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Unrecognised States: The Necessary Affirmation of the Event of International Law

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Abstract

Fitzpatrick's writing on international law did not constitute the main focus of his oeuvre. However, the determinate-responsive nature of law that characterised so much of his work did extend to an analysis of the generative force of international law. This article picks up on commentary from *Modernism and the Grounds of Law* (2001) and 'Latin Roots' (2010), among other contributions, to test this generative force of international law, which Fitzpatrick identifies as a necessary affirmation of the movement between the 'determinate but not ultimately determinate' sovereignty of a singular nation state and the 'illimitably responsive but not ultimately responsive' force of the community (Fitzpatrick 2010, p. 46). We test Fitzpatrick's view of international law through two examples of *un-recognised* states and the mechanism of non/recognition utilised by the international legal community to determine what constitutes a singular nation-state for participation in the community of international law. Our two case studies, North Cyprus and Crimea, illuminate the continuing relevance of Fitzpatrick's schema. Through non/recognition, 'states' that are included-as-excluded participate in the ongoing affirmation of an international legal 'community', a community that continues to be constituted through the affirmation of imperial power.

Keywords Crimea · Imperialism · International law · Nation-state · *Necessary affirmation* · North Cyprus · Recognition · Non-recognition

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Introduction

Peter Fitzpatrick's reading of international law centres upon the idea of a generative force. This force emerges from the contradiction of two distinct concepts that must relate to each other. These are the concepts of singularity, attributed to the sovereign nation-state, and commonality, the very feature of existing within an international community. Fitzpatrick called this generative force the event of international law, an event that renders this law both assuredly determinate and illimitably responsive. Such law is then capable of having what is exterior to itself within itself. This article tests the response of international law to unrecognised 'states' within the context of Fitzpatrick's approach. We identify the continuing contemporary relevance of Fitzpatrick's reading of international law in two case studies exemplifying states caught in de facto recognition-as-unrecognised: North Cyprus and Crimea. Ultimately, this article suggests that there is a foundational necessity within international law to maintain certain states as unrecognised, and this determinate-responsiveness that Fitzpatrick refers to as the generative force of international law reaffirms the imperialism of recognised states versus those maintained in states of non-recognition.

Fitzpatrick reinterprets international law's response to the question of recognition as a *necessary affirmation* of the generative force of international law itself. This necessary affirmation acts to compound traditional, historical modes of differentiation, outlined below as the Christian versus the barbari, the civilised versus the savage, into current conditions of *recognised versus unrecognised*. Using two case studies, North Cyprus, and Crimea, we demonstrate instances of an unrecognised entity, a de facto state, brought under the economic and military tutelage of the sponsoring state: Turkey in North Cyprus, and Russia in Crimea. The relative importance of the de facto states' sustained existence vis-à-vis the event of international law is explored by probing these existences as modes of inclusion of the excluded (see Fitzpatrick 2001).

The Event of International Law

Throughout his scholarship, Fitzpatrick identifies a relationship between the determinate and the responsive dynamic of law. When interrogating international law, Fitzpatrick characteristically identifies this dynamic within the constitutive nature and force of international law. The force of international law involves an 'intrinsically contradictory yet combinative force' (Fitzpatrick 2010, p. 44) between the 'determinate but not ultimately determinate' sovereignty of a singular nation state and the 'illimitably responsive but not ultimately responsive' force of the community (Fitzpatrick 2010, p. 46). The event of international law, as a generative force, exists in the 'confirmed circularity' (Fitzpatrick 2010, p. 45) of an international legal community. A community for Fitzpatrick, and in this case the international legal community, is both an affirmation of the singularity

of the nation-state and a community maintained through the determinate-responsiveness, the difference, of law. In other words, a community does not dissolve all members into homogeneity. Rather, a community recognises the singular individual nature of each member while also incorporating their coming together under a shared commonality or identity. The sovereign singularity of a nation-state is understood through the determination of international law, responding to the multiplicity of singularities in the international legal community. This is the confirmed circularity. The event of international law's community, like law more broadly, is found in this interplay that Fitzpatrick develops from Derrida (Derrida 2002, pp. 256–257).

