's reading of Hegel's preface to the *Phenomenology* and the former's reinterpretation of the life and death struggle.

The point of departure is, therefore, Kojève's idea of human reality wherein man's struggle against nature takes place. I demonstrate the manner in which Kojève relied upon

Hegel's definition of Absolute as Substance and Subject to elaborate this struggle; while man comprised the subject empowered with negation, nature amounted to the substance man negated to create his reality. Such negation however entailed the possibility of man negating himself as he was also situated within the very nature he was to negate. This possibility, in turn, necessitated reconception of negation as something other than actual death, it necessitated grasping consciousness of man's mortality as the very condition of human reality and the discourse which revealed this reality.

Next in this part, I show how this conditionality is manifested through the act of understanding. This is an act that separates essence from existence. The effect of this separation is the generation of a distinct domain of freedom for man wherein the animal in man is also negated. This negation, too, reveals something about the notion of death in Hegel's thought. Since man cannot kill the animal within — similar to his inability to totally negate nature — such death, according to Kojève, is postponed and this postponement underlies the very notion of man as a dialectical being, capable of individuality and freedom. Subsequently, the idea of *death postponed* forms the premise of Bataille's critique of the Hegelian subterfuge which I consider in the second part of the chapter.

To begin at the beginning, in what follows, I present Kojève's interpretation of Hegel's preface as reflecting man's struggle against nature. In the opening pages of the preface to the *Phenomenology* Hegel wrote that '[t]he true shape in which truth exists can only be the scientific system of such truth.'<sup>893</sup> The scientific systematisation of truth is based upon the notion that 'truth has only Concept as the element of its existence.'<sup>894</sup> Hegel noted that this notion contrasts with the traditional view that the True existed as intuition or immediate knowledge of the Absolute or being.<sup>895</sup> He contested that such view renders

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<sup>893</sup> Hegel G.W.F., *Phenomenology of Spirit*, (trans. A.V. Miller) (Oxford: Oxford University Press, 1977) §5, p.3.

<sup>894</sup> *Ibid*, §6, p.4.

<sup>895</sup> *Ibid*.

Absolute incomprehensible by deeming it something to be intuited or felt.<sup>896</sup> Hegel's central argument was that the exposition of philosophy must have as its object the comprehension of the Absolute, that only by achieving such object can philosophy 'lay aside the title of love of knowing and be actual knowing.'<sup>897</sup> In order to set philosophy on such a task, Hegel wrote that 'everything turns on grasping and expressing the True, not only as Substance, but equally as Subject.'<sup>898</sup>

Kojève interpreted the scientific systematisation of truth as the revelation or description of Being; he named this systematic revelation Discourse.<sup>899</sup> Therefore, the Conceptual existence of the Truth corresponds to what Kojève called 'Being-revealed-through-discourse-in-its-reality.'<sup>900</sup> Thus, Hegel's task for philosophy was interpreted by Kojève as the exposition of the revealed-Being and the ways in which Discourse achieves this revelation. It is in light of this discursive explanation that Kojève read Hegel's expression of True as both Substance and Subject:

The philosopher therefore is concerned not only with static-and-given Being or with the Substance, which is the Object of Discourse, but with the Subject of Discourse and of philosophy: It is not enough for him to speak of Being that is given to him; he must also speak of himself and must explain himself to himself insofar as he is speaking of Being and of himself.<sup>901</sup>

Identifying the subject of discourse as Man, Kojève suggested that philosophy's obligation is not only to account for the realisation of Being as Nature and natural World, but also for its realisation as Man and as historical World.<sup>902</sup> In Kojève's perspective this obligation

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<sup>896</sup> *Ibid.*

<sup>897</sup> *Ibid.*, §§ 5, 6, pp. 3, 4.

<sup>898</sup> *Ibid.*, §17, p.10.

<sup>899</sup> Kojève, op. cit. at p.28.

<sup>900</sup> *Ibid.*

<sup>901</sup> *Ibid.*

<sup>902</sup> *Ibid.*

marks an anthropological turn in philosophy wherein ‘in addition to the ontological bases of natural reality [philosophy] must investigate those of human reality, which alone is capable of revealing itself through Discourse.’<sup>903</sup>

Kojève’s identification of Subject as Man led him to take into account Hegel’s definition of Subject as pure negativity. In applying this definition to Man, Kojève noted that,

Man who is dominated in his very being by Negativity is not static-and-given Being, but Action or the Act-of-positing-itself or of creating itself. And it is objectively-real [i.e. actual] only as a dialectical movement, whose result is mediated by negation of the given-Being that serves it as a point of departure.<sup>904</sup>

In Kojève’s perspective, the static-and-given Being corresponds to Nature; therefore, in the above-mentioned quote, Man’s actuality depends on his negation of Nature.<sup>905</sup> Kojève derived Man’s opposition to Nature from Hegel’s distinction between Substance and Subject. The latter elucidated this distinction within the context of consciousness. We observed earlier in the previous chapter that a ‘disparity [...] exists in consciousness between the ‘I’ [as the knowing Subject] and the substance which is [this knowledge’s] object.’<sup>906</sup> This disparity is the work of the negative which sets up oppositions by becoming an other to itself; nevertheless, it is also the work of the same negative to negate these oppositions by returning to itself.<sup>907</sup> We observed that the outcome of such return, according to Hegel, is the Substance which proves itself to be essentially the Subject; that is to say, the outcome is a reunified Substance and Subject intrinsic to a self-conscious Spirit the phenomenology of

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<sup>903</sup> *Ibid.*

<sup>904</sup> *Ibid.*, p.29.

<sup>905</sup> *Ibid.*

<sup>906</sup> Hegel, op. cit. at §37, p.21.

<sup>907</sup> *Ibid.*, §36, p.21.

which is finally complete.<sup>908</sup> By opposing Man to Nature, Kojève was enacting the disparity which Hegel suggested exists within consciousness. Therefore, the former explained that,

[i]t is Negativity [...] that splits [...] Being into Object and Subject, in creating a Man opposed to Nature. But it is also this same Negativity, realised as human existence in the midst of Nature, that reunites anew the Subject and Object in and through true consciousness, in which Discourse coincides with the Being that it reveals.<sup>909</sup>

By interpreting the concepts of Subject and Substance as Man and Nature, Kojève elucidated the anthropologic aspect of Hegel's philosophy. This elucidation empowers Man with the force of the Negative; hence, Kojève captured the Hegelian completion of the phenomenology of Spirit within the context of human reality. However, the significance of Kojève's reading of Hegel's preface to the *Phenomenology* is not limited to the emphasis the former lay upon the anthropologic feature of the latter's thought. More importantly, Kojève provided an analysis of what the completion of the phenomenology entails for human reality and how the account of this phenomenology constitutes the originality of Hegel's thought.

In order to clarify the concept of human reality, Kojève compared this concept with ancient Greek and Judeo-Christian prehistorical traditions. According to Kojève the ancient Greeks and the philosophical traditions that followed them limited themselves 'to the phenomenological, metaphysical, and ontological description of given-Being and of the natural and eternal Cosmos.'<sup>910</sup> Regarding the Greek tradition's perception of Man, Kojève wrote that,

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<sup>908</sup> *Ibid*, §37, p.21.

<sup>909</sup> Kojève, op. cit. at p.29.

<sup>910</sup> *Ibid*, p.33.

[t]his pretended Man of the ancient or Greek tradition is in fact a purely natural being, who has neither freedom, nor history, nor individuality properly speaking. Just like the animal, he can only represent, in and through his real and active existence, an eternal idea or essence, given once and for all and remaining identical with itself. Just like the life of an animal, his empirical-existence is absolutely determined by the natural place (topos) that he occupies for all time in the midst of a given and unchanging Cosmos.<sup>911</sup>

Kojève explained that the manner in which man differs from animal in this tradition is man's coherent discourse (i.e. Logos); however, this Logos does not negate the given-Being and its 'appearance in the Cosmos, moreover, could never be explained.'<sup>912</sup> Therefore, man and his discourse are incorporated into this 'one and unique Being, which thinks itself eternally in its given totality;' hence, man, in the ancient philosophical tradition, lacks both freedom and individuality.<sup>913</sup>

Kojève was of the opinion that Hegel derived the notion of free historical Individual from the Judeo-Christian tradition.<sup>914</sup> According to Kojève, within this tradition the perception of 'Man differs essentially from Nature,' and in contrast to the ancient tradition, this variance occurs 'not in [Man's] thought alone, but by his very activity.'<sup>915</sup> He explained that in Judeo-Christianity, Nature is regarded as a sin in and for Man which he must oppose and negate by not submitting to its laws or miracles despite the fact that he lives in it.<sup>916</sup> It is in light of this opposition that man frees himself from the natural World and creates his own historical World wherein a free conversion can take place.<sup>917</sup> Kojève noted that, this is

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<sup>911</sup> *Ibid.*

<sup>912</sup> *Ibid.*

<sup>913</sup> *Ibid*, p.33.

<sup>914</sup> *Ibid.*

<sup>915</sup> *Ibid.*

<sup>916</sup> *Ibid.*

<sup>917</sup> *Ibid*, p.34.

man's conversion from 'an eternal or immutably given species' into a self-created man who is 'an individual unique of its kind.'<sup>918</sup> Kojève referred to the aforementioned triad of freedom, historicity and individuality as the spirituality of Man and he read Hegel's use of the word Spirit as the latter's attempt to underscore the Judeo-Christian perception of free, historical and individual Man.

However, the significance of Kojève's analysis lies not in recounting the similarities between the Judeo-Christian tradition and Hegel's thought but in the former's analysis of the difference between this tradition and the latter's thought. According to this analysis, contrasting accounts of the manner in which Spirit fully manifests itself comprise the difference. Kojève explained that although the notion of spirituality of man is a Judeo-Christian invention, this tradition 'has maintained itself in the course of modern times in the form of faith or theology.'<sup>919</sup> Within this essentially religious or theist tradition, Kojève noted that, 'spirituality is realised and manifests itself fully only in the beyond, and Spirit, properly so-called, truly objectively-real Spirit, is God: that is to say, an infinite and eternal being.'<sup>920</sup> In other words, the actualisation of Spirit takes place in a transcendental World of the beyond into which Man gains access only after his death. Such access ensures the immortality of the soul of Man; however, this divine or eternal World of the beyond is not the historical World Man creates by negating or transforming Nature. The former is a given World which does not depend upon Man, and 'its one and unique totality, which is Spirit, is not Man but God.'<sup>921</sup> Therefore, Kojève suggested that the tradition which invented the free, historical, and individual Man, subordinates this spirituality to a God that 'can be nothing other than the one and unique Being who thinks himself while remaining eternally

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<sup>918</sup> *Ibid.*

<sup>919</sup> *Ibid*, p.33.

<sup>920</sup> *Ibid*, p.34.

<sup>921</sup> *Ibid*, pp. 33, 34.

identical to himself.<sup>922</sup> Kojève noted the similarity of this Judeo-Christian God with the one and unique Being of the aforementioned ancient Greek tradition.<sup>923</sup>

According to Kojève, Hegel derived the spiritual triad of Man from the Judeo-Christian tradition; however, he did also ‘understood that Man could not be a free historical individual except on condition of being mortal in the proper and strong sense of the term, that is, finite in time and conscious of his finitude.’<sup>924</sup> Therefore, Hegel’s Spirit appears as Man-in-the-World.<sup>925</sup> This appearance is in stark contrast with the Judeo-Christian Spirit whose manifestation in a transcendental World subordinates the freedom, historicity, and the individuality of Man to the unique totality of God. Kojève claimed that Hegel’s derivation of the spirituality of Man is a ‘radically secularised or atheistic form’ of the Judeo-Christian anthropological tradition.<sup>926</sup> In support of this claim, Kojève pointed to the following passage in the preface:

The Spirit that, so developed, knows itself as Spirit, is Science;  
Science is [Spirit’s] actuality and the realm which [Spirit] builds for  
itself in its own element.<sup>927</sup>

Science, according to Kojève, denotes Hegelian philosophy which appears ‘in the midst of the natural World at the end of the historical becoming of Man’ and encompasses ‘the true meaning of all the discourses spoken by men in the course of History.’<sup>928</sup> Therefore, the Hegelian Spirit is the sum total of human discourse revealing a human reality. However, as mentioned above, Hegel’s Scientific or radically secularist turn is conditioned upon the rejection of the Judeo-Christian notion of the immortality of Man’s soul — a notion which

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<sup>922</sup> *Ibid*, p.35.

