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The Recognition of Latin-American Independences.

A major transformation in the history of the Law of Nations.

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Spanish-American independence is a fundamental facet required to understand how the legal and political practice of contemporary international recognition has been built. It was only after the emergence of the new Latin-American nations that the legality of a government depend solely on the legitimacy conferred on it by the *sovereign people*, despite a long-held conception of the rule of law, after which this legality depends on the respect of the royal succession law. In addition to this, the recognition of Latin American governments clearly illustrated the process of reorganization of the international system in the transition between the 18th and 19th centuries, since it showed that it was necessary to change the rules of integration of new sovereign entities.

The first acts of recognition of the Spanish-American independent governments occurred in 1822, when Portugal and the United States recognized Colombia and the United Provinces of Rio de la Plata. Later, in 1825, England recognized these two governments as well as Mexico and Brazil. This chapter will demonstrate that the real meaning of these recognitions for the history of International Law is perceptible only through a transatlantic and long-term perspective, capable of placing the Latin-American independence period in a broader chronological context and accounting for the transformations produced by political modernity in the international system of the early 19th century.

A Secular Doubt

In modern and early contemporary history, the evolution of the international recognition of states is closely linked to the fragmentation of transatlantic empires. It is in the political and territorial dynamics of these vast planetary constructions that we must seek the origins and ensuing problems of recognition, paying particular attention to the political crises provoked by the rejection of the sovereign authorities in the context of revolts, wars and dynastic succession conflicts. This starting point will allow us to better understand the scope of Latin-American governments recognition in the history of law and in international history.

The imperial history of Spain and Portugal provides the two cases which inaugurate the problem of recognition in the diplomatic practice and in the legal sphere in the 16th and 17th centuries: firstly, the creation of the Netherlands and secondly, the dissolution of the Iberian Union (the political pact grouping together Spain, Portugal and their overseas possessions¹).

¹ Serge Gruzinski, *Les quatre parties du monde. Histoire d'une mondialisation*, Paris 2004.

The United Provinces of the Netherlands

Let us first examine the case of the United Provinces of the Netherlands, resulting from the separation of a group of Protestant provinces from the Spanish Empire, and to which we will refer as “the Dutch Republic” for the sake of brevity. Bearer of an ambitious project of political centralization around the figure of the king, Philip II restricted the management capacities in civil, legislative and police matters of several provincial governments of the Spanish Netherlands. Motivated by the religious differences with Madrid and anxious to preserve their own rights of government, the Protestant provinces contested the authority of the monarch, rose against him and created an independent government in 1568.² The creation of the Republic thus provoked a long conflict that we know today as the Eighty Years War (1568–1648). The first suspension of the hostilities occurred in 1608, with the signing of an armistice in which the representatives of the Spanish emperor declared:

“Both in their names and in the name of the above-mentioned Sieur Roy, that they are pleased to treat the said General States of the United Provinces in quality, & as the tenans for Country, Provinces & free States, on which they claim nothing, & to make with them the above-mentioned names & quality as they hereby make a ceasefire [...]. Each one will remain seized & will enjoy the lands, towns, cities, places, lands & Lordships which it now holds & possesses, without being disturbed or worried during the said ceasefire; we intend to understand the Towns, villages, hamlets, & flat lands which depend on them.”³

The signing of this armistice inaugurated a short period of peace that allowed the Dutch Republic to strengthen its naval strength and organize its internal administration. These two factors were particularly important from 1621, as they fulfilled a determining role in its military strategy, because they allowed the Dutch to progress the war in South America and West Africa. However, the armistice and the ensuing truce did not in any way address the issue of the Spanish King's renunciation of his sovereign rights over vassals and Protestant domains, leaving open the possibility of a Spanish military reconquest.

As evidenced by the conduct of the other European sovereigns towards the Republic, neither the negotiations nor the documents signed between the opposing parties constituted sufficient proof to establish the sovereignty of the new authorities. Anxious to get it accepted, the Dutch government sent diplomatic representatives to other European courts, but these were not recognized as such, because they were denied the title of *Excellence*, an essential distinction given to the representatives

² The dispute between Spain and the Republic of the United Provinces raised very lively debates in the Law of Nations of that time. In the Catholic camp, for example, the jurist Balthazar Ayala and theologian Francisco Suarez denied the right of the Netherlands to rise against Philippe II. For them, the authority of the pope was the only one capable of challenging the authority of the princes and, consequently, the rebels lacked a real foundation to justify the war. For their part, the Protestant jurists denied the competence of the pope in the case and justified the separation of the Netherlands by resorting to an argument of Natural Law which will be invoked constantly during the uprisings against the authority of the Spanish King, to know the right to resistance and self-preservation. However, none of the two postures finally came to the fore, and the question of whether legitimate territories could be legitimately recognized remained. An interesting study of the thought of Balthazar Ayala and Francisco Suarez in *Carl Schmitt, Der Nomos der Erde im Völkerrechts Des Jus Publicum Europaeum*, Berlin 1950.

³ Tant en leurs noms que dudit sieur Roy, qu'ils sont contents de traiter avec lesdits Estats genereaux des Prouinces-Unies en qualité, & comme les tenans pour Pais, Prouinces & Estats libres, sur lesquels ils ne prétendent rien, & de faire avec eux es noms & qualitez susdites comme ils font par ces presentes une trefue [...]. Chacun demeurera saisi & jouira effectivement des pais, villes, places, terres & Seigneuries qu'il tient & possede à present, sans y estre troublé ny inquieté durant ladite trefue; enquoy on entend comprendre les Bourgs, villages, hameaux, & plat pais qui en dépendent. Tratado de tregua por doce años entre el Señor Rey Catholico Don PHELIPE III y los Señores Archiduques ALBERTO, è ISABEL CLARA EUGENIA, de la una parte, y los Estados de las Provincias Unidas de los PAYSES BAXOS de la otra... ajustado, y concluido en Amberes à 9 de Abril de 1609. in Diego Peralta, Antonio Marin and Juan de Zuñiga, Colección de los Tratados de paz de España. Reynado de Phelipe III. Parte I., Madrid 1740.

of the sovereign authorities according to the diplomatic usages of the time.⁴ The refusal to accept the diplomatic status of the Dutch envoys amounted in practice to denying recognition of the sovereignty of the new sovereign entity.