The case studies of North Cyprus and Crimea, albeit uniquely complex as individual cases, expose the continuity of historically affected instances of nationalism (an affirmation of singularity), and unrecognised states as objects of imperial ambitions (a particular form of commonality). Thus, in spite of international law's attempts to emerge from an imperial legacy, the *necessary affirmation* of international law maintains the non-recognised 'states' of both Northern Cyprus and Crimea.

The Nation-State

The event of international law is a twofold process that relies on a state's own identification and identity, and the collective will of the existing international legal community (Fitzpatrick 2010, p. 44). Within this event of international law, moreover, is a foundational notion of what, or who, is a nation worthy of inclusion in this international community. The nation forms the first component of the constituent equation and, as such, comprises an element in which the interplay between the universal and the particular takes place. In *Modernism and the Grounds of Law*, Fitzpatrick demonstrates that the idea of universalism permeated the perception of the modern nation-state in the latter's embodiment of universality of free citizenship and human rights (ibid., p. 120). The nation-state, as a form attempting to organise communal life on a homogenous basis, stood out from the particularity and heterogeneity of preceding forms (ibid., p. 122). Nevertheless, to the extent that a 'purely universal citizenry cannot exist', each nation-state finds its universality limited by territorial bounds (ibid., p. 135). The interplay between the territorial particularity and homogeneous universality of each nation-state develops through the orientation of particular nations towards the universal idea of progress (ibid., p. 124). This orientation generates a comity of nations which, as a unity with a common goal, comprises a model of the universal (ibid., p. 121). The common goal, however, is the notion of civilisation (ibid., p. 124). Problematically, the notion of 'civilisation' opens the nation-state to a communality at the international level while laying bare the imperial vision of this communality that defies the supposed all-inclusiveness of an abstract universal.

The Community

Community, and the communal nature of the international, suggests openness. Indeed, the international is often associated with the global: an all-encompassing space, a meeting point for all. Fitzpatrick demonstrated the universal aspect of modern international law by referring to Vitoria's utilisation of the Roman Law concept of *ius gentium* (ibid., p. 119). The concept relied on the idea that natural reason, common to all people, projected a law among nations (ibid., p. 118, 119). Within the context of Vitoria's distinct contribution to the foundation of modern international law, Fitzpatrick identified that the use of *ius gentium* permitted Vitoria to, in a manner that 'befits the all-inclusiveness of the universal', declare that 'by virtue of being human and thence possessed of reason, the Indians had dominium' (ibid., p. 119). Yet the downside of this universalist foundation was that it fuelled imperialist aspirations by enabling an exclusionary logic of 'just title'. Vitoria's 'just title' provided legitimacy for the subjection of 'barbarians' to Christian rule (ibid., p. 119). The exclusion of the other—appearing in various forms as barbarian, savage, uncivilised, underdeveloped, or backward (ibid., p. 125)—enhanced the cohesion of the nation. Occidental law was then made a comity of Christian nations, which developed into European international law and, subsequently, to an international law of the civilised nations (Fitzpatrick 2010, p. 49, 50).

The Christian became 'the Civilised' in the modern era. According to Fitzpatrick, this civilised is 'the recognised coherent force of an emergent international law' where civilisation acts as a substitute for Christianity (Fitzpatrick 2010, p. 50). The modern 'civilised' nation-state enjoys the fruitful inclusion into the community of international law. Meanwhile, the 'barbari' serves as what in Fitzpatrick's later writing is referred to as the negative universal referent (Fitzpatrick 2013, p. 48) or the negation in earlier work (Fitzpatrick 1992, p. 67). The negated, the Other, is included in the Christianised *ius gentium*—the law as the 'modern guise of "sovereign" nation state' (Fitzpatrick 2010, p. 51)—but only ever as excluded, or those who are *not quite* there. This is an exclusion that enhances the homogeneity of the universal nation-state by distinguishing from its 'savage' counterpart. The 'savage' must conform to the universal standards or face elimination (Fitzpatrick 2001, p. 125). Exclusion further marks the contours of a family of civilised nations; the savage nation may be included to the extent that it marks the family's limits but excluded since the family guards its entry by occidental standards. As such, entry into this family becomes a question of international law presented by constitutive theorists as an issue of sovereign consent through the very act of recognition. Recognition is an act that can only be performed if certain levels of civilisation are attained by the aspiring entity (Oppenheim 1905).