<sup>923</sup> *Ibid*.

<sup>924</sup> *Ibid*.

<sup>925</sup> *Ibid*, p.36.

<sup>926</sup> *Ibid*.

<sup>927</sup> Kojève referred to this passage from Hegel’s preface to the *Phenomenology* (1977, §25, p.14) in Kojève, op. cit. at p.36.

<sup>928</sup> Kojève, op. cit. at p.36.

subordinates Man's spirituality to God's uniqueness. This rejection, as we observed above, necessitates the conception of Man as mortal.

In what follows, I present an account of Kojève's analysis of the notions of human reality and Discourse. The purpose of this presentation is to outline Kojève's underlying argument that the philosophy of Hegel is a philosophy of death.<sup>929</sup> Above, I referred to two specific features of the notions of human reality and Discourse. The first feature was that, this reality is established by Man's negation of Nature. The second was that, this reality is conditioned by Man's mortality. In order to highlight the contours of his aforementioned argument, I take into account Kojève's elaboration of these two features. This elaboration focuses upon the complexity of Man's negation of the Nature in which he also exists and upon the manifestation of the condition of mortality through understanding's separation of essence from existence. I begin with Kojève's engagement with the second feature.

Science, grasped as the discursive revelation of human reality, is tasked with the fulfilment of the condition of man's mortality; according to Kojève, this task is achieved through the philosophical explanation of 'Man understood as free historical Individual.'<sup>930</sup> This explanation is offered on three levels; ontological, metaphysical and phenomenological. In the first level, Man must be described as 'finite in and through himself;' in the second level, 'as worldly or spatial and temporal;' and in the final level, as 'mortal.'<sup>931</sup> Kojève further elaborated the phenomenological level: 'On this last level, Man appears as a being who is always conscious of his death, who often freely accepts it, and, aware of what he is doing, sometimes inflicts it on himself.'<sup>932</sup>

Expression of mortality in three distinct philosophical levels underlies Kojève's argument that the philosophy of Hegel is the philosophy of death. In order to shed light upon

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<sup>929</sup> *Ibid*, p.37.

<sup>930</sup> *Ibid*, pp. 36, 37.

<sup>931</sup> *Ibid*, p.37.

<sup>932</sup> *Ibid*.

the way in which this expression is manifested — in other words, in order to explain how man becomes conscious of his death — Kojève referred to Hegel's notion of Understanding. We previously observed that, in Hegel's perspective, Understanding embodies the power of the negative.<sup>933</sup> This power is deemed by Hegel as the absolute power, and, as such, it leads to the activity of separation.<sup>934</sup> Kojève interpreted this activity as Man's ability to separate the constitutive elements of the totality in order to be able to reveal these elements in 'isolated words or partial discourses.'<sup>935</sup> Thus, man's revelatory use of words amounted to the negation of natural or immediate relation between existence and essence.<sup>936</sup> Kojève explained that,

[t]he absolute power of Understanding goes so far as to separate an essence from its natural support: The essence dog is separated from this dog that runs and barks here and now [...] Once detached from its natural support, the essence becomes meaning or idea. But the meaning does not float in the void: It is necessarily the meaning of a word or of a discourse.<sup>937</sup>

The negation of natural or immediate relation between existence and essence results in 'disengaging meaning from [given-]Being, of separating essence from existence and of embodying the meaning-essence in discourse.'<sup>938</sup> Kojève interpreted man's derivation of meaning from the negation of given-Being or Natural existence, as action or labour.<sup>939</sup> This action was considered by Hegel to be 'most astonishing.'<sup>940</sup> Kojève explained what is most astonishing or miraculous about this action in the following:

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<sup>933</sup> Hegel, op. cit. at §32, p.19.

<sup>934</sup> *Ibid*, §32, p.18.

<sup>935</sup> Kojève, op. cit. at p.39.

<sup>936</sup> *Ibid*, p.42.

<sup>937</sup> *Ibid*, p.40.

<sup>938</sup> *Ibid*, p.43.

<sup>939</sup> *Ibid*, p.42.

<sup>940</sup> Hegel, op. cit. at §32, pp. 18, 19.

Now the essence is a bound-entity, tied to its [natural] support, and it is objectively-real only in its connection with its support. Nevertheless Understanding succeeds in separating the essence from its natural support and procures for it *an empirical-existence of its own* by incarnating it in a spoken, written, or thought word or discourse.<sup>941</sup>

By creating this empirical-existence, action, that is the embodiment of the force of the negative, produces ‘an autonomous reality’ wherein empirically existing essence becomes meaning and thereby acquires its own ‘separated-or-isolated freedom.’<sup>942</sup> Miraculous is, therefore, ‘the fact that some thing [i.e. essence] that is really inseparable from some other thing [i.e. its natural support] achieves nevertheless a separate existence.’<sup>943</sup>

Kojève was of the opinion that this miracle does not only bring discourse into existence, but it also is ‘the miracle of the existence of Man in the world.’<sup>944</sup> Kojève formed this opinion by applying the separation effected by Understanding to the notion of Man:

For Man is also a bound-being that is objectively-real only in its connection with something-else: he is nothing without the animal that serves him as support, and he is pure nothingness outside the natural World. Yet nevertheless he separates himself from this World and opposes himself to it. He creates for himself an empirical-existence of his own, essentially different from every purely natural empirical existence.<sup>945</sup>

Man’s own empirical-existence affords him a separate sphere of freedom; however, this separation has repercussions for the animal which constitutes Man’s natural support. Kojève

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<sup>941</sup> Kojève, op. cit. at p.42. [*my emphasis*]

<sup>942</sup> *Ibid*, p.43.

<sup>943</sup> *Ibid*, p.42.

<sup>944</sup> *Ibid*, p.43.

<sup>945</sup> *Ibid*.

explained that Man's freedom 'permits him to move and to act completely differently from the way in which the animal that incarnates him would have moved and acted, if that animal did not incarnate Negativity and were not therefore an Ego who thinks and who speaks.'<sup>946</sup> Thus, Kojève wrote that 'just like the discourse he utters, Man is not a given-Being, nor is he the accident of a Substance. He is the result of effort by an absolute power, and he is that power itself: He is Negativity incarnate.'<sup>947</sup> On the one hand, elaboration of the embodiment of Negativity illuminates the aforementioned conditionality of mortality. On the other, we already observed that, action, which utilises the force of the negative, separates essence from existence. In the case of essence that is Man and the animal that is his natural support, the latter must, therefore, be negated. In what follows, I present Kojève's further clarification of the conditionality of mortality and the complexity inherent to the negation of the animal.

Previously, I referred to Kojève's interpretation of Hegel's notion of scientific system of truth as the discursive revelation of human reality. We observed that Hegel's radically secularist approach to the spirituality of Man necessitated the condition of man's mortality. According to Kojève, Science meets this condition by incorporating mortality into three levels of philosophical explanation of this reality. We observed that within the context of Judeo-Christian theology, the spiritual triad of man is subordinated to a transcendental notion of one God. In order to maintain his freedom, historicity and individuality, Man had to be emancipated from this theological subordination. We observed above that the condition of Man's mortality arises from this necessity. While the Judeo-Christian comparison reveals the necessity of this condition; the manner in which this condition must be expressed within three levels of philosophy is revealed by the notion of Man as Negativity incarnate.

Therefore, on the ontological level, Kojève explained that Negativity is pure Nothingness, and, as such, it corresponds to the annihilation of Being.<sup>948</sup> This is the reason

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<sup>946</sup> *Ibid*, p.44.

<sup>947</sup> *Ibid*.

<sup>948</sup> *Ibid*, p.44.

why, on this level, man, as negativity incarnate, must be described as ‘finite in and through himself.’<sup>949</sup> If Action is Negativity and Negativity is Nothingness, Action has to enact the annihilation of Being. The resultant finitude of Being would, however, occasion the finitude of Action.<sup>950</sup> Thus, on the metaphysical level, the historical World has to have a beginning and an end since the Action which creates this World is itself finite.<sup>951</sup> In light of this finitude, Kojève explained the metaphysical description of man ‘as worldly or spatial and temporal.’<sup>952</sup> Finally, on the phenomenological level, ‘an entity that is Action in its very being [can only appear] to itself and to others as irremediably mortal.’<sup>953</sup>

As I pointed out earlier, the consequences of man’s incarnation as negativity is twofold. While this incarnation determines the condition of mortality, it does also suggest the negation of the animal which provides natural support for man. Despite the fact that without this support man would cease to exist, Kojève noted that, with this negation, man achieves the separation from the natural World. This achievement underlies Kojève’s continuous emphasis on the notion of Man’s opposition to Nature. Having created himself a separate empirical-existence, Man differentiates himself from ‘every purely natural empirical existence.’<sup>954</sup> In what follows, I consider Kojève’s interpretation of the impact of this separation upon the animal that naturally supports man. This interpretation brings to the fore the impossibility of killing man’s natural support and reflects death as *postponed*.

With the force of the negative, Understanding effects a dissolution. Hegel described the outcome of this dissolution as an essential moment which is both separated and non-actual.<sup>955</sup> This non-actuality amounted to death.<sup>956</sup> Using the notions of negativity and death interchangeably, Hegel wrote that ‘Spirit is not the life that shrinks from death’ and that,

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<sup>949</sup> *Ibid*, p.37.

<sup>950</sup> *Ibid*, p.44.

<sup>951</sup> *Ibid*.

<sup>952</sup> *Ibid*, p.37.

<sup>953</sup> *Ibid*, p.44.

<sup>954</sup> *Ibid*, p.43.

<sup>955</sup> Hegel, op. cit. at §32, p.18.

<sup>956</sup> *Ibid*, §32, p.19.

‘Spirit is the power only by looking negative in the face and tarrying with it.’<sup>957</sup> Taking Hegel’s perspective into account and in light of his own description of Man as Negative incarnate, Kojève wrote that ‘Man is, in his human or speaking existence, only a death.’<sup>958</sup> However, in view of the fact that man would not survive the negation of the animal which provides him natural support, Kojève deemed this death ‘more or less deferred, and conscious of itself.’<sup>959</sup>

Death is postponed for the reason that the consciousness of man’s finitude suffices to engender Man in Nature and occasion the birth of his Discourse.<sup>960</sup> Therefore, Kojève explained that ‘Discourse is born in the Man who opposes himself to Nature, or who negates — in Struggle — the given animal that he is himself, and through Labour, the natural World that is given to him.’<sup>961</sup> The reference to the negation of the animal in the preceding quote does not amount to the actual death of the animal for the negation is contextualised within the life and death struggle for recognition — or as Kojève called it, struggle for pure prestige:

For it is in the Struggle to the death, for pure prestige, that the power of the Negative manifests itself through the voluntary acceptance of the risk of life (the Master) or through the anguish inspired by the conscious apparition of death (the Slave), it is only in the Struggle that Man creates his human being, by thus transforming, as if by magic, the Nothingness that he is and that is manifest to him and through him as death, into a negative existence, of the warrior and of the labourer, creators both, of History.<sup>962</sup>

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<sup>957</sup> *Ibid.*

<sup>958</sup> Kojève, op. cit. at p.44.

<sup>959</sup> *Ibid.*

<sup>960</sup> *Ibid.*, p.45.

<sup>961</sup> *Ibid.*

<sup>962</sup> *Ibid.*, p.46.

The reference to negation does not denote the death of the animal but the risking of its life. The manifestation of the power of the negative occurs as Master's voluntary acceptance of the *risk* of death and not his actual commitment of suicide or murder. In addition, for the same manifestation, the Slave does not have to die as a 'conscious *apparition* of death' would suffice for him to become one of the creators of History. With the contextualisation of death within the struggle for recognition, one can begin to understand death as something other than the actual killing of the animal.

