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THE RECOGNITION OF RUSSIA

*Edwin D. Dickinson**

I

REVOLUTION in Russia culminated, on March 15, 1917, in the abdication of the Romanoffs and the establishment of the Provisional Government. In November, 1917, the Provisional Government was overthrown by the Bolsheviki and the Russian Socialist Federated Soviet Republic was proclaimed. Thus in nine turbulent months authority in Russia passed from the autocracy of the Czars, through the ineffective hands of the moderates, to extreme radicals frankly committed to communism and the dictatorship of the proletariat.

The United States was the first to recognize the Provisional Government, Ambassador Francis informing the Russian Council of Ministers on March 22, 1917, that "the Government of the United States recognizes the new Government of Russia."¹ The United States is the only great power which has not recognized the Soviet Government.² After fourteen years the United States still acknowledges the existence of the Russian state but refuses to have intercourse with the government which must of necessity speak for that state. The situation is wholly anomalous, in United States experience and practice, and is one which obviously challenges our critical consideration. It is proposed to consider, first, the traditions of United States recognition practice;

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¹ UNITED STATES FOREIGN RELATIONS, 1205, 1211 (1917).

² "The United States and Russia," 4 FOREIGN POLICY ASSOCIATION INFORMATION SERVICE, 477, 479 (Feb. 20, 1929).

second, the reasons advanced for departing from traditional practice in the present instance; and, third, the effect upon law, both private and public, of failure to deal with Russia in accord with traditional practice. Though commonly regarded as raising questions of policy only, the continued withholding of recognition from the Government of Russia is of much more than passing interest to members of the legal profession.

II

The traditions of United States recognition practice are easily ascertained. There have been eddies, and occasional cross-currents, but the general course of practice has been well defined. The prompt recognition of *de facto* governments, established through revolution, as soon as stability and responsibility are sufficiently assured, has been a guiding principle of American statecraft.³ It has been said, indeed, that it constitutes "one of the distinctive contributions of United States diplomacy to the present international system."⁴

Washington's first administration repudiated the notion that recognition might be conditioned upon dynastic legitimacy, and acted upon the principle that new governments should be recognized promptly upon satisfactory evidence of *de facto* stability and capacity to perform international obligations. "It accords with our principles," said Secretary Jefferson, "to acknowledge any Government to be rightful which is formed by the will of the nation, substantially declared."⁵ For a government born in revolution and committed to democratic and pacific

³ "The practice of this country as to the recognition of new governments has been substantially uniform from the days of the administration of Secretary of State Jefferson in 1792 to the days of Secretary of State Bryan in 1913. There were certain slight departures from this policy during the Civil War, but they were manifestly due to the exigencies of warfare and were abandoned immediately afterwards. This general policy, as thus observed, was to base the act of recognition not upon the question of the constitutional legitimacy of the new government but upon its *de facto* capacity to fulfill its obligations as a member of the family of nations. This country recognized the right of other nations to regulate their own internal affairs of government and disclaimed any attempt to base its recognition upon the correctness of their constitutional action." Secretary of State Stimson, "The United States and the Other American Republics," Publications of the Department of State, Latin American Series, No. 4, p. 6 (1931).

See also Hackworth, "The Policy of the United States in Recognizing New Governments During the Past Twenty-Five Years," Proc. AM. Soc. INT. L., 120 (1931); I MOORE, DIGEST OF INTERNATIONAL LAW, 72, 119 (1906).

⁴ GOEBEL, THE RECOGNITION POLICY OF THE UNITED STATES, 221 (1915).

⁵ Secretary Jefferson to Gouverneur Morris, Minister to France, Nov. 7, 1792, I MOORE, DIGEST OF INTERNATIONAL LAW, 120 (1906).

policies, this position was dictated by the most obvious and sensible of considerations. In an instruction to the United States Minister to France of March 12, 1793, Secretary Jefferson declared:⁶

“We surely can not deny to any nation that right whereon our own Government is founded — that every one may govern itself according to whatever form it pleases, and change these forms at its own will; and that it may transact its business with foreign nations through whatever organ it thinks proper, whether king, convention, assembly, committee, president, or anything else it may choose. The will of the nation is the only thing essential to be regarded.”