Sovereignty: The State and the International

The mark of civilisation, however, 'is redolent of the period when non-European states were not accorded equal treatment by European Concert and the United States' (Brownlie 2008, p. 75). An ostensibly less discriminatory concept can be found in the sovereign aspect of the European nation-state that emerged with the

signing of the Treaty of Westphalia (Fitzpatrick 2010, p. 50). Insofar as this new sovereign entity marks 'the basis for an agnostic, procedural international law whose merit consisted in its refraining from imposing any external normative ideal on international society' (Koskenniemi 2010, p. 33), the operation of the aforementioned contradiction can be observed in the sovereign state's relation with this new form of international law. In other words, the constituent contradiction between the singular and communal, and the particular and the universal, persists in the post-Westphalian modernity of international law.

We can begin, as the starting point of what will prove to be a circularity, with the fact that contemporary international law posits a set of criteria for statehood which comprises a government, territory, population, and the ability to enter into relations with other states (Montevideo Convention 1933). This starting point is, however, preceded by another fact: international law is created by the volition of states. States create an international law that, in turn, determine the creation of states. The criteria do not leave room for any subjective resolution of the question of which nation-state enters the international comity. Ostensibly, therefore, the measure of civilisation is eliminated. However, another joinder of the particular and the universal emerges: the notion of recognition.

The debate surrounding the notion of recognition is difficult to settle. According to constitutive theorists, even if an entity satisfies the criteria of statehood, it will not become an international subject until after recognition is accorded (Oppenheim 1905). Insofar as recognition is regarded as a sovereign act of consent, without which the recognising state cannot be bound by any obligations towards the newly emerging state, international personhood is subjected to the arbitrary will of the recognising state. With this approach, the particular will of the sovereign state gains the upper hand vis-à-vis the universal application of international law. The subjective criterion remains, however, disagreeable to the extent that it cannot set a requisite number of recognitions. This denies an objective uniformity to international law's engagement with the questions of statehood/personhood. Responding to these problems, declarative theorists argue that an entity becomes a subject of international law by the very fact that it has fulfilled the international criteria of statehood (Hall 1895; Williams 1929; Chen 1951). The declarative approach, therefore, eliminates the gap between statehood and international personhood. As states, *ipso facto*, become subjects of international law, from the declarative perspective any act of recognition comprises a political gesture lacking constitutive legality. The objective universality of the criteria of statehood and concomitantly international personhood is, thus, restored.

Nevertheless, the declarative stance is not without repercussions. Craven criticises this stance for basing statehood upon a posited rule but rendering this rule self-executory as any legal relevance of the act that can confirm compliance with the rule is rejected (in Craven 2014). This rejection occasions ambivalent reactions from some international law scholars who choose to follow the declarative theory, yet also feel the need to emphasise the evidentiary value of recognition (Shaw 2017; Cassese 2005). This emphasis demonstrates that mere factual existence of an entity may not be sufficient to grant statehood or international personhood to that entity. States do not sustain an atomic existence independently; they exist within a community.

Assigning an evidentiary value to recognition can be interpreted as indicating the existence of an incontrovertible intermediary step between singular existence and existence within a community.

Fitzpatrick questions the prevalence of the declarative theory by assuming the challenge set by the evidentiary value of recognition. According to Fitzpatrick, a state cannot become a subject of international law by the very fact that an entity fulfils the criteria of statehood because 'common assurance to the contrary, facts do not speak for themselves. They come to be through various performative modes endowing them with operative existence' (Fitzpatrick 2010, p. 45). Performance sets the rightful claim apart from the wrongful one; a performance that can, therefore, exclude as well as include. As such, it marks the entry of the particular entity into the universal community of the international. An entity's unilateral declaration that it has achieved the fact of statehood lacks operative existence and will not suffice for gaining access into the comity. This insufficiency is most apparent in the international community's utilisation of the mechanism of non-recognition. As our case studies demonstrate, international community uses non-recognition collectively to sanction an entity despite ostensible satisfaction of the criteria of statehood. Sanction may be caused by a breach of pre-emptory norms on the part of the entity in its attempt to fulfil the criteria. The outcome may be that the entity's action is outlawed, and they are cast out from the community.

