Revolutionaries

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1. Introduction

1.1 Concepts of International Law

Where do concepts belong? Who decides? How is it decided? And, if one recognises the inherent temporality of concepts and their pasts, when is it decided? Focusing on the concept of 'revolutionaries',[1] this Chapter has two aims. First, recognising that there is always more than one way to think about conceptual history generally,[2] and to think about the concept of 'revolutionaries' in and for the discipline of international law in particular, it will offer *one* way to do so, not as an authoritative account or method, but rather as an aperture to a larger conversation which has yet to begin in the discipline about the relationship between revolution and international law. Second, it will offer some reflections on the question of what it means to say a concept *belongs* to a discipline. To achieve these two aims, the Chapter will examine the conceptual belonging of 'revolutionaries' in international law in three sections: Part I will address *where* a concept belongs – that is to say, it will explore the idea of a disciplinary 'home' or 'place'; Part II will examine *how* a concept belongs in a discipline – that is to say, it will examine its 'fit' within specific categories of the disciplinary body of knowledge; and finally, Part III will address *why* a concept belongs to a discipline,

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[1] For a philosophical-historical exploration of the relationship between international law and the concept of revolution in a colonial constitutional context see V. Kumar, 'International Law, Kelsen and the Aberrant Revolution: Excavating the Practices of Revolutionary Legality in Rhodesia and Beyond' in N. M. Rajkovic, T. Aalberts, and T. Gammeltoft-Hansen (eds), *The Power of Legality: Practices of International Law and Their Politics* (CUP, 2016).

[2] '…[C]ertainly the historical study of concepts admits several perspectives and approaches.' J. F. Sebastián and J. F. Fuentes, 'Conceptual History, Memory, and Identity: An Interview with Reinhart Koselleck' (2006) 2 *Contributions to the History of Concepts* 99, 104.

that is to say, it will explore the possible reasons grounding the claim that a concept possesses the quality of disciplinary belonging.

I will argue that a conceptual history that explores where, how, and why a concept belongs to a discipline can help one to understand, and come to terms with, the concept's past(s), present(s), and future(s). Specifically, it argues first, that etymology, as a technique, shows us that the epistemic *place* of the concept of revolutionaries is both within and outside the discipline of international law depending on *when* the question is posed; second, that the concept's *fit* in two extant categories of international law – state responsibility and recognition – is *contiguous;* and finally, that the concept's purpose in the discipline of international law is up for grabs. It is up for grabs in part because of the concept's relegation to the sphere of the political (rather than the legal) and its neglect by international legal scholars; and in part because the discipline has not yet decided *who counts as a revolutionary in international law*. This decision cannot be answered in one time frame alone – it is a decision which needs to be historicised itself, and which can only be answered through an engagement with the roles of justice and imagination play in international law.

1.2 On Method: Conceptual Belonging, Multiple Pasts, and Legal Imagination

Before I begin, it is important to say a few things about method here. This chapter is written to offer critical reflections on writing conceptual history within and about a discipline, and not as an attempt to write a particular uncontested or authoritative conceptual history of revolutionaries within the discipline of international law.[3] There are several reasons for this. *First*, there is always more than one way to perform conceptual history.[4] There are in fact many live debates among conceptual historians

[3] Following Anne Orford, I use conceptual history as a critical method rather than a means to describe in a fixed or settled way 'the history of revolutionaries in international law': A. Orford, 'International Law and the Limits of History' in W. Werner, A. Galán, and M. de Hoon (eds), *The Law of International Lawyers: Reading Martti Koskenniemi* (CUP, 2015). By 'discipline of international law', I refer primarily to the dominant scholarly practices of international legal scholars who write in or have been translated into English in the 20th and 21st centuries. Specifically, this chapter, for reasons of scope, is not able to address the rich and unexplored *conceptual history of revolution* in Russian international legal scholarship following the October Revolution of 1917.

[4] K. Palonen, 'Rhetorical and Temporal Perspectives on Conceptual Change: Theses on Quentin Skinner and Reinhart Koselleck' (1999) 3 *Finnish Yearbook of Political Thought* 41; R. Stephens and

as to what is the proper way to conduct conceptual history.[5] One suggestion, made by Jan-Werner Mueller, which I loosely employ, is to view conceptual history as *an attempt to come to terms with a concept's past and a concomitant attempt to come to terms with its present*.[6] This paper will use this capacious definition of conceptual history – adding to it an attempt to 'come to terms with the future' – as a way to think about, approach, and understand the question of 'belonging' of a concept.

Second, I approach conceptual history not as an historian of international law, but as a scholar of international law with an interest in how international law *as a discipline* employs, creates and characterises the historical place and significance of a concept. Specifically, I am interested in 'history *in* international law', that is, *the history of a concept within the theoretical and substantive characterisations of its treatment and place in international law by international legal scholars*.[7] I am also not interested in setting the project of doing conceptual history as one that is above, or necessarily separate from, other forms of historical inquiry. Accordingly, this chapter embraces a non-dogmatic and flexible way to tell the story, and stories, of *revolutionaries* in international law, with a deliberate lack of fidelity to one particular approach, mindful of Burckhardt's famous observation that 'history is the record of what one age finds of interest in another'.[8] It recognises the need sometimes to move away from methodological obsessions and tribalism about the 'right thing to do' (i.e., what counts as sloppiness, legitimate sources, anachronistic thinking, temporal

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A. Fleisch, *Doing Conceptual History in Africa (Making Sense of History)* (Berghahn Books, 2016); F. Berenskoetter, 'Approaches to Concept Analysis' (2017) 45 *Millennium: Journal of International Studies* 151; J Fernández Sebastián (ed), *Political Concepts and Time: New Approaches to Conceptual History* (Cantabria University Press-McGraw Hill, 2011); and the Ibero-American Project of Conceptual History (IBEROCONCEPTOS) found here <www.iberconceptos.net> accessed 17 December 2017.

[5] H. Jordheim, 'Against Periodization: Koselleck's Theory of Multiple Temporalities' (2012) 51 *History and Theory* 151; Sebastián and Fuentes (n 2); M. Pernau and D. Sashenmaier (eds), *Global Conceptual History: A Reader* (Bloomsbury, 2016).

[6] I later modify Muller's approach by acknowledging a concept can possess more than one past and present (and future). See J. W. Muller, 'Chapter 4: On Conceptual History' in D. McMahon and S. Moyn, *Rethinking Modern European Intellectual History* (OUP, 2014) 74*,* 78.

[7] Matthew Craven usefully identifies at least three approaches to conceiving the relationship between international law and history – history of international law, history in international law, and international law in history: M. Craven, 'Introducing International Law and its Histories' in M. Craven, M. Fitzmaurice, and M. Vogiatzi (eds), *Time History and International Law* (Martinus Nijhoff Publishers, 2007) 1, 7.

[8] J. Burckhardt, '[D]er jedesmalige Bericht dessen, was ein Zeitalter am anderen Zeitalter merkwürdig findtt' Historische Fragmente (Koehler, 1957) translated as *Judgements on History and Historians* (George Allen and Unwin, 1959) 158. This translation of 'merkwürdig' as 'of interest' is only one possible translation. The word can also be translated as being 'worthy of note', 'as odd', 'as strange' but most plausibly, 'as curious'.

commensurability),[9] so as not to overlook Burrow's observation that 'there is no vantage point from which to look at history'.[10] And this means recognising there are many pasts, the past being of course not the same as history.[11] Thus, the intelligibility of concepts depends on acknowledging the multiplicity of pasts undergirding them, rather than upon 'a determinately configured past subsisting *sub specie aeternitatis*'.[12]

Finally, the intelligibility of a concept also depends on an approach that considers the role of the imagination in forming and understanding a concept's disciplinary belonging. *To understand the significance of international legal concepts therefore requires both a turn to history and a turn to imagination*.[13] Although there have been some attempts by historians,[14] and by conceptual historians,[15] to take the relationship between history and imagination seriously, a distinct or accepted methodology dealing with the relationship between international legal concepts, history, and the imagination – which is at the centre of this chapter – has yet to invented. As there is no discernible accredited path to take to do this, this chapter proceeds in a novel fashion, and will explore this relationship through three salient questions: *Where, how, and why does the concept of 'revolutionaries' belong to the discipline of international law?*

2. Conceptual Belonging as 'Place' – Where does the Concept of 'Revolutionaries' Belong?

2.1 Politics or International Law?

[9] G. E. Kirsch and L. Rohan (eds) *Beyond the Archives: Research as a Lived Process* (Southern Illinois University Press, 2008). My approach is *simpatico* with Gerry Simpson's 'After Method' (2016), delivered at the *History, Politics, Law: Thinking Through the International Conference* at Clare College in Cambridge UK (on file with author).