The dissolution of the Iberian Union

The second case is that of the dissolution of the Iberian Union, in other words, the separation of Portugal and Spain from the same political group. Historiography offers us little analysis of the legal consequences of this global fragmentation, but it is an interesting work site that deserves to be exploited to examine the issue of international recognition around the Iberian world. The Union was born in 1580, during the crisis of the succession of the throne of Portugal. This began with the death of Sebastian I, and came to an end in 1640, when a fraction of the Portuguese nobility revolted against the hegemony of the Spaniards and proclaimed the Duke of Braganza as King.

The causes of this revolt constitute a true case of connected history. The growing involvement of the Habsburgs in a series of long and costly wars in Europe had had a negative impact on the Portuguese. First of all, the European territories of Portugal had to satisfy the demand for manpower and resources necessary to lead the war of reconquest of the Dutch Republic.⁵ Then, the nobles and the commercial bourgeoisie had lost considerable sources of income when the Dutch companies seized the sugar territories of northern Brazil and the slave ports of West Africa.⁶

The reaction of Philippe III on the diplomatic level was immediate. The Duke of Braganza and all those who supported his proclamation were accused of treason and the new government installed in Lisbon was considered illegal. Between 1641 and 1648 the Portuguese crown faced attacks and constant threats from the Spaniards, who were entirely vested in challenging the sovereignty of Portugal. Spanish diplomats then prevented the European courts from receiving Portuguese diplomats in accordance with the practice established by the Law of Nations, and the result was that, for several years, the status of the Portuguese Government remained ambivalent.

In the years before the signing of the Westphalian peace treaties, the Portuguese prepared to send diplomatic ministers to this congress, but their status created heated controversy. The other participants opposed their inclusion because the Spanish King had not yet renounced his rights over the Portuguese territories, and therefore nobody could consider Portugal as an entity independent of Spain. After several weeks of negotiations, Portugal was allowed to participate in the conference and to be represented by three envoys, which belonged to the legations of France, Sweden and the Dutch Republic. It was only in 1668, when Alphonse VI of Portugal and Charles II of Spain signed

⁴ *Jochen Abr. Frowein*, Die Entwicklung der Anerkennung von Staaten und Regierungen im Völkerrecht, in: *Der Staat* 11.2, 1972, 145–159.

⁵ *Fernando Dores Costa*, *A Guerra da Restauração 1641–1668*, Lisbon 2004.

⁶ In this regard, the observations of L. F. de Alencastro are very relevant: *Luiz Felipe de Alencastro*, Le versant brésilien de l'Atlantique sud, 1550-1850, in: *Annales, Histoire Sciences Sociales*, 61.2, 2006, 343.

a peace treaty, that Portuguese independence was perceived as a real fact in European international politics.⁷

The case of the Dutch Republic differs because of the military exploits of its land and sea armies. Since its creation, the Republic has required other sovereigns to receive its diplomatic ministers in due form. The French, for example, refused to make this concession, because of the rights that Philip II had over the territories which had risen. But when, in 1645, the war in Flanders deprived the Spaniards of any possibility of recovering the rebellious provinces, France finally answered affirmatively to the demand of the Dutch Republic. A year later, in 1646, Philippe IV of Spain challenged this reaction by arguing that other European courts must wait for Spain to give the title of *Excellence* to the envoys of the Dutch Republic before doing it themselves. The definitive independence of the Republic was recognized by the forum of European powers through the signing of the treaties of Münster and Osnabrück, in which the Spanish King recognized the envoys of the Dutch Republic as legitimate signatories of the peace.⁸

The cases of the Dutch Republic and that of Portugal allow us to clarify the first important aspect of our study, because they reveal a particular conception of the sovereignty of States within the framework of the Law of Nations of the 16th and 17th centuries. The fragmentation of a sovereign unit gives rise to an exceptional situation that can only be resolved through the renunciation or transfer of the rights of the previous sovereign. The legal existence of a new independent entity depends on the continuity established with the internal political order of the previous political community. However, as long as no transfer or waiver occurs, there is the question of whether third States can recognize the sovereignty and independence of the separate territories and whether such recognition is valid under the international law of the time. From the point of view of diplomatic practice, this problem, as we have already said, arises from the status of diplomatic envoys and the way in which they are received by other sovereigns.

The Independence of the United States

At the end of the 18th century, when thirteen colonies in North America rose against the English crown, the problem of international recognition once again became relevant. Anxious to counterbalance the power of the British rival, France recognized in 1778 the sovereignty of the new independent entity through several treaties. The Treaty of Alliance of February 6 indicated that the purpose of the agreement between the two countries was to safeguard “the Freedom, Sovereignty and absolute and unlimited independence of the said states, both in terms of Government and trade”.⁹

In the months following the signing of these treaties, English diplomats in Paris put forward three arguments to deny the validity of French recognition when they stated: firstly, that France can not

⁷ Tratado de Paz entre El-Rei o senhor D. Affonso VI e Carlos II Rei de Hespanha, por mediação de Carlos II Rei da Gran-Bretanha, feito e concluído no Convento de Santo Eloy da Cidade de Lisboa, A 13 de Fevereiro de 1668 ; ratificado por parte de Portugal, em 3 de Março, e Pela de Hespanha, em 23 de Fevereiro do Dito Anno, in: *José Ferreira Borges de Castro* (Ed.), *Tratados, convenções, contratos e actos publicos celebrados entre a Coroa de Portugal e as mais potencias desde 1640 até ao presente*, Lisbon 1856, 358f.

