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Integrating the Subject: Narratives of Emancipation in Regionalism

Floris de Witte*

Abstract

This article seeks to tease out how different regional organizations understand the subject and how that subject frames the process of integration. It does so in two steps. The first part of the article argues that the notion of emancipation is an interesting lens through which to approach this question in a way that allows for a meaningful and nuanced comparison of radically different projects of regional integration. Emancipation, at the highest level of abstraction, is concerned with the capacity of (public) power to dominate the subject in the ways in which she understands or realizes herself. The regional integration projects that have emerged as ways of overcoming quite specific and historically rooted state limitations, have a selective vision of who the subject is. This selective vision needs to be appreciated in order to understand the organization and process of integration. The second part of the article looks at the European Union, the African Union and Mercosur through this lens and traces different visions of emancipation and of the relationship between the subject, state and regional integration.

The purpose of this article is to understand how different regional organizations structure their understanding of the subject (the individual). It does so in two steps. The first part of the article fleshes out why emancipation might be an interesting lens through which to look at projects of regional integration. Emancipation, at the highest level of abstraction, is concerned with challenging the potential of (public) power to dominate the subject in the ways in which she understands or realizes herself. The starting premise for this article is that all integration projects have a selective vision of how the subject understands or realizes herself and that this selective vision needs to be appreciated in order to understand the organization and process of integration.

This, in turn, suggests that analysing how regional integration processes understand the subject requires us to look at three elements. First, we need to look at the

* Associate Professor, London School of Economics, United Kingdom. Email: f.e.de-witte@lse.ac.uk. Many thanks to Sarah Trotter. The usual disclaimer applies.

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'long history' of regional integration: which narratives, cultural claims or political circumstances have driven the process of integration and which ideas of power and oppression have structured the need for transborder cooperation? Second, we need to look at the specific objectives of the integration processes and, particularly, at how it understands its economic, social and political objectives. What type of subject emerges and what modes of realization are envisaged? Third, we need to look at the precise legal provisions and juridical framework that structure the interaction between subject and state: to what extent are individuals and their lives the object and subject of integration? This approach suggests that different geographical spaces will likely have different visions of their subject and of how she relates to the nation-state. This regional specificity, of course, relates not just to wider cultural, historical or economic processes but also serves to stabilize the specific instances of regional cooperation.

The second part of the article looks at the European Union (EU), the African Union (AU), and the Southern Common Market (Mercosur) through this lens and traces different visions of emancipation and of the relationship between the subject, state and regional integration. In the EU context, the citizen – primarily through the right to free movement – has in some sense emancipated from the state. The underlying logic here is that state power and state authority are understood to be problematic in so far as they prescribe a very particular kind of subject. Crucially, in the EU context, emancipation does not mean emancipation into another polity or identity. The legal structure through which emancipation is secured suggests that the EU is not trying to create a transnational identity as much as trying to liberate the individual from state coercion in their capacity to become who they want to become.

In the context of the AU, on the other hand, emancipation is culturally understood as emancipation from colonial rule and into autonomous political communities. To the extent that regional integration has occurred (both in a pan-African and regional sense), it has focused most critically on the need to build state and institutional capacity. In a sense, there is a feeling that the African subject emerges with the state. The most extensive state obligations and political tools in the AU, for example, see to the prevention of military conflict within states rather than across states. The capacity of the subject for self-expression and self-realization is contingent on the stability of the institutional framework that allows for its articulation. What results is a vision that understands the subject and the state as coterminous; the one cannot exist in a meaningful sense without the other. Unlike within the context of the EU, however, regional cooperation in the AU takes place against the backdrop of a strong sense of pan-Africanism, which ensures that state building remains committed towards the subject rather than towards the creation of homogenous (ethnic) communities.

In the South American context, finally, we can best understand integration as the conflict between visions of, on the one hand, strong attachment to social and cultural regionalism and, on the other hand, (militant) economic nationalism. While regional integration in South America focuses on economic cooperation, it is very weakly institutionalized, giving plenty of space for the articulation of state power. The exceptions to this are the rights to free movement of South American nationals under Mercosur, which are both more extensive and more strongly protected than their economic

counterparts. This suggests a vision of the individual as fractured and composite: at once a national and a regional subject. Being able to articulate one's self between these two visions, then, is understood as part of the subject's human dignity – as something that states cannot limit.

Overall, this article aims to highlight that the relationship between subject and polity is helpful in understanding regional integration. States cooperate for a number of reasons. But the cultural, historical and social context within which they do, and the specific problems that they focus on, tells us something not just about the normative forces that drive the process but also about the ethos of emancipation that drives and stabilizes that process. The point of this article, then, is less about specifying exactly the precise nature of the European, African or South American subject and more about highlighting that these subjects' understanding of regionalism plays a crucial role in institutionalizing it.

1 Emancipation and Regionalism

Emancipation, in the broadest sense, is about the problematization of structures of power that curtail the individual's agency.[1] These structures can exist in a political, economic, cultural or social form. Emancipation is about the progressive liberation of the subjects' agency from these forms of domination.[2] It is not a static concept; there is no checklist of 'emancipatory objectives' that must be met for a fully emancipated state of being. Instead, it is a dynamic and reflexive concept; the struggle for emancipation emerges and evolves with the subject's articulation of agency.[3] To put this more straightforwardly, the struggle for emancipation pops up whenever and wherever the subjects experience something as oppressing them. Historically, the process of emancipation is associated with the tearing down of quite specific and concrete exclusionary economic processes (for example, the labour movement), political processes (for example, the women's voting movement) or cultural processes (for example, the lesbian, gay, bisexual and transgender movement). More generally, however, we can see emancipation to be a reflexive (and reflective) process towards the articulation of the subject's 'self'. How we understand ourselves, after all, is both the cause and effect of the struggle of emancipation; the capacity to articulate or realize our most authentic 'self' is a dynamic process that blurs the boundaries between 'being' and 'becoming'.[4]

The capacity to realize one's self, then, includes both an internal-looking and a developmental component, and it includes both a public and a private element – all of which cannot be separated neatly. On the one hand, emancipation involves liberating the individual from understandings of the 'self' that are imposed by external forces (be they political, social, economic or cultural). In other words, this requires a negative

1 De Witte, 'Emancipation through Law?', in L. Azoulai, S. Barbou des Places and E. Pataut (eds), *Ideas of the Person and Personhood in EU Law* (2016) 17.