[10] J. W. Burrow, 'Intellectual History in English Academic Life: Reflections on a Revolution' in R. Whatmore and B. Young (eds), *Palgrave Advances in Intellectual History* (Palgrave Macmillan, 2006) 24.

[11] P. Roth, *'The Pasts'* (2012) 51 *History and Theory* 313, 330.

[12] ibid, 313.

[13] Here is where I depart from a *Geschichtliche Grundbegriffe* (*GG*) approach to historiography and conceptual history co-founded by Reinhard Koselleck (together with Otto Brunnner and Werner Conze): G*eschichtliche Gunderbegriffe: Historisches Lexikon sur Politische-sozialen Sprache in Deutschland* 8 vols (Klett-Cotta, 1972–1997).

[14] H. Lloyd-Jones, V. Pearl, and B. Worden (eds), *History and Imagination: Essays in Honor of H. R. Trevor-Roper* (Holmes & Meier Publishers, 1982)**.**

[15] A. Schinkel, 'Imagination as a Category of History: An Essay Concerning Koselleck's Concepts of *Erfahrungsraum* and *Erwartungshorizont*' (2005) 44 *History and Theory* 44, 48: 'It is imagination that nestles itself between experience and expectation.'

Reinhart Koselleck, the renown conceptual historian once concluded, '[t]here are few words so widely diffused and belonging so naturally to modern political vocabulary as the term "revolution"'.[16] Can one then conclude that revolution – and the related concept of revolutionaries – *belong* to the study, discipline, and vocabulary of politics? Certainly, a strong case could be made in support of this assertion. The various fields and sub-fields of politics, whether political science, political theory, political sociology, or political philosophy, certainly boast a surfeit of work on revolution and revolutionaries.[17] From Edmund Burke (1729–1797) to Alexis de Tocqueville (1805–1859), to Karl Marx (1818–1883), to Rosa Luxemburg (1871–1919), to C.L.R. James (1901–1989), to Hannah Arendt (1906–1975), to Franz Fanon (1925–1961), one has little trouble naming 'scholars of revolution' within the broad field of politics. International legal scholarship, by comparison, has produced astonishingly few works examining revolutionary actors and/or revolutions, with the result being that the significance and importance of these concepts – their legal implications for, effects upon, and possibilities within international law – have been under-theorised if not entirely neglected.[18] So one reading of the place of the concepts of revolution and of revolutionaries, based on the extant written record of which disciplines pay attention to revolutionary phenomena, would have us conclude that these are profoundly if not predominantly *non-legal concepts*: concepts fundamentally rooted in the broad discipline of politics, concepts which are therefore 'outside' the disciplines of law or indeed international law.

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[16] R. Koselleck, 'Historical Criteria of the Modern Concept of Revolution' in R. Koselleck, *Futures Past: On the Semantics of Historical Time* (K. Tribe tr, Columbia University Press, 2004), 43.

[17] A small selection includes: B. Moore, *Injustice: The Social Bases of Obedience and Revolt* (Palgrave McMillan, 1978); T. Scopol, *States and Social Revolutions* (CUP, 1979); C. Johnson, *Revolutionary Change* (Little, Brown, 1966); J. Dunn, *Modern Revolutions: An Introduction To the Analysis of a Political Phenomenon* (CUP, 1972); P. Calvert, *Revolution and Counter-Revolution* (Open University Press, 1990); T. Scopol, J. Goldstone, T. R. Gurr and F. Moshiri, *Revolutions of the Late Twentieth Century* (Westview Press, 1991); J. DeFronzo, *Revolutions of Revolutionary Movements* (Westview Press, 1991); M. S. Kimmel, *Revolution: A Sociological Approach* (Polity, 1990); C. Tilly, *European Revolutions 1492–1992* (Blackwell, 1993).

[18] Exceptions whose *primary* focus is revolution in international law include: P. Allott, *International Law and International Revolution* (University of Hull Press, 1989); E. McWhinney, *International Law and World Revolution* (A. W. Sijthoff, 1967); D. Armstrong, *Revolution and World Order: The Revolutionary State in International Society* (Clarendon Press, 1993); A. Casesse, 'The Diffusion of Revolutionary Ideas and the Evolution of International Law' in P. Gaeta and S. Zappalà (eds) *The Human Dimension of International Law: Selected Papers of Antonio Cassese* (OUP, 2008); O. Taylor, 'Reclaiming Revolution' (2013) 22 *Finnish Yearbook of International Law* 259; V. A. Arslanian, *Beyond Revolution: Ending Lawlessness and Impunity During Revolutionary Periods*' (2011) 36 *Boston College International & Comparative Law Review* 121; Kumar (n 1).

However, when examined more closely, this answer – that 'revolutionaries' is wholly or even primarily a *non-legal* concept – is unsatisfactory. It is unsatisfactory first in that the dearth of studies on the concept of revolution and revolutionaries in international law may simply signify a blind spot of the discipline, rather than being indicative of *what counts* as a concept of international law. Revolutionaries and revolution are on this reading the conceptual elephants in the salon of international law, *infra-legal concepts*[19] awaiting formal recognition, lurking in the unwritten unconscious of international law, concepts so suppressed they fail to even be scattered through the indexes of international law textbooks, let alone be deemed deserving of a chapter or spotlight of their own.[20] The conceptual pedigree of 'revolutionaries' in international law has yet to be traced, not because there is no such pedigree (or more aptly, pedigrees) but because the excavation and analysis has yet to begin, the legal archaeological commissions have yet to be undertaken.

Second, it is not clear that 'revolutionaries' as a *concept* 'naturally belongs' to the realm of politics or its vocabulary, *any more than* it belongs to that of sociology, history, philosophy, art, music, literature, anthropology, economics, or, as I show below, the hard or soft sciences (e.g., astronomy, astrology, geology, physics, chemistry, archaeology). It is not clear in part because there is simply no accepted test to determine this. And it is also not clear because the epistemic borders and parameters of disciplines, when closely examined, are inherently permeable, co-dependent, and overlapping, such that concepts, however circumscribed, can never be completely confined or bounded.

Third, even if the concepts of revolutionaries and revolution can be said to 'belong naturally' to 'modern political vocabulary', Koselleck's qualifier of 'modern' admits, *inter alia*, that this was at one point not the case. The concept of revolution or revolutionaries was indeed a problem for political vocabulary *in the past*. The late Fred Halliday, International Relations doyen and clairvoyant on revolution and the Middle East, noted that 'the study of revolution is not at home in *any* of the social

[19] Fleur Johns helpfully defines *infra-legality* as 'the practice of relegating certain issues, experiences, and elements to international law's margins, as the natural, the incidental or the unworthy of direct notice'. F. Johns, *Non-Legality in International Law: Unruly Law* (CUP 2012), 10.
[20] M. N. Shaw, *International Law* (8th edn, CUP, 2017); J. Crawford (ed), *Brownlie's Principles of Public International Law* (8th edn, OUP, 2012); M. D. Evans, *International Law* (4th edn, OUP, 2014); J. Klabbers, *International Law* (CUP, 2017); M. Dixon, *Textbook on International Law* (7th edn, OUP, 2013).

sciences'.[21] These sciences, if they indeed can still be unqualifiedly considered sciences, clearly included both political and legal science. So the 'place' of a concept, its epistemic location and *terms of belonging*, can change over time. This leaves us with the following query: if one ought to be deterred from classifying 'revolution' and 'revolutionaries' as *solely* or *fundamentally* non-legal (or political) concepts because of disciplinary neglect, permeability, and temporality, how then ought one to approach these concepts?

2.2 Etymology as a Technique

If it is indeed specious to argue that the natural home of 'revolutionaries' and 'revolution' is solely or even primarily the realm of politics, perhaps there are other ways to determine where concepts belong or don't belong. Here I want to suggest that etymology may be a helpful technique for tracing how terms come to be designated within or outside of organised bodies of knowledge (i.e., disciplinary knowledge, including that of international law). Etymology appears to be an overlooked and neglected hermeneutical device for understanding the history and meaning of international legal concepts in legal scholarship on concepts.