⁸ Article XVII-10 of the Treaty of Osnabrück, 1648.

⁹ Treaty of Alliance. Published online: The Avalon project. Digital documents in Law, History and Diplomacy, Treaty of Alliance (06.02.1778), in: Yale Law School, <http://avalon.law.yale.edu/default.asp>. The source of the digital document is: *David Hunter Miller* (Ed.), *Treaties and Other International Acts of the United States of America*, vol. 2, Washington D.C., 1931, doc. 1—40: 1776-1818.

recognize the rebel provinces that violated a constituted legality, like that of the English Empire. Secondly, that France can not give the inhabitants of the thirteen provinces legitimate titles of possession of these territories, because the English crown acquired them by virtue of the right of conquest. Finally, that the recognition is not valid because it was done in the absence of a state of war between England and France.¹⁰

To this, the Count de Vergennes replied that it was not necessary to prove the validity of the recognition, since the thirteen colonies were de facto independent. The legitimate rights of a sovereign over the possession of a territory may also disappear, stated Vergennes, as demonstrated by the English Revolution, during which a dynasty lost the right to occupy a throne. For the first time, recognition of the sovereignty of fragmented territories was established without taking into account the rights of the previous sovereign, as was the custom of European nations. As in the case of the Republic and Portugal, the recognition of the United States provoked a great controversy among the publicists of the law of nations at the time, but the fundamental question of whether such an approach was legal or not was not resolved. Forced by circumstances, England would eventually recognize the United States with the Treaty of Paris in 1783.

Latin-American Independence and Contemporary Doctrine of Recognition

That third states could recognize the independence of the territories without an agreement between the previous rulers and the new authorities is a practice that has become widespread through the recognition of the Hispanic-American republics. Hispanic-American independence is not only a decisive transformation in the global spatial order, but, as we shall see, it is also a singular precedent for the acquisition of state sovereignty and independence.

In the legal sphere, the transition between a traditional conception of recognition anchored in royal legality and a modern conception based on popular sovereignty took place between 1814 and 1825. Change was clearly perceivable in this period of time: if at the beginning of the period the rights of kings had a primordial place in the deliberations prior to the recognition of a new government, the dissolution of the Iberian empires, the warlike dynamics of the Spanish-American independence movements and the foreign policy of Spain lead Portugal, the United States and England to reinterpret old tools of the Law of nations or to create new ones to accept the factual existence of Colombia, Buenos Aires¹¹ and Mexico.

¹⁰ *Frowein*, Die Entwicklung der Anerkennung.

¹¹ Buenos Aires is the term used in the diplomatic documentation to name the independent government erected at the Rio de la Plata. The term Argentine Republic does not appear definitively until 1860.

Principle of Legitimacy and Doctrine of Non-recognition

The starting point of our analysis is the establishment of the principle of legitimacy, between 1814 and 1815, during the negotiations of the Congress of Vienna. This principle, enunciated by the Prince de Talleyrand in order to reconcile the interests of the various European sovereigns in the common objective of reconstituting the order prior to the expansion of the French, rests on two great foundations. The first is the proclamation of absolute monarchy as the only type of legitimate government and the second is the concept that the legality of a new political order must come from continuity with a prior political order.

The principle of legitimacy provided a concrete foundation from which attempts to restore the authority of princes and to oppose the liberal uprisings that erupted in Spain, Italy, France and the Germanic space were made. This statement is particularly important in the Spanish case, because it achieved two objectives of great political importance. On the one hand, the reinstatement of Ferdinand VII on the throne that was a blow against all European liberals who had found popular support in Spain. On the other hand, given the riots facing the Crown in the American territories, the affirmation of legitimacy across imperial territories sent a clear message to the world, defending the absolute monarchy as the keystone of the entire international system.

The principle of legitimacy gave rise to a doctrine of non-recognition of governments elaborated during the congresses of Karlsbadd, Troppau, Laybach and Verona between 1819 and 1822.¹² This doctrine was at the base of several interventions (and attempts to intervene) against Naples, Spain and the rebel territories of Hispanic-America. The doctrine affirmed that the recognition of a new government must be done respecting the legality of the dynastic succession, and authorized the political and military intervention of the Holy Alliance against those governments that resulted from popular uprisings. It constituted an important antecedent for the doctrines of non-international recognition set in the 20th century.¹³

The triumph of the Restoration in Europe erased all the governments that had established themselves on the basis of popular representation. On the American continent, the War of 1812, the vain attempts to reconquer Spain and the development of representative governments made the political discourse of non-recognition and the affirmation of legitimacy inapplicable. These circumstances explain to a large extent the emergence of other modalities of recognition, given the impossibility of treating the populations of the Western Hemisphere as communities outside the law.

The distinction made between *de jure* recognition and *de facto* recognition at this time was due largely to the political diffusion of the principle of legitimacy. If *de jure* recognition was associated with a widespread conception of public authority as being based on the right of dynastic succession, *de facto* recognition resulted from a rather contractual and positive conception of state sovereignty in which royal rights played no role.

¹² *Wilhelm Grewe*, *Epochen der Völkerrechtsgeschichte*, Baden-Baden 1984. See especially the fourth chapter.

¹³ Seen in perspective, and contrary to the doctrines of non-recognition set out in the cases of the German Democratic Republic, the State of Israel and the Palestinian National Authority, its most notable feature is the fact that no-recognition authorized military intervention.