Following the precedents of Washington's administration, application of the so-called *de facto* principle soon became an established policy. There is an unusually good summary of the practice in a speech made by Henry Clay, in 1818, arguing for the immediate recognition of the revolutionary government then recently established in the United Provinces of Rio de la Plata.⁷ The principle was consistently applied, for example, in according recognition promptly to revolutionary governments established in France, as France passed from republic to empire, empire to monarchy, monarchy to republic, republic to empire, and empire to republic.⁸ In the words of the

⁶ I MOORE, DIGEST OF INTERNATIONAL LAW, 120 (1906). “Jefferson's statements carried the implication that a government, such as he described, would be in possession of the machinery of government, would possess stability, and would be able and willing to meet its international obligations. Therefore, stipulations to that effect contained in more recent instructions to our diplomatic officers may be regarded as specifically stating conditions which otherwise would have been implied in the principles enunciated by Jefferson.” Hackworth, “The Policy of the United States in Recognizing New Governments During the Past Twenty-Five Years,” PROC. AM. SOC. INT. L. 120, 123 (1931). (See note 3, *supra*).

⁷ I MALLORY, LIFE AND SPEECHES OF HENRY CLAY, 391, quoted by GOEBEL, THE RECOGNITION POLICY OF THE UNITED STATES, 123 (1915).

⁸ I MOORE, DIGEST OF INTERNATIONAL LAW, 119-128 (1906). In instructions to the United States Minister to France, March 31, 1848, Secretary Buchanan said: “In its intercourse with foreign nations the Government of the United States has, from its origin, always recognized *de facto* governments. We recognize the right of all nations to create and re-form their political institutions according to their own will and pleasure. We do not go behind the existing Government to involve ourselves in the question of legitimacy. It is sufficient for us to know that a government exists capable of maintaining itself; and then its recognition on our part inevitably follows.” (I MOORE, DIGEST OF INTERNATIONAL LAW, 124.) Four years later, Jan. 12, 1852, in instructions to the United States Minister to France, Secretary Webster said: “From President Washington's time down to the present day it has been a principle, always acknowledged by the United States, that every nation possesses a right to govern itself according to its own will, to change institutions at discretion, and to transact its

present Secretary of State of the United States, it has been traditional American practice "to base the act of recognition not upon the question of the constitutional legitimacy of the new government but upon its *de facto* capacity to fulfill its obligations as a member of the family of nations."⁹

Without further reference to the precedents, it may be said that the United States, from the beginning, has been content to renounce dictation to others and take the world as it is, thus stabilizing the conditions of international intercourse, as effectively as possible, among the governments in power at any given time in the different countries of the world. While occasionally manifesting satisfaction when new governments were established on principles similar to its own, or regret when revolution resulted in the triumph of principles opposed, the United States has conceded freely the right of every people to manage or mismanage its own internal affairs and has cautiously refrained from either approving or disapproving of the curiously assorted governments with which it has become necessary to establish diplomatic relations.

Of those who have explored the record of this development, there is no one who knows it so intimately, or who appreciates so profoundly its true significance, as Judge John Bassett Moore. In a recent address before the Association of the Bar of New York City, Judge Moore denounces the notion that recognition by the United States may imply approval of a foreign government's constitution, economic system, or general course of conduct as a "preposterous and mischievous supposition." He reviews the governments with which the United States has established diplomatic relations in the past as "a motley procession," including "governments liberal and governments illiberal; governments free and governments unfree; governments honest, and governments corrupt; governments pacific and gov-

business through whatever agents it may think proper to employ. This cardinal point in our policy has been strongly illustrated by recognizing the many forms of political power which have been successively adopted by France in the series of revolutions with which that country has been visited. Throughout all these changes the Government of the United States has conducted itself in strict conformity to the original principles adopted by Washington, and made known to our diplomatic agents abroad, and to the nations of the world, by Mr. Jefferson's letter to Gouverneur Morris, of the 12th March, 1793." (1 MOORE, DIGEST OF INTERNATIONAL LAW, 126.)

For other precedents illustrating the application of the *de facto* principle, see 1 MOORE, DIGEST OF INTERNATIONAL LAW, 128-164; COLE, THE RECOGNITION POLICY OF THE UNITED STATES SINCE 1901; GOEBEL, THE RECOGNITION POLICY OF THE UNITED STATES (1915).