Compared to the act of recognition which arguably confers personhood, collective non-recognition may be based on a different legal footing as its purpose is to sanction a wrongful act. Notwithstanding the parity, this collective act exhibits the conceptual existence of an interstice betwixt the singular and the communal, an interstice that necessitates some sort of mediation among the particular and the universal. Fitzpatrick recognised this exigency by referring to recognition as 'a constitutive legal decision responding to a legal claim [to statehood], 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' (Fitzpatrick 2010, p. 45). Not only the question of recognition, the constituent contradiction and the circularity of modern international law can be traced to the exigency of such mediation. It is conceptually impossible to have an immediate unity between the singular state and the communal international unless a mediating act takes place which, then, plunges this unity into a paradoxical roundabout, a paradox that is the very generative event.

North Cyprus and Crimea

The question remains as to what extent unrecognised states may fit into the Fitzpatrickean reading of international law. Our argument is that not only do the unrecognised states of the Turkish Republic of Northern Cyprus (TRNC) and Crimea exemplify the mechanism of non-recognition, but these 'states' embody the central elements of nation and imperialism. The unilateral declaration of independence by the TRNC was made in 1983 only to be met by a Security Council Resolution (S/RES/541, UNSC 1983) that called for its non-recognition. The TRNC has managed

to sustain its de facto existence since 1983 but is solely, and rather ostensibly, recognised by its so-called sponsor state, the Republic of Turkey. The second case of Crimea illustrates how non-recognition has been used by the international legal community to resist Russia's territorial claim over this peninsula, with little to no effect. Russia has recognised Crimean independence, which was declared in 2014, and has subsequently annexed Crimea at the alleged behest of its population. Both the claim of independence and the annexation have been denied legitimacy and legality by the international community. Nevertheless, Crimea is an annexed territory connected to Russia and its population is subjected to Russian law, in spite of international legal non-recognition.

We draw on the TRNC and the Crimean political experiences firstly to demonstrate how nationalist narratives and imperial ambitions affect these communities, and secondly, to display the inclusionary/exclusionary logic of the event of international law. In both cases, the respective state's non-recognition is ultimately what allows the continuing function of international law as an 'intrinsically contradictory yet combinative force' (Fitzpatrick 2010, p. 44). Both the communal interests of the international community of nation-states, and the singularity of the imperial powers that hold power over unrecognised 'states', are maintained. In the TRNC, Turkey ostensibly includes-the-excluded by recognising an internationally ostracised entity (TRNC) while maintaining a relation of dependence through sustained military presence, political intervention and economic interests on the island. In Crimea, reactive non-recognition by the international legal community has facilitated Russian occupation by permitting, through omission, the practice of Russian law and Russian control of resources on the peninsula. These cases exemplify the generative force of international law, both as an interplay of the communal and singular, and as intrinsically rooted in furthering the power of imperialist nation-states.

The Nation: TRNC

The 1960 Constitution of the Republic of Cyprus settled the colonial problem of Cyprus with a bi-communal state structure built with power sharing measures between Greek and Turkish Cypriot communities. One of the major reasons for the collapse of this constitutional set-up in its third year was that neither of the communities wanted such a solution. Throughout the 1950s, Greek Cypriots conducted an anti-colonial struggle against British rule on the island with the intended purpose to achieve *enosis*—meaning 'union' in Greek—with Greece. Perceiving this as a threat to its existence, the Turkish Cypriot community responded to the idea of *enosis* with a demand for *taksim*—meaning 'division' in Turkish—of the island enabling the unification of its Turkish part with Turkey. The common denominator of the communities' irreconcilable political ambitions was the desire to become part of their respective motherlands. With *enosis,* Greek Cypriots would partially fulfil the irredentist *megali idea* (great idea) of creating a Greek nation-state in the Eastern Mediterranean. With *taksim*, Turkish Cypriots would not only return some part of the island to its previous owners per the legacy of the Ottoman Empire but would

also reunite with their kinspeople to ensure their own safety and security contra the Greek *megali idea.*