2 C. Welzel, *Freedom Rising* (2013), at 33.

3 Welzel, *ibid.*, in fact, argues its exponential nature.

4 Many thanks to Sarah Trotter for highlighting this point.

space of freedom (not a space of negative freedom!) in which the individual can retreat and experiment with who she is and what matters to her, unencumbered by external forces. This is, crucially, not a solitary experience. As Hannah Arendt puts it, this process is dialogical; it requires continuous engagement with oneself as much as with the other.[5] As Axel Honneth highlights, moreover, this retreat into a negative space of freedom in order to understand and construct 'the self' is dynamic.[6] It requires encounters with the 'other' and is inextricably linked with the public expression of the 'self'. It is meaningless to talk of emancipation when the 'self' can only be expressed or articulated in one's bedroom. 'Being' someone is a state that not only is inward looking ('I know who I am') but also presumes a public recognition of that state. Here, the boundaries between 'being' and 'becoming' start to blur. Emancipation, after all, is also about creating a space in which the 'self' can be expressed in public. A meaningful commitment to emancipation, it seems, presupposes structures that institutionalize respect and recognition for difference, that guard a negative space of freedom for the individual and that provide basic resources for individuals to realize their 'self'. Both 'being' and 'becoming', then, require an encounter with the 'other' – both privately and publically.[7]

One of the biggest conceptual problems when thinking about emancipation is its ambivalent relationship with institutions. On the one hand, institutions have often been understood as generating or solidifying instances of oppression. The main historical examples of emancipation – against capital, against racism, against colonialism, against sexism – invariably challenge existing institutions and polities as perpetuating and legitimizing oppression. On the other hand, however, it can be argued that a meaningful process of emancipation is difficult to sustain in absence of an institutional framework. Without solid democratic and juridical institutions, for example, it is difficult to guarantee the negative space of freedom through which individuals can express and assert themselves both privately and publicly.[8] These same institutions serve to protect the capacity to challenge oppression (for example, through voice), instantiate civic notions of respect and recognition and, crucially, entrench the 'victories' of emancipatory struggle. Much of the legitimacy and authority of modern polities, in fact, seems to derive from their capacity to allow for, and institutionalize, new forms and types of emancipation.[9] Institutions, then, can either allow for more emancipation or limit it. They can even do both at the same time and, in doing so, suggest institutional (and cultural) sensitivities for particular kinds of oppression or

5 Arendt, 'Some Questions of Moral Philosophy (1965–66)', in H. Arendt, *Responsibility and Judgment* (2003) 89, at 96.

6 A. Honneth, *Freedom's Right: The Social Foundations of Democratic Life* (2014), at 71.

7 For much more elaboration, see De Witte, *supra* note 1, at 16–20. For more nuanced (and different) views on the relationship between self-identity and self-realization, see C. Taylor, *Sources of the Self: The Making of the Modern Identity* (1992); K. Wright, *Mirroring and Attunement: Self-Realisation in Psychoanalysis and Art* (2009); A. Giddens, *Modernity and Self-Identity: Self and Society in the Late Modern Age* (1991).

8 Honneth, *supra* note 6, at 40–45.

9 Welzel, *supra* note 2, at 189.

domination while legitimizing other kinds. Looking at institutional projects from the lens of emancipation, then, tells us something about a polity's specific nature and essence.

This specificity is even greater when we look at regional integration projects. These projects, in themselves, articulate certain limits to the nation-state. Regional integrations typically serve (very different) instrumental or functional purposes. At a very general level of abstraction, however, they all serve to institutionalize emancipatory processes – either in helping the nation-state to overcome certain forms of domination or in disciplining the nation-state so that it does not become the source of domination itself. This might be understood in the positive sense (for example, solving climate change is an objective that a state cannot achieve alone) or in the negative sense (for example, integration is an antidote to the nation-state's habit of excluding internally and being antagonistic externally).[10] Either way, the nature of regional integration – as well as its institutional and legal framework – makes certain assumptions about what it is that the nation-state cannot do. Regionalism, then, seems to be about making the state more sensitive, or transforming it, in a way that allows it to more easily meet whatever it is trying (not) to do.

But, in doing so, regional integration also changes the subject. For one, regionalism suggests the existence of a community that is not exclusively statist and opens the possibility for the self-realization and self-identification of subjects as 'something' else. Second, how the regional integration project frames the subject tells us something about the specific sites of domination or oppression that regional integration is used to problematize or overcome. In other words, understanding the ethos of emancipation that drives regionalism explains both the organization and process of regionalism. If that sounds too opaque, it might be worthwhile thinking of where exactly we can locate this ethos of emancipation in regional integration projects. Here, we can distinguish three different elements, all of which play a role in understanding the place of the subject in regional integration. The first is the 'long history' of integration – that is, the historical, cultural, ethnic or social narratives that link a certain geographical space. These can be as diverse as allusions to previous cooperation (the Netherlands, Belgium and Luxembourg used to be, once, one country), a shared history (the world war or colonialism), shared ethnic or communitarian visions (pan-Africanism), certain political ideologies (communist legacies) or linguistic connections.[11] How these accounts of the subject are employed to legitimize regional cooperation matters as it tells us something about the backdrop against which the state transforms itself.[12] The most obvious (and most studied) example of this is the EU, which is widely understood to be an answer to World War II. This 'long history approach' matters as it tells us the kinds of oppression or domination that regional integration serves to rationalize or problematize as well as the kinds of emancipation that it structurally favours or seeks.

[10] E. Balibar, *We, the People of Europe* (2004).

[11] Acharya, 'Regionalism beyond EU-centrism', in T. Borzel and T. Risse (eds), *The Oxford Handbook of Comparative Regionalism* (2016) 109.

[12] Soderbaum, 'Old, New, and Comparative Regionalism: The History and Scholarly Development of the Field', in Borzel and Risse, *supra* note 11, 16.

The second element through which we can trace accounts of emancipation lies in the specific tasks and objectives that regional integration projects focus on. These range from economic cooperation to shared security cooperation to political union. Whatever the objectives, however, they need to be rationalized. Authority for their exercise at the level beyond the state needs to be sourced from somewhere.[13] In other words, the object and nature of regional integration tells us something not only about the limits of the state but also of the type of subject that can emerge from it. At the very basic level, for example, it seems to matter whether state consent remains necessary for enforcing any obligations arising from regional integration projects or whether a supranational enforcement mechanism exists and whether the subjects derive certain rights that can be invoked against the state. These differing modes of integration, in a sense, tell us to what extent the state deliberately limits itself – that is, to what extent it understands itself (or its neighbours) to be prone to instances of domination or oppression or to what extent it considers itself constrained by normative claims or processes that understand the nation-state as a site of domination or, conversely, whether it understands regional integration as an instrument for increasing the state's autonomy.

The third site where we can look in order to understand a regional integration's commitment to emancipation is the most straightforward. This requires analysis of the range of individual rights that it offers the subject. In general terms, rights matter as they allow citizens to actively create, rather than passively absorb, a regional idea of 'being' or 'becoming'.[14] The specific kind of rights that the subject can avail herself of on the regional level, then, tells us which kinds of 'being' can be expressed or formed through regionalism. Typically, moreover, this is a kind that cannot be fully expressed on the national level, and, as such, it offers a glimpse into the types of domination or oppression that regionalism attempts to problematize.

These three ways of looking at regionalism in order to tease out what vision of the subject lies at its core are crude and hardly exhaustive. They do not necessarily offer a precise way of defining regional integration projects (let alone, of comparing them). The purpose of this article, then, is more to offer a starting point for analysis of how regional integration relates to the subject and for articulating the ambiguous relationship between regionalism and the nation-state – wherein the subject's self-understanding and self-realization play an active role. In other words, while the way in which the subject understands herself and realizes she might be transformed by regional cooperation, it also lies at its source: without 'something' binding subjects across borders, regional cooperation would not exist. The following discussion is an exploration of this ambiguity in three regional cooperation projects: the EU, the AU and Mercosur.