Kojève wrote that negation or negative Action is that which 'realises Nothingness by *nullifying* Being — the given-being of Man in the Struggle, and the given-being of Nature through Labour;' therefore, man, who in his very being is this Action, is 'death that lives a human life.'<sup>963</sup> However, we already observed that, Man's negation of Nature is through his Labour. Thus, this type of negation constitutes transformation of nature and not necessarily death. Neither did Kojève refer to actual death in relation to the power of Understanding, with which man encompassed the force of the negative:

For it is in separating and recombining [constitutive elements of totality] in and *through his discursive thought* that man forms his technical projects, which, *once realised through work*, really transform the aspect of the natural and given World by creating therein a World of culture.<sup>964</sup>

Therefore, there only remains man's negation of himself wherein death might play an actual role. The outcome of this type of negation is man's own separation from the immediacy of nature. However, we also know that for such separation man's consciousness of his own death suffices. Kojève explained that 'the human being, to the extent that he implies the

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<sup>963</sup> *Ibid.*

<sup>964</sup> *Ibid*, p.39. [*my emphases*]

consciousness of and the will for his own death, is a being *mediated* by Negation — that is, a dialectical being.<sup>965</sup>

The mediation of man into a dialectical being is achieved through man's cognisance of his own death.<sup>966</sup> While this mediation ensures the triad of spirituality for man in his historical world, Kojève referred to the notion of recognition to explain how this spirituality is safeguarded:

To be sure, the idea of death does not add to the well-being of man; it does not make him happy, and procures no pleasure for him, nor any joy. But is unique in being able to satisfy his pride, [that is to say,] the full satisfaction of the human and anthropogenetic desire for Recognition of man's desire to see all other man attribute an absolute value to his free historical individuality or to his personhood.<sup>967</sup>

The desire for recognition, however, leads to a life and death struggle the outcome of which is the relation between master and slave. Kojève ended his argument on Hegel's philosophy and its relation to death by demonstrating how within the above-mentioned relation the idea of death manifests itself. Confirming that Hegel's intention within the context of the struggle for recognition was not to associate the realisation of Man with actual death or annihilation, Kojève wrote that 'mere risk of life suffices to realise the human being.'<sup>968</sup> It is this act of risking one's life that humanises the Master.<sup>969</sup> The Slave, however, does not take this risk; it is his act of running away from this risk that enslaves him in the first place. Nonetheless, Kojève noted that the latter is also humanised, not by risking his life, but 'through the

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<sup>965</sup> *Ibid*, p.46. [*my emphasis*]

<sup>966</sup> *Ibid*, p.47.

<sup>967</sup> *Ibid*.

<sup>968</sup> *Ibid*, p.66.

<sup>969</sup> *Ibid*, p.67.

cognisance he takes of his essential finitude in experiencing the dread of death.<sup>970</sup> Therefore, as a man conscious of his death, Slave transforms the world through his labour. Kojève remarked that it is this transformation that helps Slave to ‘[raise] himself to the level of discursive thought and [elaborate] the abstract notion of freedom.’<sup>971</sup> Slave’s development is in stark contrast to Master who, as Kojève understood, ‘remains forever fixed in his humanity as Master.’<sup>972</sup> The consequence of this fixity is that Slave is exclusively capable of creating himself through transformative Labour as the Man who is ‘free and ultimately fully satisfied’ and as ‘the individual who freely creates History.’<sup>973</sup> Kojève insisted that ‘we must not forget to notice that Service and Labour are free and creative only to the extent that they are accomplished within or in terms of the Dread that is born of the consciousness of death. It is therefore, when all is said and done, this consciousness of death that humanises Man and constitutes the ultimate basis of his humanity.’<sup>974</sup>

To sum up my preceding engagement with Kojève’s work, above I presented Kojève’s argument that the philosophy of Hegel is a philosophy of death. This argument was premised upon what Kojève regarded as an anthropocentric turn in Hegel’s philosophy. By replacing the notion of divine God with that of mortal Man, Hegel’s anthropocentric approach confirmed and sustained the historicity, freedom, and the individuality of Man. Kojève emphasised that the modus operandi of this turn is the force of the negative which is embodied by Man. However, Kojève also associated negativity with the notion of death. With this association, he situated Man against Nature and emphasised the negation of the animal for the attainment of Human reality.

In Kojève’s reading, the struggle for recognition encompasses man’s encounter with death wherein master emerges triumphant having voluntarily risked his life. However,

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<sup>970</sup> *Ibid.*

<sup>971</sup> *Ibid.*, p.68.

<sup>972</sup> *Ibid.*

<sup>973</sup> *Ibid.*

<sup>974</sup> *Ibid.*

bondsman is enslaved for shying away from death; nevertheless, bondsman does eventually gain his humanness through his labour which transforms the given world into a world of culture. Kojève fitted the notion of death into the process of recognition by commenting that mere risking of life would suffice for man to pass the life and death struggle and attain humanness. Negativity initially corresponded to death which was concomitant with nothingness. However, the struggle for recognition transformed this nothingness into a risk; that is to say, one would not have to commit absolutely to death whether this meant murder or suicide. Instead, to take the risk would suffice for attaining freedom, historicity and individuality. In other words, Kojève read recognition as a process of risk-taking which is oriented towards the notion of death and thought that this orientation was essential for man to achieve his human reality. Kojève's interpretation of the notions of negativity and death sets up the basis for George Bataille's critique of Hegel's work. This critique is relevant for understanding the repercussions of servile-consciousness upon the process of recognition. In the next part of this chapter, I present Bataille's critique with a particular focus on the notions of subterfuge and servility.

## **Part Two**

### **Bataille on Hegel (via Kojève): Subterfuge, Sovereignty, and Sacrifice**

In his essay 'Hegel, Death and Sacrifice' Bataille argued that subterfuge and servility underlie the process of recognition.<sup>975</sup> The point of departure for Bataille's argument is Kojève's situation of man in opposition to nature and the resultant complexity that pertains to man's negation of the very nature in which he exists. Within the context of this chapter, reference to Bataille's critique of Kojève's reading of Hegel's thought serves two purposes. Firstly, the critique brings to the fore the aforementioned complexity as a subterfuge which

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<sup>975</sup> Bataille G., 'Hegel, Death and Sacrifice' in Botting F., Wilson S. (editors), *The Bataille Reader*, (Oxford: Blackwell Publishing, 1997).

the notion of negation/death has to undergo in Hegel's thought. This subterfuge is epitomised by the notion of sacrifice. Thus, secondly, Bataille's work demonstrates Hegel's dismissal of the lessons of sacrifice to confine negation to the servile ends of knowledge; this is a confinement which, in turn, elucidates the very effects of servile consciousness upon the theory of recognition.

Therefore, I commence this part of the chapter by introducing Bataille's derivation of subterfuge from man's paradoxical negation of nature. I show that Bataille associated subterfuge with the notion of sacrifice. Next, I consider Bataille's distinction between two possible approaches to the idea of sacrifice, the restrictive approach found in Hegel's work, and another conducted through the notion of sovereignty. In order to present this distinction, I, first, introduce Bataille's idea of sovereignty as life beyond utility, life opposed to servility and to limits. Then I show how Bataille used this conception to point out the restrictive elements in Hegel's take on sacrifice. Bataille located this take in Hegel's discourse on absolute knowledge and understood this knowledge to limit the potential of negation to the consciousness of death. Bataille contrasted this approach to the sovereign moment of unknowing in which all limits set by fear of death are transgressed. Inasmuch as the notion of negativity hinted at the possibility of such transgression, Hegel imposed the aforementioned limit onto this notion through the process of recognition and the ensuing life and death struggle — a limit which was finally manifest in the notion of servile consciousness. This is a particular type of consciousness which holds desire in check and advances labour for the servile purposes of absolute knowledge. I conclude this part by referring to Bataille's interpretation of the servile operation of knowledge as a blind spot which kept Hegel from utilising the full potential of the link between negation and death.

As I mentioned above, Bataille's engagement with Kojève's work is premised upon the former's reading of the latter's notion of Man in opposition to Nature. Within the context of this opposition, Man negates Nature and it is as a result of this negation that Man creates

a historical world. According to Bataille to pay attention to the primary consequences of this negation entails the following:

[...] the man who negates nature could not in any way live outside of it. He is not merely a man who negates nature, he is first of all an animal, that is to say the very thing he negates: he cannot therefore negate nature without negating himself.<sup>976</sup>

We observed above that, in Kojève's perspective, man's negation of himself corresponds to a death 'more or less deferred, and conscious of itself.'<sup>977</sup> According to Bataille, however, such consciousness was inherently paradoxical:

[i]n order for man to reveal himself ultimately to himself, he would have to die, but he would have to do it while living — watching himself ceasing to be. In other words, death itself would have to become (self-) consciousness at the very moment that it annihilates the conscious being.<sup>978</sup>

In light of the impossibility of being conscious of one's own death, Kojève employed the notion of recognition to explain death's deferral. We observed that with this notion, the act of tarrying with the negative/death is transformed into a mere risking of one's life. In order to reveal the consequences of this deferral Bataille juxtaposed the notion of sacrifice with Kojève's reading of Hegel's preface.

Bataille did not reject Kojève's reading that consciousness of death engenders Man in Nature; nonetheless, the former recognised the above-mentioned complexity of attaining this consciousness. In view of this recognition, Bataille reasoned that '[the] difficulty [of attaining consciousness of death] proclaims the necessity of spectacle, or of

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<sup>976</sup> *Ibid*, p.283.

<sup>977</sup> Kojève, op. cit. at p.44.

<sup>978</sup> Bataille, op. cit. at pp. 286, 287.

representation.<sup>979</sup> In other words, in order to become a Man amidst Nature ‘at all costs, man must live at the moment that he really dies, or he must live with the impression of really dying.’<sup>980</sup> Sacrifice is the age old spectacle which provides such impression and, according to Bataille, this spectacle is implicitly represented in Hegel’s preface.<sup>981</sup> The former explained that ‘[i]n the sacrifice, the sacrificer identifies himself with the animal that is struck down dead. And so he dies in seeing himself die, and even, in a certain way, by his own will, one in spirit with the sacrificial weapon.’<sup>982</sup> Bataille’s juxtaposition of sacrifice with Kojève’s reading renders intelligible two intrinsic features of Hegel’s thought. These are subterfuge and servility.

Bataille thought that, consciousness of death can only be attained through subterfuge which the spectacle of sacrifice epitomises.<sup>983</sup> This is a necessary deception ‘without the practice of which it would be possible for us to remain alien and ignorant of death, just as beasts apparently are.’<sup>984</sup> While Kojève covertly opted for the idea of risking one’s life in a struggle for recognition to circumvent the above-mentioned impossibility, Bataille overtly pointed out the inherent necessity of subterfuge. The latter explained this necessity in the following way:

Man does not live by bread alone, but also by the comedies with which he willingly deceives himself. In man it is the animal, it is the natural being, which eats. But man takes part in rites and performances. Or else, he can read: to the extent that it is sovereign — authentic — literature prolongs in him the haunting magic of performances, tragic or comic.<sup>985</sup>

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<sup>979</sup> *Ibid*, p.287.

<sup>980</sup> *Ibid*.

<sup>981</sup> *Ibid*, pp. 285, 286.

<sup>982</sup> *Ibid*, p.287.

<sup>983</sup> *Ibid*.

<sup>984</sup> *Ibid*.

<sup>985</sup> *Ibid*.

Therefore, according to Bataille, the subterfuge is not peculiar to Hegel's thought for the reason that with the representation of death in art, festivals or performances 'it is all of humanity which everywhere always sought, obliquely, to seize what death both gave and took away from humanity.'<sup>986</sup> What is peculiar to Hegel's thought is, nonetheless, the rejection of the sovereign aspect of this comedy or tragedy. Before considering Bataille's analysis of this rejection, however, it is necessary to provide a brief explanation of the way in which Bataille employed the notion of sovereignty.