Perhaps one reason etymology is undervalued as a technique for conceptual understanding has to do with an absence of attention its own conceptual history – namely, the lack of curiosity about the very etymology of the word '*etymology*'. Even a cursory glance reveals its possesses two valences. First, as is commonly understood, etymology involves the study of the *form* or *class* of words (their familial and linguistic roots, origins, cognates, and so on), their usage, and how these use-meanings changed over time. But the etymology of the word 'etymology' reveals something else, something about etymological teleology. The term 'etymology' is derived from the Greek word *ehtumologia*, which, when broken down into its

[21] F. Halliday, '"The Sixth Great Power": On the Study of Revolution and International Relations' (1990) 16 *Review of International Studies* 207, 207. (emphasis added)

constitutive components, comes from the word *ehtumon* meaning 'true sense' and the suffix *logia*, meaning 'the study of'.[22]

It is this second valence – the study of a word's or concept's *true sense* – that has been lost and must be recovered. The question then becomes what is a concept's 'true sense' and how can one identify this? Obviously, pronouncing upon the truth of anything, after the proverbial 'incredulity' expressed towards metanarratives,[23] will leave one's account open to doubt. But, perhaps we should read this second sense of what etymology involves more *imaginatively* than merely an appeal to a platonic universal truth. We could instead understand a concept's etymology as something that *includes* but also *goes beyond* a concept's *usage* within a discipline, as something that also involves an inquiry into *its significance for* a discipline. 'True sense' as employed here should be taken to mean not an immutable essence, but rather *an endeavour*: the uncovering of multiple and varied ways a concept *belongs* to a body of knowledge or discipline over time. Such an understanding accepts the true sense of a concept as always unfixed, historically contingent, and temporally-marked. With this in mind, one is encouraged to view the etymological story that follows below as only *one* mode or technique of 'uncovering' of a larger unfinishable picture of the true sense of revolutionaries in and for the discipline.

2.3 An Etymology of the Concept of Revolutionaries

The concept of 'revolutionaries' derives from the concept of revolution; the two concepts are, therefore, interlinked. The term 'revolution' derives from the Latin '*revolutio*', a combination of the verb '*volvere*', meaning 'to turn', combined with the prefix '*re*', meaning 'back, anew, again' or 'to relapse, to revert or to be brought back, to restore'.[24] The idea of revolution as a particular kind of circular movement – namely the action of *rolling back* or *returning to an original point,* as in a *restoration,* is found as early as the fifth century in Europe. In the twelfth century, revolution would come primarily to describe the specific action of a *celestial object* rotating – a

[22] H. G. Liddlell and R. Scott, *A Greek-English Lexicon, Perseus Project* <www.perseus.tufts.edu> accessed 15 January 2017.
[23] J-F. Lyotard, *The Postmodern Condition* (first published 1979; University of Minnesota Press, 1984).
[24] OED Online <https://en.oxforddictionaries.com/> accessed 24 August 2016.

revolution was then a planetary circular or elliptical orbit or course.[25] This placed revolution's disciplinary origins, at least in its occidental etymological moorings,[26] firmly within the field of astronomy, the study of the universe and its contents, around the thirteenth century.

By the sixteenth century, the concept of revolution was transformed from a primarily astronomical term to an astrological one.[27] Although it continued to be used in relation to scientific enquiry into the universe and its celestial objects, it soon came to refer to natural celestial forces operating behind, and influencing, human affairs (i.e., how celestial bodies affected human events on earth). By 1425, not long after the 1381 Peasants Revolt across England, the word was rapidly becoming anthropocentric, referring to 'an alteration, change, upheaval' on earth *by human agents*, and by 1521, the term became interchangeable with that of rebellion, namely 'the overthrow of established government or social order by people previously subject to it'.[28]

The term 'revolutionaries' (as distinct from 'revolution') shows up in the English language only in 1694, six years after the Glorious Revolution of 1688, when King James II (King James VII of Scotland) was overthrown jointly by William III and Mary II of Orange and English Parliamentarians.[29] This particular understanding of revolution reflected the *two opposing registers* of the term: *first*, it connoted radical political transformation and upheaval (that is, the change from an absolute to a constitutional monarchy, a partial consequence of the 1689 Declaration of Rights).[30] Yet this revolution was also deemed 'Glorious' in that it involved the restoration of the monarchy to its rightful place – it was a peaceful transition, a restitution of political and legal order.[31] This *second* register is what made it, for some,

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[25] N. Copernicus, *De Revolutionibus Orbium Coelestium* (first published 1543; reprinted in E. Rosen ed, *Three Copernican Treaties*, New York, 1939) 19. The term revolution also frequently referred to *the time* it took this object to complete this rotation, movement or cycle - so here, time and revolution are indistinguishable, with revolution connoting a unit of time itself.
[26] A discussion of non-Occidental accounts of the concept occurs below.
[27] A. Souter, *A Glossary of Later Latin to 600 A.D.* (OUP, 1949) 356.
[28] OED Online (n 24).
[29] ibid.
[30] Snow argues that this double valence persisted when John Locke wrote his *Two Treatises* 'as the term revolution possessed diverse political connotations. To all who used the word it denoted change, generally sudden, and to most it signified completed circular movement'. V. F. Snow, 'The Concept of Revolution in Seventeenth-Century England' (1962) 2 *The Historical Journal* 167*,* 172.
[31] ibid, 171.

'transhistorical' in nature,[32] that is to say, a part of predetermined natural cycles of political life,[33] consonant with the Aristotelian theory of political-constitutional change, from monarchy (and then its deviant, tyranny), to aristocracy (and then its deviant, oligarchy), to polity (and then its deviant, democracy).[34]

It would not be until the end of the eighteenth century, with the advent of the French Revolution of 1789 in particular, that the concept of revolution was thought to have fundamentally broken with its cyclical etymological meaning to connote a singular (that is to say, distinctive) *rupture* with the past.[35] This break symbolised the end of the *ancien régime* and the beginning of a yet unwritten new order on a political *tabula rasa*. Revolution would thereafter come to mean, in a way not thought before, *the fundamental, total, systemic, and radical social, economic, political, and legal change within a society, nation, and State.* In particular**,** revolution became *synonymous with rupture and radical change*. Rather than evince a natural cycle, the French Revolution was perceived to inaugurate a new linear time that moved inexorably towards progress, freedom, and emancipation – a better, yet unknown and unknowable, future.

It is this particular etymological account which would form the basis of Koselleck's so-called '*modern*' conceptualisation of revolution, his *Begriffsgeschichte* of revolution, which changed everything. For him, the French Revolution was unlike those species of revolutions which came before it, changing the very meaning of the concept of revolution: it was not about predetermined, naturalistic, or given conditions and possibilities; it was about the spectre of unknown futures; it was about the creation in history of 'a collective singular' (a capital 'R' Revolution), which itself possessed a consciousness; it was a *metahistorical*[36] concept (in contrast to the repetitive naturalistic *transhistorical*[37] one); it was about the emancipation of *all* mankind and was therefore by definition *global* in scope; it was also timeless, with no

[32] Koselleck (n 16)*,* 47**.**
[33] Though he departs from other aspects of the characterisation of revolution made by his contemporaries, Hobbes's writing on revolution in *Leviathan* and *Behemoth* exemplifies this view: M. Hartman, 'Hobbes Concept of Political Revolution' (1986) 47 *Journal of the History of Ideas* 487*,* 492.
[34] Aristotle, *Politics* Book V (H. Rackham tr, Harvard University Press, 1932)**.**
[35] P. Zagirin, 'Theories of Revolution in Contemporary Historiography' (1973) 88 *Political Science Quarterly* 23*,* 26.
[36] Metahistorical meaning looking beyond historical perspectives, a debate about the nature of historical knowledge. Koselleck (n 16)*,* 50.
[37] Transhistorical meaning holding true across historical boundaries or demarcations. ibid**.**

end until humanity was liberated.[38] There was accordingly no such thing as a failed revolution, only setbacks and the delay of an inexorable process of global emancipation which was always being called forth. And most interestingly for our purposes, the concept of revolution itself was now personified as an agent of history – a revolutionary – calling forth a duty of activism of its revolutionary sub-agents – to bring about mankind's global emancipation.