⁹ See note 3, *supra*.

ernments even aggressively warlike; empires, monarchies, and oligarchies; despotisms decked out as democracies, and tyrannies masquerading as republics — all representative of the motley world in which we live and with which we must do business.”¹⁰

There have been only two instances of first-rate importance in which the United States has departed from this traditional practice to invoke doctrines of legitimacy and attempt disguised dictation to other countries. An apparent departure in the period of the Civil War requires no comment, since it was prompted by the exigencies of an exceptional situation and was soon abandoned.¹¹ A more recent departure, in dealing with the five Central American Republics, is not of general significance since it applies only in a limited area and is justified by a treaty between the five republics.¹² The two really noteworthy departures have been, first, the policy initiated in the administration of President Wilson in 1913 in refusing to recognize the government of Huerta in Mexico, and second, the policy initiated by President Wilson in 1917 and continued by succeeding administrations in withholding recognition from the Soviet Government of Russia.

No doubt the refusal to recognize the Huerta government in Mexico was inspired by idealistic considerations. Upon assuming office, President Wilson found a friendly country torn by futile internal strife which was disturbing in its effects externally as well as internally. He strove to stabilize external relations by making recognition a reward for internal stability.¹³ His policy was a return to the discredited principal of legitimacy,¹⁴ it was foredoomed to failure, and its repudiation by the present administration of the United States¹⁵ has been accepted as a return to sound principles.

With respect to Russia, the question whether President Wilson's decision to withhold recognition in 1917 and the troubled years imme-

¹⁰ "Candor and Common Sense," an Address before the Association of the Bar of New York City, p. 26 (Dec. 4, 1930).

¹¹ See GOEBEL, *THE RECOGNITION POLICY OF THE UNITED STATES*, 171 ff. (1915).

¹² See Hackworth, "The Policy of the United States in Recognizing New Governments During the Past Twenty-Five Years," *PROC. AM. SOC. INT. L.*, 120, 125 (1931).

¹³ See President Wilson's "Declaration of Policy with Regard to Latin America," March 11, 1913, in *UNITED STATES FOREIGN RELATIONS* 7 (1913).

¹⁴ See Moore, "Candor and Common Sense," an address before the Association of the Bar of New York City, Dec. 4, 1930, p. 24.

¹⁵ See Stimson, "The United States and the Other American Republics," *PUBLICATIONS OF THE DEPARTMENT OF STATE, Latin American Series*, No. 4, p. 8 (1931).

diately following was justified by conditions then prevailing is now largely academic. In justification it may be said that the world was then at war, that the Soviet Government was negotiating a separate peace, and that reports as to its stability and its willingness to respond to international obligations were confused and misleading.¹⁶ In any case, the question of paramount importance for the present moment is not whether the first decision was right or wrong, wise or unwise. The important question is whether the continued withholding of recognition from the Soviet Government, years after its stability in fact has been established, can be defended as anything other than disguised intervention in the internal affairs of another state.

III

The United States continues to withhold recognition from the Soviet Government for reasons which are adequately summarized in a recent address by the Solicitor of the United States Department of State. According to the Solicitor's statement, the United States adheres to the position taken because it regards the Soviet Government as

"deficient in its observance of the fundamental conditions of international intercourse in three respects, namely:

(1) Its failure to accord to the persons and property of foreigners within its jurisdiction that degree of respect and protection required by international law;

(2) Its failure to respect the international obligations of preceding governments; and

(3) Its failure to respect the right of other nations to develop their institutions and to conduct their internal affairs without interference or control by other states."¹⁷

The alleged deficiencies of the Soviet Government may be considered in the order in which they are set forth above. The first concerns chiefly the confiscation in Russia of the property of United States nationals. It is estimated that the property of American nationals, worth some hundreds of millions of dollars, has been confiscated in Russia without compensation. The interests affected are, in the aggregate, of great magnitude; the confiscation is unprecedented in its method and scope; and it is profoundly shocking, to say the least, to a people committed to a capitalistic economy.

¹⁶ See SCHUMAN, *AMERICAN POLICY TOWARD RUSSIA SINCE 1917*, 55 ff. (1928).

¹⁷ Hackworth, "The Policy of the United States in Recognizing New Governments During the Past Twenty-Five Years," *PROC. AM. SOC. INT. L.*, 120, 131 (1931).