Bryant (2004) and Kızılyürek (2002) analysed the manner in which Greek and Turkish nationalisms, respectively, determined the identities of two communities in Cyprus suppressing efforts to construct a shared idea and feeling of Cypriot-ness. During the decolonisation era political ambitions were aimed at what was perceived as a homogenous notion of Greekness or Turkishness prompting one of the Turkish Cypriot leaders to quip, much later on, that only the donkeys roaming in the wild can be regarded as Cypriot. The other's ensuing exclusion from the dedicated nation and continuing enmity in between fuelled more conflict in the post-1960 era. Firstly, interethnic armed strife in December 1963 ousted Turkish Cypriots from statutory positions in the state structure and confined the community to life in isolated ghettos. Secondly, a coup d'état sponsored by the junta in power in mainland Greece and a reactionary military operation by Turkey in July 1974 resulted in geographic separation of the communities with the Turkish army occupying the northern region of the island.

Less than a decade of achieving geographical separation and failing to reach any solution with their Greek Cypriot counterparts, the Turkish Cypriot community declared independence. In doing so, the community departed from the idea of uniting with kinspeople of the motherland yet remained within the notional framework of the nation-state. This framework was apparent in Turkish Cypriots' claim to exercise a perceived right to self-determination and to create a sovereign state of their own (Tamkoç 1988; Necatigil 1993). The resultant ethnically homogenous break-away state was the desired outcome of a leadership that long utilised Turkish nationalism as its organising force. For instance, giving Turkish names to streets, punishing Turkish Cypriots for communicating in languages other than Turkish, prohibiting any form of trade between Turkish and non-Turkish inhabitants of the island, and sanctioning the execution of persons who dissented or collaborated with persons from the other community (Kızılyürek 2002).

Imperialism: TRNC

One day after its unilateral declaration, the United Nations declared the illegality of the TRNC and called for its non-recognition in Security Council Resolution No 541 (UNSC 1983). The reasons for the UN's actions were twofold. Firstly, despite the armed strife of 1963, and the military operations of 1974, the international community continued to recognise the Republic of Cyprus as the sole sovereign state on the island (S/RES/186, UNSC 1964, S/RES/353, UNSC 1974). Secondly, although the TRNC ostensibly met the criteria of statehood with a government, population, and territory, the last element of the criteria could only be met by the occupying presence of a foreign army (Crawford 2006) which, in itself, amounted to offending a peremptory norm of international law. Notwithstanding the UN's reaction and the ensuing international sanctions, the Republic of Turkey recognised the break-away entity and fostered a relationship of economic, political, and military dependence and tutelage.

Turkey's protracted engagement with the Cyprus problem reflects the geopolitical importance of the island in the Eastern Mediterranean. Situated at what may be termed the underbelly of the Turkish mainland, the idea of a Greek-controlled Cyprus does not only pose a historically charged military threat but also hinders Turkey's access to the Mediterranean and natural resources therein. In this regard, even if there was no Turkish Cypriot community whose security and rights Turkey would attempt to safeguard, the latter would arguably remain strategically involved in the matters of the island (Davutoğlu 2001). Beyond the local conflict is a broader, regional struggle that not only subsumes the former but is capable of staging imperial ambitions. Examples of such ambitions abound in the context of Cyprus.