2.4 On The Place of 'Revolutionaries' within the Discipline of International Law

What does the above brief etymological story of the meaning, usage, roots, and origins of the related concepts of 'revolution' and 'revolutionaries' tell us about *the place* of 'revolutionaries' within the discipline of international law? And what can it tell us about 'the true sense' of the concept (i.e., its significance for the discipline)? First, it tells us something about the *peripatetic* nature of the concept of revolution. It is a concept which can be seen to originate in one epistemic disciplinary field and to migrate across fields, mutating in shape, reconfiguring in meaning and application as it conforms to the terms and conditions of new and different disciplinary foundations (from astronomy, to astrology, to politics). In other words, it reveals that both concepts of revolution and revolutionaries may be seen to 'belong' to a discipline in one period and not another, underscoring the inherent temporality of the question of 'conceptual belonging'. A concept's place is meaningless shorn of its time.

Second, this etymology starkly warns us that the specific concept of *revolutionaries* – as subjects of a field or causal actors of a discipline – are not what they used to be, and therefore may transmogrify again. Two important changes to the concept of revolutionaries are evident. First, revolutionaries, once sublime heavenly bodies (rotating planets and celestial objects), are now earthly, mortal, human actors. Revolutionary agents and subjects are no longer are found from above, but from below; a conceptual vindication of Luxemburgism over Leninism. Second, following the French Revolution, revolutionaries have ostensibly stopped repeating historical cycles of political change: they have stopped being *transhistorical* creatures (who

[38] ibid, 52–3.

move back and forth between political orders) and have become *metahistorical* (who move only forwards, in Hegelian historical linearity). Revolutionaries now seek to bring about radical transformations of all aspects of their conditions through historical rupture and a unidirectional movement towards Enlightenment progress and emancipation. (Revolutionary) Actors which move backwards, to restoration, are now represented by *different* concepts: the *counter*revolutionary or the reactionary. Revolutionaries, like the 'modern' concept of revolution following 1789, now occupy only *one* historical register (the project towards global emancipation), in contrast to the *dual* registers they were associated with following the 1688 Glorious Revolution (i.e., radical change *and* restoration). That the identity, place, and teleology of revolutionaries can shift over time across disciplines may offer insight into how disciplines form, sustain, and (de)recognise revolutionary subjects (i.e., counterrevolutionaries); it makes us attuned to the ways in which the discipline of international law names *and also unnames* who counts as a revolutionary and who does not at different points in time.

Third, and as a consequence of the above, this preliminary etymology helps us find a way to come to terms with the past, or more accurately, the pasts a concept may invoke. It does so by making clear that one cannot simply trace *where* these concepts show up in international legal practices and categories (i) *as if* there are no past lives and meanings that inhere in these concepts which may be smuggled into these practices and categories; and (ii) *as if* the discipline of international law – if ever appearing to accept or embrace these concepts into its lexicon, cosmology, and ordering – does so in any fixed and settled way. Importantly, this suggests that just as one attempts to sketch the relationship between international law and revolutionaries, it is likely that one will instead be depicting what has come to pass and is no more.[39] The etymology of a concept helps us come to terms with the past, and multiple pasts, by demonstrating that the meaning of a concept at any one time, in any one discipline, will be at best but a limited snapshot.

[39] For an important discussion of the naming and unnaming of revolutionaries in the context of extradition treaties, see V. DeFabo, 'Terrorist or Revolutionary: The Development of the Political Offender Exception and Its Effects on Defining Terrorism in International Law' (2012) 2(2) *American University National Security Law Brief* 69.

Finally, a caveat must be asserted on the utility of etymology sketched above – that is to say, it must be read against the fact that there are competing non-Occidental conceptual etymologies of the concept. Revolutions, as *historical phenomena*, long predate the French and American examples. Revolutions are literally *ancient history*,[40] occurring outside the West, and occurring before *anno Domini*. Revolutions, in recorded history, have taken place in the Assyrian, Babylonian, Persian, Seleucid, and Roman empires and in the Ptolemaic Kingdom.[41] Although various ancient philosophers theorised revolution as a naturalistic and cyclical concept,[42] the 'modern' linear progressive understanding of the concept of revolution, depicted in Part I[43] and ostensibly inaugurated by the 1789 French Revolution, was in fact known and understood by educated Assyrians and Babylonians.[44] This suggests that relatively late etymological appearance and usage in the West of the terms of 'revolution' (*revolutio* in the fifth century AD) and 'revolutionaries' (in the seventeenth century AD) should not be taken to signify the absence of older revolutionary *phenomena* or *concepts* outside the West prior to these dates. Though I do not have space to discuss the historical similarities, differences, and co-productions with the Western etymological sketch of the concept of 'revolutionaries' outlined earlier, it is important to note that, *inter alia*, Arabic[45] and Chinese[46] concepts of revolution have their own discrete conceptual histories which predate and overlap this one. These non-Western conceptions of revolution (e.g., the concepts of *geming*, *fitna, inqilab, hakara,* and *tharwa*) strongly suggest that, unlike their Western conceptual counterparts, the history of both colonialism[47] and Western imperial aggression[48] in the international legal order play *formative* roles in their usage, meaning, significance,

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[40] M. Finley *'Revolution in Antiquity'* in R. Porter and M. Teich (eds), *Revolution in History* (CUP, 1986) 47.
[41] J. J. Collins and J. G. Manning (eds) *Revolt and Resistance in the Ancient Classical World and the Near East: In the Crucible of Empire* (Brill, 2016).
[42] Plato *Republic*, vol 2, Book VIII (C. Emlyn-Jones and W. Preddy ed and tr, Harvard University Press, 2013); and Aristotle (n 34), Book V.
[43] A similar now standardised definition of revolution (as a forcible overthrow of government, the pursuit of a vision of social justice and the creation of new political order) is made by J. A. Goldstone, *Revolutions: A Very Short Introduction* (OUP, 2014).
[44] K. Radner, 'Revolts in the Assyrian Empire: Succession Wars, Rebellions Against a False King and Independence Movements' in Collins and Manning (eds) (n 41), 41, 42.
[45] A. Ayalon, 'From *Fitna* to *Thawra*' (1987) 66 *Studia Islamica* 145.
[46] H. E. Ping, 'Ideas of Revolution in China and the West' (2008) 3 *Frontiers of History in China* 139, 142–3.
[47] Zou Rong, 'Geingiun (Revolutionary Army)' in Department CCP History (ed), *Zhongguo jindai zhengzhi sixiangshi cankao ziliao*, Vol 2 (Renmin University of China,1980) 411–3.
[48] Ayalon (n 45), 163. See also B. Lewis, 'Islamic Concepts of Revolution' in B. Lewis, *Islam in History: Ideas, Men and Events in the Middle East* (The Library Press, 1973).

and development across time and space.[49] This caveat to the etymological account of the concept of revolutionaries helps us come to terms with the past by reflecting on *whose* past and *whose* account of this past is being foregrounded.

In sum, although the conceptual etymology above sketched helps us to come to terms with a concept's past in these ways, the question of *where* a concept belongs (i.e., *inside* or *outside* a disciplinary corpus of knowledge) may nevertheless be the wrong kind of question to *fully* comprehend the 'conceptual belonging' of revolutionaries in international law. This 'where' question needs therefore to be supplemented by 'how' and 'why' questions of conceptual belonging.

3. Concept Belonging as 'Fit' – How does a Concept Belong?

If answering 'where' a concept belongs provides only a partial understanding of its conceptual belonging, an analysis of *how* it belongs may offer further insights. In this section, I turn to examine how the concept of revolutionaries has shown up in extant categories of international law. Here I explore two ways (of many) in which international legal scholars have employed the concept in relation to the accepted categories of the discipline, i.e., *how the concept is deemed to possess categorical value*. Although it cannot offer an exhaustive analysis, Part 3 examines how scholarly practices have 'fit' this concept into the discipline's epistemological categories, with the aim to uncover *present* understandings of the concept.

3.1 The Concept of Revolutionaries in International Legal Practices and Categories: State Responsibility and Recognition

There are countless ways to discuss 'the fit' between the concept of revolutionaries and international legal categories. *Prima facie*, revolutionaries raise the following broad questions: who is a subject of international law, who possesses international legal personality (ILP) in international law, and what does revolutionary international legal personality entail in a given circumstance and context. Although the concept of

[49] H. E. Ping (n 46), 142–3; Ayalon (n 45); Lewis (n 48), 37–9.

revolutionaries, when it *was* addressed or mentioned, is frequently framed indirectly in one way or another as a discussion of one of these questions, the framing is often configured through other recognised categories of the discipline, two of which are addressed here: state responsibility and recognition.[50] What follows is a brief sketch of how international legal scholars have *fit* the concept of revolutionaries into these two categories of the discipline of international law.

