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### The Recognition of Cuban Belligerency

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## BRIEFER COMMUNICATIONS.

### THE RECOGNITION OF CUBAN BELLIGERENCY.

The purpose of this paper is to demonstrate the undoubted right and propriety on the part of the United States Government to accord belligerent rights to the Cuban insurgents.

It must be confessed, however, at the outset, that it is very difficult to see what immediate practical benefits the Cubans are to enjoy as a result of these rights, so far as the conduct of the war against Spain is concerned, inasmuch as they are in no position to exercise them.

Such recognition by the United States would doubtless give them much moral aid and encouragement in inspiring increased hope and enthusiasm in the Cuban breast, and might induce many natives and even foreigners to enter the Cuban ranks.\* It would dignify their struggle in the eyes of the civilized world, and would probably enable them to borrow money and float their bonds. It would entitle them to the rights of war as far as the United States are concerned, but their relations with Spain or other governments would not be affected, unless other governments should be induced to follow our example.

Recognition of Cuban belligerency by the United States implies in itself, however, no more than a declaration of strict and impartial neutrality between the two parties. To both of them are accorded belligerent rights and upon both of them are imposed belligerent duties in the struggle which we consider as actual war. It means that *we* at least do not look upon the Cubans as rebels and pirates, and that *we* think them entitled to all the privileges of honorable warfare and capable of fulfilling neutral obligations. However, should either party fail to observe the most elementary rules of civilized warfare, we should probably remonstrate, and if necessary intervene.

Recognition implies to the Cubans no aid or support other than moral, nor would it give them any special advantage over Spain. We on the contrary bind ourselves to the observance of a stricter neutrality, if possible, than before,† and we accord to both parties certain rights which only one of the parties in this contest (Spain) is in a

\* It would seem, however, according to the statements of the Cuban leaders, that (as in the case of the previous revolution of 1868-78) arms and ammunition—not men are needed.

† At present we are bound merely by our own Neutrality Acts, *i. e.*, by municipal law, which we are under no obligation to Spain to observe. Recognition of Cuban belligerency would place us under international obligations.

position to take advantage of. The exercise of the most important of these rights—that of searching our vessels for contraband goods on the high seas—would be of decided advantage to Spain, and would be a right which she alone would enjoy, inasmuch as the Cubans are not at all in a position to exercise it, nor indeed are they likely to be in such a position for some time to come, being in possession neither of ports nor of commissioned cruisers. Again, as soon as the Cubans are recognized as belligerents, the responsibility to the United States for injury to the persons or property of American citizens within Cuban territory is shifted from Spain to Cuba. Thus we see that the Cubans are not only in no position to exercise the more important rights of belligerency, but that they would become subject to onerous duties. They would have the right, to be sure, to insist upon the strict neutrality of the United States, but they could not prevent the sale of contraband goods to their enemies—a strictly legal business in itself, although Spain would be able to prevent such sale to them. These points are not made to prove that the true interests of the Cubans lie in remaining unrecognized by the United States (for the moral support which such recognition would give them would of course far outweigh these disadvantages); but merely to call attention to the fact that the recognition of Cuban belligerency is in itself not such a radical step and would not be so injurious to Spain as some would have us think; and that such recognition would involve some sacrifice on our part, and would not be of unmixed benefit to Cuba.\*

The importance attached to the recognition of Cuban belligerency by the United States is in part due to the commanding position which this nation occupies in the eyes of the civilized world. In greater part, however, the importance attached to such a step is due to the great and peculiar interest which the government and people of the United States have always taken, since the early part of this century, in the future of Cuba.

This interest has been manifested in various ways. As early as 1823, when a rumor had reached the United States to the effect that France intended to take possession of Cuba, Mr. J. Q. Adams, Secretary of State, wrote to Mr. Nelson, United States Minister in Spain, that "these islands [referring to Cuba and Porto Rico], from their local position, are natural appendages to the North American continent,

\* General Campos, the former commander-in-chief of the Spanish forces, is reported to have said in an interview by the *New York Times* of December 8, 1895: "Recognition of Cuban belligerency would have no serious consequences for Spain. On the contrary, it would give us the advantage of having the right to search American ships on the high seas, as well as enable us to stop many expeditions that otherwise would be able, from time to time, to slip in."

and one of them [Cuba] almost in sight of our shores, from a multitude of considerations has become an object of transcendent importance to the commercial and political interests of our Union. Its commanding position, with reference to the Gulf of Mexico and the West Indian seas; the character of its population; its situation midway between our Southern coast and the island of San Domingo; its safe and capacious harbor of Havana, fronting a long line of our shores destitute of the same advantage; the nature of its productions and of its wants, furnishing the supplies and needing the returns of a commerce immensely profitable and mutually beneficial, give it an importance in the sum of our national interests with which that of no other foreign territory can be compared, and little inferior to that which binds the different members of this Union together." \*

Jefferson, in a letter of June 11, 1823, to President Monroe wrote: "Its [Cuba's] possession by Great Britain would indeed be a great calamity to us. Could we induce her to join us in guaranteeing its independence against all the world, *except* Spain, it would be nearly as valuable as if it were our own. But should she take it, I would not immediately go to war for it; because the first war on other accounts will give it to us, or the island will give itself to us when able to do so." He recommends a neutrality as partial to Spain as the circumstances would justify, but in another letter written a fortnight later, June 23, 1823, he retracts his opinion and thinks "it is better to lie still, in readiness to receive that interesting incorporation when solicited by herself, for certainly her addition to our Confederacy is exactly what is wanted to round our power as a nation to the point of its utmost interest." †