There are certain observations, however, which are relevant if the problem is to be weighed objectively. In the first place, the Soviet Government has counterclaims for the destruction of Russian property during the allied military intervention in Russia, 1918-1920, in which the United States was an active participant, amounting in the aggregate to several billions of dollars. In the second place, it is not positively established that the nationalization of private property as a measure of national regulation or economy, without discrimination, entails an international obligation to make full compensation to such aliens as may be adversely affected.¹⁸ In the third place, it is perfectly clear that the issue, however sharply drawn between a government organized to establish a socialistic or communistic economy and a government committed to the capitalistic system, will never be settled by withholding recognition. To withhold recognition on such an issue is to deny, in effect, that capitalistic and communistic systems can coexist in the same world. There come to mind earlier denials that monarchies and republics can coexist in the same world. It is probably superfluous to observe that such a denial, in a world so closely knit and interdependent, is nothing less than a challenge to war. It seems clear that the processes of international negotiation are likely to produce a more lasting and a more satisfactory adjustment.

The second alleged deficiency of the Soviet Government is based upon its repudiation of the debts incurred by preceding governments. The debts incurred by the Czarist and Provisional Governments were repudiated by the Soviet Government in a series of decrees issued in 1917-1918. Briefly stated, it was the Bolshevik thesis that these debts had been contracted by previous governments as a means of oppressing the Russian laboring classes and that a revolutionary proletarian government could not be expected to repay them. In the history of Czarist public finance, unfortunately, there is much which lends justification to the Bolshevik contention. From the viewpoint of victorious revolutionists, moreover, the legal system which makes revolutionary governments responsible for all debts incurred by preceding governments, but which imposes upon conquering states a more limited and doubtful responsibility for debts of the conquered state,¹⁹ is bound to seem an arbitrary system.

¹⁸ See Williams, "International Law and the Property of Aliens," *BRITISH YEAR-BOOK OF INT. L.*, 1928, p. 1. Cf. Fachiri, "Expropriation and International Law," *ibid.* 159 (1925), "International Law and the Property of Aliens," *ibid.* 32 (1929).

¹⁹ See APPLETON, *DES EFFETS DES ANNEXIONS DE TERRITOIRES SUR LES DETTES DE L'ETAT DEMEMBRE OU ANNEXE*, 25 (1895); I HYDE, *INTERNATIONAL LAW*, 219

Nevertheless, the repudiation was a violation of international obligation, as understood by the rest of the world, and it had a disastrous effect upon Soviet credit abroad. There have been discussions and conferences between the Soviet Government and the governments of European creditor states, both preceding and following recognition by the latter; but thus far no satisfactory solution has been found. The history of these negotiations indicates that the Soviet Government is willing to honor the pre-war debt of the Russian state in return for credits and some consideration of the Russian counter-claims, that the creditor states have no real expectation that the Russian state debt will ever be paid in full, and that an eventual settlement is extremely difficult but by no means impossible.

While the Soviet repudiation of Russian debts is the first, so far as the present writer is aware, to be defended on a communistic thesis, it is by no means the first repudiation of state debts; nor is it likely, unfortunately, to be the last. To denounce it as a deficiency in the observance of "the fundamental conditions of international intercourse," and to withhold recognition in consequence, is to take a very extreme position and one likely to prove quite untenable in the present condition of international relations. In fact, the Soviet repudiation is nothing more nor less than a serious breach of a specific international obligation which, if repaired at all, must of necessity be repaired through the processes of international negotiation.

The third alleged deficiency concerns propaganda. This is probably the most serious count in the indictment of the Soviet Government by the Government of the United States. The Soviet Government is the creation of the communist movement. The program of the communist movement is a program of international revolution. It is "a scheme not only for the liberation of the proletariat of one country but for the emancipation of the proletariat of the whole world." It advocates the support of international revolution "by means of revolutionary propaganda, strikes, revolts in imperialistic countries and by propagating revolts and insurrections in the colonies of these countries."²⁰ The communist movement is organized nationally in communist parties in the different countries and internationally in the Communist International with headquarters at Moscow.²¹ At the

(1922); KEITH, *THEORY OF STATE SUCCESSION*, 58 (1907); I MOORE, *DIGEST OF INTERNATIONAL LAW*, 339 (1906); I OPPENHEIM, *INTERNATIONAL LAW*, 4th ed., 164 (1926).