State Responsibility

The concept of revolutionaries has arisen in some scholarly literature as part of a discussion about state responsibility in international law.[51] Specifically, the capacities, obligations and rights of revolutionaries been viewed as an issue of state responsibility in cases where revolutionary actors have been accused of violating rules and norms of international law (such as international humanitarian law,[52] international investment law,[53] and international criminal law[54]) where these revolutionaries have *successfully* formed a new government, or established a new State[55] following an armed conflict (whether characterised as international or non-international in nature).

Two main questions are commonly posed by international legal scholars relating to state responsibility obligations of revolutionaries. First, can international legal offences or wrongdoings committed by revolutionaries be attributed to a new government or new State following a successful revolution? Scholars have concluded that the answer to this question is, with limited exceptions, that States are generally not responsible for the acts of *unsuccessful* revolutionaries, but are responsible for the

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[50] This is not an *exhaustive account* of those international legal categories where the concept of 'revolutionaries' is addressed, directly or indirectly, as this is beyond the aim and ambit of this Chapter.
[51] See Articles 10(1) and 10(2) of the final 2001 *Articles on Responsibility of States for Internationally Wrongful Acts* (hereafter *Articles On State Responsibility*), annexed to UNGA Res 56/83 (28 January 2002) and reprinted in (2001) II/1 *Yearbook of the International Law Commission*; see also L. B. Sohn and R. R. Baxter, 'Draft Convention on the International Responsibility of States for Injuries to Aliens' (1961) 55 *American Journal of International Law* 548.
[52] M. N. Schmitt, 'Legitimacy versus Legality Redux: Arming the Syrian Rebels' (2014) 7 *Journal of National Security Law and Policy* 139*,* 146; C. R. King, 'Revolutionary War, Guerrilla Warfare, and International Law' (1972) 4 *Case Western Reserve Journal of International Law* 91.
[53] J. Vaughan, 'Arbitration in the Aftermath of the Arab Spring: From Uprisings to Awards' (2013) 28 *Ohio State Journal on Dispute Resolution* 491; C. Schreuer, 'The Protection of Investments in Armed Conflicts' (2011) 6 *Oil, Gas & Energy Law* 6.
[54] Arslanian (n 18)*,* 148–52.
[55] P. Dumberry, 'New State Responsibility for Internationally Wrongful Acts by an Insurrectional Movement' (2006) 17 *European Journal of International Law* 605.

acts of successful ones.[56] A second related question they address is whether there is *legal continuity* in terms of a shared international legal personality between the revolutionary actors (or insurrectional movement) and the new government or State actor. Scholars generally agree that legal continuity exists,[57] but offer differing grounds for the existence of that continuity.[58] Some have even argued that this continuity, which results in holding revolutionary actors retroactively responsible for these wrongful acts,[59] is one of the objects of international law.[60]

What conclusions can one draw from the brief sketch of this concept's 'fit' into this category of international law? One conclusion that can be drawn is that the concept of revolutionaries is treated in state responsibility scholarship in an *oblique* manner. The concept itself is not addressed directly in the literature, either in terms of its relation to the discipline of international law or as an international legal concept distinct from a State or its government. Instead, the concept of revolutionaries is framed here solely as a derivation of 'proper' recognised forms of international legal authority: governments and States. Revolutionaries as a concept in the category of state responsibility does not have *independent* standing. First, its 'fit' in the discipline (as framed by the first question scholars have posed) is as a reflection of those *negative* consequences (i.e., harms caused and legal rules and norms violated by revolutionaries) imputed to governments and States. Moreover, with respect to the treatment of the concept as a question of *its legal continuity* with a State or a government, this too evinces a reluctance to treat the concept of revolutionaries as possessing an *independent* legal status, character, and relevance, rather than an indirect one. Viewing the concept as a question of its continuity with a state or governmental actor underscores its auxiliary status as an international legal actor in the discipline.

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[56] ibid; E. M. Morchard, 'International Pecuniary Claims against Mexico' (1917) 26 *Yale Law Journal* 339, 339; and Sohn and Baxter, (n 51), 576–7.

[57] H. Lauterpacht 'Recognition of Governments' (1945) 45 *Columbia Law Review* 815, 821; R. Jennings and A. Watts, *Opennheim's International Law: Volume 1 Peace* (4th edn, OUP, 1996) 44; and *Aguilar-Amory and Royal Bank of Canada Claims (Great Britain v Costa Rica) Award* (Oct 18, 1923) 1 Reports of International Arbitral Awards 369 (hereinafter *Tinoco Arbitration Case*), 377–8 (Arbitrator William H Taft holding that a revolutionary government succeeds *inter alia,* to the debts, loans, contracts, treaties of the previous government).

[58] Dumberry (n 55), 609–12.

[59] Lauterpacht,(n 57), 441, footnote 149.

[60] ibid, 441: '…the legal continuity of the municipal system torn asunder by revolutionary convulsions is one of the objects of international law.'

The fact that the concept is dealt with indirectly in this manner is a likely consequence of the fact that no accepted *legal* definition of revolutionaries has been put forward either by international legal scholars writing on state responsibility or in international legal sources outlining the law on state responsibility.[61] The concept of 'revolutionaries' thus effectively operates in this category of the field as *an empty signifier.* This allows it to be treated interchangeably with many other un- and ill-defined concepts: rebels, insurgents, guerrillas, insurrectionary movements, coup d'état leaders, and usurpers.[62] Some have argued that the absence of a definition of revolutionaries in this category of international law may be no accident. That is to say, the law on state responsibility may have been framed as it is presently framed, *precisely in order to avoid having to define or deal with the question of the international legal personality of revolutionaries*.[63] This would explain why revolutionaries are treated as 'trace' legal subjects – that is to say, they exist in so far as their observable and measurable *deleterious* effects for States and their governments can be traced (and thereby attributed as a matter of law). Accordingly, unsuccessful revolutionaries are less 'traceable' as pertinent subjects of international law when States and their government representatives do not attract responsibility for their actions. In this sense, these kinds of revolutionaries, defined solely by their lack of success, form 'shadow' international legal subjects in the law of state responsibility. Interestingly, should revolutionaries have *salutary* effects on States and their governments (for example and hypothetically, if revolutionaries act to prevent acts of genocide; secure land rights and restitution for indigenous peoples; repel fascist, colonial, or racist authorities from taking power or harming sections of a population), these putatively 'positive' effects are hitherto untranslatable – and untraceable – in the law of state responsibility.

One final effect of avoiding a stand-alone definition of the concept of revolutionaries in writing on state responsibility is to sustain the existing indeterminacy and

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[61] Jean d'Aspremont makes this important point in relation to the absence of a definition of 'insurgents' in the ILC's *Articles On State Responsibility*: see J. d'Aspremont, 'Rebellion and State Responsibility: Wrongdoing by Democratically Elected Insurgents' (2009) 58 *International and Comparative Law Quarterly* 427*,* 428.

[62] J. d'Aspremont, 'Responsibility for *Coups d'État* in International Law' (2010) 18 *Tulane Journal of International and Comparative Law* 451*,* 468.

[63] d'Aspremont (n 61)*,* 430; L. Zegveld, *Accountability of Armed Opposition Groups in International Law* (CUP, 2002); and A. Clapham, *Human Rights Obligations of Non-State Actors* (OUP, 2006)*,* 275–85.

uncertainty about who is (and thus who can be held) responsible for committing international wrongs. If attributing responsibility to revolutionaries 'is an exception to the principle that acts of individuals (including rebels) cannot be considered acts of the State for the sake of State responsibility',[64] the concept operates to carve out a space for actors normally rendered illegible in international law's traditional Westphalian landscape.