[13] Soderbaum, *supra* note 12; L. Fawcett and A. Hurrell, *Regionalism in World Politics: Regional Organisation and International Order* (1995).

[14] See also Neuvonen, 'Transforming Membership? Citizenship, Identity, and the Problem of Belonging in Regional Integration Organizations', in this issue, 229.

2 Creating the Subject: Comparing the EU, AU and Mercosur

From the outset, it is clear that the differences in the nature, depth and type of integration between the EU, the AU and Mercosur makes them, to a large extent, incommensurable. But emancipation offers one of the most coherent conceptual visions in order to compare widely different political projects. This is because emancipation is a dynamic concept; it suggests that there are always obstacles to the fully emancipated 'self' and always newly formed or articulated sites of oppression – be it in the cultural, economic or social sphere. Whether the fight for emancipation deals with resisting market forces, gender discrimination or the struggle for democracy does not matter. Emancipation is a never-ending and constant reassessment of sites of domination that ought to be problematized and reinstitutionalized.[15] This makes it possible to compare the struggle for emancipation across different regional integration projects. This is not to say that the struggles are not markedly different, or can be easily classified, but, rather, to say that the processes through which they are articulated and mediated are comparable.

In looking at how the subject is understood in these three projects, we can trace different visions of emancipation and of the relationship between the subject, state and regional integration. In the EU context, the subject, primarily through the right to free movement, has in some sense emancipated from the state. The underlying logic here is that state power and state authority are understood to be problematic in so far as they prescribe a very particular kind of 'being'. Crucially, in the EU context, emancipation does not mean emancipation into another polity or identity. Rather, it has a deeply aspirational nature; it is about allowing its subjects more opportunities to realize the 'self' by creating access to more choices as to how to live one's life.

Regional integration in Africa has a very different vision of the subject. The African subject, in a sense, emerges with the state; they are coterminous. This is tied to the backdrop of colonialism, in which the nation-state is seen as an instantiation of emancipation and can be traced in both the legal framework and political narratives that pervade African integration – both regionally and in the pan-African sense. Regional integration in Africa, then, focuses on institutional capacity building within the state or, in negative terms, on the prevention of instability within states. What underlies this process is an awareness that strong institutions are required to protect the individual in her private and public self.

Within the South American context, finally, integration is most significant when it comes to the mobility of its subjects. This can be explained by the curious mix between, on the one hand, (militant) nationalism with presidential models of political authority and, on the other hand, strong narratives of transnational community that articulate a historical, linguistic, religious and ideological commonality that transcends the nation-state. What results is a vision of the subject as being located between these two visions and realizations of 'self' and an idea of regionalism as being primarily focused on mediating between these two selves.

[15] Welzel, *supra* note 2, at 33.

A *EU*

Integration in the EU is understood as a process that weakens the capacity of its states to dictate the terms and conditions under which its citizens ought to live. Emancipation, then, can best be understood as emancipation of the subject from the state. This can be traced in the EU's history, its mode of integration and the pivotal role – both conceptually and normatively – of legally enforceable individual rights in the integration process. Creating a subject whose life choices can no longer be dictated by state authorities, on this view, allows for an amplified expression and realization of the self. However, this is not a process wherein the subject as a national is emancipated 'into' a new transnational imagined community (hence, the little traction that the notion of European identity has), nor is it a kind of emancipation that leads to a 'retreat into freedom', in which the subject exists in an institutional vacuum.[16] Instead, the European subject is reinstitutionalized within the structures of her choosing – that is, the institutional structures that best allow for her specific self-realization. This process of disembedding the subject from state authority comes with significant emancipatory challenges of its own.

The context within which European integration took place was heavily influenced by both political and economic concerns. In the broadest terms, European integration has always been understood as the answer to World War II, which could be seen as the culmination of the capacity of states to internally exclude citizens and externally antagonize their neighbours, which had been considered a problem even in the interwar period.[17] From this view, the objective to prevent war and reinstate a commitment to the equality of citizens could only be met through a significant curtailing of state power and popular sovereignty. This idea of 'militant democracy' explains both domestic and transnational constraints to the capacity of the state to limit the freedom of its subjects, ranging from constitutional courts and the European Court of Human Rights to market integration through the EU.[18] This political narrative that focuses on the need to prevent authoritarianism from limiting the subject's aspirations and freedom also resonated, conveniently, with later entries to the EU's project. Greece, Spain, Portugal and the Central and Eastern European states all suffered from authoritarian regimes in the decades before 'returning to Europe'. If the 'long history' of European integration tells us one thing, then, it is that there is a deeply rooted distrust of state power.

This political vision of integration as a bulwark against authoritarianism is mirrored quite nicely in the more economic or functional objectives of integration. The idea here is well known; by working together and expanding the market, the member states could expand the size of the economic pie. This idea of comparative advantage has been institutionalized through the free movement provisions and the creation of a single market and was premised on ordo-liberal economic beliefs. This puts the subject at the centre of the European project; while the objective is the need to constrain public (state) power, the main instrument to do so is the subject's economic freedom.

16 Honneth, *supra* note 6, at 88.
17 Balibar, *supra* note 10.
18 J.-W. Muller, *Contesting Democracy* (2013).

The centrality of the subject in the integration project has been bolstered by two juridical developments. The first is the process of integration through law.[19] This speaks to the doctrines of direct effect and supremacy, through which the Court of Justice of the European Union has simultaneously imbued EU law norms with the capacity to strike down domestic norms that conflict with it and allowed EU law to be effective even in the absence of political will.[20] The second is the role of the free movement provisions, which offer the right to cross borders to labour, capital, services, companies and, later on, citizens. These have been read as individual constitutional rights and are enforceable against the EU's member states, cannot be circumvented by political action on the national level and are upheld against the state apparatus by national courts.[21] These two developments mean that the subject has become the instrument through which the objectives of integration are achieved.[22] Every subject of EU law has the ability to challenge the exercise of state power where the latter is understood to constrain the former's ability (or even willingness) to move across borders. This not only problematizes state authority but, evidently, also offers a very particular understanding of the European subject.

What does this short historical and judicial account suggest about the idea of emancipation in European integration and the relationship between state and polity? It suggests a number of things. Emancipation, in the European context, can primarily be understood as the emancipation of the individual from state control. The free movement provisions (and the corollary right of non-discrimination based on nationality) serve to amplify available realizations of self for subjects to include those available in other member states. Essentially, it tells the European subject that she can choose to live at home (and under the economic, social, political and cultural conditions that come with it), but she can also choose to live in structures that have more or less emphasis on these particular elements.[23] The possibility of free movement, in a sense, orients the individual's capacity for self-realization, and, therefore, self-understanding outwards. It allows for expressions of 'self' that might be unavailable or unattractive in a subject's own state. Saara Koikkalainen's research suggests that this effect takes place even in the absence of actual movement.[24] The mere possibility of movement

[19] See M. Cappelletti, M. Seccombe and J. Weiler, *Integration through Law: Europe and the American Federal Experience* (1987); D. Augenstein (ed.), *'Integration through Law' Revisited: The Making of the European Polity* (2012); Azoulai, '"Integration through Law" and Us', 14 *International Journal of Constitutional Law* (*ICON*) (2016) 461.