A Necessary Clarification

In his influential book *Epochen der Völkerrechtsgeschichte*, Wilhelm Grewe pointed out that the legal principles on which the contemporary doctrine of the recognition of States is based on were conceived by Anglo-Saxon jurists and statesmen during the independence of the Hispanic-American republics. Recognition of the rebellious provinces of Spanish America was reportedly debated in the political circles of Washington and London in 1810, and the legal basis for recognition would have been elaborated later, between 1822 and 1825, in a sequence of parliamentary debates in which H. Clay (1777–1852), J. Adams (1735–1826), H. Mackintosh (1765–1832) and G. Canning (1770–1827) played a predominant role. According to Grewe: “Principles for recognizing new states in the nineteenth century were formulated for the first time by statesmen and English jurists on the basis of the example given by the independence of the Latin American republics.”¹⁴

This thesis has greatly influenced the historiography of International Law and the national accounts of several Ibero-American countries, for which the recognition of the United States and England inaugurates the integration of new governments to the community of civilized nations. However, this idea is based on a documentary evidence that includes only an analysis of the sources produced in the United States, England and France, and which neglects the documentation produced by the protagonists of the independence movements in Iberian America and in the Iberian Peninsula. This methodological approach constitutes an error of legal and historical appreciation that eclipses other factors and other political actors that are decisive in the evolution of the issue of international recognition. The following discussion illustrates why.

The Portuguese Recognition

In chronological terms, the recognition of the new Spanish-American governments by the United States was preceded by that of the Portuguese crown, made in the weeks preceding the return of John VI to Portugal, in April 1821. The starting point of the recognition was the mission of João Manoel Figueredo, sent from Río de Janeiro to Buenos Aires, and by which the King announced his will to recognize all the independent governments that existed at that time in South America.¹⁵

The news of the recognition of the Portuguese crown spreads rapidly and the offer was received with enthusiasm in Bogotá. This enthusiasm was not only due to the fact that a European monarchy had decided to recognize a new republic, which could potentially have a positive influence on the behavior of other monarchical governments, but also to the possibility of sending agents to Portugal as the Colombian government would sooner or later begin border negotiations with Lisbon to clarify their respective jurisdictions in the Amazon region.

Between May and June, the network of Colombian diplomatic envoys in Europe were activated at the announcement of the Portuguese. In May, the Colombian Foreign Ministry took the decision to send a diplomat to Lisbon as Envoy Extraordinary and Minister Plenipotentiary. At the same time,

¹⁴ Grewe, *Epochen*, 584.

¹⁵ This mission allowed, one year later, the liberal government of Portugal to explore the possibility of establishing an alliance capable of safeguarding the unity of all Ibero-American peoples, defending their achievements in constitutional matters and their independence towards the Holy Alliance and England: Al gobernador y Capitan general de la Provincia de Buenos Aires, Río de Janeiro, 16.04.1821. *Simón Planas-Suarez*, *Notas históricas y diplomáticas. Portugal y la independencia americana*, Lisbon 1918, 17.

Francisco Antonio Zea sent a letter to the Portuguese legation staying in Paris and asked for recognition from Colombia.¹⁶ The Portuguese responded in June and mentioned that they maintained a reciprocal recognition policy with Hispanic-American governments.¹⁷ It was reported that Portuguese agents residing in the United States had been instructed to establish links with the Colombian Legation of Washington in order to establish commercial relations.

The legal justification for the recognition of the Colombian Government and Buenos Aires by Portugal allows us to improve our own understanding of the evolution of international recognition in historical and current times. The two arguments justifying Portuguese recognition appear in the instructions that Silvestre Pinheiro de Ferreira sent to several members of the Portuguese diplomatic corps between 1821 and 1823.¹⁸ One concerns the government and the other sovereignty.

The first statement was that no government could legally argue or challenge the legitimate existence of a *de facto* government which is obeyed by a population. The instructions given to de Figuereido exposed it in all clarity:

“Convinced the King that it is not legitimate for one government to discuss the legitimacy of another whose existence as such is proved by the fact of the obedience of peoples, he was only waiting for a situation of this nature - which seems to show that all will be gathered around the government of this state - to open with it the external relations of government to government practiced among all the civilized nations.”¹⁹

It must be pointed out that this argument is defended with the same formulation by James Mackintosh and George Canning before the House of Commons in 1824 and is one of the strengths of contemporary recognition doctrine. We will come back to this point later.

The second statement was based on a particular conception of political sovereignty and constituted an original response to the repertoire of questions posed in a revolutionary conjuncture: Where is sovereignty? In the figure of the ruler himself or in the nation? In the link established between them? In the territory or in the people? The recognition made by Portugal is the result of an old interpretation of the power of the sovereign present in most of the contractual legal traditions of the Iberian Peninsula. If Portugal had recognized the new governments, De Ferreira pointed out, it was because the basic communities (peoples and provinces) of the Iberian monarchies had re-assumed the inalienable right to submit to the authority of those who ruled it with righteousness and accuracy. The authority of any governor was restricted by the laws. The disrespect of these laws led to a rupture of the pact established between the nation and the sovereign. But the Spanish king had committed acts of tyranny by violating the fundamental rights of the kingdoms in America. This

¹⁶ Zea a los gobiernos de Europa; Zea's letter was written in French and addressed to various European sovereigns. Archives diplomatiques françaises, La Courneuve, 175/ard 78, Colombie.

¹⁷ It made it clear that the establishment of official correspondence between the representatives of the Portuguese Government and the Spanish Governments was already a proof of recognition.

¹⁸ *Vicente Barreto*, Uma introdução ao pensamento político de Silvestre Pinheiro Ferreira, in: *Revista Brasileira de Filosofia*, São Paulo, 25.100, 1975, 470–478.