The agreements establishing the Republic of Cyprus in 1960—despite the fact that these met neither of the communities' political demands—can be interpreted as the Western world's appeasement of two NATO member-states that comprised the block's eastern border, namely Greece and Turkey, against the ever-increasing threat of the Cold War (O'Maller and Craig 1999). The same interpretation could be extended to the involvement of Henry Kissinger, as then Secretary of State of the United States, in the orchestration of the events of 1974 (Hitchens 1997). At the focal point of this article is, however, Turkey's position vis-à-vis the unrecognised status of the TRNC. In its relation to the non-recognised state, Turkey incorporates some of the imperialistic dynamics outlined above. One of these dynamics is the ostensible inclusion of the excluded as Turkey claims to recognise an internationally ostracised entity yet fails to establish equal relations between itself and that entity. A relation of dependence is maintained whereby Turkey sponsors the economic well-being of the unrecognised state and sustains a military presence on the island, paving the way for political intermeddling. Turkey's presence on the island, in turn, satisfies two more imperialistic ambitions. The first is the hunger for military expansionism that finds its expression in the slogan of *Kıbrıs Türktür, Türk Kalacak* (Cyprus is Turkish and will remain so) together with the perception that each square metre of Northern Cypriot soil is awash with Turkish soldiers' blood. The second ambition is taking place in contemporary times over the issue of natural gas reserves in the Mediterranean Sea. In its attempt to settle the boundaries of its exclusive economic zone, Turkey contests the sovereign claims of the Republic of Cyprus. Cynically, however, part of this contention is staged as Turkey's ostensible protection of the share the Turkish Cypriot community retains over natural resources via the community's involvement in the Republic of Cyprus.

Nation: Crimea

A similar staged protection of an ethnically and linguistically bound 'nationhood' tied to claims over natural resources can be found in Russia's claim to Crimea. Crimea has been a valuable territory for centuries. Situated on the Black Sea, it provides a major military base historically vital for the strength of Tsarist Russia against the Ottoman Empire, and currently for Russia's control over hydrocarbon resources (oil and gas deposits) in the Black Sea. While in 1921 Crimea was granted status as an Autonomous Soviet Socialist Republic (ASSR), this status was retracted in 1946

when Crimea was reduced to an oblast (province) of the Russian Soviet Federative Socialist Republic (RSFSR). The Russification of Crimea involved the 1944 forceable expulsion of 200,000 Crimean Tatars, a Turkic-speaking ethnic group who had lived under the Ottoman Empire until Catherine the Great annexed Crimea in 1783. The forced deportation of 1944 also included Crimean Germans, Greeks, Bulgarians and Armenians, but has been specifically remembered for the trauma rendered to Crimean Tatars who regard Crimea as their ethnic homeland. Indeed, Stalin's policy of 'de-tatarisation' targeted Crimean Tatars, who, as a Muslim-non-Russian-speaking community were accused of being Nazi-collaborators and traitors to the Soviet project (Campana 2008). The imperial policies that maintained Crimea as a province of the RSFSR effectively 'cleansed' the territory of non-Russian populations and allowed Crimea to be predominantly populated by ethnic Russians, and solely populated by Russian-language speakers, including small minority groups of ethnic Ukrainians and Belarussians.

In 1954, Crimea was transferred from the RSFSR to the Ukrainian Soviet Socialist Republic (UkrSSR), nevertheless maintaining its identity as an ethnically Russian, Russian-speaking territory (GARF 1992). It was not until the late 1980s that Crimea's population once again began to include non-Russian speakers, namely through the cautious, and largely unwelcomed, resettlement of Crimean Tatars. Following the dissolution of the Soviet Union (UkrSSR, RSFSR), Crimea was granted status as an autonomous republic. For 23 years, Crimea held internal self-determination as an autonomous part of Ukraine, included in the 1992 Constitution of Ukraine. During this period, Crimean Tatar institutions such as an assembly, the Kurultaj, and its executive committee, the Mejlis, increasingly operated with relative autonomy and acceptance, with representation in the Ukrainian Parliament. The Russian Federation, meanwhile, agreed in the Budapest Memorandum of 1994 to respect the independence and sovereignty of Ukraine, including Crimea. This Memorandum further articulated that aggression against Ukraine would garner UN Security Council action. The 1997 Treaty on Friendship, Cooperation and Partnership between Ukraine and Russia allowed Russian military presence in Crimea, but restricted operations and prohibited public military presence (Marxsen 2014). The Russian Federation's Black Sea Fleet at the military port in Sevastopol was permitted through a lease agreement—Black Sea Fleet Status of Forces Agreement (SOFA)—not as ceded territory. Ukraine thus maintained its territorial waters in the Black Sea via the autonomous republic of Crimea.