[20] Weiler, 'The Transformation of Europe', 100 *Yale Law Journal* (1991) 2403.

[21] M. Poiares Maduro, *We, the Court* (1998); Azoulai, 'The Court of Justice and the Social Market Economy: The Emergence of an Ideal and the Conditions for Its Realisation', 45 *Common Market Law Review* (2008) 1335, at 1342–1343.

[22] As Weiler highlights, this obviously comes with problems of its own. Weiler, 'Van Gend en Loos: The Individual as Subject and Object and the Dilemma of European Legitimacy', 12 *ICON* (2014) 94.

[23] F. de Witte, 'EU Citizenship, Free Movement and Emancipation', in F. de Witte, J. Shaw and R. Baubock (eds), 'Free Movement under Attack: Is It Worth Defending as the Core of EU Citizenship?', RSCAS Working Paper 2016/69 (2016).

[24] Koikkalainen and Kyle, 'Imagining Mobility: The Prospective Cognition Question in Migration Research', 41 *Journal of Ethnic and Migration Studies* (2015) 759.

means that the minds of citizens go beyond the national borders and beyond the understandings of 'self' that are permitted 'at home'. In limiting the capacity of the state to control its citizen's physical movement, then, EU law reflects significant emancipatory values. What it suggests, in a sense, is that oppression or domination in the European context primarily comes from the state's capacity to control its citizens' movement, choices, realizations and, implicitly, understandings of self.

To put it as starkly as possible, an individual might identify herself most strongly by her sexual orientation, political values, lifestyle choices or taste in music. But the nation-state suggests that this does not matter. What matters is nationality, as this is the form of social integration that defines the group of people that you talk to (politically), that you agree on choices with, that you share resources with, and that defines what constitutes permissive social or cultural behaviour and what not. EU law, at a very general level, suggests that this is problematic. To use Amartya Sen's words,

> [a] person belongs to many different groups (related to gender, class, language group, profession, nationality, community, race, religion and so on), and to see them merely as a member of just one particular group would be a major denial of each person to decide how exactly to see himself or herself. The increasing tendency towards seeing people in terms of one dominant 'identity'… is not only an imposition of an external and arbitrary priority, but also the denial of an important liberty of a person who can decide on their respective loyalties to different groups.[25]

The kind of oppression or domination that European integration problematizes, then, is the oppression in the name of ethnos – the oppression that comes from the way in which society is organized and its norms legitimated. Crucially, the process of emancipation in the EU does not see to the emancipation of the individual into a wider, pre-existing or imagined European community. In fact, some scholars have argued that the very reason that the EU should not be democratic or structure a strong peripheral identity is because a democratic EU would replicate, on the supranational level, the exclusionary processes that the EU was meant to prevent on the national level.[26] The limited traction that the notion of European identity has (had) can partially be explained by the fact that the European subject is not institutionalized particularly strongly on the supranational level. The strongest articulation of 'self' of the European subject, through the exercise of free movement, does not (necessarily) presume self-understanding or self-realization *qua* European. Instead, the exercise of free movement seems to say more about the subject's specific aspirations than her European identity. The legitimacy that underpins the supranational character of the EU, in other words, is not premised on a strong sense of pan-Europeanness but, rather, on catering to the individual's aspirations.

If the EU's emancipatory process is about institutionalizing the individual's freedom to pursue her aspirations, it is not, as Honneth puts it, a 'retreat into freedom'.[27] For Honneth, disembedding the individual from her institutional framework through

[25] A. Sen, *The Idea of Justice* (2nd edn, 2012), at 246–247.
[26] Balibar, *supra* note 10.
[27] Honneth, *supra* note 6, at 88.

which the 'self' is given shape is not particularly emancipatory. Without such a framework, after all, the individual might be free in a formal sense, but he or she remains unable to articulate or become the 'self' in a meaningful way. Päivi Neuvonen, for example, argues that the EU citizenship law understands the self as an unencumbered and private self, which makes self-realization and emancipation difficult, given that these are premised on the idea of encountering 'the other'.[28] EU free movement law, however, does not only serve to liberate the subject from the constraints imposed by her home state. It does not seek to create an institutional vacuum into which the individual can retreat. Instead, EU law serves to reinstitutionalize the subject in her host state. The non-discrimination obligations attached to the free movement provisions, after all, allow the subject to make use of the institutional framework that allows for a negative space of freedom (such as welfare rights), and that protects the articulation of self (such as fundamental rights or economic activity).

Crucially, then, free movement is not only about creating more opportunities for the subject to pursue her aspirations, but it also offers a way in which to reinstitutionalize the subject, so that the 'self' can be realized in a meaningful fashion. This process of reinstitutionalization is contested. While it can be conceptualized as expressing the precise ties that link citizens across borders – be it in economic, social or cultural terms[29] – it is also clearly at the root of the contestation of the idea of free movement, most powerfully in the Brexit process. And, in fact, the past decades have seen the strengthening of the conditions under which European subjects are allowed to realize themselves across borders. These conditions see to very specific dimensions of self (falling under the economic categories of 'worker', 'self-employed' or 'service provider'), and to the conditions of sufficient resources, so that the host state's welfare structures are not impacted by the migrant's way of realizing herself.[30] This process evidently imposes a significant limit on the emancipatory potential of EU law and articulates a vision of the subject that is functional. Subjects that are economically vulnerable, unable to work or pursue realizations of self that require institutional support are not, in principle, part of the EU's understanding of the subject.

What we see when we look at the EU from the lens of emancipation, then, is a vision of emancipation that understands the subject as being oppressed by the state and its internal method of functioning. This can be explained by looking at the long history of integration and the distrust of popular sovereignty after World War II. Emancipation in the EU, then, is aspirational; it aims to allow the individual to live a life that more closely realizes his or her idea of 'self'. In other words, it is more about becoming someone than it is about being someone. This is institutionalized through the right to free movement and the legal peculiarities of the EU's integration project, which allow individuals significant and legally enforceable rights to physically move

[28] P. Neuvonen, *Equal Citizenship and Its Limits in EU Law* (2016).

[29] This is conceptualized as requiring the intra-European Union (EU) migrant to show a 'degree of integration' in the host state society. See F. de Witte, *Justice in the EU: The Emergence of Transnational Solidarity* (2015).

[30] For the conditions of free movement in the EU, see Commission Directive 2004/38, OJ 2004 L 158/77.

between the territories of the member states. This at once disciplines the darker side of state authority while allowing individual bodies and minds to be emancipated from the nation-state. While the EU seems very successful at questioning state power, however, it struggles to be sensitive to the way in which institutions remain crucial in offering spaces for meaningful expression of self-realization. In this lies the ambiguity of emancipation in the EU.