¹⁹ *Planas-Suarez*, *Notas Históricas y Diplomáticas*, 37.

constituted a break in the wake of which sovereignty returned to the basic communities and thus justified the legality of the Portuguese approach.²⁰

The Recognition by the United States

That Portugal first recognized the South American governments does not overshadow the importance of the recognition by the United States. However, it places it in a broader context, which goes beyond the national and hemispheric scales, and places the issue of the recognition of Hispanic-American republics in a true framework of transnational history.

Several discussions concerning the recognition of the new Hispanic-American governments took place in the United States after 1817, and some points should be underlined most notably as the same problem was posed in 1776 by the recognition of the United States by France. In October of that year, President James Monroe submitted a memorandum to members of his cabinet in which he asked them whether the recognition of a state that has not yet been recognized by the motherland came under the competences of the executive power. Motivated by the many requests for meetings with the President of the Union and his Secretary of State made by the envoys of Colombia and the Province of Buenos Aires, the question sums up well the doubts preceding the act of recognition:

Does the executive have the power to recognize the independence of new states even though this independence has not been recognized by the motherland and whose parties are fighting a war over it?

The question asked by Monroe was of great significance. That the United States Government, the creation of which was made possible by the violation of the rights of the King of England, continued to look at the question of recognition in terms of respect for the rights of the previous ruler shows us that, in the mentality of contemporaries and on the legal plane, no alternative to the renunciation or transfer of sovereignty actually existed.²¹

In the following years, the government published the principles that would guide its policy *vis-à-vis* international recognition. After several parliamentary debates concerning the situation of Spanish-American governments, the Congress agreed to give the executive power the competence to recognize another state. Clay argued that the United States had always acted by recognizing governments that were *de facto* in power.²² The question of recognizing *de facto* or *de jure* sovereignty was a choice, and for the US government *de facto* recognition equalled the recognition of *de jure*. The distinction *de jure* /*de facto*, argued John Q. Adams thereafter, was non-existent since these two criteria were only two different parts of the same process. In diplomatic practice, the first concrete act of recognition of the United States based on these postulations was the reception of Colombian charge d'affaires Manuel Torres in March 1822.²³

²⁰ *François-Xavier Guerra*, *Modernidad e independencias. Ensayos sobre las revoluciones hispánicas*, Madrid 1992; *José Villacañas*, *La formación de los reinos hispánicos*, Madrid 2006; On the arguments that support the contractual philosophy of Pinheiro de Ferreira can be studied *Silvestre Pinheiro-Ferreira*, *Manual do cidadão em um governo representativo, ou principios de direito constitucional, administrativo e das gentes*, Paris 1834.

²¹ On the other hand, to know whether the recognition of another State fell within the competences of the executive power showed a problem of Constitutional Law consubstantial with the new state formations: that of the division and the attribution of the branches of public power.

²² *Henry Clay/ Daniel Mallory* (Ed.), *Life and Speeches of Henry Clay*, vol. 1., New York 1843, 391.

²³ *Charles H. Bowman Jr.*, *The activities of Manuel Torres as purchasing agent 1820-1821*, in: *The Hispanic American Historical Review*, 48.2, 1968, 234–246.

The attitude of the Spanish ambassador in Washington confirmed the change that was taking place. Don Joaquín de Anduaga protested against the reception of Torres, but he did not mention the rights of the Spanish ruler over the revolted provinces. Additionally, Anduaga opposed the reception by virtue of the following argument: the recognition was made without taking into account the fact that Spain could still recover by force the rebel provinces.²⁴ This difference, though subtle, is essential because it is part of a previously established continuity. Anduaga could not criticize the recognition of territories that eventually gained military, legal and administrative independence, because that would contradict the practice that his own government had inaugurated with the Spanish recognition of the independence of the thirteen colonies.

The Recognition between Hispanic-American governments

For various reasons and through different processes, using arguments extracted from the jus-naturist or positive conceptions of the Law of Nations as well as sometimes mixing the two, the independent governments recognized each other and established relations of commerce and friendship throughout the Atlantic Ocean. As we will see in the following discussion, the foreign policy of the Colombian government is a case that illustrates the political and legal changes of the period: from consultation with the Spanish sovereign on the basis of a renunciation of its rights, it passes to the acceptance of de facto independence as the dominant criterion for recognizing another government.

After the signing of the Trujillo armistice in 1820, Simón Bolívar sent a diplomatic mission to Europe to negotiate the Spanish recognition of Colombia with the ministers of Ferdinand VII. Like many politicians in Iberian America, Bolívar agreed that the legal basis on which the new republics should be erected would arise from the internal order of the Hispanic monarchy. The starting point of the negotiations was the recognition of sovereignty by virtue of the Spanish King's renunciation of his rights over Colombian territories. The Colombian diplomatic envoys had to conclude:

“[...] an honorable and glorious peace treaty, whose fundamental basis is the recognition of Colombia as a Republic or State perfectly equal to all other sovereign and independent states in the world, with a clear and well-meaning renunciation of the Spain, his people and his government, for himself and for his successors, for any reason, right or claim of ownership or sovereignty over the whole and each of the parties that make up the Republic of Colombia.”²⁵

The instructions of these envoys show that Spanish-American politicians considered the possibility of reaching an agreement with Spain to put an end to war through a negotiated peace. For a long time, national historiography has forgotten this essential fact of the independence story, and nuanced it through a tendentious narrative according to which the military expulsion of troops and political actors loyal to the Crown was the ultimate goal of the patriotic leaders. This view of things is not only contrary to the political circumstances which we can discern through the stripping of diplomatic sources, but especially contrary to the nature of the warlike phenomenon present in Iberian America. While the liberation of the territories of the former viceroyalties has guided the conti-

²⁴ Excerpts from the Anduaga note in *Ricardo Montaner y Bello*, *Historia diplomática de la independencia de Chile*, Santiago de Chile 1961, 130.