Imperialism: Crimea

In 2014, the anti-Russian Revolution of Dignity swept across Ukraine and resulted in Ukraine's President Victor Yanykovych fleeing to Russia, being replaced by an interim government of pro-Revolution opposition leaders. In direct response, the Russian Federation took military control of Crimea: Russian military, already based in the Black Sea Fleet port in Sevastopol, and Russian militia ('green men') took over the Crimean legislature and government. In a masterful stroke of declaratory nation-state building, on 11 March 2014 the Supreme

National Council of Crimea declared the Independence of the Autonomous Republic of Crimea (see Weiner-Bronner 2014). With this new-found independence, the Republic of Crimea then conducted a referendum five days later, which allegedly confirmed the population's desire to 'reunify Crimea with the Russian Federation' (Harding and Walker 2014; Sneider 2014). According to the Russia-Crimea Treaty signed on 16 March 2014, the Republic of Crimea invited accession to Russia on the premise that this would ensure Crimean citizens, especially those recognised as ethnically Russia and Russian-speakers, protection against a foreign—Ukrainian, revolutionary—threat.

Inviting accession, under International Law, requires effective control of the highest form of government (International Law Commission Yearbook 1979, pp. 114–115; Marxsen 2014). Russia argued that Yanukovych was still in power as the highest form of government at the time of 'invited' accession. Notwithstanding that external Russian intervention was used to hold the 16 March referendum, an infringement of the 1994 Budapest Memorandum, and that the Parliamentary Assembly of the Council of Europe noted that Ukraine's interim government had 'legitimacy … and legality' (Parliamentary Assembly of the Council of Europe (PACE) 2014). Russia nevertheless claims a nation-led prerogative—Article 51 UN Charter 'act to protect nationals abroad'—that the integrity of Crimea with its majority Russian population were being threatened (Burke-White 2014, quoting Kremlin address 2014). Meanwhile, Ukraine and the European Council declared the referendum illegal under Article 2 of Ukraine's constitution (Ministry of Foreign Affairs of Ukraine. 2014 quoting Article 134 Constitution 1992), and the Office of the High Commissioner for Human Rights concluded that after visiting Crimea and other areas in Ukraine, the alleged violations of the rights of ethnic Russians seemed to be 'neither widespread nor systemic' (Grant 2015; OHCHR 2014).

In spite of Crimea's annexation by Russia, legally Crimea remains a part of Ukraine. Non-recognition of Crimea as firstly, an independent state and secondly, a part of Russia, is enforced by member states of the European Council (European Council 2014). However, de facto, the Independent Autonomous Republic of Crimea is a part of Russia and is subject to Russian law. Thus, Crimea is included-as-excluded. Moreover, by controlling the port at Sevastopol, Russia has effective control over Ukraine's Black Sea territorial waters. Russian law has been practiced throughout Crimea since 2014, in breach of the Fourth Geneva Convention in its application of foreign law on occupied territory (Geneva Convention IV 1949/1958, Art. 27–34 and 47–78,). Russian law has led to forced conscription, and the prosecution, expulsion and imprisonment of dissidents, including the leaders, Mustafa Dzhemilev and Refat Chubarov, and those accused of leading, the Crimean Tatar community (Coynash 2020). The Russian Federation has labelled the Mejlis of the Crimean Tatar People an 'extremist organisation'. Russia, and by default Crimea, also have banned membership to Hizb ut-Tahrir, an international Muslim organisation which is legal in Ukraine. Crimean Tatars, notwithstanding national and international law, are regularly imprisoned on unsubstantiated allegations of anti-Russian group membership and extremism (Coynash 2021). Russian citizenship is also being coerced onto residents of Crimea. Without Russian citizenship, one cannot access

health care, health insurance, and many people experience extreme difficulty finding work and employment (Human Rights Watch 2019).