B AU

In the context of the AU, emancipation is historically understood as emancipation from colonial rule and into autonomous political communities. Post-colonial regional cooperation in the AU seems to operate on two different narratives. On the one hand, we can perceive a strong sense of pan-Africanism in both rhetoric and substance, which understands the subject as being trapped by the inherited borders and their institutional structures. On the other hand, regional integration is – compared with other integration projects – very minimal and substantively unambitious, leaving states to operate relatively independently, with one clear exception. The most far-reaching legal and political obligations on states relate to the need to prevent military conflict and institutional instability within states. This suggests a vision of the subject that is institutionally entrenched; the African subject emerges with the state. In other words, this presumes that emancipation is conditional; it requires strong institutional resources and internal stability, without which the subject cannot emerge. These two narratives might appear at odds with each other. It is argued, however, that the two can best be understood as complementary. While the resources required to create a 'negative space of freedom' through which emancipation can be meaningful and the self can be realized publicly do not exist beyond the boundaries of the state; the normative backdrop of pan-Africanism serves to direct institutional capacity towards the emancipation of the subject rather than towards state building along ethnic lines.

Regional integration in Africa is premised on a range of 17 regional economic blocs, the eight most significant of which (the Community of Sahel-Saharan States, the Economic Community of Central African States, the Economic and Monetary Union, the Intergovernmental Authority on Development, the Economic Community of West African States [ECOWAS], the East African Community, the Common Market for Eastern and Southern Africa, the Southern African Development Community) are linked together into an overarching institutional structure (the AU) that primarily focuses on pan-African political and security cooperation. This article focuses on this overarching structure, rather than the regional blocs, which differ widely in scope, nature and the level of institutionalization.[31] The backdrop against which to understand African integration and the framing of the African subject is clearly that of colonialism and the arbitrary civic structures that have resulted from it. Already in 1945, the Pan-African Congress argued that 'the artificial division and territorial boundaries created by the imperialist powers are deliberate steps to obscure the political unity of

[31] For a discussion of the extensive free movement rights within the Economic Community of West African States, see, e.g., Neuvonen, *supra* note 14.

the African people'.[32] The colonially imposed territorial boundaries and institutional structures, often structured arbitrarily without regard to existing ethnic, tribal, cultural or economic communities, were perceived to articulate an inauthentic vision of the subject.[33]

The years after colonialism were typified by a strong and widely held commitment to pan-Africanism, albeit with significant disagreement about how to get there.[34] In the immediate aftermath of decolonization, two different approaches to regional cooperation emerged. As Ole Thonke and Adam Spliid tell it, 'on the one hand Kwame Nkrumah introduced the philosophy that Africa should unite into a single political federation through an "all-African government". … On the other hand, Julius Nyerere argued that Africa first had to unite at the regional level before the vision of one united Africa could be realised'.[35] The latter view initially prevailed, and the principle of *uti possedetis*, which effectively froze the colonially imposed borders was considered, somewhat counterintuitively, as the most obvious starting point from which to achieve pan-African unity.[36] This decision is crucial in analysing how the African subject is understood in regional integration. It introduces a certain ambivalence that can best be explained as a product of the relationship between identity and regionalism. While the nature, scope and content of regional integration articulate a vision of the subject (so that a new, post-national subject is formed), the opposite is also true: the nature and strength of pan-regional identity informs what regionalism can be about or ought to be about. In the African context, it is suggested that the relative strength of pan-Africanism constrains what states can be about and informs what regional integration ought to be about.

This ambivalence explains why regionalism in Africa is both premised on highly symbolic rhetoric relating to pan-African ambitions and on the strengthening of the independence and institutional capacity of the nation-state. Pan-Africanism provides the legitimacy for integration and cooperation as well as for its central values and is often wheeled out in discourse justifying and explaining the decisions of the AU. The 2063 Agenda, an action plan approved by 54 African heads of state (only Morocco is not a member of the AU), for example, explicitly highlights the need to 'emphasize the importance to success of rekindling the passion for Pan-Africanism, a sense of unity, self-reliance, integration and solidarity that was a highlight of the triumphs of the 20th century'.[37] Pan-Africanism is also explicitly at the core of the recent project to create a single African transport policy, with liberalized aviation industries and road corridors linking the different states and the project to offer an African passport, with visa-free travel between states (both approved in the 2016 and 2017 summits of the

[32] S. Touval, *The Boundary Politics of Independent Africa* (1972).

[33] P. Esedebe, *Pan-Africanism: The Idea and Movement: 1776–1991* (1994).

[34] Thonke and Spliid, 'What to Expect from Regional Integration in Africa?', 21 *African Security Review* (2012) 47.

[35] *Ibid.*, at 48.

[36] Michael, 'Panafricanism, African Boundaries and Regional Integration', 8 *Canadian Social Science* (2012) 232.

[37] 'What Is Agenda 2063', Agenda 2063, available at https://au.int/en/agenda2063.

AU in Kigali and Addis Ababa).[38] More generally, it also explains the already-existing commitments to free movement across regional blocks;[39] migration having always played a central role in the African experience, even in the absence of coordination and institutionalization.[40] National borders, in other words, are seen as historically contingent, and the ability to move across borders is seen as being central to what it means to be African. They are understood as arbitrary hangovers from colonialism, as placeholders that defy other, more authentic and legitimate senses of identity, being and 'the self'.

At the same time, almost all cooperation is explicitly premised on the autonomy of member states and substantively focuses on ways to enhance their institutional capacity. To put it bluntly, cooperation is primarily geared towards strengthening states, not weakening them in the name of pan-African unity. In general terms, economic cooperation has been relatively unsuccessful in Africa (with a few exceptions). The main explanation highlights the lack of homogeneity in governance and democratic structures between regional partners and the lack of basic infrastructural and institutional resources.[41] Even if the AU ambitiously aims to integrate the different regional economic cooperation blocs to coordinate between them, and to create a continent-wide customs union and common market by 2023, most commentators agree that meaningful economic cooperation and integration will require significantly more institutional capacity than is currently available in most states.

The most important characteristic of African integration over the last decades, however, is an increased focus and commitment to prevent conflict and large-scale violence within states. Thonke and Spliid argue that the turning point for this goal was the failed United Nations (UN) mission in Somalia in 1991.[42] Ever since, as the reluctance of the global community to intervene in African disputes increased, Africa has become more assertive in its own security management. This has led to the rethinking of the (until then) sacred principle that underpinned African integration: the principle of non-interference and state sovereignty. With the exception of the conflict between Eritrea and Ethiopia in 1998–2000, all violence in Africa in the last 20 years has started as intra-state (and often ethnic) conflict. The limited institutional capacity of states, after all, is not only reflected in their unstable economic infrastructure but also in their institutional weakness and inability to contain and institutionalize conflict. As a result, the most extensive and ambitious projects of regional cooperation involve military or peacekeeping intervention.

The AU's Peace and Security Council has far-ranging (and binding) powers to support the AU's general objectives, which include 'the right to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances,

[38] 'Establishing a Public Transport Authority in African Cities', *Africa Transport Policy Program*, available at www.ssatp.org/; 'United States of Africa? African Union Launches All-Africa Passport', *Marketplace Africa* (19 July 2016), available at http://edition.cnn.com/2016/07/05/africa/african-union-passport/.

[39] Lavanex *et al.*, 'Regional Migration Governance', in Borzel and Risse, *supra* note 11, 457.