²⁰ BUKHARIN, *THE COMMUNIST PROGRAM*, 73, 75 (1919).

²¹ See BATSELL, *SOVIET RULE IN RUSSIA*, chs. 12, 13 (1929).

present time the Russian Communist Party is, of course, the most important part of the Communist International. The relationship between the Communist International and the Soviet Government is consequently a very close one indeed. From outside Russia it has all the appearance of an identity of interest and control; and the propaganda which emanates from Moscow is attributed indifferently to the Communist International and the Soviet Government. The Soviet Government insists upon a distinction, nevertheless, denies that it propagandizes abroad, and disclaims responsibility for the propagandist activities of the Communist International.²²

If Soviet premises be granted, the Soviet conclusion is correct. According to the Anglo-American view, at least, a government is not required by international law to suppress or prevent within its borders the propagandist activities of private persons against foreign governments; it is responsible only for revolutionary propaganda against foreign governments which is fostered or encouraged by the government itself or by persons or institutions in receipt of direct governmental subsidy or assistance.²³ The Soviet Government recognizes this distinction in its negotiations and treaties and agrees to the principle of non-interference in the internal affairs of other states.²⁴ The

²² Compare the position taken by Secretary of State Webster in 1852. Kossuth, the Hungarian revolutionist, had been entertained at a Congressional banquet in Washington at which Secretary Webster was one of the principal speakers. Secretary Webster spoke in favor of Hungarian independence. Austria protested. In reply, Secretary Webster maintained that "no foreign government or its representative can take just offense at anything which an officer" of the United States "may say in his private capacity;" that "official communications only are to be regarded as indicating the sentiments and views of the Government of the United States;" and that, if those communications were of a "friendly character," the "foreign government has no right or reason to infer that there is any insincerity in them, or to point to other matters as showing the real sentiments of the government." 6 MOORE, DIGEST OF INTERNATIONAL LAW, 50-53 (1906).

²³ See Lauterpacht, "Revolutionary Activities by Private Persons against Foreign States," 22 AM. J. INT. L. 105, 121, 123 (1923).

It will be recalled that foreign revolutionary movements, especially those initiated to establish a republican form of government, have frequently been regarded sympathetically in the United States. In some important instances (e.g., Texas, Cuba, Ireland), such revolutions have been fostered and financed in the United States. On occasion, indeed, persons holding important posts in the nation's government have been conspicuously indiscreet in manifesting sympathetic interest in such revolutionary movements.

²⁴ Thus, the Treaty of Jan. 20, 1925, between Russia and Japan, art. 5, provides: "The High Contracting Parties solemnly affirm their desire and intention to live in peace and amity with each other, scrupulously to respect the undoubted right of a State to order its own life within its own jurisdiction in its own way, to refrain and restrain all persons in any governmental service for them, and all organizations in

difficulty arises out of the Soviet premises. The United States denies that there is or can be a sufficient distinction between the Communist International and the Soviet Government, admits no real difference between propaganda emanating from Moscow by one avenue or another, and takes the position, in effect, that revolutionary propaganda from Moscow must cease before recognition can be granted.

There is merit in the United States' contention, so far as the relationship between the Communist International and the Soviet Government is concerned,²⁵ though the contention comes somewhat oddly from a country which has regarded revolutions with indulgence throughout most of its history,²⁶ which has been a fertile field for Russian counter-revolutionary propaganda, and which has consistently denied an international obligation to suppress the revolutionary activi-

receipt of any financial assistance from them, from any act overt or covert liable in any way whatever to endanger the order and security in any part of the territories of Japan or the Union of Soviet Socialist Republics. It is further agreed that neither Contracting Party shall permit the presence in the territories under its jurisdiction: (a) of organizations or groups pretending to be the Government for any part of the territories of the other Party, or (b) of alien subjects or citizens who may be found to be actually carrying on political activities for such organizations or groups." 34 LEAGUE OF NATIONS TREATY SERIES, 31, 34 (1925).

²⁵ See BATSELL, SOVIET RULE IN RUSSIA, chs. 12, 13 (1929).