The third volume of Bataille's *Accursed Share* bears the title Sovereignty. Under this title, Bataille studied the conceptual link between the notions of *sovereignty*, *miracle*, *unknowing* and *death*, and juxtaposed this link with Hegel's discourse on knowledge to expose the boundaries of this discourse. The volume opens with Bataille's warning that his perception of sovereignty has not much in common with 'the sovereignty of States, as international law defines it.'<sup>987</sup> His notion of sovereignty consists of 'an aspect that is opposed to the servile and the subordinate.'<sup>988</sup> Within the context of this opposition, Bataille explained that, 'the sovereign (or the sovereign life) begins when, with the necessities ensured, the possibility of life opens without limit.'<sup>989</sup> Theoretically, this is not the life of 'a man [who is] compelled to work [and to consume] the products without which production would not be possible.'<sup>990</sup> In light of such utility oriented consumption, Bataille noted that 'it is servile to consider duration first, to employ the present time for the sake of future.'<sup>991</sup> In contrast to this servility, '[life] beyond utility is the domain of sovereignty' wherein 'the sovereign consumes rather the surplus of production [and, therefore,] truly enjoys the products of this world.'<sup>992</sup>

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<sup>986</sup> *Ibid.*, p.288.

<sup>987</sup> Bataille G., *Accursed Share: An Essay on General Economy Volumes II & III*, (New York: Zone Books, 1993) p.197.

<sup>988</sup> *Ibid.*

<sup>989</sup> *Ibid.*, p.198.

<sup>990</sup> *Ibid.*

<sup>991</sup> *Ibid.*

<sup>992</sup> *Ibid.*

Bataille associated the notion of miracle with that of sovereignty; he declared that ‘[b]eyond need, the object of desire is, humanly, the miracle; it is sovereign life, beyond the necessary that suffering defines.’<sup>993</sup> Furthermore, he explained that,

this miracle to which the whole of humanity aspires is manifested among us in the form of beauty, of wealth — in the form, moreover, of violence, of funeral and sacred sadness; in the form of glory.<sup>994</sup>

The significance of the association among the notions of miracle and sovereignty is clarified within the context of Bataille’s differentiation between the latter notion and that of knowledge. Knowledge, according to Bataille, contrasts with sovereignty on the account of the former being ‘always a servile operation, indefinitely resumed, indefinitely repeated.’<sup>995</sup>

Bataille relied on Hegel for the affirmation of the servility of knowledge:

Hegel saw very well that, were it acquired in a thorough and definitive way, knowledge is never given to us except by unfolding in time. It is not given in a sudden illumination of the mind but in a discourse, which is necessarily deployed in duration. Knowledge and the most profound knowledge, never appears to us in full except, finally, as the result of a calculated effort, an operation useful to some end. Knowledge [cannot] in any way be confused with the last moment or the end of the operation; it is the entire operation.<sup>996</sup>

Knowledge is servile for the very reason that its revelation extends to a duration and requires utilitarian work. As we observed above, Bataille opposed sovereignty to servility. The former notion cannot have a duration which would necessitate some sort of servile work. Therefore, Bataille noted that sovereignty occurs in a moment, and since to know would be

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<sup>993</sup> *Ibid*, p.199.

<sup>994</sup> *Ibid*, p.200.

<sup>995</sup> *Ibid*, p.202.

<sup>996</sup> *Ibid*.

servile, ‘we know nothing absolutely, of the moment.’<sup>997</sup> In other words, one cannot have access to this sovereign moment through knowing; this access could only be gained by the consciousness of the moment. However, in view of the opposition between sovereignty and knowing, Bataille argued that, ‘[c]onsciousness of the moment is not truly such, is not sovereign, except in unknowing.’<sup>998</sup> Miracle plays an important role in attaining this consciousness.

Bataille explained unknowing as the nullification of every function of knowing within one’s self.<sup>999</sup> Such nullification is effected by severing the continuous process of thinking. This severance is possible ‘in the grip of strong emotions that shut off, interrupt or override the flow of thought.’<sup>1000</sup> Bursts of laughter and/or tears attest to these moments; these are bursts that fill in the ‘vacuum of thought’ created by the object of laughter or tears in one’s mind.<sup>1001</sup> Bataille regarded this vacuum as ‘the moment of rupture, of fissure’ which ‘the deeply rhythmical movements of poetry, of music, of love, of dance, have the power to capture and endlessly recapture.’<sup>1002</sup> The rapture is the ‘miraculous moment when anticipation dissolves into nothing.’<sup>1003</sup> Bataille expanded upon this miraculous moment by stating that,

it is the moment when we are relieved of anticipation, man’s customary misery, of the anticipation that enslaves, that subordinates the present moment to some anticipated result. Precisely in the miracle, we are thrust from our anticipation of the future into the presence of the moment, of the moment illuminated by a miraculous light, the light of sovereignty of life delivered from its servitude.<sup>1004</sup>

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<sup>997</sup> *Ibid.*

<sup>998</sup> *Ibid*, p.203.

<sup>999</sup> *Ibid.*

<sup>1000</sup> *Ibid.*

<sup>1001</sup> *Ibid.*

<sup>1002</sup> *Ibid.*

<sup>1003</sup> *Ibid.*

<sup>1004</sup> *Ibid*, p.207.

What thrusts one from the anticipation of future into the present moment is an uncalculated reaction and/or an unreasoned impulse which the miracle evokes.<sup>1005</sup> The miraculous quality which evokes such reaction, as Bataille noted, ‘is conveyed rather exactly by the expression: impossible and yet there it is.’<sup>1006</sup> In other words, ‘[w]hat matters most from [the point of anticipation’s dissolution into nothing] is that an unanticipated, unhoped-for aspect, considered impossible, reveals itself.’<sup>1007</sup> Therefore, death, which causes sadness, is as much miraculous as beauty, which inspires joy; for death may also be regarded as ‘an impossibility that suddenly changes into a reality.’<sup>1008</sup>

In addition to its miraculous character, death has a certain preeminence over man’s activity; this pre-eminence manifests itself as a contradiction within man’s world of practice.<sup>1009</sup> Bataille explained that the world of practice is the objective world which was first posited by the primitive man’s use of the ‘crude flint tool;’ he argued that in this world, man himself also becomes an object similar to the tool that he uses.<sup>1010</sup> However, man cannot remain as an object or a thing within the world of practice for the reason that he also dies and decomposes. The contradiction is inherent in the fact that man is both a thing and not a thing; according to Bataille, this contradiction engenders a sacred world:

Within the world of practice the sacred is essentially that which, although impossible, is nonetheless there, which is at the same time removed from the world of practice (insofar as it might destroy it) and valorised as something that frees itself from the subordinating characterisation of the world.<sup>1011</sup>

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<sup>1005</sup> *Ibid*, p.209.

<sup>1006</sup> *Ibid*, p.206.

<sup>1007</sup> *Ibid*, p.210.

<sup>1008</sup> *Ibid*, p.209.

<sup>1009</sup> *Ibid*, p.213.

<sup>1010</sup> *Ibid*.

<sup>1011</sup> *Ibid*, p.214.

While the world of practice is subordinating, that is to say, it is a world wherein man serves a purpose, it is, nonetheless, an ordered world the coherence of which is established by man's work.<sup>1012</sup> The significance of death lays in the threat it poses to this coherence; 'death in the midst of things that are well ordered in their coherence is an effect that disturbs that order, and which by a kind of miracle escapes that coherence.'<sup>1013</sup> The cause of this disturbance is death's destruction of the future of any man it strikes.<sup>1014</sup> This destruction cannot be integrated into the coherent order of the world of practice. The reason for this is given above; servility, which is inherent to this world, is concomitant with employing present for the sake of future. Destruction of future instills fear of death into man; this fear, in turn, captures man in a continuous state of anticipation. Thus, Bataille commented that 'man is always more or less in a state of anguish, because he is always in a state of anticipation.'<sup>1015</sup>

We previously observed that life beyond utility is the domain of sovereignty. While servility manifests itself in the utilisation of present in the interest of future, sovereignty occurs in the present moment. Similarly, since the world of practice is a world of anticipation pervaded by fear of death and the resultant anguish, Bataille wrote that, 'in a fundamental sense, to live sovereignly is to escape, if not death, at least the anguish of death.'<sup>1016</sup> This escape necessitates the 'denial of the sentiments that death controls.'<sup>1017</sup> In other words, Bataille explained that, 'sovereignty is essentially the refusal to accept the limits that the fear of death would have us respect in order to ensure, in a general way, the laboriously peaceful life of individuals.'<sup>1018</sup> The fear of death generates anticipation wherein man projects himself into a future; according to Bataille, this projection is 'the precondition for *conscious individualisation*.'<sup>1019</sup> Since sovereignty is situated in opposition to servile

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<sup>1012</sup> *Ibid*, p.215.

<sup>1013</sup> *Ibid*, p.216.

<sup>1014</sup> *Ibid*.

<sup>1015</sup> *Ibid*, p.218.

<sup>1016</sup> *Ibid*, p.219.

<sup>1017</sup> *Ibid*, p.221.

<sup>1018</sup> *Ibid*.

<sup>1019</sup> *Ibid*, p.218. [*my emphasis*]

utilisation of present for future, the former notion exists in the present moment. It escapes fear of death, anticipation of future, and the resultant anguish by existing within the moment. In addition to this existence, sovereignty opposes ‘a playful impulse’ to individual consciousness which underlies the world of practice.<sup>1020</sup> While fear of death conditions this consciousness to work, sovereignty opposes this condition by play.<sup>1021</sup> Bataille exemplified the play with a reference to the Egyptian pyramids;

[in] the eyes of the Egyptians, the pyramid was an image of solar radiance. In the person of the dead king, death was changed into a radiance, changed into an indefinite being [...] There [in the pyramid] death is no longer anything but death’s inability to maintain an icy little horror, which is the projected shadow of individual anguish.<sup>1022</sup>

It is with the defiance of the horror of death that sovereignty transgresses its limits; sovereign makes a game of the pyramids for the very reason that the world of practice is absent from these structures — an absence marked by death’s above-mentioned inability. Along with laughter, tears, poetry, tragedy, comedy, ecstasy, the funeral horror, beauty, and the sacred, play is included in Bataille’s list of forms of effusions which his virtual sovereignty would conjoin if one was to ‘secretly attain it.’<sup>1023</sup>

In the foregoing, I provided an account of Bataille’s concept of sovereignty. For this account, I relied on the latter’s book entitled *Accursed Share* the third volume of which is devoted to this concept. The purpose of this account was to inform Bataille’s analysis of Hegel’s thought in his essay ‘Hegel, Death and Sacrifice.’ I introduced the essay above and highlighted Bataille’s argument that subterfuge and servility are inherent to Hegel’s notion

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<sup>1020</sup> *Ibid*, p.219.

<sup>1021</sup> *Ibid*, p.222.

<sup>1022</sup> *Ibid*, p.223.

<sup>1023</sup> *Ibid*, p.230.

of absolute knowledge. In the essay, in order to render these inherent features more intelligible, Bataille contrasted absolute knowledge with the notion of sovereignty (hence, the need to refer to *Accursed Share* for a clearer perception of Bataille's understanding of the latter notion). Bataille's central argument was that, although he came very close, Hegel failed to find authentic sovereignty or full autonomy.<sup>1024</sup> With the above-reference to *Accursed Share*, we now know that such full autonomy is concomitant with sovereign's transgression of all limits set by death within the world of practice. In other words, it is the transgression of the rules that engender and maintain servility. With the purpose of demonstrating Hegel's failure, Bataille focused upon the absence of two notions from the former's scheme of absolute knowledge. These notions are beauty and sacred horror.

We previously observed that, according to Hegel, beauty cannot meet understanding's demand to tarry with the negative. While he did not expand upon beauty's inability to do so, Hegel only stated that 'Beauty hates Understanding for asking her what it cannot do.'<sup>1025</sup> Thus, in Hegel's perspective, beauty is ostensibly impotent. Bataille explained this impotency with his perception of beauty as sovereign; beauty cannot act to meet this demand, for the reason that the action of supporting and maintaining 'the work of human death' would contradict the very notion of sovereignty — the notion which Bataille opposed to servile work and fear of death.<sup>1026</sup> As sovereign, beauty is an end, and therefore, cannot be a laborious activity in anticipation of an end which is not itself, or a future for which the present is forsaken:

[Beauty] cannot become conscious negativity, awakened in dismemberment, and the lucid gaze, absorbed in the negative. This latter attitude presupposes the violent and laborious struggle of man

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<sup>1024</sup> Bataille (1997) op. cit. at p.292.