Recognition

The concept of revolutionaries also appears in international legal scholarship on the *recognition* of revolutionary actors (as individuals, groups, or regimes) in international law. An extensive history exists on the recognition of forms of revolutionary authority, democratic or otherwise, in international law. Following the French Revolution, European nations pursued a policy that denied recognition of revolutionary governments and actors as they were not based on divine right of monarchs;[65] a policy that became one of the purposes of the Holy Alliance after the Congress of Vienna in 1815.[66] In the early twentieth century, attempts were made through treaties and conventions not only to outlaw revolutionary governments, but to impose a duty of non-recognition of revolutionary governments,[67] but these ended in failure.[68] By the mid-twentieth century, imperial courts dealing with the question of the legality of revolutionary governments in international law[69] characterised the acts throughout history where revolutionary actors and regimes have been internationally recognised as a *juridical* fact:

> It is an historical fact that in many countries…there are now regimes *which are universally recognised as lawful* but which derive their origins from

[64] d'Aspremont (n 61), 429.
[65] L. Dennis, 'Revolution, Recognition, Intervention' (1930) 9 F*oreign Affairs* 204*,* 205.
[66] K. Marek, *Identity and Continuity of States in Public International Law* (2nd edition, Librairie Droz, 1968); S. D. Murphy, 'Democratic Legitimacy and the Recognition of States and Governments' (1998) 48 *International and Comparative Law Quarterly* 545*,* 567; R. Albrecht-Carrie, *A Diplomatic History of Europe Since the Congress of Vienna* (revised edn, Harper & Row, 1973).
[67] Central American General Treaty of Peace and Amity (signed 20 December 1907) and Central American Treaty of 1923 (signed 2 February 1923; drafted by the US but not a party to it). T-C. Chen, *The International Law of Recognition* (Fredrick A Praeger, Inc, 1951) 300, 398.
[68] E.g., the 1930 Estrada Doctrine; William Taft, *Tinoco Arbitration* case (n 56)**,** 155; Marek (n 66)*,* 55.
[69] Kumar (n 1), 157.

revolutions or *coups d'etat*. The law must take account of that fact.[70]

The recognition of revolutionary actors (as a question of international law) is discussed in a variety of ways in international legal writing, *four* of which are canvassed here. Some scholars have described revolutionaries as actors who have formed or founded *a new state*.[71] The discussion of recognition here mostly turns on whether that newly created entity – an entity viewed as having been *authored by* revolutionaries – has met the four criteria set down by the 1933 *Montevideo Convention on the Rights and Duties of States*: does the entity possess (1) a defined territory; (2) a permanent population; (3) an effective government; and (4) the capacity to enter into relations with other States (i.e., independence).[72] In this literature, the concept of revolutionaries is treated as either preceding, secondary to, or suffused with the question of whether something is a state or not according to international legal rules and practice.

More frequently, the concept of revolutionaries is addressed by international legal scholars as a question of the recognition of a *government* in international law. The literature describes how recognition of revolutionary government (or government representatives[73]) can be a political or a legal act.[74] As a *political* act, recognition of revolutionary government means that another state or government 'is willing to enter into political and other relations' with the recognised revolutionary government, 'relations of the kind which normally exist between members of the family of nations'.[75] With some exceptions,[76] scholars frame the *legal* act of recognition in

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[70] *Madzimbambuto v Lardner-Burke NO*, *Baron v Ayre NO* [1969] 1 A.C. 645 (J.C.P.C.), 724 (emphasis added).

[71] H. Lauterpacht, 'Recognition of States in International Law' (1944) 33 *Yale Law Journal* 385; Murphy (n 66); J. Crawford, 'The Criteria for Statehood in International Law' (1977) 48 *British Yearbook of International Law* 93*,* 118. See also Decision of the Council of the League of Nations on the Åland Islands including Sweden's Protest, League of Nations, Council Doc. B7 21/68/106 (1921)*,* 22.

[72] Montevideo Convention on the Rights and Duties of States, (1936) 165 LNTS 19.

[73] For an useful discussion of how a *revolutionary* actor (i.e., The National Coalition for Syrian Revolutionary and Oppositional Forces (NCSROF)) has been recognised in six different ways as a 'legitimate representative', see S. Talmon, 'Recognition of Opposition Groups as the Legitimate Representative of a People' (2013) 12 *Chinese Journal of International law* 219*,* 227.

[74] H. Kelsen, 'Recognition in International Law: Theoretical Observations' (1941) 35 *American Journal of International Law* 605; and Talmon (n 73)**.**

[75] Kelsen (n 74)*,* 605.

[76] M. Aristodemou, 'Choice and Evasion in Judicial Recognition of Governments: Lessons from Somalia' (1994) 5 *European Journal of International Law* 532*,* 539, 547; A. C. Bundu, 'Recognition of Revolutionary Authorities, Law and Practice of States' (1978) 27 *International and Comparative Law Quarterly* 18*,* 23; Lauterpacht (n 71)*,* 390.

international law as distinct from the *political* act of recognition.[77] The dominant criterion used as grounds to recognise revolutionary government status in international law is whether it possesses 'effective control' over a State's territory,[78] a criterion not applied consistently by the international community to governments who satisfied it,[79] and a criterion now widely criticised for excluding *by definition* the recognition of the authority of individuals or groups under colonial rule (and occupation) who sought self-determination.[80] In international customary law, it has been long recognised that a revolution can create a new government if that government is 'effective'.[81] A further qualification is that that the effective control must be exercised 'to the exclusion of other entities'.[82] To determine the degree of control exercised by a revolutionary government, it is assessed in relation to the strength of rival claims of control by other entities.[83] 'Premature' recognition of a revolutionary government by another State can amount to an act of intervention contrary to international law.[84]

In addition to addressing whether revolutionaries can or should be legally recognised as constituting a new state or new government under these rules of international law,[85] international legal scholars have debated whether a 'democratic legitimacy' component should be added to the definition of the legal act of recognition (in addition to or instead of the requirement that the government possess 'effective control').[86] This component or 'norm' qualifying revolutionary government recognition has been challenged in terms of its desirability, enforceability, and

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[77] Kelsen (n 74), 606: 'Entirely different from the political act is the legal act of recognition'; Talmon (n 73), 232–3: 'The legal act of recognition is very different from the political act.'
[78] E. Milano, *Unlawful Territorial Situations: Reconciling Effectiveness, Legality and Legitimacy* (Brill Nijhoff, 2005) 30–32; Talmon (n 73), 232.
[79] Kumar (n 1).
[80] U. Baxi 'Some Newly Emergent Geographies of Injustice: Boundaries and Borders in International Law' (2016) 23 *Indiana Journal of Global Legal Studies* 15.
[81] *Tinoco Arbitration Case* (n 53), 381.
[82] Murphy (n 66).
[83] Crawford (n 71), 44–5.
[84] Lauterpacht (n 57), 882.
[85] H. Lauterpacht, 'Recogntition of Insurgents as a De Facto Government' (1939) 3 *Modern Law Review* 1.
[86] T. M. Franck, 'The Emerging Right to Democratic Governance' (1992) 86 *American Journal of International Law* 46; G. H Fox and B. R Roth, 'Democracy and International Law' (2001) 27 *Review of International Studies* 327; R. Buchan, *International Law and the Construction of the Liberal Peace* (Bloomsbury, 2013); G. Fox and B. Roth (eds), *Democratic Governance and International Law* (CUP, 2000); Murphy (n 66), 123, 153.

legality.[87]

Finally, scholars have discussed the relationship between recognition and revolutionaries in the context of international humanitarian law.[88] Here the discussion revolves upon whether revolutionaries, *as non-state actors*, qualify as belligerents in the law of armed conflict.[89] If so, certain rights and obligations attach to them.[90] Revolutionaries are discussed here in relation to whether they need to meet various criteria in order to benefit from protections offered to individuals and groups under international humanitarian law.[91]

What conclusions can one draw from the above discussion as to the concept of revolutionaries 'fit' into this category of international law? First, like state responsibility, international legal scholars have no agreed definition of what constitutes a *revolutionary* government (or a *revolutionary* State) in international law for the purposes of recognition. As expressed by one scholar, 'international law determines *what* a government is, but not *who* the government of a particular state is'.[92] This lack of consensus on a legal definition of *who counts* as a revolutionary or revolutionary government poses problems for the democratic legitimacy debate in particular, given that revolutionaries and revolutionary governments can be democratic or non-democratic in nature. Accordingly, in order to legally recognise the democratic legitimacy of municipal authorities, these scholars will need to outline

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[87] S. Marks, 'What Has Become of the Emerging Right to Democratic Governance?' (2011) 22 *European Journal of International Law* 507*,* 512–3 (on desirability, enforceability, and legality); S. D. Murphy, 'Democratic Legitimacy and the Recognition of States and Governments' (1998) 48 *International and Comparative Law Quarterly* 545*,* 581 (on desirability); B. Roth, 'Popular Sovereignty: The Elusive Norm' (1997) 91 *American Society International Law Proceedings* 363*,* 364, 367-68, and 370 (on legality and enforceability); P. Allott, 'The Emerging International Aristocracy' (2003) 35 *New York Journal of International Law and Politics* 309 (on desireability and legality); and E. Omorogbe, 'A Club of Incumbents? The African Union and *Coups d'État*' (2011) 44 *Vanderbilt Journal of Transnational Law* 123 (on legality, enforceability, and desirability). For a counterarguments on legality and legitimacy, see J. D'Asprémont, 'The Rise and Fall of Democracy Governance in International Law: A Reply to Susan Marks' (2011) 22 *European Journal of International Law* 549*,* 552–3, 570.

