RECOGNITION; A CHAPTER FROM THE HISTORY OF THE NORTH AMERICAN & SOUTH AMERICAN STATES, PP 1-41

Published @ 2017 Trieste Publishing Pty Ltd

ISBN 9780649251162

Recognition; A Chapter from the History of the North American & South American States, pp 1-41 by Frederick Waymouth Gibbs

Edited by Trieste Publishing Pty Ltd.
Cover @ 2017

www.triestepublishing.com

FREDERICK WAYMOUTH GIBBS

RECOGNITION; A CHAPTER FROM THE HISTORY OF THE NORTH AMERICAN & SOUTH AMERICAN STATES, PP 1-41

Trieste

RECOGNITION.

THE object of these pages is to give an account, at greater length than is possible in a Treatise on International Law, of the two cases, in which the principles have been most fully discussed that govern the Recognition, as a Sovereign State by other States, of a province or colony which has revolted from its parent State, and has erected itself into a separate community.

The first of these cases is that of the Recognition of the Independence of the United States by France in 1778; the second, that of the Recognition of the Independence of the States of Spanish America by the United States in 1822, and by England in 1825. They are the leading cases of International Law on the subject of Recognition. The first has found a place in the Causes Célèbres of Martens; the documents illustrating the second have not been collected in a separate form. In their circumstances they are widely different: but each has an interest of its own; each marks an epoch in history; and a comparison of the two will enable us to trace the progress of International Law, till its principles and practice on the subject of Recognition may be considered to have become settled. Taken together, these two cases make up a chapter from the history of the North American and South American States containing an account of the foundation of their independence, an angry correspondence and "models and master-pieces of diplomatic composition," and the worst precedent and the best precedent of Recognition.

America is at this moment furnishing International Law with a third leading case on the same subject. The secession—for secession under a claim of constitutional right, if

resisted by the parent State, is, as far as other nations are concerned, revolt — the secession of the Confederate States has forced the question of their recognition as an independent State upon our consideration; and the consideration of that question has already produced so much discussion on the principles of Recognition, that nothing really new remains to be said. Both the precedents mentioned above have been again and again referred to. Still, though nothing new be said, the subject will continue to be discussed until—for we cannot suppose any other termination—the actual recognition of the Confederate States. Many are called upon to form an opinion, who have not access to the treatises, in which the maxims now acknowledged among nations as their guides, are stated; and still less to the sources from which those maxims are drawn. My wish is, to be of use to those who are anxious to consult the original authorities for the principles of International Law on the subject, and to learn the past policy of this country, but who have not leisure or opportunity to search the volumes of the State Papers published by the Foreign Office, Martens' Recueil, or the other sources of reference. With this view, I have put the notes of my own reading in a form available for others. They consist chiefly of passages from original documents, especially from the documents relating to the recognition of Spanish America. Should the passages appear long, it must be remembered that a passage imperfectly quoted is worse than useless as a reference. My own experience is, that there is more often reason to complain of the shortness than of the length of a quotation.

It is not for a moment supposed that precedents from the past will prove infallible guides for the future. A subsequent case seldom occurs precisely similar to a previous one. But by examining the precedents, we shall find the principles that have been established; and there can be but one opinion as to the importance of adhering strictly to those principles in practice. The influence of a country in its foreign relations depends almost wholly upon the clearness of the principles which it adopts, and the consistency with which it is known to carry them out.

Recognition is a chapter of International Law of comparatively recent introduction. The subject has grown in importance with the expansion of the Rights and Duties of Neutrals. Consequently, the earlier text writers contain but little upon it. Recognition was in their time a step towards, or a kind of, Intervention. The measure can obviously be adopted with this view, and cannot then be distinguished from intervention. It must be interpreted according to the intention shown by the surrounding circumstances. The recognition of the revolted province may be made in such a manner, and under such circumstances, as actually to have the character of a hostile act to the mother country. Such was the recognition of the United States by France, in 1778. Again, without going so far, it may be a moral intervention. The recognition may be intended to show the sympathies of the country recognising, in favour of the revolted provinces, and thus to afford whatever moral help this expression may carry with it towards the establishment of their independence. A judgment on the merits of the dispute between the province and the mother country may thus be given, which may wound the susceptibilities of the latter, without amounting to an act of hostility. But neither of these courses can be called absolute neutrality.