²⁵ Instrucciones del Libertador a los plenipotenciarios de Colombia para negociar la paz con España en 1821, in: German Cavalier, *Documentos para la historia diplomática de Colombia*, vol. 1, Bogotá, 1976, 18-27. According to the instructions, if Spain agreed to start negotiations, Colombia would make territorial concessions. The Colombian government was ready to cede the territories of the Isthmus of Panama and the Audiencia de Quito, and pledged not to interfere in the war between the Mexican separatists and the crown (Article VIII). Spain would also receive the status of most favored nation against the recognition of Colombia.

mental tactics of the patriots, it is no less certain that the willingness to negotiate with Madrid had shaped the whole international strategy of the new governments until 1823.

In 1821, Bolívar and Pedro Gual sent a diplomatic mission to the Spanish-American governments in order to centralize the war effort against Spain and to prepare an assembly of independent nations. The axis of this new alliance was to be the set of treaties that the Colombians would sign with Peru, Chile and the Province of Buenos Aires through the Minister Plenipotentiary Joaquín Mosquera y Arboleda.

Article 1 of the Treaty of Union, League and Confederation between the Colombian and Peruvian governments, which was to serve as a model for others, contains two seemingly contradictory ideas, but which in reality reflected the Colombian government's desire to open the doors to negotiations with Spain. The treaty stated:

“The Republic of Colombia and the State of Peru unite, join and confederate now and forever in peace and war to maintain through their influence and their maritime and land forces as far as possible, their independence of the Spanish nation and all other foreign domination, and ensure, after this independence is recognized, their mutual prosperity, harmony and mutual understanding, between their peoples, subjects and citizens, as with the other powers with which they will have to report.”²⁶

If the union referred to in the treaty presupposed the reciprocal recognition of the two governments, the phrase "after this independence is recognized" shows nevertheless that military victories and the liberation of the territories were not the only source of recognition of independence neither for the Colombian Government nor for the Peruvian Government. In practice, the treaty accepted the need for prior recognition by Spain for Colombia's recognition to be effective, in other words, the need for the Crown to renounce its rights in the territories of Peru.

However, no negotiations between the Hispanic-American governments and Spain on the basis of a waiver or transfer of the rights of the sovereign was made possible. In 1823, the news arrived to Bogotá of the total failure of the mission sent by Bolívar to Madrid.²⁷As a result, the Colombian government renounced its recognition under an agreement with Spain and developed a new strategy. In the following years, Colombian diplomats would report to the chancelleries of other European princes, as a preamble to the negotiations, that the Spanish ruler has never agreed to begin negotiations.²⁸

The British Recognition

The fact that the whole process of recognition of Hispanic-American governments has often been reduced to the recognition granted by England is mainly due to the dominant position of the British in the international system throughout the 19th century and to the way in which this position has been interpreted. It is undeniable that this recognition has greatly influenced the history of all Iberian America, however it would be wrong to exaggerate its importance by interpreting it as an un-

²⁶ Tratado de Union, liga y confederación perpetua entre la República de Colombia y el Estado del Perú, in: *Cavelier*, Documentos para la historia diplomática de Colombia, vol. 1, Bogotá 1976., 72-75.

²⁷ Speech on presenting a petition from the merchants of London for the Recognition of the independent States established in the countries of America formerly subject to Spain. Delivered in the House of Commons, on the 15th of June, 1824, in: *Sir James Mackintosh*, The Miscellaneous Works of the Right Honourable Sir James Mackintosh, vol. 1, Philadelphia, 1846, 549-564.

²⁸ See: General Archive of the Colombian Nation (AGNC), Ministry of Foreign Relations Fund, T. XVII, London Legation, report by *José Manuel Hurtado*, plenipotentiary in London, to George Canning, Minister of S.M.I, 485, f. 61-63.

conditional offer of protection against intervention by the other North Atlantic powers. The Ibero-American scholars of the 19th century and contemporary historians who supported such opinions are proof not only of limited knowledge of the documentary sources of the time, but also and above all of an unrealistic approach to recognition.

Conducted confidentially for several years, the debate on the recognition of new governments was not made public in England until 1824. British commercial and financial interests in Hispanic America were then known for a long time, but the new situation was explained by the pressure of a large group of London traders and other important public figures such as David Ricardo. In May, traders sent a petition to Sir James Mackintosh, in which they asked the English government to recognize all the new governments settled in Hispanic America in order to improve and secure trade with them. Mackintosh immediately presented this petition to the House of Commons, declaring that it was useless to wait for a Spanish reconquest of America. Independentists, he said, were too determined to reach independence, and the Spaniards too weak to oppose it. As his discourse suggests, the problem of whether or not to recognize new governments was not strictly related to the situation in America, but rather to the legal consistency of the English arguments to justify recognition and the subsequent position that England must assume *vis-à-vis* Spain.

Mackintosh favored official relations with Hispanic-Americans, but he could not defend the purpose of the petition without offering a solution to the age-old problem of recognizing independent governments that have not been recognized by their ancient sovereigns. Next his solution to justify a possible recognition of England consisted in distinguishing between the recognition of sovereignty and the acknowledgment of independence. He pointed out that the whole problem was reduced to the semantic versatility of the term *recognition*, which has at least two very distinct meanings:

“The first, which is the true and legitimate meaning of the word "recognition" as a technical term of international law, is the one in which it refers to the explicit recognition of the independence of a country by a State which formerly exercised its sovereignty over him [...]. These recognitions are renunciations of sovereignty—the abandonment of power or the demand to govern.