The question, and language, of self-determination in Crimea was seized by the imperial power, Russia. Self-determination was referenced by Russia in order to justify the annexation of the territory. Russia's use of 'self-determination' raised unresolved questions in international law as to the extent that a foreign power may assist its nationals, e.g. Russian citizens, living in a separate nation-state, e.g. Ukraine, to achieve independence (Burke-White 2014). Russia continues to claim a broad right of intervention under international law to protect Russian-speakers, 'nationals', in Crimea (Burke-White 2014). While these actions contravene the explicit agreement to respect the territorial integrity of Ukraine in the 1994 Budapest Memorandum and have been determined by the Venice Commission to have violated the Ukrainian Constitution (Article 135, see Peters 2014), international law responds with the mechanism of non-recognition. Meanwhile, the Crimean Tatar population for whom Crimea is an ancestral homeland are systematically exiled from and imprisoned in Russian-occupied Crimea. The Crimean Tatars are denied the language of international law when they are, arguably, a nation for whom the language and discourse of self-determination provides a meaningful tool. Meanwhile, international law is batted back and forth between Russia and the EU-NATO (see Issaeva 2015).

Crimea's de facto status as independent-now-Russian is made possible because of the generative force of international law including the unrecognised state. Reactive non-recognition has permitted Crimea's annexation by Russia, while official non-recognition by the Organization for Security and Co-operation in Europe (OSCE), EU, NATO and UN General Assembly maintain this as a contentious, fraught space. While it is evident that international law affirms itself through the absence of clear recognition, the default submission is to imperialist power: in this case, Russian power over its territories both internationally recognised and unrecognised. Moreover, that the international community officially does not recognise the current Crimean authorities effectively permits Russia to act with relative impunity towards the Crimean population. This is *relative* impunity as the ability to make claims against human rights abuses in non-recognised states is up for debate. For instance, in the case of *Cyprus v. Turkey* [2001] the ECtHR recognised the domestic law of the TRNC with regard to property, stating that the domestic juridical system in the TRNC has not been 'tainted' by the illegality of the de facto regime (Nuridzhanian 2017). The consequences for Russian intervention in Crimea have yet to be determined. In January 2021 the Grand Chamber declared the case of *Ukraine v. Russia re Crimea* admissible (see Milanovic 2021).

Conclusion

Geopolitics have been enacted through the movements of imperial states throughout a history that gave rise to the modern nation-state. Imperial states further their interests, singular and communal, on territories that are included-as-excluded. Our two examples demonstrate how Turkey, Russia, Europe and the United States (via NATO) are employing the mechanism of international legal non/recognition

to continue this performance. The international community constitutes its unity through the logic of exclusion. Equally, it is through the logic of inclusion-as-excluded that imperial powers maintain their force. Insofar as this unity is maintained by excluding the TRNC and Crimea through non-recognition, these entities are also included-as-excluded by means of their relations with their 'sponsor' nations. This is a relation set upon the unequal status of the unrecognised state which is then rendered economically dependent and strategically useful as part of the ongoing military-resource-imperial ambitions of the sponsor. It is, therefore, precisely as unrecognised states that the TRNC and Crimea embody central elements of nation and imperialism. Rather than being outside of international law, these 'states' can be seen as the locus around which the mediating act of a singular state circulates, the aforementioned paradoxical roundabout: as a nation, claiming an ethnic and/or linguistic bond, and as a communal international—the entity, the unity, that bestows recognition. Decisively, denying recognition to TRNC and withholding action against Russia in lieu of the non-action of non-recognition of Crimea, become the very means by which international law sustains its mythical constitution.

What Fitzpatrick identified as a *necessary affirmation* of the generative force and the event of international law compounds traditional, historical modes of differentiation into current conditions of recognised versus unrecognised nation-states. Where previously Turkey and Russia may have been external to the Western European Christian (Catholic and Protestant) international project, their current position as global powers renders them useful to the communal quality of international law. While the limitations of this brief article prevent us from expanding on the economic function of non-recognition, which ultimately benefits the imperial state (Turkey; Russia), the brief introduction to the situation of TRNC and Crimea illustrates the function of non-recognition that lends power and currency to international law—that is, in Fitzpatrick's terms, the generative force and the event of international law.

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