[88] J. Klabbers '(I Can't Get No) Recognition: Subjects Doctrine and the Emergence of Non-State Actors' in J. Petman and J. Klabbers (eds), *Nordic Cosmopolitanism. Essays in International Law for Martti Koskenniemi* (Martinus Nijhoff, 2003).

[89] K. Mastorodimos 'Belligerency Recognition: Past, Present, and Future' (2014) 29 *Connecticut Journal of International Law* 301*,* 303.

[90] A. Cullen, *The Concept of Non-International Armed Conflict in International Humanitarian Law* (CUP 2010) 100; S. Sivakumaran, 'Binding Armed Opposition Groups' (2006) 55 *International and Comparative Law Quarterly* 369.

[91] Mastorodimos (n 89).

[92] Talmon (n 73)*,* 233.

substantive criteria distinguishing between democratic and non-democratic revolutionary governments; between democratic and non-democratic revolutionaries; and between democratic and non-democratic revolutionary aims, goals, or deployments of force.[93] Even if these criteria and definitions could be easily devised (an unlikely scenario), the risk that they will end up being *subjectively* rather than objectively defined has been duly noted:

> At the outset, some discussion is required of the concept of 'rebellion.' A variety of terminology is often used to describe revolutionary change of government or revolutionary establishment of a new State. Not only is there no agreed form of nomenclature but there is no universally accepted definition of any of the terms often employed by judicial tribunals, publicists, diplomatists and statesmen. The terms in vogue in popular parlance are 'insurrection,' 'rebellion,' 'military coup d'état,' 'civil war,' 'civil strife,' 'revolution,' 'revolt,' 'war of national liberation' and so on. Quite frequently they are used to describe a particular situation according to one's own subjective view of that situation.[94]

Arguably, this subjectivity may not matter. The unresolved (and prior) question of *what exactly is being recognised* – i.e., who constitutes a revolutionary or a revolutionary government in or for international law – may not matter if the legal test of recognition continues to be viewed as based on the *effective control* of a government over a particular territory in the absence of challengers.[95] Here, self-determining revolutionaries or revolutionary groups under the occupation or control of a foreign State could not be recognised as government or State actors. If effectiveness is still widely accepted by international legal scholars to be a requisite criterion in the test for recognition, it may lead them to focus on and emphasise

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[93] For a convincing call for the development of *legitimate* revolutionary aims in the context of use of force, see: F. Mégret, 'Beyond "Freedom Fighters" and "Terrorists": When, if Ever, is Non-State Violence Legitimate in International Law?' (April 6, 2009), available at SSRN: <https://ssrn.com/abstract=1373590> accessed 17 December 2017.

[94] Bundu (n 76), 20–1. For examples of such a subjective definition, see D. Auron, 'The Derecognition Approach: Government Illegality, Recognition, and Non-Violent Regime Change' (2013) 45 *George Washington International Law Review* 443; and E. Wilson, 'People Power and the Problem of Sovereignty in International Law' (2015) 26 *Duke Journal of Comparative and International Law* 551.

[95] That said, there are examples where effectiveness has not been deemed sufficient for the recognition of a new state, an important one being the case of Southern Rhodesia in 1965: see Kumar (n 1). See also B. R. Roth, 'Secessions, Coups and The International Rule of Law: Assessing the Decline of the Effective Control Doctrine' (2011) 11 *Melbourne Journal of International Law* 1.

certain attributes thought to characterise the concept of revolutionaries *over others*, rendering a fragmented and partial definition of the concept. For example, attributes related to the political legitimacy and/or democratic nature of the change being brought about by revolutionaries and revolutionary governments may be de-emphasised relative to those attributes of relative strength, endurance, and likelihood of success possessed by the new revolutionary actor(s) claiming legal authority. In either case, the absence of a definition of revolutionaries in the international legal category of recognition combined with the role effectiveness continues to play in the recognition of governments and states in international law results in a 'fit' conditioned by subjectivity and/or partiality.

A second way the concept of revolutionaries has been fit into the literature on recognition is through historical and contemporary international relations. Some scholars have argued that international legal rules governing the recognition of revolutionary governments are not determined by international law, but by developments in international politics, specifically the existence and the 'end' of the Cold War. The advent of the Cold War has been used to justify the suspension of 'normal' rules relating to the legitimacy of revolutionary governments,[96] whereas the ostensible end of the Cold War in 1989 has been used to justify the emergence of democratic norms and principles applicable to*, inter alia*, the recognition of revolutionary governments.[97] This suggests that the fit of this concept into this disciplinary category of international law is temporally and politically contingent: scholarly assessments of the rules governing the recognition of revolutionaries and revolutionary governments in international law are in flux and unsettled. Consequently, the concept takes the form of a *legal undecidable*: its status as a concept of international law is irresolvable outside the ostensible certainty of a particular geopolitical-temporal frame.[98]

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[96] T. M. Frank and N. S. Rodley, 'Legitimacy and Legal Rights of Revolutionary Movements with Special Reference to the Peoples' Revolutionary Government of South Viet Nam' (1970) 45 *NYU Law Review* 679*,* 683–9 (arguing the international legal rules normally governing three kinds of revolution – belligerency, rebellion and insurgency - no longer apply in light of the effect of the rivalry between Cold War superpowers and the existence of nuclear weapons on state practice).

[97] N. Petersen, 'The Principle of Democractic Theology in International Law' (2008) 34 *Brooklyn Journal of International Law* 33; Franck (n 86).

[98] J. Derrida, 'The Force of Law' (1989-1990) 11 *Cardozo Law Review* 921.

3.2 Conclusion

From the above analysis of the fit of the concept of revolutionaries in these two international legal categories, the following two conclusions can be drawn. First, 'revolutionaries' is not *straightforwardly* an international legal concept. The concept may live next door to the main categorical characters in the neighbourhood of international law (e.g., States, governments, international organisations), interacting with them, often in disruptive or in norm-forming ways, but the international legal categories of the discipline have not offered 'revolutionaries' subjectivity in a legal form or name. These international legal categories have not been able to fully *identify* the concept this way, though they are familiar with it and though they often experience a shared history. The concept rather is more of 'a bit actor' on the international law stage, earning its living primarily from cameo appearances in the legal dramas taking place within the category-homes of the discipline. This *adjacent* fit between the concept of revolutionaries and the disciplinary categories of international law is borne out in *how* the concept is treated in international legal scholarly writing. In state responsibility literature, the concept's oblique, indirect, and exceptional character is revealed. In legal writing on the law of recognition, the concept's subjective, partial, and political-temporal Cold War dimensions are exposed.

But another conclusion is drawable here. As argued in Part I, to observe, on the one hand, that the concept has a *contiguous* fit with the discipline of international law does not mean that 'revolutionaries' is not also and already an international legal concept. The fact that the concept is treated at all, however tangentially, by international legal scholars makes it at the very least a scholarly *object* of international law. Its equivocal nature, the fact that it remains ill-defined in international legal writing - the absence of both an 'International Law Commission Draft Resolution on Revolutionaries and Revolution' and a scholarly 'willing and able' delegation to devise an authoritative treatise on revolutionaries – none of these difficulties or omissions precludes the concept from *belonging* to the discipline of international law. They merely *qualify* the nature of that belonging: that is to say, it is an overlooked and spectral belonging; a peripheral, anonymised, and informal belonging; a belonging to the political, legal, and historical contexts and the

development narratives of international legal categories; a belonging as 'back-story' to components of the discipline; a belonging predominantly manifest in scholarly assumptions, asides, allusions, footnotes, subtitles, anecdotes, resemblances, by-the-way comments, and trivial musings. Revolutionaries without doubt are simultaneously present and absent in the discipline of international law; they are seen and held to be influential actors and simultaneously deemed to be formally irrelevant to the operation and constitution of legal actors in the discipline's categories. Although conventionally and unenlighteningly described most often as undifferentiated 'non-state actors', the concept of revolutionaries may be better described as having an under-the-radar drone-like fit within the discipline. Like debates on drones,[99] the concept can be described both as a story of continuity (revolutionaries were *always* a concept of international law) and one of rupture (revolutionaries are *now* a part of international law as an acknowledged non-state actor with corresponding international legal personality) within the unwritten rules of international law's relationship with revolution.