<sup>1025</sup> Hegel, op. cit. at §32, p.19.

<sup>1026</sup> Bataille (1997) op. cit. at p.284.

against nature and is its end. That is the historic struggle where man constitutes himself as subject [...] <sup>1027</sup>

On the one hand, Bataille acknowledged that Hegel's theory of recognition is instrumental in the constitution of the subject. On the other, Hegel's dismissal of the notion of beauty as impotent testifies to the gap between Hegel's thought and Bataille's perception of sovereignty. In order to further elucidate this gap, Bataille contrasted Hegel's reaction vis-à-vis death to that of naive man of sacrifice.

What distinguishes Hegel from the naivety of man of sacrifice is the former's conscious depiction of negativity; Bataille explained that 'Hegel was conscious of his representation of the negative: he situated it, lucidly, in a definite point of the coherent discourse which revealed him to himself. That totality included the discourse which reveals it.'<sup>1028</sup> The man of sacrifice, however, is naive for the reason that he lacked 'a discursive consciousness of what he did, [and] had only a sensual awareness, [that is to say,] an obscure one, reduced to an unintelligible emotion.'<sup>1029</sup> For the naive man of sacrifice this emotion may remain unintelligible; nevertheless, Bataille identified the emotion as sacred horror:

the richest and the most agonising experience [which] opens itself, like a theatre curtain, on to a realm beyond this world, where the rising light of day transfigures all things and destroys their limited meaning.<sup>1030</sup>

In light of the above-presented engagement with *the Accursed Share*, one can assume that the realm beyond this world which Bataille mentioned in the above-indented quote is the sacred domain of sovereignty. This assumption can be verified by Bataille's verdict that, while Hegel might have implicitly referred to sacrifice in the preface and, perhaps, was not

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<sup>1027</sup> *Ibid.*, p.285.

<sup>1028</sup> *Ibid.*, p.288.

<sup>1029</sup> *Ibid.*

<sup>1030</sup> *Ibid.*

unaware of its moment, the latter, nonetheless, ‘did not see that sacrifice in itself bore witness to the entire movement of death.’<sup>1031</sup> This is the movement which, in *the Accursed Share*, leads to sovereignty. In other words, sacrifice horrifies the naive man and the horror, in turn, generates a sacred world. This world is removed from the world of practice for the reason that fear or the horror and the agony of death disturbs the coherence therein established by man’s work. Thus, sovereignty is attained by transgressing the limits which are governed by this fear. However, Hegel did not follow this route in its entirety, and therefore, ‘did not know to what extent he was right — with what precision he described the intimate movement of negativity.’<sup>1032</sup> That is to say, he did not reach the sacred domain of sovereignty by overcoming the fear of death.

Instead of the *fear* of death and its overcoming, Hegel focused upon the *consciousness* of death. In the previous section we observed that according to Kojève’s reading, consciousness of death engendered man in nature and occasioned the birth of his discourse. One attains this consciousness by voluntarily risking one’s own life in a struggle for recognition; thus, the risking of life becomes the very act whereby the power of negative manifests itself. However, while the lord as the winner of the struggle is fixed in his humanity, it is the slave who by the experience of dread attains consciousness of death and through his labour raises himself to the level of discursive thought. In view of the servile aspect of discourse, Bataille argued that

[o]nly sacred, poetic words, limited to the level of impotent beauty, have retained the power to manifest full sovereignty. Sacrifice, consequently, is a sovereign, autonomous manner of being only to the extent that it is uninformed by meaningful discourse. To the

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<sup>1031</sup> *Ibid.*

<sup>1032</sup> *Ibid.*, p.289.

extent that discourse informs it, what is sovereign is given in terms of servitude.<sup>1033</sup>

Therefore, by containing the power of negative for the purposes of discourse, Hegel distanced himself from what Bataille called sovereignty or full autonomy wherein the limits imposed by fear of death are transgressed. Bataille demonstrated Hegel's failure to attain sovereignty through the latter's exclusion of beauty from his overall scheme of absolute knowledge and his conscious rendering of sacrifice.

To conclude this part of the chapter, I recapitulate Kojève's views, which I considered in the previous part, on recognition and sum up Bataille's critique of these views. According to Kojève, recognition had a twofold meaning. Firstly, with the struggle for recognition one had the chance to voluntarily risk one's life and thus, attain humanness. Secondly, recognition provided full satisfaction to the Wise Man.<sup>1034</sup> I previously referred to Kojève's interpretation of Hegel's philosophy as the Science which encompasses the sum-total of men's discourses throughout history. In the former's perspective, as the author of this overall discourse, Hegel is the Wise Man who 'being satisfied by given-Being, ceases to negate it, transform it, and to disfigure it, even if this be only in his discourse.'<sup>1035</sup> Kojève wrote that such satisfaction meant 'the full satisfaction of the human and anthropogenetic desire for Recognition of man's desire to see all other men attribute an absolute value to his free historical individuality or to his personhood.'<sup>1036</sup> Hegel is the Wise Man for his consciousness of man's mortality and his awareness of what this consciousness entailed for man's freedom. It is in light of the link between consciousness of death and man's freedom that Kojève dissociated death from feelings of well-being, happiness, pleasure, and joy.<sup>1037</sup> Cognisance of death satisfies the Wise Man, however, not in the sense of giving him pleasure

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<sup>1033</sup> *Ibid.*, p.291.

<sup>1034</sup> Kojève, op. cit. at p.47.

<sup>1035</sup> *Ibid.*

<sup>1036</sup> *Ibid.*

<sup>1037</sup> *Ibid.*

or joy; it does so by occasioning the satisfaction of the anthropogenetic desire for Recognition. According to Kojève, the fully satisfied Wise Man embodies the Spirit; ‘[t]he point is that, Spirit is Being revealed by speech [or discourse,] and the life of the Spirit is the existence of the philosopher or of the Wise Man, conscious of the World and of itself.’<sup>1038</sup>

According to Bataille, however, the discourse of the Wise Man is built upon subterfuge and consisted of a servile operation. While subterfuge and servility condemn the Wise Man to failure in his attempt to achieve full autonomy, the process of recognition becomes an integral part of this failing system of discourse. Bataille based this failure upon Hegel’s conscious exclusion of sovereign elements of beauty and sacred horror from the latter’s scheme of absolute knowledge. This exclusion evinced Hegel’s failure to unreservedly follow the implications of the notion of negativity and revealed the latter’s employment of subterfuge to subject this notion to the servility of knowledge. Elsewhere, Bataille made a similar argument by submitting that ‘[t]here is in [Hegel’s notion of] understanding a blind spot.’<sup>1039</sup> This argument is premised upon the idea that to know is to relate the unknown to the known.<sup>1040</sup> According to Bataille, the consequence of the dialectical aspect of Hegel’s circular knowledge is that the unknown is contained within the latter’s scheme of absolute knowledge.<sup>1041</sup> Therefore, in understanding, which renders man the embodiment of the force of the negative — that is to say, the force necessary for the completion of the circle and also for the completion of the self — there is a blind spot occasioned by the ever-presence of the unknown.

Since unknown is dialectically contained within Hegel’s scheme of circular knowledge, Bataille pointed out that, within this circle, the movement from the unknown to the known is bound to be reversed effecting a return to the unknown.<sup>1042</sup> Such return,

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<sup>1038</sup> *Ibid*, p.45.

<sup>1039</sup> Bataille G., *Inner Experience*, (New York: State University of New York Press, 1988) p.110.

<sup>1040</sup> *Ibid*, pp. 108, 110.

<sup>1041</sup> *Ibid*, p.108.

<sup>1042</sup> *Ibid*, pp. 110, 111.

however, is effected by ‘desire, poetry, laughter [which] unceasingly cause life to slip in the opposite direction, moving from the known to the unknown.’<sup>1043</sup> Hegel, according to Bataille, ‘gets rid of [desire, poetry and laughter] in a hurry [for] he knows of no other end than knowledge.’<sup>1044</sup> Through Bataille’s critique one begins to understand servile consciousness as a symptom of such blind spot or the aforementioned failure to attain authentic sovereignty. Getting rid of desire and favouring labour pertain to the outcome of the process of recognition and the manifestation of this outcome is in the shape of servile consciousness. In what follows, I shift my focus upon Derrida’s engagement with Bataille’s critique wherein the servility of consciousness is interpreted as a restrictive economy of meaning.

### **Part Three**

#### **Derrida: The Restricted Economy of Recognition**

In this part of the chapter, I refer to Derrida’s work to elucidate the repercussions of subterfuge specifically upon the process of recognition. The point of departure is Derrida’s understanding that a ruse of life pertains to the life and death struggle whereby both lives remain alive so that truth or meaning can be achieved through self-consciousness. This ruse comprises an economy of life which enables lordship to experience his truth, an economy that shapes the entire outcome of the process of recognition. Next, I present Derrida’s comparison between Hegel’s notion of lordship and Bataille’s idea of Sovereignty to emphasise two distinct ways of utilising the notion of negation. While in the life-and-death struggle Hegel eschewed absolute negation or actual death via the utilisation of the aforementioned ruse, Bataille showed that such negation was capable of transgressing the limits of the Hegelian discourse on knowledge.

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<sup>1043</sup> *Ibid.*, p.111.

<sup>1044</sup> *Ibid.*

According to Derrida, Hegel's sidestepping of the idea of absolute negation and its unlimited notional scope amounted to a restricted economy of lordship. This economy is epitomised by Hegel's use of the notion of sublation that canceled in a manner that preserved what was being negated. Sublation occasions the aforementioned ruse and the resultant economy. This is an economy which holds desire in check and generates servile labour to produce absolute knowledge or meaning, but is, nevertheless, blind to what lies beyond this meaning. Whereas, in Derrida's perspective, Bataille's idea of sovereignty encompasses an empty sublation, a negative-without-reserve capable of transgressing the constraints of meaning that lordship produces. The without-reserve aspect of the negative, thus, exposes two important attributes of Hegel's thought. Firstly, servile consciousness is the outcome of a restricted economy imposed upon the process of recognition. Secondly, however, a radical overhaul of such an economy is possible due to a transgressive instant inherent to the very notion of negative Hegel utilised. This is an instant which parallels Nancy's reading of the restless negative and, as such, introduces into Hegel's theory of recognition an element of flux, of constant transformation.

The purposes of referring to Derrida's interpretation of servility of consciousness as a restrictive economy of recognition are, therefore, threefold. Firstly, this interpretation applies Bataille's critique, which is broadly directed at Hegel's discourse on knowledge, more specifically to the workings and the outcome of the theory of recognition. Secondly, in doing so, Derrida's interpretation renders the failure of the constitutive and the declarative theories of recognition more intelligible. In other words, the notion of restrictive economy supplements the argument I made in the third chapter regarding the limiting effects of the notion of absolute sovereignty on the prevalent theories. Thirdly, inasmuch as Derrida's work exposes the drawbacks of Hegel's theory of recognition, it does also reveal its inherent capacity to overcome these difficulties.

The particular focus of this part of the chapter is upon the essay entitled ‘From Restricted to General Economy: A Hegelianism Without Reserve’ wherein Derrida began his assessment of Hegel’s dialectic of master and slave by asking whether Bataille’s notion of sovereignty ‘at first glance, translate[s] the lordship of *Phenomenology*.’<sup>1045</sup> To the extent that ‘the lord is the man who has had the strength to endure the anguish of death and to maintain the work of death’ it may be said that lordship is translated by sovereignty.<sup>1046</sup> However, this translation is only at a first glance since in Derrida’s perspective,

[l]ordship has a meaning. The putting at stake of life is a moment in the constitution of meaning, in the presentation of essence and truth. It is an obligatory stage in the history of self-consciousness and phenomenality, that is to say, in the presentation of meaning. For history — that is, meaning — to form a continuous chain, to be woven, the master must experience his truth.<sup>1047</sup>

Therefore, insofar as master’s experience is an integral part of the construction of servile knowledge or meaning, Hegel’s lordship diverges from Bataille’s sovereignty.

