

**ADDITIONAL LETTERS BY
HISTORICUS ON
SOME QUESTIONS OF
INTERNATIONAL LAW**

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Additional Letters by Historicus on Some Questions of International Law by W. V. Harcourt

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PREFACE.

IN putting forth these further letters on some topics of public interest, I have to acknowledge with gratitude the unmerited indulgence which has been extended on both sides of the Atlantic to my former attempts to elucidate some of the difficult questions as between neutrals and belligerents to which the unhappy war in America has given rise. The doctrines I have ventured to lay down have been naturally subjected to a searching criticism by each party in turn, to whose interests they appeared alternately adverse. After a careful consideration of that which has been alleged on either side, I do not find much reason materially to modify the views I have expressed in my former letters.

The doctrine I have maintained on the subject of 'Recognition' seems to have met with general acceptance. It has been confirmed by the high authority of the Earl of Derby and of Earl Russell. The remarks of Lord Derby on this topic will be found at p. 36 of my former publication. The speech of Lord Russell in reply to Lord Stratheden's motion in favour of a Recognition of the South contains the following observations from the mouth of certainly one of our greatest masters of political history:—

We come, then, to the course proposed by my noble friend, namely, that of recognition. My noble friend alluded to several cases—not very happy illustrations of his argument, I think—in which the United States of America have recognised insurgent countries which

they believed likely to be able to maintain their independence. One was the revolted state of Hungary, whose independence had sunk like the island in the Mediterranean. It had disappeared before the despatch reached Vienna by which the United States recognised it. Another instance referred to by my noble friend scarcely comes within the category, though it has been quoted by a gentleman who has written some very able letters under the title of 'Historicus'—I mean the recognition of the United States themselves by France two years after the war with this country had begun. If anyone will examine that precedent, and the important documents which have lately come to light, he will see that the French monarchy of the day had, most unfortunately for itself, been exciting democratic passions in America, and had been endeavouring to raise opposition there to the Government of Great Britain. It had prepared means of concert with those States; and even in the letter, so courteous in appearance, but so exceedingly hostile and bitter in its spirit, written by the French ambassador, it was stated that the French Government had not only made a treaty of commerce with the United States, but further, that they had a right to carry that treaty into effect, if necessary, even by force. This was a threat to take part in the war between Great Britain and her revolted colonies. But we know that besides this open threat there was a secret treaty signed, by which France lent her support to the revolted provinces, and the opposition of this country, which was then as decided as ever any opposition was, agreed that the threat was one of war, and that by war only could it be met. This was not a case of recognition, but a case of interference. It was, I think, a most unjustifiable interference, an interference for the purpose of spreading those democratic principles which afterwards reacted on France, and produced so many excesses and crimes during the revolution. Well, then, with regard to the other cases to which my noble friend has alluded, those of Portugal and Holland, were cases of forcible intervention. There is hardly more than one case in which the question was limited to simple recognition—that was the war carried on between Spain and her revolted colonies, which went on from 1808 to 1822 or 1823 without any proposal for a recognition. This case is one worthy of the attention of your lordships, because it was illustrated by the mild wisdom of Lord Lansdowne, by the profound research of Sir James Mackintosh, and by the dazzling genius of Canning. We have, therefore, upon this question of recognition as much light as can possibly be thrown upon any subject. Now I beg to refer your lordships to the words of Lord Lansdowne. He was zealous for the recognition of the South American provinces, he thought it would