[40] Hartmann, 'Sub-Saharan Africa', in Borzel and Risse, *supra* note 11, 271.

[41] Thonke and Spliid, *supra* note 34, at 42.

[42] *Ibid.*, at 47.

namely: war crimes, genocide and crimes against humanity'[43] and the 'condemnation and rejection of unconstitutional changes of government'.[44] The Peace and Security Council has the ability to impose sanctions, authorize action in case of potential, actual or recently finished violent conflict and can authorize peace missions. So far, it has been active in aid of peaceful transitions and the prevention of unconstitutional changes in Mali, Mauritania and Togo and in military intervention in Sudan (Darfur), Somalia and the Comoros. Practically, these interventions have taken place through the regional blocs, and the AU primarily acts as an intermediary between these regional actors and the UN. ECOWAS' intervention in Ivory Coast in 2010, on the mandate of upholding democratic processes, is a perfect example of this action. Despite clear institutional constraints and practical problems, it is clear that, at least conceptually, regional integration in Africa prioritizes the need to stabilize states from conflict internal to them. It sees the stability and autonomy of institutional structures as being crucial in achieving the objectives of integration.[45]

What to make of this mix of strong pan-Africanist aspirations, a strong commitment to state autonomy, weak institutional structures on the national level and the growing sense of the legitimacy of intra-state intervention to protect citizens from conflict and unconstitutional changes? What does it tell us about how the subject is framed and the kinds of emancipation that are supported by regional integration? At a high level of abstraction, it is clear that if integration and emancipation in the EU is about weakening strong states, then, in the context of African integration, we can best understand the process as one that is about strengthening weak states. The limited institutional capacity of most African states is understood as the core problem and one that prevents any meaningful sense of emancipation of its subjects. This is perhaps reflected best of all in the preamble to AU's Constitutive Act: '[C]onscious of the fact that the scourge of conflicts in Africa constitutes a major impediment to the socio-economic development of the continent and of the need to promote peace, security, and stability as a prerequisite for the implementation of our development and integration agenda.'[46] In African integration, then, emancipation appears to require the creation of strong states, capable of producing and defending the 'negative space for freedom', positive and negative rights without which the self cannot possibly be articulated or realized in a meaningful sense.

Emancipation requires strong domestic institutions for a number of reasons. First, weak institutions constrain pre-existing understandings of 'self' and alter the available ways of expressing the 'self'. They are unable to secure the democratic and judicial framework that protects the private space through which individuals can understand themselves and the public space through which they can realize themselves. Second, weak institutions allow for (violent) domination and competition among communities,

[43] Constitutive Act 2002, available at www.achpr.org/instruments/au-constitutive-act/, Art. 4(h).

[44] *Ibid.*, Art. 4(o).

[45] Hartmann, *supra* note 40; Vandegiste, 'The African Union, Constitutionalism and Power Sharing', 57 *Journal of African Law* (2013) 1.

[46] Constitutive Act, *supra* note 43.

each vying for control over the state's institutions and resources. As mentioned before, only one of the African conflicts over the last 20 years started as an interstate conflict. Typically, conflict starts as intra-state, and, more often than not, these conflicts can be traced back to tension between ethnic groups over the control of resources or institutions. Stronger institutional capacity is required to allow for the institutional mediation of such conflicts. Third, weak institutions cannot produce the positive rights that are indispensible in liberating the subject from the mere pursuit of survival. Structures providing schooling, health care, shelter or food provide the subject with the basic instruments through which she can manage life's vicissitudes and are preconditions for any kind of self-realization. But the stable provision of these resources requires (at the very least) the administrative capacity to lock in subjects, extract resources and manage vast redistributive projects. Weak institutions, then, are understood to create oppression and domination that stand in the way of any meaningful form of emancipation.

This explains why regional integration in Africa has focused on strengthening the state, protecting democratic transition and only limits state autonomy in order to prevent large-scale violence. In other words, the road towards emancipation of the African subject starts with preventing violent conflict within states; continues with the construction of strong institutional capacity within states that allows for the peaceful problematization of economic, ethnic, social or political domination and the institutionalization of new forms of emancipation and ends with a pan-African space in which the subjects can realize their authentic self. If we compare this to the EU model, we might be less optimistic of the capacity of states to play a positive role in the quest for ever more emancipation. At the same time, it appears that the pan-African discourse that underpins the creation and strengthening of state autonomy in Africa allows for a much stronger mode of systemic integration between citizens across borders and might prevent the formation of strong and antagonistic ethnic communities that coincide with the boundaries of polities. If anything, then, the arbitrariness of boundaries in Africa might be a blessing in disguise; it allows for the push towards strong states without the risk of creating strong national identities that narrow the scope for the exploration of 'self'.

C *Mercosur*

In the context of South America, we can trace yet another understanding of the subject and the presuppositions for her emancipation. As in the EU, cooperation in South America is premised on the existence of strong and autonomous states. Unlike in the EU, however, this is not seen as a problem to be solved. And, like in the African context, the normative backdrop for regional integration in South America is the existence of a relatively thick transboundary community of identification. A movement towards unification of the South American continent,[47] from this view, not only underpins regional integration in South America but also informs the subject's role in it. What this mix leads to is, on the one hand, a very weakly institutionalized economic cooperation

[47] To prevent confusion, I will not use the term 'pan-Americanism' because it is often used to include North America. Neither will I use 'Bolivarism' as shorthand for the feeling of togetherness that spans the South American continent for that term comes with a very specific (socialist) vision of that togetherness.

project and, on the other hand, a very ambitious and liberal free movement policy, allowing all South American nationals almost unfettered access to the whole continent. This suggests something about the nature of the subject – at once national and regional – and that the ability to articulate one's self between these two visions is understood to be central to the subject's self-understanding.

Regional integration in South America takes place against the backdrop of two conflicting long-term cultural, social and political processes.[48] On the one hand, we find a tradition towards unification, primarily inspired by Simon Bolivar, which has never gone out of (intellectual) fashion and provides a deep cultural narrative of belonging, sharing and 'sameness' that transcends the geographical boundaries between states. This narrative highlights the similar ethnic, linguistic, cultural and historic make-up of the citizenry and institutional structures between the South American states, and it highlights their joint struggle for liberation from their European oppressors. Regional cooperation in South America, then, is partially understood as a coming together of a wider, ill-defined, but relatively homogenous, transnational community. This homogeneity is more starkly visible when one considers how relatively similar citizens in Bogota and Montevideo are compared with citizens living equally far apart in the rest of the world (consider how similar citizens are between, say, Zurich and Yaounde or between Berlin and Kabul).[49] Consequently, while decolonialization ultimately did not lead to the creation of a continent-wide polity, its subjects have always been understood as 'more than nationals'. As Diego Acosta highlights, in fact, this regional subject already emerged as a legal category in the early 19th century.[50]

On the other hand, we find a history of almost militant (economic) nationalism in state formation, starting in the late 1800s. Oscar Oszlak highlights a number of similarities in the process of state formation, wherein the new states all faced significant internal struggles for institutional domination and legitimacy, primarily caused by the limited territorial integration within states.[51] In consequence, the institutional structures that emerged throughout South America are more typified by their robust capacity to settle conflict and extract resources than any specific political orientation or values.[52] Throughout the region, for example, state institutions are constructed around a very specific civic-military relationship and social and economic classes that correspond to different roles in the production and distribution of (agricultural) resources.[53] This has served to legitimize state building in the absence of strong communitarian or historical and ethic visions of community. The need to create strong centre-periphery relations also explains why most political systems in South America

[48] Fawcett and Hurrell, *supra* note 13.