The discussions of the earlier writers took the direction thus mentioned, because their attention was turned to the circumstances which justify intervention. The precedents before them were those of actual or moral intervention. Vattel wrote with the example of William of Orange before his eyes. His remarks, from which subsequent writers have borrowed, are not very clear or consistent; but they show the degree of distinctness which the law had attained, and the propositions established at the time of the publication of his book. In the first place, he states the conditions justifying intervention, and adds,—

" Whenever, therefore, matters are carried so far as to produce
" a civil war, foreign powers may assist that party which appears
" to them to have justice on its side. He who assists an odious
" tyrant,—he who declares for an unjust and rebellious people,—
" violates his duty. But when the bands of the political society

" are broken, or at least suspended, between the sovereign and " his people, the contending parties may then be considered as " two distinct Powers; and, since they are both equally inde- " pendent of all foreign authority, nobody has a right to judge " them. Either may be in the right; and each of those who " grant their assistance may imagine that he is acting in sup- " port of the better cause." *

2ndly.—" Those who thus assist either side are entitled to be " treated on the usual footing of enemies in general, and, accord- " ing to the laws of war, as auxiliaries in a regular war."

3rdly. He says,—

" After having established the position that foreign nations " have no right to interfere in the government of an indepen- " dent State, it is not difficult to prove that the latter has a right " to oppose such interference. A sovereign has a right to treat " those as enemies who attempt to interfere in his domestic " affairs otherwise than by their good offices."†

Now, it is obvious that a foreign Power intervening in a civil war, however justifiable the intervention, makes itself the ally of one party, and the enemy of the other. This intervention is war with one or the other party. Vattel goes so far as to say, that it is a regular war, in some cases morally justifiable; and stops at that point. But since his time, the increasing desire not to engage in wars which can be avoided, has turned attention to defining more accurately the rights and duties of neutrality. To the question, what circumstances should be held to justify the intervention of a foreign Power in a civil war, another is added, what conduct should a foreign Power pursue, so as not to give just cause of offence either to the original State or to the revolted portion? On the one hand, what act should this foreign Power abstain from doing? On the other, what acts may this foreign Power perform for its own interest, which are not to be considered by either of the contending parties as acts of hostility?

Great misconception often prevails as to the meaning of the term Recognition, the nature of the act, and the consequences

* Vattel, ii., c. 4, s. 56. † Ib. s. 57.

resulting from it to the State recognised. We find this misconception common now; and Sir J. Mackintosh and Mr. Canning complained of it in 1824.

In its primary sense, in International Law, Recognition is the term appropriated to the acknowledgment by a State of the independence of a portion or a province which has separated from it. The State recognising cedes its claim of sovereignty, and confers on the portion or province recognised the legal status of independence. Till that moment, worthless as the claim may be, the one has a claim of sovereignty over the other, which by that act it resigns. Thus Great Britain recognised the independence of the United States in 1783.

But there is a secondary use of the word, as applied to the act by which a foreign Power expresses its opinion, that the portion which has revolted from its parent State has acquired actual independence of that State. The foreign Power has no sovereignty to cede. The recognition, therefore, does not confer independence, but implies a solemn verdict on the part of the Power which recognises, recording the establishment in fact of that independence.