²⁶ In his response to the address of the French Minister, Jan. 1, 1796, President Washington said, "Born, sir, in a land of liberty; having early learned its value; having engaged in a perilous conflict to defend it; having, in a word, devoted the best years of my life to secure its permanent establishment in my own country, my anxious recollections, my sympathetick feelings, and my best wishes are irresistibly excited, whensoever, in any country, I see an oppressed nation unfurl the banners of freedom." 6 MOORE, DIGEST OF INTERNATIONAL LAW, 45 (1906). In his reply to the protest of the Austrian Chargé d'Affaires, Dec. 21, 1850, Secretary Webster said: "Well-known circumstances in their [the United States] history, indeed their whole history, have made them the representatives of purely popular principles of government. In this light they now stand before the world. They could not, if they would, conceal their character, their condition, or their destiny. They could not, if they so desired, shut out from the view of mankind the causes which have placed them, in so short a national career, in the station which they now hold among the civilized states of the world. They could not, if they desired it, suppress either the thoughts or the hopes which arise in men's minds, in other countries, from contemplating their successful example of free government." 1 MOORE, DIGEST OF INTERNATIONAL LAW, 226 (1906). In his annual message to Congress, Dec. 6, 1869, President Grant said: "As the United States is the freest of all nations, so, too, its people sympathize with all peoples struggling for liberty and self-government. But while so sympathizing, it is due to our honor that we should abstain from enforcing our views upon unwilling nations, and from taking an interested part, *without invitation*, in the quarrels between different nations or between governments and their subjects. Our course should always be in conformity with strict justice and law, international and local." 6 MOORE, DIGEST OF INTERNATIONAL LAW, 61 (1906).

ties of private persons against foreign governments.²⁷ If good understanding between Russia and the United States is to be restored, there are two concessions, among others, which are probably necessary: first, it must be understood in Moscow that a more obvious and effective divorcement of the Communist International and the Soviet Government needs to be assured before there can be confidence in the Soviet Government's protestations; second, it must be appreciated in Washington that intolerance of a communist government in Russia, however unpopular the doctrines of communism may be in the United States, is nothing less than a fatuous and menacing motivation of foreign policy. The continued withholding of recognition facilitates neither concession; on the contrary, it serves only to accentuate existing differences.

From this review of the reasons advanced on behalf of the United States for continuing to withhold recognition, it seems clear enough that the indictment of the Soviet Government as "deficient in its observance of the fundamental conditions of international intercourse" is not supported by the evidence adduced. The conditions of international intercourse have never been ideal and they fall far short of being ideal at the present day. Judge Moore's realistic review of "the motley world in which we live and with which we must do business" should be remembered.

The nationalization without compensation of the property of American nationals in Russia may or may not entail an obligation to make full compensation, according to the view of international obligation which eventually prevails, but it is no justification for the branding of a nation of one hundred and fifty million people as internationally infamous. The repudiation of Russian state debts is a breach of international duty, under the rule generally approved, but it does not make of the Russian people a nation of outlaws. Eventually there will have to be negotiation and adjustment; moreover, in all fairness, the Russian counterclaims will have to be considered. The charge of propaganda revives an old issue with respect to which international practice has never been uniform and with respect to which international law may be quite inadequate; but the withholding of recognition facilitates neither a specific solution nor the acceptance of a satisfactory general principle. On this count Russia has something to learn, the United States something to remember.

²⁷ See Lauterpacht, "Revolutionary Activities by Private Persons against Foreign States," 22 AM. J. INT. L. 105, 123 (1923).

If the United States' indictment of the Soviet Government is not fully sustained, then the continued withholding of recognition can be justified only on the ground that communistic and capitalistic states cannot live together in the same world because a communistic state is fundamentally unworthy. Such a position requires a violent break with traditional American recognition practice; it is an officious intervention in the internal affairs of another state; it is likely to prove even more costly than the ill-fated military intervention in Russia of 1918-1920.

IV

A departure from traditional American practice, particularly in case of a country of Russia's magnitude and importance, is a costly and dangerous experiment. It is productive of uncertainty and confusion in the field of law as well as in the field of national policy. Its disturbing effects upon the processes of law, both national and international, have been too little appreciated.