4. Conceptual Belonging as 'Purpose'

4.1 Why does a Concept Belong?

The conclusions above addressing *how* the concept of revolutionaries fits in two international legal categories (state responsibility and recognition), combined with those addressing *where* the concept is epistemically located, brings us closer to a fuller understanding of the concept's belonging in and for the discipline of international law. A final necessary step must be taken. The normative and purposive nature of defining the concept of revolutionaries in international law is inescapable. Any account of conceptual belonging will be as much instrumental as explanatory – it will and must answer the question, *belonging to what end?*

4.2 Towards a Conceptual Belonging of Revolutionaries:

[99] P. W. Kahn, 'Imagining Warfare' (2013) 24 *European Journal of International Law* 199; S. Moyn, 'Drones and Imagination: A Response to Paul Kahn' (2013) 24 *European Journal of International Law* 227.

There are at least three possible answers to the question *'Why* does the concept of "revolutionaries" belong in the discipline of international law?' Two of these answers assert degrees of the concept's belonging *as forms of non-belonging*. The first answer holds this concept lacks any recognised or authoritative legal grounds to belong in the discipline of international law. This is either because the concept is perceived to be *solely* a political one, and *not* a legal one; therefore, it is justifiably absent from the discipline. This argument is not very convincing as it is clear that other widely recognised political concepts have also been clothed in legality in the discipline of international law, with the concept of 'war' being the clearest example. But the concept of 'revolutionaries' may also be said to lack a legal grounding because of its non-treatment by legal scholars. The neglect of this concept is undeniable – and may be because revolutions are thought to be rare phenomena, or events that did not have significant legal and political ramifications *for the international legal order(s)*. Yet, as was mentioned earlier, the evidence of ancient and non-occidental revolutions speaks overwhelmingly against this conclusion. Indeed, 'there have been revolutions as long as there have been [legal] systems against which to rebel'.[100]

Another important reason for the neglect of the concept of revolutionaries has to do with the unwillingness of legal scholars to not only reckon with the existence of colonialism in international legal history, but to admit that international law not only did nothing prohibit the rise and flourishing of colonialism in the international legal order, but fostered and legitimised it. This relates to the concept's absence in the discipline as many revolutionaries in the eighteenth, nineteenth, and twentieth centuries were *anti-colonial and anti-imperial revolutionaries*, some acting transnationally and internationally through internationalised national liberation movements (e.g., the 1966 Tricontinental Conference). Mainstream or orthodox international legal scholars regularly portray international law as having valiantly *facilitated* decolonisation, whilst omitting international law's complicity, compatibility, and contemporaneous existence with colonial dispossession, accumulation, violence, and conquest. Revolutionaries who approved of using force and armed struggle for revolution to reject and end colonialism and imperialism (such as Thomas Sankara, Ahmed Ben Bella, Fidel Castro, Che Guevara, Vladimir Illich

[100] W. Lipsky, 'Comparative Approaches to the Study of Revolution: A Historiographic Essay' (1976) 38 *Review of Politics* 494, 494. See also Bundu (n77), 18: 'As a general observation, it is indisputable that rebellion has been a constant feature of history.'

Ulyanov Lenin) were clearly international legal subjects who facilitated decolonisation in the international legal order, and yet remain unrecognised, *infra-legal* beings in the discipline. This form of neglect of the concept exemplifies denial in contemporary scholarship of the fundamental compatibility between international law and colonialism and imperialism.[101] Nevertheless, the dearth of contemporary writing on both the concepts of revolution and revolutionaries in international legal scholarship means these concepts *have not been given a reason for belonging by international legal scholars* – the concept of revolutionaries thus appears to lack significant categorical weight in the discipline because little attention has been paid to it. The reasons for its belonging as an international legal concept will come when scholars stop neglecting the significance of the concept.

The second answer to this question is that if it does belong, it belongs at best only obliquely, indirectly, and partially, as demonstrated by its *contiguous fit* in the disciplinary categories of recognition and state responsibility. So here, the reason for its belonging is that it is 'attached to', 'derived from', or 'implied by' the treatment of and formation of *other* international legal categories and actors. But this belonging rests entirely on a denial of a 'formal' and 'direct' belonging of the concept, and can therefore be considered at best another form of *non-belonging*.

A third answer to this question is that the concept of revolutionaries *does* indeed belong as a concept in the discipline of international law. This answer – that the concept of revolutionaries *is* an international legal concept – raises two important questions. First, if it is such a concept, what is its purpose? Put another way, to what end is it a concept for the discipline? Perhaps one purpose of the concept is to expand the range of actors recognised in the international legal order, not only to go beyond the anachronistic statist depiction of international law, but to further diversify the range of other non-state actors who are now being discussed and theorised in international legal scholarship. Revolutionaries can thus be said to serve the purpose of displacing the state's conceptual hegemony in the discipline. The concept of 'revolutionaries' – like that of 'the individual', 'the terrorist', and 'the belligerent', *inter alia* – is then just another late-comer to the repository of legitimate international legal concepts and personalities beyond the state.

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[101] Matthew Craven, What Happened to Unequal Treaties: The Continuities of Informal Empire 74 *Nordic Journal of International Law* 335, 341.

In addition to moving the focus of the discipline beyond its *methodological statism*, the purpose of the concept of revolutionaries can be unsettling and transformative for the discipline in other ways. This is because the concept of revolutionaries raises intractable yet inescapable questions for the discipline. *Who* is a revolutionary in and for international law? *Can the discipline define who is a revolutionary*?

This will not be an easy task as who counts as a revolutionary changes across time and space (not unlike the concept's epistemic place): the question "who is a revolutionary" needs to be historicised itself. To vary an old adage: yesterday's revolutionary may be today's terrorist. This may buttress Nietzsche's pessimistic assertion that 'concepts…cannot be defined: only that which has no history can be defined'.[102] Or it may mean the concept of revolutionaries will require a 'coming to terms with' the past(s), present(s), and future(s) of international legal subjects vis-à-vis their role in international legal orders. At the very least, for it to be a concept with a purpose in international law demands that scholars begin to assess who counted (in the past), who counts (in the present), and who will count (in the future) as a revolutionary, *and explain why.* This will require not just an assessment of where revolutionaries currently fit in positivist international law: it will require that international legal scholars engage with both the roles justice and the imagination play in international law. Thus, on the one hand, a purposive conceptual history of revolutionaries will require the discipline to set out its understanding of the role of justice in the international legal order. Specifically, the discipline will have to confront the legitimate role revolutionaries often play as international legal actors pursuing justice domestically, internationally, transnationally, and globally. On the other hand, a *purposive* conceptual history of revolutionaries in international law will involve the 're(discovery) of imagination as a pertinent device with which to perform historical research and enhance reflection on the art of history [and legal] writing'.[103] That is to say, the discipline of international law will need to begin to imagine what criteria constitutes - and what criteria *can* and *should* constitute - a revolutionary in and for its epistemological foundations and categories (i.e. international legal actors). As the image of the revolutionary is still a spectre which haunts international law,

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102 F. Nietzsche, *The Birth of Tragedy and The Genealogy of Morals* (F. Golffing tr, Doubleday, 1956) 212.

103 C. Cuttia, 'What Type of Historian: Conceptual History and The History of Concept: A Complex Legacy and A Recent Contribution' 51 *History and Theory* 411*,* 421 (emphasis added).

international legal scholars should start imagining a bespoke place for it in the discipline. As '[t]here are no rules of architecture for a castle in the clouds', this is the task left to begin, and this is where the concept's belonging will ultimately be found.[104]

[104] G. K. Chesterton, *The Everlasting Man* (Doubleday, 1925).