But we, who are so foreign to the Spanish States in America as we are to Spain itself—we have never had more authority over them than over it—have in this case no claim to abandon neither the power to abdicate, nor the sovereignty to surrender, nor any legal right to give. What we have to do is not recognition in the first sense. It is not by formal provisions or solemn declarations that we must recognize the American states, but by practical policy measures, which implies that we recognize their independence.”²⁹

Not very legally consistent, since independence may be seen as one of the attributes of sovereignty, but arguably original, the acceptance of independence was the way to build relationships with new governments without pronouncing on the sovereign rights of the Spanish monarch.

Moreover, to reinforce the legitimacy of recognition, Mackintosh evoked the same argument advanced by Pinheiro de Ferreira in 1822, according to which to claim the legality or illegality of a government obeyed by a population goes beyond the jurisdiction of the British government:

“Our recognition is virtual. The most visible part of such recognition is the act of sending and receiving diplomatic agents. It implies no guarantee, no alliance, no help, no approval of the successful revolt—besides an opinion concerning the justice or the injustice of the means by which the revolt was accomplished. These are matters outside our jurisdiction.”³⁰

²⁹ Speech on a presenting a petition from the merchants..., in: *Mackintosh*, The Miscellaneous Works, 550.

³⁰ Speech on a presenting a petition from the merchants..., in: *Mackintosh*, The Miscellaneous Works, 550.

England, Mackintosh continued, can neither condemn nor justify revolutions which affect neither his subjects nor his laws. To this extent, it deals with the authorities of the new governments for the same reasons that it has to do with the authorities of the European nations: both of them exercise in fact the authority over a certain population and territory.

In a new debate held in June 1824, George Canning, then Secretary of the Foreign Office, collected part of Mackintosh's argument, but he introduced an important nuance. In his opinion, the difference between the two meanings of the term lies in the degree of legitimacy of recognition.³¹ He argued that if it is done by a third government, it can not have the same political weight as that resulting from a negotiation between the new and the old authorities of the same territory. As the negotiations between Spain and the Hispanic-American governments were slow to take place without the fire or the sword persuading the Spanish sovereign to begin it, England would have the liberty to recognize these new governments.

In reality, the question of the degree of legitimacy was related to the possibility of a Spanish reconquest. In fact, the absence of an agreement between the new governments and the Spanish King leaves open the possibility of a reconquest led by Madrid, to which the English government could not oppose. As Canning very clearly pointed out to Parliament, the recognition of a third government does not imply the cessation of a state of war between two opposing parties. On the other hand, recognition creates an obligation for the recognizing government, in the sense that the government must automatically adopt a neutral position with respect to the two belligerents.

The military victory of the armies of Bolívar and Antonio J. de Sucre in Ayacucho in December 1824 helped to dispel the doubts of certain sectors of the British parliament with regard to the recognition of the new governments. As many contemporaries have noted, this new victory of the patriots removed Spain from the only region that would have allowed them to recover South America. From January 1825, the British government officially exchanged diplomatic agents and signed treaties of friendship, commerce and navigation with Colombia, Mexico and the government of Buenos Aires.

In the works of international law written from the 1830s, the doubt about the recognition of the independence of territories that had not yet been recognized as such by their former rulers no longer arises. Since then, effective independence is the dominant criterion for recognizing a new government. Andrés Bello, deliberately forgetting a legal problem of which he was aware of, and a political context in which he had been a protagonist of, points out in his *Principios del Derecho internacional* that:

“In the event of a violent separation from another nation and the establishment of independent states, one or more of the provinces that constituted it, it is established that other nations are bound to respect the rights of the first nation, considering the separate provinces as rebels and refusing to deal with them. During the entire conflict between the two parties, there is no doubt that a foreign nation can embrace the cause of the metropolis in the face of the provinces, if it deems it just and good, and that of the provinces against the mother country in the opposite case. But once the new state, or the states, are in possession of power, it is not forbidden for others to recognize them as such, because in this it is nothing more than to recognize a fact and to have a neutral position in a foreign controversy.”³²

³¹London Petition for recognition of the Independence of South America 1345, Speeches of Mr. Georges Canning on the year 1824, in: HC Deb 15 June 1824 vol 11 cc1344-406, UK Parliamentary Digital Service, Hansard 1803–2005, <https://api.parliament.uk/historic-hansard/commons/1824/jun/15/recognition-of-the-independence-of-south>

³² *Andrés Bello*, *Principios de Derecho Internacional* (1832), Buenos Aires 1946, 144.

The Recognition of Brazil

It is well known that the recognition of Brazil was the result of a negotiation between the new independent governments of Portugal, England and Austria.³³ This negotiation led, in August 1825, to the signing of a treaty in which the first article said:

“His Most Faithful Majesty recognizes the Empire of Brazil as an independent empire and separated from the kingdoms of Portugal and the Algarve; and his beloved son Peter as Emperor, by renouncing and transferring from his free will the sovereignty of the Empire to his son and his legitimate successors [...]”³⁴

The renunciation and transfer of sovereignty of John VI to his son Peter respected the principle of continuity defended by the publicists of the European Law of Nations of the 18th century with regard to the creation of a new sovereign entity. The Brazilian transition to independence was a singular event in a region of the world where most governments were born in the opposite way, that is, without a negotiation between the new authorities and the former metropolis. This fact partly helped to build a recurring pattern making Brazilian independence an exceptional case in the history of the south of the continent.

However, as always, the historical reality is more complex. Firstly, because the chronology of Brazilian recognition can not be reduced to the year 1825, and secondly, because the possibility of a negotiation between Rio de Janeiro and Portugal was the result of the establishment of a prior balance of power in which the Spanish-American independence dynamics had been an important factor.