In national law, there is resulting uncertainty and confusion wherever Russian public rights, Russian nationals, Russian transactions, or Russian laws are concerned. The confusion spares neither communist nor anti-communist; it may prejudice American no less than Russian interests. Thus, the Russian Government has no standing in court, so long as recognition is withheld, either as party defendant or party plaintiff. There is no authority which is fully competent to conserve Russian state property, whether funds, ships, or other species of property, within the country, nor can Russian state property be brought into the country under the normal safeguards of public ownership. Russian nationals may be admitted as usual, and may even be naturalized with slight modifications of the prescribed forms, but troublesome questions arise concerning their privileges, protection, and deportation.²⁸

The resulting uncertainty is strikingly exemplified in the field of the conflict of laws. Should Russian laws and decrees have the effect generally attributed to foreign laws where the foreign government is recognized, or should they have no effect whatever, or is there a middle ground which courts are required to explore in the situation which is presented in consequence of the withholding of recognition? There may be questions, for example, with respect to the effect to be

²⁸ For numerous examples, selected from British and American adjudicated cases, see Dickinson, "The Unrecognized Government or State in English and American Law," 22 MICH. L. REV. 29, 118 (1923); Tennant, "Recognition Cases in American Courts, 1923-1930," 29 *ibid.* 708 (1931).

attributed to Russian marriage, divorce, or legitimation; questions as to the proper rule to govern commercial contracts made or to be performed in Russia; questions of liability for civil wrongs committed in Russia; questions of property in movables or immovables having a situs in Russia; and questions of the effect of Russian laws and decrees creating, destroying, or nationalizing private corporations. The answers to these questions and to many others, difficult enough under ordinary circumstances, become much more difficult when recognition is withheld.²⁹

In international law, the uncertainty and confusion produced by the withholding of recognition, though less easily measured, are undoubtedly more serious. Recognition serves a unique function in the international legal society which is quite unlike anything with which we are familiar in national legal systems. It is an assurance that the recognized government will be permitted to work out its problems without interference, a manifestation of willingness to enter into normal political and legal relationships, and an undertaking to settle differences by recourse to the normal processes of non-hostile international adjustment. It provides a kind of substitute, in brief, for the cement of effective political organization, making it less difficult to invoke legal processes in the absence of superior law-enforcing agencies or authorities. Until it is granted, legal processes cannot function normally.³⁰

Until recognition is granted, for example, there can be no assurance of diplomatic protection for the persons or property of nationals of either state who may travel, reside, or trade in the other. While trade and travel go on, they are continued at the individual's risk and without the support of such governmental aids as are usually available to facilitate the activities of nationals in foreign lands. The nationals of a state without recognized government may be admitted or excluded, like other aliens, but their deportation, when deportation becomes desirable, is seriously impeded. The mutual rendition of fugitives from criminal justice is, of course, suspended. Questions of governmental succession affecting a variety of public and private interests are

²⁹ For numerous examples, selected chiefly from recent British and American cases, see Dickinson, "Recognition Cases, 1925-1930," 25 *AM. J. INT. L.* 214, 220 (1931).

³⁰ The function of recognition in international law has not received the attention which it deserves. See, however, the valuable paper of Sir John Fischer Williams, "Recognition," in 15 *TRANSACTIONS OF THE GROTIUS SOCIETY*, 53, 63, (1929). See also Dickinson, "The New Law of Nations," 32 *W. VA. L. Q.* 4, 6 (1925).

either postponed or resolved with reference to an incomplete record of the essential facts. Since the foreign government has no access, directly or indirectly, to the national courts, matters which are normally settled by recourse to national tribunals remain unsettled. Instead of being facilitated, as it should be, this type of judicial settlement is obstructed.

The varied matters of international concern which would be adjusted normally through bilateral treaties are required to await the time when recognition will reopen the door to the processes of negotiation and agreement. Multilateral treaties may be concluded, with or without reservations as to recognition,³¹ but their provisions can be invoked only through the cumbersome device of an appeal or protest communicated through the government of a third state which has already granted recognition. Thus, in the recent Russian-Chinese crisis, the United States called the Soviet Government's attention to its obligations under the Kellogg-Briand Pact for the renunciation of war through the French Government as intermediary.³² In brief, the customary processes of international adjudication, arbitration, and negotiation are necessarily foreclosed until normal relationships have been restored.