[49] The distance between these sets of cities is 4,800 kilometres.

[50] Acosta, 'Free Movement in South America: The Emergence of an Alternative Model?', *Migration Policy Institute*, 23 August 2016, available at www.migrationpolicy.org/article/free-movement-south-america-emergence-alternative-model.

[51] Oszlak, 'The Historical Formation of the State in South-America: Some Theoretical and Methodological Guidelines for Its Study', 16 *Latin American Research Review* (1981) 3.

[52] Oszlak, *supra* note 51, at 7.

[53] F. Lopez-Alves, *State Formation and Democracy in Latin America 1810–1900* (2000).

invest significant amounts of power in their president and appear to resist limits to that power, even after the experiences of authoritarianism of the latter half of the 20th century. This emphasis on state power can also be traced in regional cooperation, which has remained squarely based on intergovernmental structures (whether within the context of Mercosur, the Union of South American Nations [UNASUR], the Bolivarian Alliance for the Americas, the Corporacion Electrica del Ecuador or Pacific Alliance). There is little transfer of state authority or enforcement capacity to the level beyond the state.

This contradiction between, on the one hand, the protection of national (economic) autonomy and, on the other hand, strong transnational communities can also be traced in the substance and method of regional integration. The history of integration in South America, to be fair, was always concerned with both economic and more political objectives. Recent developments since the early 2000s, however, indicate a strong turn away from trade and economics towards what is called a 'post-neoliberal conception' of regional integration.[54] What this suggests is that cooperation is not fundamentally premised on the economic theory of comparative advantages, which necessitates or justifies, as the European example suggests, relatively significant limits to state authority, the sharing of sovereignty and strong enforcement mechanisms. Instead, regional integration is increasingly premised on developing a shared social dimension, regional infrastructure, development agendas, fostering economic autonomy and cooperation in areas such as health care – that is to say, objectives that can be pursued with the retention of state power.[55]

In fact, looking at South American integration from the widest perspective indicates that integration serves to protect state power (and its capacity to attain certain objectives) rather than to rationalize state power.[56] Pia Riggirozzi explains this development by referring both to domestic electoral cycles, which, since the early 2000s, saw a range of leftist presidents that sought alternatives to trade as the basis for regional cooperation and to the emergence of ideas of solidarity as a placeholder for legitimation narratives regarding regional cooperation.[57] This explanation, again, nicely mirrors the central feature of South American integration, which marries an accumulation of political power in national actors with the enduring account of cross-border solidarity or cooperation inspired by accounts of pan-Americanism.

The relative absence of meaningful trade agreement or economic integration can be juxtaposed with a very liberal and ambitious free movement regime and (prospective) transnational citizenship. The Mercosur Residence Agreement and the UNASUR project of a 'South-American citizenship' are the most ambitious of these projects.[58] The 2002 Residence Agreement, which entered into force in 2009, grants Mercosur

[54] Riggorozzi, 'The Social Turn and Contentious Politics in Latin America Post-Neoliberal Regionalism', in A. Hurrelmann and S. Schneider (eds), *The Legitimacy of Regional Integration in Europe and the Americas* (2015) 229.

[55] Riggorozzi, *supra* note 54.

[56] Acharya, *supra* note 11.

[57] Riggorozzi, *supra* note 54.

[58] Lavanex *et al.*, *supra* note 39.

citizens (as well as Bolivian and Chilean nationals and, by extension, Colombian, Ecuadorian, Peruvian, Surinam and Guyana nationals) the right to work and live on the territory of all of the states. Provided that the migrant has no criminal record, he or she is given a two-year residence and work permit, which is transformed into a permanent permit after these two years. Article 9 of the Residence Agreement offers migrants the same economic, social, cultural and civil rights as nationals.[59] In 2010, a Statute of Regional Citizenship was adopted in the Mercosur Council, highlighting that

> the statute of Mercosur citizenship shall be composed of a group of fundamental rights and benefits for all nationals of the states parties of Mercosur, and shall be based on the following objectives, among others … implementation of a policy of free circulation of people in the region; equal civil, social, cultural and economic rights for nationals of all Mercosur states; equal conditions of accessing work, health and education.[60]

This Statute of Regional Citizenship is meant to enter into force in 2021, even if its implementation and enforcement remains contingent on national implementation (and consent) as well as a range of harmonization measures regarding social security. At the same time, UNASUR, which in its founding treaty highlights the need to 'strengthen South American identity through the progressive recognition of the rights of Member State nationals residing in any other Member State, with the goal of achieving South American citizenship',[61] has launched a process towards the creation of a South American passport and citizenship, with similar aims as the Mercosur Residence Agreement but highlighting more explicitly the narrative of a coherent, transnational identity underpinning it. As the UNASUR Secretariat reported after the 2016 summer meeting, '[t]he building of the South American citizenship promotes free intra-regional mobility; and the creation of a South American education space and common identity, which will contribute to deepening the regional integration process. In addition it will guarantee civil, political, labour and social rights for all natives of the member-states who are at present residing in any country of South America'.[62]

Whatever form its eventual implementation will take, and regardless of how successful the project of the creation of a South American citizenship will be, the direction of travel is clear. It seems that in South America the subject is understood as structurally fragmented – at once a national and a regional citizen. These two identities are neither in conflict nor in competition with each other. Nor is the subject understood as an instrument for further integration or economic cooperation. The transnational community of identification is not something that is constructed through integration. Instead, it is something that limits the capacity of states not to pay attention to it; its

[59] Mercosur: Acuerdo sobre Residencia para los Nacionales de los Estados parte del Mercosur, 6 December 2002, Art. 9. See Accord 13/02 on the Residence of Nationals of State Parties of Mercosur, 6 December 2002; Accord 14/02 on the Residence of Nationals of Mercosur, Bolivia and Chile, 6 December 2002.

[60] Mercosur Council, Decision no. 64/10, 16 December 2010.

[61] Tratado Constitutivo de la Unión de Naciones Suramericanas, 23 May 2008, available at www.unasursg.org/images/descargas/DOCUMENTOS%20CONSTITUTIVOS%20DE%20UNASUR/Tratado-UNASUR-solo.pdf.

[62] 'South American Citizenship Project Consolidates Its Initial Steps', *Union of South American Nations*, www.unasursg.org/en/node/858.

existence, and the normative strength of the narrative of 'sameness', constrains states in their capacity to understand the citizen as exclusively national. To put it as simply as possible, in return for the autonomy and authority of the state that is guaranteed through economic intergovernmentalism, the state promises its citizens that they are able to understand and articulate themselves as being regional, South American citizens. The key to understanding integration in South America, arguably, is that emancipation is contingent on both the existence of strong states – that offer the welfare and resources and institutionalize the civic rights that allow for self-realization – and a space beyond the state through which the self can be expressed and realized. Emancipation, in other words, is understood as the emancipation of the individual into a wider cultural space and 'imagined community' that transcend the boundaries between states in South America, with the retention of the institutional and administrative structures that allow for the stable production of welfare and civic resources.