The news of the reception of Colombian Manuel Torres in Washington in 1822 spread rapidly around the Atlantic Ocean. In the United States, other South American envoys hoping to be received by President Monroe evoked the precedent of Colombia's recognition to demand the recognition of their respective governments. In Europe, the recognition of Colombia acted as a pressure mechanism used by the South American agents living in London, Paris and Vienna, who did not hesitate to assert that the European governments would lose ground against the giant of the North if they were not in a hurry to establish relations with these new nations.

The option of being recognized by other governments without negotiating with Portugal had already been taken into account in 1822 by some sympathizers of independence. In December of this year, Peter I's first envoy to England, Felisberto Caldeira Brand (later Marquis of Barbacena), reported that the best way to ensure Brazil's independence would be to act on the basis of a policy of *faits accomplis*. Caldeira Brand expected Brazil to gain independence by emulating the example of other governments in the region, particularly Colombia, and was deeply skeptical of the support that Peter I found in England to defend the new American Empire.³⁵

In November 1824, the precedent of Colombian recognition was once again evoked. In the instructions of Manuel Gameiro de Pessoa, a new Brazilian agent sent to London, the Colombian example

³³ See Kelia Grinberg/Ricardo Salles (Ed.), *O Brasil imperial*, vol. 1., Rio de Janeiro 2010.

³⁴ Tratado de amizade e aliança entre El-Rei o Senhor D. João VI e D. Pedro I, Emperado do Brasil, feito por mediação de sua Majestade Britânica, assinado no Rio de Janeiro a 29 de Agosto de 1825, e ratificado por parte de Portugal em 15 de Novembro e pela do Brasil em 30 de Agosto do dito ano, in: *Ministerio das Relações exteriores do governo do Brasil*, Sistema do atos internacionais, in: http://dai-mre.serpro.gov.br/atos-internacionais/bilaterais/1825/b_2/

³⁵ Caldeira Brant reports in: *Francisco Adolfo Varnhagen*, *História da Independência do Brasil*, 1ª ed., São Paulo 1916.

and the damage that could be caused to England to defer the recognition of Brazil, served as a pressure mechanism against London in order to ensure British recognition of Brazilian independence if Portugal refused to conclude a negotiation. The document stated that:

“Beyond the reasons given above, the examples of Colombia and other small independent states that have already been recognized, and principles of public law that you could also appeal to, since Brazil has always been consistent with them, you will delicately suggest that England's own interests require this recognition, because would not be strange that the Brazilian Government deals exclusively with another power in this respect, by stipulating conditions which could harm the mercantile interests of Great Britain in this vast empire [...]”³⁶

These instructions show a barely perceptible change, albeit a change of great importance. On the one hand, Pessõa demanded the British recognition of Brazil in the register of European natural law, pointing out that the tyrannical attitude of the Portuguese had forced Brazil to proclaim independence. On the other hand, the envoy must mention that Brazil was a *de facto* independent country, which opened the possibility of recognizing it through a modern register like the one that made possible the recognition of Colombia by the United States. These two options reflect the political context of Brazil's integration into the international system, in which Spanish-American independence has had a considerable impact and that it was impossible to ignore when drawing up a realistic strategy to achieve the recognition of the new empire.

Brazil's recent social and political historiography has documented the remarkable parallels between the Lusitanian and Hispanic areas of America throughout the independence period. If the patriotic narrative of the 19th century has long regarded the birth of the American monarchy as an exception in the midst of a continent of republics, the recent works reflect a new interpretive tendency which shows that the two zones were subject to logics and similar problems. The study of imperial recognition is a good starting point for exploring these methodological innovations in the international history of the 19th century Brazil. The invitation to this exploration remains open.

Conclusions

The problem of international recognition has remained in the history of the Law of Nations for almost three centuries without ever having been conclusively resolved. However, the historical framework in which all the questions concerning the acceptance of a new member into the international system, appears to have changed radically with the Atlantic revolutions. If the legality of the emergence of a new independent government no longer depended on respect for dynastic continuity, but on the sovereign will of a people who decided to establish themselves as independent institutions, respect for the sovereign rights of the previous royal authority lost all meaning.

It would be useless to attribute the transformation of recognition to the only mutations undergone by the concept of sovereignty during the transition between the 18th and 19th centuries. Sovereignty is immersed in a more widespread repertoire of political notions including legality, legitimacy, state and government, and which are directly related to the conception of public authority in society at a particular time: The roots of change are not limited to the evolution of a legal paradigm, but to the radical transformation of one period of international history and the advent of another.

³⁶ Instruções para servirem de regulamento ao Sr. Manoel Rodrigues Gameiro Pessoa na missão com que parte para a cõrte de Londres de Encarregado de Negocios do Imperio do Brazil, Río de Janeiro, 24.11.1824, Luis de Carvalho e Mello, Appendice Documental, in: *Manuel de Oliveira Lima*, Historia diplomatica do Brazil: O reconhecimento do Imperio, Paris / Rio de Janeiro 1897, 314-321.

With the emergence of the Spanish-American republics in the early 19th century, third states recognized the independence of new territories without the mediation of agreements between the new and the former authorities of the latter. Henceforth, recognition was based on other types of criteria such as political and military control over a given territory, the existence of representative institutions and the administration of justice and, of course, the fundamental criterion of the existence of a nation.

A trace of these changes would remained present in treaty language throughout the 19th century. In treaties dating back to the 1820s when an act of recognition was carried out directly or implicitly, the formula in most common usage is *recognition of sovereignty and independence*. In contrast, after the Hispanic-American recognitions, independence always appears in the first place and recognition was achieved by virtue of *independence and sovereignty*.