The effect of this obstruction of normal international processes has been sufficiently demonstrated in Russian-American relations. For fourteen years the usual avenues have been closed. Difficult issues, the heritage of war and revolution, have remained unsettled and are certainly no nearer settlement today than they were a decade ago. Claims and counterclaims have remained unliquidated. The absence of normal relations has been a provocation rather than a check to propaganda. Instead of progress there has been stalemate. Instead of tolerance there has been hostility. It is beside the point to infer, from the experience of governments which have recognized the Government of Russia, that the United States would not have obtained

³¹ The Universal Postal Union Convention was ratified on behalf of the United States in 1925 without reservation. 44 Stat. 2221, 2273. On the other hand, the International Sanitary Convention was ratified in 1928 with a reservation as to recognition. 45 Stat. 2492, 2547. An international narcotics convention has been signed recently (July 18, 1931) with a similar reservation. The absence of a reservation in case of the postal convention may possibly be explained by reference to the fact that postal conventions are concluded on behalf of the United States, under the Act of 1872, by the Postmaster-General "by and with the advice and consent of the President." 17 Stat. 283, 304; DICKINSON, CASES AND READINGS ON THE LAW OF NATIONS, 1021 note (1929).

³² See New York Times, Dec. 3, 1929, p. 1, col. 1.

a satisfactory settlement even if recognition had been granted. The point is that there would have been a possibility of settlement, that some progress, at least, could have been made in the adjustment of controversies.

V

When the United States finally concurs with other influential powers in recognizing the Government of Russia, a substantial and much needed contribution to international order and security will have been made. The act of recognition will imply neither approval nor disapproval of the system established under the Soviet regime. It will only acknowledge facts over which the United States has no control and for which it should assume no responsibility.³³ It will mark the end of an unfortunate experiment in intervention and the resumption of normal relationships too long delayed.

For fourteen years the Soviet Government has been the *de facto* government of Russia. It is irrelevant that few in America admire its system or accept the economic theories upon which it is based. For fourteen years the Soviet Government has commanded the enthusiastic support of a militant minority of the Russian people and has compelled the acquiescence of the rest. It is irrelevant that this is in substance a form of dictatorship. For fourteen years the Soviet Government has represented Russia in the family of nations, conducting negotiations with a steadily expanding group of states, concluding treaties, and participating in conferences. It is irrelevant that its avowed understanding of important international obligations is different from the understanding of the United States.

In the eighteenth century, doctrines of monarchic legitimacy obstructed and thwarted the orderly processes of international intercourse. The United States led the way in repudiating and discrediting these doctrines and thereby made one of its distinctive contributions to an improved international system. In later years, notions of republican or constitutional legitimacy were also tried and were found utterly

³³ Such are the implications, for example, of the statement issued by the United States Department of State, July 27, 1922, in announcing the recognition of the governments of Esthonia, Latvia, and Lithuania. The statement was as follows: "The Governments of Esthonia, Latvia and Lithuania have been recognized either *de jure* or *de facto* by the principal Governments of Europe and have entered into treaty relations with their neighbors. In extending to them recognition on its part, the Government of the United States takes cognizance of the actual existence of these Governments during a considerable period of time and of the successful maintenance within their borders of political and economic stability." *New York Times*, July 28, 1922, p. 12, col. 7.

unsuited to an international society in which the delicate adjustment of a maximum of national freedom to the requirements of international order and stability is of supreme importance. It is matter of regret, for those who cherish American traditions, that the United States should have elected in these recent years to experiment with the vicious notion of capitalistic legitimacy. It is a disconcerting paradox, indeed, that the ghost of the Holy Alliance should have been permitted to walk unchallenged in the country which contributed so much, but little more than a century ago, to thwart the Alliance's unholy ambitions.

During the century which preceded the World War it would have been difficult to find two governments whose antecedents, traditions, political ideals, and fundamental policies were more sharply opposed than the autocratic and militaristic government of Czarist Russia, on the one hand, and the democratic and pacific government of the United States on the other hand. There was cultivated, nevertheless, a tradition of friendship which proved advantageous to both countries. It may be that the tradition cannot be revived between governments fostering economies which are so sharply opposed; but tolerance, at least, may be cultivated as soon as normal relations are permitted to dissipate the ignorance, suspicion, and hostility now prevailing. The mere cultivation of tolerance between the United States and Russia will contribute much to the stabilization of international law and international relations at a time when stability and confidence are the world's most obvious needs.