While this starting point does not stand in the way of economic integration (but neither does it mandate it), it is clear that it lies at the core of the ambitious and liberal regime of free movement. More than that, it is clear both historically and in the text of the legal provisions on both the national and regional level that this right to free movement is understood as a fundamental right, part of the subject's core rights.[63] Crossing borders is understood as an expression of 'being', not – as in the EU – a more aspirational idea of 'becoming'. Crossing borders in South America, revealingly, does not require any proof of sufficiency of resources, health insurance or the ability or willingness to work. To put it as simply as possible, mobility in South America is not about who you want to become, and the subject's right to reside in another state is therefore not contingent on fulfilling certain functional criteria or adhering to a hegemonic idea of being. Instead, mobility is an expression of who you already are. Imposing limits on this kind of mobility, then, is a much more egregious violation of the subject's ability to articulate her authentic self than in the European context. It not only affects the subject's available realizations of self but also affects their human dignity – their capacity to be themselves.[64] In consequence, the right to reside across the South American states is disentangled from any particular realization of the subject.

If we compare this to the EU model, the main difference is the relative trust in state authority and state power and the more liberal and ambitious understanding of the regional citizen. In the EU, state power is distrusted as it reflects ethnic or cultural visions of being that are exclusionary (internally) and often antagonistic (externally). In South America, it seems, this is less of a worry. In fact, the strength of the unified identity as a cultural and social narrative (and the corresponding weakness of nationalist visions based on ethnic or cultural differences) might suffice to discipline the state's capacity to exclude internally or antagonize its neighbours. In other words,

[63] Acosta, *supra* note 50.

[64] Of course, an idea of human dignity that is particular to the South American context. As Trotter points out, the European idea of 'being' is much more strongly embedded within a developmental idea that highlights the closer link between being and becoming. See Trotter, 'Time in European Human Rights Law' (on file with the author).

understanding the subject as being both Uruguayan and South American, and allowing for the expression of self as both, makes the state stronger; it allows the subject to legitimize the institutional and civic structures of the state. The state, through regional integration, has turned its greatest weakness into its strength; rather than being seen as illegitimate by only partially reflecting what the citizen is and can be, it allows the citizen to construe and realize the 'self' between the two poles of national and regional identity. Of course, therein also lies its weakness; the institutionalization of economic nationalism has come with a system of political control that squarely centres around the national capitals without offering a meaningful institutional site for the articulation of the emancipatory struggle of the regional citizen.

3 Conclusion: Emancipation, Regionalism and the Limits of the Nation-State

This account of the ways in which regionalism can be understood to reflect emancipatory values has told us a number of things. First, all regional integration projects understand the role of the state to be contingent. States, to put it as simply as possible, are good at some things and bad at others. States are typically understood to be good at creating an institutional structure through which emancipatory struggles can be articulated and institutionalized. The rule of law, fundamental rights, institutional sites of mediation and legitimation and welfare provision, as such, can be understood as ways in which state capacity helps the emancipatory project. But states can also create, as we have seen, forms of domination that stand in the way of the subject's self-realization. In the European context, this comes from the state's capacity to exclude groups that do not conform to hegemonic visions of 'self'. In the African context, the state is understood as being too weak to help emancipation; it inhibits any meaningful sense of emancipation by a lack of institutional capacity. In the South American context, states create domination because they artificially prioritize a political community (the nation-state) over cultural, social or ethnic communities that transcend the borders of the nation-state and are part of the subject's 'self'.

Each of these projects of integration, then, has its own ethos of emancipation, based on presuppositions about, and vision of, the subject. What is similar, however, is that by understanding how the subject is framed we can better grasp the way in which regionalism is organized and institutionalized. From this viewpoint, the most interesting connection is between, on the one hand, the way in which the subject and her possibilities for self-realization are transformed through regionalism and, on the other hand, the regional identity underlying the regional integration projects. Once again, this results from the blurred conceptual distinction between 'being' and 'becoming'. It seems that the existence of strong (imagined) communities beyond the state serves as an instrument to constrain the exercise of state power. To use simple examples, a president of Senegal that renounces his 'Africanness', or an Argentinian president who wants a free movement deal with Russia but not with Colombia, will struggle more than when she or he makes the opposite claim. In the United Kingdom, on the other hand, the

renunciation of 'Europeanness', or giving priority to a trade deal with New Zealand over Portugal, appears less problematic. The reference to 'being' across borders or the invocation of an imagined community across borders, then, forces states to internalize a vision of the subject that is structurally open to elements beyond the state. The strength of these imagined communities beyond the state function as an instrument for the systemic integration of non-nationals within domestic institutional structures. They are also indispensible in reinstitutionalizing emancipatory processes beyond the state. Jürgen Habermas' work within the context of the EU seeks to achieve this by appealing to the 'double sovereign' that is the subject – at once national and European – and understands this as a precondition for the possibility to reinstitutionalize conflicts and claims to justice and emancipation on the level beyond the state.[65]

This does not mean that all is well in the world of emancipation and regionalism. All three areas studied understand the role of the state differently, offer a different understanding of the subject and face different challenges. Within the EU context, we have seen the emergence of literature bemoaning the evaporation of power and authority and, with it, the institutional context within which subjects can express and realize themselves in a meaningful sense. More than that, there is an increasing awareness that EU law only allows for certain types of self-realization. This is also where Habermas' concern comes from. He argues the need to find a way to reinstitutionalize claims to 'self' in order to prevent creating a society in which retreat into freedom or economic activity is the only possibility.[66] Within the context of the AU, a lot of work needs to be done to stabilize the construction of state capacity in a way that is pluralistic and offers a way to construct the rule of law and democracy and welfare entitlements that serve to institutionalize conflict and stabilize the emancipatory project. In the South American context, the main problem is probably the precarious balance between regionalism and a commitment to intergovernmentalism and state sovereignty. The pursuit of a liberal free movement regime and South American citizenship, its implementation and its longevity appear to be structurally premised on an understanding that the political leaders remain convinced by it. Putting state consent as the core of transnational processes, history tells us, creates an unstable structure, particularly in a region where mobility is understood as an expression of self rather than the realization of self. More widely, these struggles throughout regionalism highlight that a state's stability is at least partially contingent on its vision of the subject (and its capacity to implement or institutionalize that vision).

Above all, this contribution suggests that emancipation can be a very useful lens through which to understand state transformation and regionalism. Both regionalism and the process of emancipation are historically contingent. The EU, AU and Mercosur are miles apart in their economic development, institutional sophistication, political commitment and scope and objectives. Yet all three offer an ethos of emancipation that is particular to their nature and offers insights into how the transformation of the nation-state relates to wider claims of 'self' and the subject.

[65] Habermas, 'Democracy in Europe: Why the Development of the EU into a Transnational Democracy Is Necessary and How It Is Possible', 21 *European Law Journal* (2015) 546.

[66] Honneth, *supra* note 6, at 88.