be a great advantage to this country to recognise them; and he was entirely free from any trammels of office, or any obligation to consult the interests of the minister of the day. But with that wisdom and forbearance which characterised every act of his public life, he stated that the first thing to be considered was the right, and he went on thus:—'It will be my duty this night to point out to your lordships the great advantages which may result from the establishment of South American independence. I hope I shall never stand up in this House to recommend your lordships to adopt any course of policy inconsistent with those principles of right which are paramount to all expediency, and which compose that great law of nations, any departure from which, to answer a selfish and ambitious policy, never fails to recoil upon its authors.' These are words upon which this House may well reflect, and we may well consider upon what grounds Lord Lansdowne founded the views which I have just brought under the notice of your lordships. In the first place, he stated it was necessary that a country which required to be recognised should have established its independence. In the next place, that it should be able to maintain that independence for the future; and, lastly, that it should be able to carry on with all foreign nations those relations of peace and amity which form the general international law of the world. Now, examine the state of the revolted provinces of Spain at that time, as Sir James Mackintosh and as Mr. Canning did. We find that the greater part of South America had been some twelve or fourteen years entirely free from the presence of Spanish armies. We find that with regard to those provinces in which that was not absolutely the case—namely, Mexico, where Vera Cruz alone was occupied by a Spanish garrison, and Peru, where there were 4,000 or 5,000 Spanish troops—although the cause of Spain seemed hopeless, it was agreed that their recognition should be deferred, and that only in the case of Buenos Ayres and those parts of South America which had clearly, and for a number of years, established their independence, would it be right for Great Britain to proceed to the step of recognition. Besides this, Mr. Canning took care to inform the Spanish minister that such recognition would not be very long delayed, that if the Spanish Government wished to recognise them they ought to take that step, and that Great Britain was willing to give time before proceeding to recognise them herself. Well, here is a great precedent for our consideration—here is a step taken by the Government of the day after considerable care and examination; here is a course recommended by the Opposition of the day, not in any harsh spirit, but notwithstanding the conviction which this country generally entertained

that the cause of Spain was hopeless and that the independence of those provinces was firmly established. Well, now, if we look to the present position of North America, and compare it with that of the states of which Lord Lansdowne spoke, we find that the war in North America is still carried on with the utmost vigour—I had almost said with the utmost fury. We find some of those provinces which were the first to proclaim their independence—a great part of Louisiana, New Orleans, and the banks of the Mississippi—occupied by the Federal armies. There are very considerable Federal armies menacing cities of the Confederation, such as Charlestown and Savannah. So that no man can say it is a case of hopeless war. For my own part, and speaking according to my limited vision, I do not believe those efforts of the Federals will be successful. But no man can say that the war is finally over, or that the independence of the Southern States is established. Well, then, what is the present state of the case? Although great efforts have been made in vain, the great Federal Republic seems unwilling to accept the decision of events. So far from it, we find the last acts of the Congress which has just expired are to place, by conscription, every man fit to carry arms at the disposal of the President of the United States, and to vote sums of money amounting to no less than 180,000,000*l.* sterling for the purpose of carrying on the war. Well, then, in this state of affairs I should say that, looking to the question of right, it would not be a friendly act towards the United States, it would not be to fulfil our obligations to a country with which we have long maintained relations of peace and amity—a great country which says it can still carry on the war—it would, I say, be a failure of friendship on our part if at this moment we were to interpose and recognise the Southern States.

It will be observed that in this speech, whilst confirming the general conclusion to which my former letters pointed as to the doctrine of recognition, Lord Russell takes exception to the particular view which I have expressed as to the precedent of 1778. In this criticism the Foreign Secretary has been followed by the high authority of the Chancellor of the Exchequer. It would seem almost presumptuous to argue against the conclusions of such distinguished critics. What I have to say on this point has been already said in my former publication in answer to a similar objection taken by the 'Edinburgh Review.' The reviewer contended on

similar grounds that the treaty of commerce communicated by the Marquis de Noailles was not the alleged cause of the English declaration of war. I confess that, with the most unfeigned deference for such eminent authorities, I have been unable on the most careful consideration of the diplomatic documents to arrive at that conclusion.

The whole discussion is perhaps rather one of words than of substance. But in point of form upon the pleadings (as the lawyers would say), it still seems to me that the issue of war was joined on the commercial treaty which constituted the act of recognition. I have no difficulty in admitting that there was much else in the conduct of the French Government which afforded great and just cause of resentment to that of Great Britain. I fully agree that the French Government contemplated much more than mere recognition, and had actively prepared for the intervention on which they were determined. Knowing or suspecting all this, it would unquestionably have been open to the King in his message to Parliament to have rested his quarrel with France upon these other and more serious grounds. But the important point to observe is that in fact he did not do so. It is said (and truly) that in the despatch of the Marquis de Noailles allusion is made to 'eventual* measures,' which are rightly interpreted to refer to the treaty of alliance between France and the United States. But if the English Government meant to rely principally on this point, why did not they put it prominently forward in the king's message? Instead of doing so, they place the treaty of commerce in the van of their battle. The preamble of the message runs thus: 'His Majesty having been informed, by order of the French

* The word 'eventual' in my former publication was misprinted 'effectual,' an error which has been perpetuated by other critics of this passage.