The following passage from Sir J. Mackintosh's speech in 1824, on the recognition of the Spanish American States, explains this distinction clearly:—

"Recognition is a term which is used in two senses so different "from each other as to have nothing very important in common. "The first, which is the true and legitimate use of the word "'recognition,' as a technical term of international law, is that "in which it denotes the explicit acknowledgment of the inde- "pendence of a country by a State which formerly exercised "sovereignty over it. Such recognitions are renunciations of "sovereignty,—surrenders of the power or of the claim to "govern.

"But we, who are as foreign to the Spanish States in America "as we are to Spain herself,—who never had any more author- "ity over them than over her,—have, in this case, no claims to "renounce, no powers to abdicate, no sovereignty to resign, no "legal rights to confer. What we have to do is, therefore, not

" recognition in its first and most strictly proper sense. Our " recognition is virtual. The most conspicuous part of such a " recognition is the act of sending and receiving diplomatic " agents. It implies no guarantee, no alliance, no aid, no appro- " bation of the successful revolt, no intimation of an opinion " concerning the justice or injustice of the means by which it " has been accomplished. These are matters beyond our juris- " diction. It would be an usurpation in us to sit in judgment " upon them. As a State, we can neither condemn nor justify " revolutions which do not affect our safety, and are not amen- " able to our laws. We deal with the authorities of new States " on the same principles and for the same object as with those " of old. We consider them as Governments actually exercising " authority over the people of a country with whom we are " called upon to maintain a regular intercourse by diplomatic " agents for the interests of Great Britain, and for the security " of British subjects."*

In his reply, Mr. Canning puts the same distinction shortly thus :—

" Recognition has clearly two senses, in which it is to be " differently understood. If the colonies say to the mother " country, 'We assert our independence,' and the mother coun- " try answers, 'I admit it,' that is recognition in one sense. If " the colonies say to another State, 'We are independent,' and " that other State replies, 'I allow that you are so,' that is " recognition in another sense of the term. That other State " simply acknowledges the fact, or rather its opinion of the " fact; but she confers nothing, unless, under particular cir- " cumstances, she may be considered as conferring a favour."†

The misconception arises from confounding these two senses. People pass from the one use of the word to the other use. Recognition of independence by a foreign Power is spoken of as if it gave the independence conferred by recognition on the part of the mother country, instead of being spoken of as the acknowledgment of a fact, which must exist to be acknowledged.

* Mackintosh's Works, p. 748.

† Canning's Speeches, v., p. 300.

I. The first of the two cases before us presents an angry correspondence, and a precedent of little value; but, in return, it presents an amusing story. The transactions which ended with the recognition of the United States by France in 1778, were marked throughout by a want of good faith to England. Lewis the Sixteenth, his Ministers, and the French people treated the propriety of the recognition of the United States not as a question of international law, but as a question of the interests of France. Arguments from international law were indeed appealed to, but in support of foregone conclusions, and of a policy adopted without regard to any law. Every fresh diplomatic and even literary discovery on the subject places this in a clearer light. The papers of Beaumarchais have filled up what the letters of Franklin left untold. The appeal to international law is of value to us in tracing the progress of international law, but the main interest of the whole transaction is historical. It was a political intrigue, in which Lewis the Sixteenth, the Comte de Vergennes, and Beaumarchais were the chief actors.

From the beginning, the dispute between England and her American colonies attracted the eager attention of the French Government, and of the French people. When the dispute became revolution, their interest in it deepened. The treaty of 1763, at the end of the seven years war, had always been felt in France to be a humiliation, and the nation hoped that the events in America would lessen the influence of England, and afford an opportunity of repairing their own disgrace. The sympathies of French society displayed themselves even in social habits. "With a frivolity," observes a French historian, "which we mix with our most serious business," whist was banished for a game called Boston. Some, too, saw in the declaration of independence of the 4th of July, 1776, the realisation of the theories of the "Contrat Social," and the opening of a new era. But all hated England.

In 1776, Beaumarchais, at once a secret envoy and the author of "Le Barbier de Seville," a politician and a speculator, presented a memoir to the Government on the subject, which ultimately determined their course of action. The memoir is