According to Derrida, lord experiences his truth under two intertwined conditions; he must stay alive to enjoy the benefits of risking his life in the struggle for recognition, and the truth of independent consciousness is, nevertheless, the consciousness of bondsman.<sup>1048</sup> I referred to these two conditions in the fourth chapter of this thesis within the context of the one-sidedness of the recognition lord derives from staking his life. The essentiality and independence of lord is met by the inessentiality and dependence of slave and the thing upon which the latter works, and the former consumes. This one-sided recognition results in the truth of independent consciousness residing in servile consciousness. Derrida explained the

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<sup>1045</sup> Derrida J., *Writing and Difference*, (London: Routledge Classics, 2001) p.321.

<sup>1046</sup> *Ibid.*

<sup>1047</sup> *Ibid.*

<sup>1048</sup> *Ibid.*, pp. 321, 322.

one-sidedness of this recognition and what it entails for servile consciousness as a ‘dissymmetry, [an] absolute privilege given to the slave.’<sup>1049</sup> Two important classifications emerge from this dissymmetry.

Firstly, according to Derrida, ‘the truth of the master is in the slave; and the slave become a master remains a repressed slave. Such is the condition of meaning, of history of discourse, of philosophy.’<sup>1050</sup> Therefore, contrary to what Kojève predicted, slave cannot entirely overcome the master as the repressed servility somehow remains active and, as such, underlies what Bataille called the servility of knowledge. Secondly, and more importantly, this servility is occasioned by master staying alive. Thus, to probe into the means by which Hegel achieved and justified the retention of master’s life provides a critical insight into the functioning of Hegelian meaning or discourse.

In the *Phenomenology* Hegel wrote that ‘trial by death [...] does away with the truth which was supposed to issue from it [i.e. from the struggle for recognition].’<sup>1051</sup> Therefore, the life and death battle of two self-consciousnesses results in the dialectic of master and slave wherein, eschewing death, each self-consciousness continues to live. Derrida interpreted this continuation as an ‘economy of life’ for the reasons that will become clear below.<sup>1052</sup> Central to this economy is Hegel’s treatment of the notion of negativity. Derrida explained this treatment by distinguishing between two forms of negativity. The first of these forms is abstract negativity;

[t]o rush headlong into death pure and simple is thus to risk the absolute loss of meaning [...] One risks losing the effect and profit of meaning which were the very stakes one hoped to win. Hegel

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<sup>1049</sup> *Ibid.*, p.322.

<sup>1050</sup> *Ibid.*

<sup>1051</sup> Hegel, op. cit. at §188, p.114.

<sup>1052</sup> Derrida, op. cit. at p.322.

called this mute and nonproductive death, this death pure and simple,  
 abstract negativity [...] <sup>1053</sup>

Opposed to such unproductive death, Derrida noted, Hegel had recourse to ‘the negation characteristic of consciousness, which cancels in such a way that it preserves and maintains what is sublated, and thereby survives its being sublated.’ <sup>1054</sup> In other words, Hegel opted for a form of negation that does not amount to pure and simple death. This option is, however, both paradoxical and, as such, it engenders what Derrida called an economy of life.

Initially, in the preface, Hegel ‘places knowledge at the height of death.’ <sup>1055</sup> Kojève also reiterated this placement by stating that ‘Man is, in his human or speaking existence, only a death.’ <sup>1056</sup> Ultimately, however, in the life and death struggle of two self-consciousnesses, neither of them experiences death. As we observed in the previous chapter, through sublation (that is to say, negation characteristic of consciousness) two self-consciousnesses understand the essentiality of life, thus each survive the struggle. Despite the fact that initially Hegel placed knowledge at the height of death, it is the survival of both self-consciousnesses which ensures the meaning is not lost. This survival, in Derrida’s view, is an economy for the very reason that it carefully conserves life within what Kojève insisted was a philosophy of death.

More importantly, Derrida viewed the notion of sublation as the ruse by which Hegel achieved the aforementioned economy. <sup>1057</sup> This view echoes Bataille’s assessment that in order for one to gain consciousness of one’s own death he or she has to die but must do so

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<sup>1053</sup> *Ibid.*

<sup>1054</sup> Hegel G.W.F., *Phenomenology of Mind*, (trans. J.B. Baille), (New York: Harper Torchbooks, 1967) p.234, cited in Derrida, op. cit. at pp. 322, 323.

<sup>1055</sup> Derrida, op. cit. at p.321.

<sup>1056</sup> Kojève, op. cit. at p.44.

<sup>1057</sup> Derrida, op.cit. at p.323.

while living, and that, in light of the impossibility of such consciousness, *subterfuge* becomes necessary. Derrida explained that

[t]hrough a ruse of life, that is, of reason, life has thus stayed alive  
 [...] This life is not natural life, the biological existence put at stake  
 in lordship, but an essential life that is welded to the first one, holding  
 it back, making it work for the constitution of self-consciousness,  
 truth, and meaning. Such is the truth of life. Through this recourse to  
 the [Sublation], which conserves stakes, remains in control of play,  
 limiting it and elaborating it by giving it form and meaning, this  
 economy of life restricts itself to conservation, to circulation and  
 self-reproduction as the reproduction of meaning; henceforth,  
 everything covered by the name of lordship collapses into  
 comedy.<sup>1058</sup>

In the opening section of this part, I referred to Derrida's question on whether Bataille's notion of sovereignty 'at first glance, translate[s] the lordship of *Phenomenology*.'<sup>1059</sup> To the extent that lord endured the anguish of death and maintained death's work, it did resemble Bataille's notion of sovereignty. Nonetheless, as Derrida suggested, this resemblance pertained only to the initial glance since a careful analysis revealed that lordship consisted not of enduring the anguish of death but of a ruse which engendered a restricted economy of life. Therefore, Derrida came to the conclusion that Hegel's notion of Sublation signified 'the busying of a discourse losing its breath as it reappropriates all negativity for itself, as it works the "putting at stake" into an investment, as it amortizes

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<sup>1058</sup> *Ibid*, p.323. [*my emphasis*]

<sup>1059</sup> *Ibid*, p.321.

absolute expenditure.’<sup>1060</sup> In stark contrast to the restrictive economy, or the servile condition of lordship is Bataille’s notion of sovereignty.

In the previous part, I referred to Bataille’s definition of sovereignty in the third volume of his *Accursed Share* as consisting of ‘an aspect that is opposed to the servile and the subordinate.’<sup>1061</sup> In order to distinguish sovereignty from the servility of knowledge, Bataille argued that the consciousness of the sovereign moment could only be attained in unknowing.<sup>1062</sup> The manner in which one attained such unknowing contrasted with the servile operation of knowledge wherein calculated effort is directed towards a useful end over a duration.<sup>1063</sup> As we observed in the previous part of this chapter, opposed to this operation is the notion of miracle. Bataille explained that unknowing consisted of the nullification of every function of knowing within one’s self.<sup>1064</sup> The significance of miracle lay in the uncalculated reaction, an unreasoned or playful impulse which it evoked; it is only with this evocation that one is thrust, in Bataille’s perspective, from the anticipation of future instrumental to the servile function of knowing into the sovereign moment of the present.<sup>1065</sup> Recalling from the first part of this section, laughter, poetry, tragedy, comedy, the funeral horror, beauty, the sacred, and play would occasion such miracle — all of which were absent from Hegel’s schema of absolute knowledge.<sup>1066</sup>

The distinction between the servility of knowledge and the sovereignty of unknowing informed Derrida’s interpretation of *negativity-without-reserve*. Expanding upon Hegel’s reappropriation of negativity for the purposes of meaning and absolute knowledge, Derrida noted that in giving meaning to death Hegel concurrently blinded

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<sup>1060</sup> *Ibid*, p.324. In *Glas*, Derrida expressed this restricted economy by defining *Aufhebung* (i.e. Sublation) as ‘the dying away, the amortization, of death.’ As such, Sublation amounted, in Derrida’s view, to ‘the economic law of absolute reappropriation of the absolute loss.’ Derrida J., *Glas*, (Lincoln: University of Nebraska Press, 1986) p.133.

<sup>1061</sup> Bataille (1993) op. cit. at p.197.

<sup>1062</sup> *Ibid*, p.203.

<sup>1063</sup> *Ibid*, p.202.

<sup>1064</sup> *Ibid*, p.203.

<sup>1065</sup> *Ibid*, p.209.

<sup>1066</sup> *Ibid*, p.230.

himself ‘to the baselessness of the nonmeaning [that is to say, of death] from which the basis of meaning is drawn.’<sup>1067</sup> Opposed to such blind meaning is, however, the notion of sovereignty which consists of the moment of unknowing (or, in this context, nonmeaning) and is attained through the miraculousness of play, of beauty, or of death. Sovereignty renders Hegel’s blindness intelligible for the reason that it corresponds to the absolute expenditure. Derrida explained that for Hegel,

destruction, suppression, death and sacrifice constitute so irreversible an expenditure, so radical a negativity — here we would have to say an expenditure and a negativity without reserve — that they can no longer be determined as negativity in a process of system. In discourse, (the unity of process and system), negativity is always the underside and accomplice of positivity. Negativity cannot be spoken of, nor has it ever been except in this fabric of meaning.<sup>1068</sup>

Sovereignty, however, is absolute expenditure or corresponds to ‘the point of nonreserve’ for it is not oriented towards a meaning; more precisely, as mentioned above, it is the very moment at which knowing is suspended rendering meaning impossible through laughter, play, and/or beauty.<sup>1069</sup>

In his overall scheme of absolute knowledge, Hegel excluded notions of play and beauty. Bondsman’s obligations to keep desire in check and to work upon the object consumed by lord underlie the servile condition of Hegelian meaning. Bataille interpreted this condition as Hegel’s failure to attain an authentic notion of sovereignty. Following Bataille, Derrida demonstrated that a ruse is operative in Hegel’s notion of Sublation which reappropriates negativity for the purposes of the restrictive economy of meaning. Bataille’s idea of sovereignty, however, corresponded, in Derrida’s view, to an empty form of

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<sup>1067</sup> Derrida, *op. cit.* at p.325.

<sup>1068</sup> *Ibid.*, p.327.

<sup>1069</sup> *Ibid.*

Sublation.<sup>1070</sup> Unburdened by the restrictive economy of meaning, this latter form enables absolute expenditure for, therein, negativity does not function as a ruse in the service of meaning but seeks out its radical end:

[t]o go to the end both of absolute rending and of the negative without measure, without reserve, is not progressively to pursue logic to the point at which, within discourse, the Sublation (discourse itself) makes logic collaborate with the constitution [...] of meaning. On the contrary, it is convulsively to tear apart the negative side, that which makes it the reassuring other surface of the positive; and *it is to exhibit within the negative, in an instant, that which can no longer be called negative [...] precisely because it has no reserved underside*, because it can no longer permit itself to be converted into positivity, because it can no longer collaborate with the continuous linking-up of meaning [...]<sup>1071</sup>

With the possibility of a negative-without-reserve, sovereignty exposes not only the limits of discourse but also ‘the beyond of absolute knowledge.’<sup>1072</sup>

In the previous part, I referred to Bataille’s argument that Hegel failed to attain an authentic notion of sovereignty but that this failure was ‘weighty with sense’ as Hegel did not know with what precision he demonstrated the intimate movement of negativity.<sup>1073</sup> According to Derrida, this was a movement of absolute expenditure. Contrary to lordship’s restricted economy, this expenditure follows negativity through to its unreserved end. This end occasions a negative-without-reserve which, torn of its positive side, could not be utilised in the servile function of meaning. Equipped with such form of negative, sovereignty

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<sup>1070</sup> *Ibid.*, p.348.

<sup>1071</sup> *Ibid.*, p.328. [*my emphasis*]

<sup>1072</sup> *Ibid.*, p.330.

