

Sec. 3—Legislative, Diplomatic, and Law Enforcement Duties of the President

executive has a right to reject a public minister, it must be founded on some other consideration than a change in the government, or the newness of the government; and consequently a right to refuse to acknowledge a new government cannot be implied by the right to refuse a public minister. It is not denied that there may be cases in which a respect to the general principles of liberty, the essential rights of the people, or the overruling sentiments of humanity, might require a government, whether new or old, to be treated as an illegitimate despotism. Such are in fact discussed and admitted by the most approved authorities. But they are great and extraordinary cases, by no means submitted to so limited an organ of the national will as the executive of the United States; and certainly not to be brought by any torture of words, within the right to receive ambassadors.”⁶⁵⁹

Hamilton, with the case of Genet before him, had taken the contrary position, which history has ratified. In consequence of his power to receive and dispatch diplomatic agents, but more especially the former, the President possesses the power to recognize new states, communities claiming the status of belligerency, and changes of government in established states; also, by the same token, the power to decline recognition, and thereby decline diplomatic relations with such new states or governments. The affirmative precedents down to 1906 are succinctly summarized by John Bassett Moore in his famous Digest, as follows: “In the preceding review of the recognition, respectively, of the new states, new governments, and belligerency, there has been made in each case a precise statement of facts, showing how and by whom the recognition was accorded. In every case, as it appears, of a new government and of belligerency, the question of recognition was determined solely by the Executive. In the case of the Spanish-American republics, of Texas, of Hayti, and of Liberia, the President, before recognizing the new state, invoked the judgment and cooperation of Congress; and in each of these cases provision was made for the appointment of a minister, which, when made in due form, constitutes, as has been seen, according to the rules of international law, a formal recognition. In numerous other cases, the recognition was given by the Executive solely on his own responsibility.”⁶⁶⁰

The Case of Cuba.—The question of Congress’s right also to recognize new states was prominently raised in connection with Cuba’s successful struggle for independence. Beset by numerous legislative proposals of a more or less mandatory character, urging recognition upon the President, the Senate Foreign Relations Committee,

⁶⁵⁹ Letters of Helvidius, 5 WRITINGS OF JAMES MADISON 133 (G. Hunt ed., 1905).

⁶⁶⁰ 1 J. Moore, *supra*, 243–44. See Restatement, Foreign Relations §§ 204, 205.