<sup>1073</sup> Bataille (1997) op. cit. at p.293.

exposes the limit of discourse and the beyond of absolute knowledge.<sup>1074</sup> Derrida explained that to relate discourse to sovereignty is ‘to institute a relation in the form of a nonrelation, to inscribe rupture in the text, to place the chain of discursive knowledge in relation to an unknowledge which is not a moment of knowledge: an absolute unknowledge from whose nonbasis is launched chance, or the wagers of meaning, history, and the horizons of absolute knowledge.’<sup>1075</sup> Such a relation marks the possibility of ‘an interminable negation which cannot be assimilated, represented, or even thought.’<sup>1076</sup> Hegel did not know to what extent he was right because he contained such possibility by working negative to the servile ends of absolute knowledge blinding himself to what may lie beyond this knowledge.

## Conclusion

At the outset of this chapter, I pointed out that Hegel concluded his section on master and slave with the declaration that servile consciousness amounted to the truth of independent consciousness. Despite the fact that in the previous chapter I engaged with the repercussions of the dialectic of lord and bondsman upon the process of recognition, this engagement did not entail a specific focus upon the effects of the culmination of this process in servile consciousness. I took the consequences of servile consciousness into account in the current chapter. Similar to the preceding chapter, Kojève’s reading of Hegel’s thought comprised the starting point of my scrutiny.

Thus, in the first part of the chapter, I presented Kojève’s perception of Hegel’s work as a philosophy of death wherein consciousness of mortality played an elemental role in man’s struggle against nature. Insofar as man created human reality by dissociating himself from nature, such dissociation necessitated death of the animal in man. However, this death would entail the demise of the biological support man needed to survive. In light of the

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<sup>1074</sup> Derrida, op. cit. at p.330.

<sup>1075</sup> *Ibid*, pp. 339, 340.

<sup>1076</sup> Kellog C., *Law’s Trace: From Hegel to Derrida*, (New York: Routledge, 2010) p.49.

inherent paradox of humans' negation of nature, Kojève understood the notion of negation as death postponed. Epitomising the necessity of this deferral, consciousness of mortality was, thus, sufficient for man to create his human reality.

In the second part of the chapter, I presented a critical approach to the idea of consciousness of death by referring to Bataille's understanding that a paradox inheres in such consciousness which can only be overcome by subterfuge. To the extent that sacrifice comprised such a subterfuge, Bataille argued that Hegel ignored the lessons of this sacrifice to limit the role of negation to servile operation of absolute knowledge. By contrasting Hegel's notion of absolute knowledge to his understanding of sovereignty, Bataille demonstrated a blind spot in Hegel's discourse by which Hegel ignored the possibility of a beyond of absolute knowledge. Thus, through a life and death struggle, the process of recognition culminated in servile consciousness which held desire in check and laboured to attain absolute knowledge by excluding actual death, poetry, beauty, laughter, and anything with an element of sovereignty or a connection to the unknown that could undermine the absoluteness of Hegel's knowledge.

In the final part of this chapter, I relied upon Derrida's reading of Bataille's critique to identify the repercussion of servile consciousness as an economy that restricts the very function of recognition. Derrida traced this economy to the ruse of life inherent to the notion of sublation, to negation that is peculiar to consciousness. The ruse pertained to the condition of lord which Derrida juxtaposed against Bataille's notion of sovereignty. While sovereignty carried with the concept of negative to its radical end, lord stayed alive to contain this concept within the servility of Hegelian discourse. Three lessons can be derived from this juxtaposition. Firstly, as an outcome of lordship and bondsman, relations of dominance and dependence effect a restrictive economy upon recognition. Secondly, this economy produces a particular type of subject which conforms to the very discourse the economy serves.

Finally, transgression of such an economy is possible only if limits of the ostensibly absolute discourse are exposed.

In the conclusion of the thesis, I draw an analogy between Derrida's critique of Hegel's discourse on absolute knowledge and Vattel's notion of absolute sovereignty. The purposes of this analogy are twofold. The first object is to expose a restrictive economy of recognition within the context of international relations wherein one-sided recognition is maintained through relations of dependence and domination. The second purpose is to argue that the transgression of such an economy is possible through re-conception of the international subject as one that is always in flux. This re-conception will depart from the perception of statehood as always closed and complete-in-itself, from the very form of subject that conforms to the discourse of absolute sovereignty. Overall, therefore, the analogy will help me to relate the discussion of Hegel's notion of recognition and the dialectic of lordship and bondsman back to international law, and to clarify the move from the subject of recognition in the *Phenomenology* to the international subject in international law.

## CONCLUSION

The central thesis I developed here is that recognition is imperative for the constitution of subjects under international law, that the criteria of statehood must be supplemented with recognition to reflect an accurate perception of international personality. As opposed to a notion of statehood which is closed and complete-in-itself, and, can, thus, be attained on an individualistic basis, I argued for an international subject which is always in flux, is determined by its relations to its others. I built the thesis upon two premises. The first premise is that, entities cannot survive without relations of recognition, that, these relations are constitutive of the very being of each entity. Secondly, the prevalent theories of recognition of states fail to account for such relational coming-into-being of the international subject. I established these premises in the first three chapters of the thesis and moved on to suggest an alternative approach to recognition by adopting Hegel's theory presented in the *Phenomenology*. In the remaining chapters of the thesis, I considered the difficulties utilisation of Hegel's theory on an *ad hoc* basis posed and the lessons overcoming of these difficulties entailed.

I established the initial premise in the first two chapters with a case-study on the political impasse surrounding the Turkish Cypriot community. In the first chapter, I focused upon Turkish Cypriots' relations with Britain, the Greek Cypriot community of Cyprus, Greece, and Turkey to demonstrate the manner in which these relations determined the existence of the Turkish Cypriot community. This determination was reflected in the 1960 constitution which created a carefully balanced state structure, defining and requiring the communities to cooperate in their practice of sovereignty.

In the second chapter, I focused upon the development of Turkish Cypriots' relations and the ways in which these developments affected the very being of the community. The armed struggle of 1963 followed three years of tense constitutional crises and confined the

Turkish Cypriot community into isolated life in enclaves. Thus, the year of 1963 marked the collapse of the constitutional system and, hence, the loss of sovereign share of power for the Turkish Cypriot community. A series of futile negotiations in the aftermath of 1963 culminated, eventually, in a coup d'état and an external military intervention. These double military occasions of 1974 resulted in the geographical separation of the communities providing Turkish Cypriots with the relative safety of the northern part of the island and renewed opportunities for regaining some form of sovereignty to ensure the existence of their community. Consequent to further failures at the negotiation table, in 1983, the community unilaterally declared independence. However, this declaration was instantly rejected by the United Nations whose Security Council called for its non-recognition.

I concluded the case study by focusing upon international isolation of the Turkish Cypriot community through prohibitions on direct trade and travel, and non-recognition of property rights. I demonstrated the resultant dependence of the community upon financial support from Turkey and highlighted the political vulnerability this dependence engendered. I showed that the dire consequences of dependence upon Turkey and unwillingness of Greek Cypriots to reach a solution with their Turkish Cypriot counterparts produce a political impasse which traps the latter community in an existential crisis. The context of this impasse is one in which Turkish Cypriots cannot assert their personality as a distinct community under international law and this law, in turn, cannot provide any means to ensure that the community fends off these existential challenges.

In the third chapter of the thesis, I provided an analysis of the prevalent theories of recognition of states under international law to establish the second premise that in theoretical terms, too, international law fails to account for recognition as a constitutive imperative. This analysis comprised an evaluation of the underlying effects of Vattel's notion of absolute sovereignty upon the constitutive and the declarative theories. I traced the development of the notion of absolute sovereignty of states initially through the respective

works of Bodin and Hobbes. These authors' perceptions of the notion rested upon the idea of a sovereign whose powers were unmatched by any other person within the realm of sovereignty but were externally subjected to rules of God or nature. In other words, Bodin and Hobbes respectively argued for what may be termed as absolute internal sovereignty. Consequent to these internal accounts of sovereignty, I turned to Grotius' development of the notion. The latter thought of this notion within the external domain of international relations among states wherein the overbearing powers of God or nature were much diminished. Vattel completed this development by not only arguing that the laws of nature did not apply to international relations among states as it did to relations between persons, but also that the positive laws of nations were based on absolute sovereignty of states that are quite independent of each other. My argument was that Vattel's approach entailed an atomistic understanding of state sovereignty that disregarded the difficulties of perceiving states as absolute entities with no external relations.

My argument vis-à-vis the question of recognition under international law was that Vattel's problematic approach underlay both the constitutive and the declarative theories limiting the scope of each theory to the production of a certain form of subject. I argued that Vattel's effect was manifest in constitutive theorists' perception of recognition as an act of sovereign consent which provided established states with the means to sovereignly decide whether to be bound by duties and obligations towards newly emerging entities under international law. Constitutive approach does not only generate practical concerns for enacting such recognition, but it does also fail to account for recognition as a mutually constitutive imperative. The proponents of the declarative theory also commit a similar failure by limiting their approach to countering these practical difficulties. The essential aspect of the declarative theory's shortcoming is marked by the idea that states can become subjects of international law on an *ipso facto* basis. Responding to the constitutional theorists' separation of statehood from international personality, such a basis presumes that

coming-into-being is an individual affair. This presumption, in turn, reflects the underlying effect of Vattel's idea that states, as absolute sovereignties, can ostensibly be quite independent from each other.

Therefore, in both theory and practice, international law overlooks the significance of one's relations to its others vis-à-vis the establishment of one's personality. Insofar as this oversight necessitates rethinking the role of recognition, in the fourth chapter, I turned to Hegel's work to meet this requirement. Slavoj Žižek demonstrated the aptness of this turn when he commented upon Hegel's perception of identity:

How are we to determine [what Hegel calls] identity? If we try to seize the thing as it is "in itself," irrespective of its relationships to other things, its specific identity eludes us, we cannot say anything about it, the thing coincides with all other things.<sup>1077</sup>

To present a theory of recognition that departs from the study of the in-itself, and essentially accommodates one's relations to its others as the constitutive element of one's personality, I focused upon Hegel's account of consciousness' transformation into self-consciousness through mutual recognition in the *Phenomenology of Spirit*. This transformation takes place as one's reflection into one's self by mediating through otherness, a form of mutual recognition that creates an intersubjective I, *an I that is We and We that is I*.

In other words, Hegel's perception of a free and independent subject is established through subject's relation to its other that mutually constitutes both parties as subjects capable of such freedom. Hegel's theory of recognition, thus, introduces an intersubjective element into a system of freedom wherein subjects' connectedness becomes the means that ensure each person's freedom. The question then is whether this theory can be adopted to account for international personality whereby the relational element of coming-into-being is

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<sup>1077</sup> Žižek S., *Tarrying with the Negative: Kant, Hegel, and the Critique of Ideology*, (Durham: Duke University Press, 1993) p.130. [*my emphasis*]

thus accounted for. I referred to three examples in which Hegel's notion of recognition was employed to account for different forms of subjects. Firstly, I considered Axel Honneth's idea of moral subjects which was constructed upon the understanding that relations of recognition sustained a uniform level of morality based on persons' willingness to limit their individual liberties in their relations to others. Secondly, I considered Charles Taylor's concept of cultural subjects. This concept was built upon the idea that the honour-oriented hierarchical societies of the pre-modern age gave way for the modern age in which equal dignity of all human beings are acknowledged. Taylor utilised Hegel's notion of lord and bondsman to demonstrate the failure of such pre-modern societies and emphasised the role mutuality of recognition played in achieving such transformation between the ages. The focal point of Taylor's work was that recognition of cultural identities of groups which existed within multicultural societies were essential for each group's survival. Finally, I considered Costas Douzinas' utilisation of Hegel's theory of recognition to criticise liberal perception of legal subject as monological and abstract. Through Hegel's notion of self-consciousness, Douzinas argued that legal subjects, too, came into being through one's relation to an other, that recognition, therefore, played an important part in the constitution of persons as subjects of legal rights.

Several issues arise with my attempt to extrapolate Hegel's theory of recognition to the constitution of international subjects. The first of these is whether the Hegelian terms that indicate the movements of human consciousness, such as, desire, self-certainty, and self-consciousness are also applicable to movements of states in their relations as international subjects. In Taylor's perspective, for instance, individuals, and communities alike, understand the importance of mutually recognising each other's esteem. In what way would such recognition be interpreted for relations among states? Vattel's underlying notion of absolute sovereignty can be pivotal in our understanding of how a state may desire the desire of another state or be willing to enter into a life and death struggle for self-certainty.

Beginning with Bodin's and progressing to Vattel's accounts, the notion of sovereignty is developed from one established internally to one asserted externally. In Hegelian terms, this can be interpreted as sovereignty determined initially as in-itself whereby a state can be certain of its independence. Later on, the certainty of this self-knowledge is to be tested as the state has, at some point of its existence, to externally assert its sovereignty. Similar to the movements of Hegelian self-consciousness, such externality may only be achieved by an encounter with an outsider. In other words, sovereignty can only remain in-itself until the moment of the encounter. If this self-certainty is threatened, each state will be ready to enter into a life and death struggle to assure itself and the other of their independence and absolute detachment. Interpreted through the notion of absolute sovereignty, relations among states present similar trends to the moments that lead up to Hegel's theory of recognition. Insofar as the Hegelian human subject needs self-consciousness to attain *the I that is We and We that is I*, the state, as the international subject, needs the reciprocity from its other to ensure that sovereignty that exists in-itself also equally exists for and is mutually accepted by others.

Hegel's theory of recognition provides an apt theoretical framework to account for such reciprocity; however, in the *Phenomenology*, this reciprocity is conditioned by the struggle between lordship and bondsman, and the resultant truth of servile consciousness. In chapters five and six, I engaged with two challenges that the struggle and its result presented for the *ad hoc* utilisation of recognition. The first related to the teleological reading of the effects of lordship and bondsman which suggested that the outcome of Hegel's theory brought an end to history via the attainment of the homogenous and the universal state. This challenge pertained to Kojève's reading of the struggle between master and slave as the *modus operandi* of an history that comes to an end with the reconciliation of the struggle. Kojève's interpretation did not only limit the outcome of recognition to a specific purpose

but it also hindered my attempt to deviate from strictly state-centric orientation of the prevalent theories of recognition under international law.

The second challenge originated from Hegel's conclusion of the dialectic with the notion of servile consciousness and the interpretation that linked this conclusion to the prevalence of the notion of death in Hegel's thought. The point of reference for this challenge was again Kojève's reading wherein the latter argued that the former's philosophy is a philosophy of death. This argument brought to the fore the notion of negation and highlighted humans' consciousness of their mortality as the cornerstone of human reality. The question Kojève's second reading raised was the extent to which one could appropriate a theory of recognition to account for the constitution of international subjects if that theory culminated in the production of servile consciousnesses with an inclination towards facing up to death.

I addressed the first challenge in the fifth chapter by relying upon Nancy's perception of negative as restless. This perception derived from Hegel's theoretical framework of recognition a form of subject which is always in flux, is constantly determined by its relation to an other — a relation that never has a beginning nor an end. As the embodiment of the power of the negative, the very first mediation of the subject takes place as the negation of the immediate moments of being and nothingness, and this mediation determines the subject as *becoming*, as that which can only come to be by being with an other, by being in a ceaseless relation that constantly shapes the very being of each subject. The idea of subjects in constant flux overcomes the possibility that such a restless mediation can come to a teleological end in any form of end-of-history reconciliation of the struggle between lord and bondsman.

I engaged with the second challenge in the sixth chapter. I relied upon Derrida's work to interpret the servile outcome of Hegel's theory as a restricted economy which produced, reproduced and circulated a particular form of subject. In Hegel's thought, this

was a subject that held desire in check and conformed in its labours to the discourse of absolute knowledge. Derrida derived the notion of restricted economy from Bataille's criticism of Kojève's reading. I showed that this criticism focused upon the subterfuge prevalent in Hegel's thought as humans cannot become conscious of death unless they die first, and such an act would, in turn, render it impossible to gain consciousness. Insofar as subterfuge is necessary to retain the discourse on absolute knowledge, Bataille argued that the sovereign aspect of death, the true potential of actual negation, is disregarded by Hegel. Bataille's comparison between the latter's notion of servile knowledge and the former's perception of sovereignty without any servile limits exposed a blind spot in Hegel's thought. Derrida drew upon this blind spot to interpret Hegelian notion of lordship as imposing a restricted economy upon recognition by holding desire in check, by opting for consciousness of death, instead of working negation to its radical end — an end which would, in turn, reveal the limits of absolute discourse.

My references to the *Phenomenology*, thus, presented a notion of recognition that does not readily attain mutuality, and a notion of self-consciousness which is dependent upon holding desire in check and labouring upon an object; that is to say, two notions that are the outcome of domination, fear, and servile endeavour. Extrapolating Hegel's notion of recognition to states requires understanding whether such trends of domination and servility exist in relations among states and what overcoming these trends may entail for statehood and international law. My concluding argument is that trends of domination can be identified in two modes of relations among states and surpassing these trends is central to rethinking recognition vis-à-vis the constitution of international subjects.

Firstly, domination pertains to the mode of relation advocated by the constitutive theorists. Encompassing a subjective set of criteria for statehood, this form of relation permits already established states to dominate new entities by withholding recognition. In Oppenheim's perspective, a newly emerging entity may not be admitted to the Family of

Nations without recognition and thus cannot become a subject of international law. In Kelsen's perspective, relative aspect of recognition may render an entity a subject of international law for the recognising state and not for the one that does not recognise. In other words, established states can subjectively determine the personhood of each emerging state retaining the right to be or not to be bound by any obligations towards these entities. Such determination would, in turn, amount to one-sided recognition.

Another mode of relation is the one between a non-recognised entity and its sponsor state. Inherent to this relation is, too, a one-sided recognition as the former entity remains heavily dependent upon the latter for economic and military support. I used the case-study in chapter two to present the repercussions of such dependence between the Turkish Republic of Northern Cyprus and Turkey. The latter professes to recognise the former as an independent state however their relation resembles that of the lord and the bondsman; Turkey, an independent state, ostensibly recognises the TRNC, a dependent state. In Hegelian terms, this is recognition accorded by an essential entity signified by the master. In its dependence, the only type of recognition TRNC can offer in return is inessential as that of the bondsman. The outcome is that neither of the parties can act as middle term to each other, that mutual recognition is impossible as the relation between the non-recognised entity and the recognising sponsor state is one of domination, of bondage. However, distinguished from Hegel's servile consciousness, which attains truth of independent consciousness via the object upon which it labours, the TRNC lacks the very means to achieve such emancipation.

One way of surpassing these trends of domination is provided by the proponents of declarative theory who dismissed the subjective criteria of statehood. However, central to this dismissal was the rejection of recognition as legally constitutive of international personality. With such rejection, constitution of the international subject remains an isolated, singular affair. One can circumvent such atomism by adopting Nancy's interpretation of

restlessness of negative. This adoption entails understanding statehood as an absolute entity that actualises itself. To be able to achieve this realisation, states must be subjects capable of movement. This movement can be observed in states' creation of international law that in turn renders states subjects but also determines and safeguards their sovereignty. Such sovereignty cannot remain in-itself, it must encompass the mediated moments between being and nothingness. As Nancy would have it, the self that emerges from such mediated moment of becoming is one that beings with the other, that is constantly determined by its relation to its other.

Nancy's interpretation of *becoming* accentuates the relational element of coming-into-being, the mutually constitutive and determinative aspect of one's relation to its other. However, this interpretation does not, in itself, provide an alternative means of overcoming trends of domination and bondage in two modes of relations I identified above. Nancy's interpretation must, therefore, be supplemented by Derrida's critique of the restrictive economy of recognition for such alternative means. The significance of this critique lies in Derrida's clarification of the effects of lordship, of domination and bondage upon the act of recognition as a restricted economy which produces, reproduces and circulates a particular form of subject. This is an economy that serves the discourse of absolute knowledge and is blind to the underside of this discourse. This service requires lordship to stay alive in the face of death, to dominate through subterfuge, to keep the other in bondage wherein desire is held in check and servile labour is constant. These elements of lordship, in turn, produce a form of subject which conforms to the discourse of absolute knowledge.

My argument is that, based on Derrida's critique, an analogy can be drawn between Hegel's notion of absolute knowledge and Vattel's notion of absolute sovereignty. This analogy will not only help us gain a better understanding of the role of domination identified within two modes of relations among states but will also provide theoretical tools to circumvent this role. As I pointed out above, domination exists if recognition is one-sided

as it would be in Hegel's idea of lordship and bondsman. Within the context of international relations, such one-sidedness prevails if one entity is an already established state and another is a newly emerging one that remains dependent upon the former to gain international personality. Within these types of relations, the former entity can assert its sovereignty against the latter. Such assertion is possible if there is no mutuality or no equality of sovereignty among two entities. This is a certain lack that pertains to the discourse of absolute sovereignty, to the idea that states can be quite independent from each other and therefore are absolutely free to decide whether to be bound by obligations arising from the emergence of a new entity. One can, therefore, begin to understand that domination serves the discourse of absolute sovereignty whereby a particular form of subject is circulated; this is a subject which, in its absoluteness, is closed and complete-in-itself.

In theoretical terms, the constitutive camp contributes to the restricted economy of international subjects by permitting recognition to be one-sided; and the declarative camp contributes to this economy by claiming that a state can become an international subject in-itself, not requiring any form of outward connection. Overcoming the restrictive economy is, therefore, conditional upon transgressing the limits of the discourse of absolute sovereignty by insisting on a form of subject that is always in flux and, as such, is continuously determined by its relation to its other. It is this insistence that brings to the fore what were previously excluded by the discourse of absolute sovereignty, namely, constitutive element of intersubjective relations and the fact that even absolute has to relate to its underside that is non-absolute. It is the latter relation that sets off the dialectical mode of becoming and renders one's relation to an other essential for coming-into-being. Without this relation, the absolutely sovereign state is merely an immediate form of being or substance which lacks the ability to act and to realise itself.

Dialectical mode of becoming presents a more accurate account of statehood for which sovereignty is no longer established by the measure of its misconceived absoluteness

but is established through an intersubjective set of relations. A new form of international subject is conceived through this account; this is the subject which is always in flux, the subject whose constant relations to its others continuously determine and reshape its very being, the subject which is not complete-in-itself. International law can account for such a subject if the criteria of statehood is supplemented by the criterion of recognition that would enable taking into account the imperative force of relations. Without the incorporation of this force, international subject is bound to remain closed and complete-in-itself and to contribute to the problematic discourse of absolute sovereignty.

Direct consequences of failing to take into account constitutive aspects of relations are clearly discernible in the case study of the Turkish Cypriot community. This study demonstrated the effects of the restricted economy of recognition that culminated in the domination of a dependent, non-recognised, and thus purportedly inessential entity. The advantage of the consolidation of the criteria of statehood with the imperative force of relations for such entities is that the question of international personality may no longer be fixed or closed by a once-and-for-all decision of international non-recognition. The question will remain open to considerations of ongoing relations and their constitutive or destructive effects upon entities.

Turkish Cypriots' struggles to assert any form of sovereignty can be divided into three categories: the failure to reunite with the Greek Cypriot community under a reformed state structure, the impossibility of compelling Turkey to withdraw its troops, and the insurmountable decision of the international community not to recognise an independent Turkish Cypriot state. Greek Cypriots' reluctance and Turkey's overbearing sponsorship respectively determine the fate of the first two categories. The aforementioned advantage of a reconceived criteria of statehood for the case of the Turkish Cypriot community is, therefore, twofold. Firstly, understanding the fluidity of international personality would necessitate reopening the international decision of non-recognition to fresh scrutiny.

Secondly, such scrutiny would entail taking into account the existential repercussions of the relations that determine the first two categories of Turkish Cypriots' struggles. Without such scrutiny, the question of international personality for the Turkish Cypriot community will remain within the confines of the restrictive economy of recognition that traps this community in an existentially harmful political impasse.

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