On the seventeenth of October, 1825, Mr. Clay was directed by President J. Q. Adams to announce to our ministers to the leading European governments "that the United States for themselves desired no change in the political condition of Cuba; that they were satisfied that it should remain open as it now is, to their commerce, and that they could not with indifference see it passing from Spain to any (other) European power." And in instructions to Mr. Brown, Minister to France, October 25, 1825, Mr. Clay wrote: "You will now add that we could not consent to the occupation of those islands [Cuba and Porto Rico] by any other European power than Spain under any contingency whatever." ‡

Mr. Gallatin, when Minister at London, tried "to impress strongly on his [Mr. Canning's] mind that it was impossible that the United

\* Wharton's "Digest," Vol. i, p. 361.

† Ibid., pp. 366-67.

‡ Ibid., p. 367.

States could acquiesce in the conquest by, or transfer of, that island [Cuba] to any great maritime power."

This policy with reference to Cuba was reiterated during the administrations of Jackson, Van Buren and Tyler, and found ardent exponents in Mr. Webster and Mr. Calhoun.\* President Polk, in 1848, went so far as to authorize a direct proposal to Spain for the purchase of Cuba, and, according to Von Holst,† Mr. Saunders, Minister to Spain, was authorized by Secretary Buchanan to go as high in his offer as \$100,000,000. The proposition was, according to Secretary Clayton,‡ "considered by the Spanish Ministry as a national indignity, and the sentiment of the ministry was responded to by the Cortes." It was not, therefore, renewed by the succeeding administration.

In consequence, however, of three filibustering expeditions under Lopez and the warm sympathy which they elicited in the South, England and France proposed to the United States Government, in 1852, a tripartite agreement with reference to Cuba in the form of a treaty, to the effect that the three "high contracting parties severally and collectively disclaim, both now and for hereafter, all intention to obtain possession of the island of Cuba," and that they bind themselves not to "obtain or maintain, for themselves, or for any one of themselves, any exclusive control over the said island, nor assume nor exercise any dominion over the same." § This proposition was rejected by the United States on the grounds, as stated by Secretary Everett, that "the policy of the United States has uniformly been to avoid as far as possible alliances or agreements with other States, and to keep itself free from national obligations, except such as affect directly the interests of the United States themselves;" that "although the President did not covet the acquisition of Cuba for the United States, he at the same time considered the condition of that island as mainly an American question;" that the proposed convention "assumed that the United States had no other or greater interest in the question than France or England, whereas it was necessary only to cast one's eye on the map to see how remote were the relations of Europe and how intimate those of the United States with this island." ||

On October 8, 1854, after a revival of filibustering projects, the interference on the part of the Cuban authorities with our commerce, and the rights of American citizens, which culminated in the "Black

\* *Ibid.*, p. 369, etc.

† "History of the United States, 1846-50," p. 441.

‡ Wharton's "Digest," Vol. i, p. 373.

§ Tucker's "Monroe Doctrine," pp. 83-84.

|| *Ibid.*, pp. 86-89; Snow, "American Diplomacy," p. 353.

Warrior" incident, the three ministers to England, France and Spain respectively, Buchanan, Mason and Soulé, acting under instructions of the administration, met at Ostend, for "a full and free interchange of views in order to secure a concurrence in reference to the general object," \* *i. e.*, the purchase of Cuba. On the eighteenth of October they signed the "Ostend Manifesto," addressed to Secretary Marcy, in which they argued that "an immediate effort ought to be made by the Government of the United States to purchase Cuba from Spain" at a sum not exceeding \$120,000,000, and that the interest of Spain would be "greatly and essentially promoted" by the sale of the island to the United States. The manifesto went so far as to threaten force, "if Spain, dead to the voice of her own interest, and actuated by stubborn pride and a false sense of honor, should refuse to sell Cuba to the United States." † This manifesto was not approved by President Pierce, although Buchanan, as President, still continued to urge the acquisition of Cuba in successive messages." ‡

With the abolition of slavery in the United States, one of the main causes of the agitation for the annexation of Cuba has ceased to exist, and "although there has been much correspondence with Spain in respect of Cuban affairs, active projects for the acquisition of the island have not been revived by the government of the United States." § On the other hand, the projected construction of an Inter-oceanic Canal has supplied the advocates of annexation with a powerful argument, for as one writer observes, || "It is plain, also, that any increased facility of Isthmian transit, such as a successfully operated canal, must result in placing the commerce benefited thereby more or less under the supervision of the fleets which find a haven in her [Cuba's] numerous harbors." Furthermore, the protracted struggle of 1868-78, and the present insurrection (which promises to be a repetition of the former on a larger scale) have made it more and more evident that Spain can retain Cuba only at great cost to herself and at great discomfort and inconvenience to the United States.

Let us now examine the question of the right and propriety on the part of the United States Government, under these and other circumstances which we shall consider, to recognize Cuban belligerency. Cuba cannot claim a right of recognition, even if she were to file a much stronger brief than she is capable of doing. Recognition of belligerency is an act of pure grace on the part of the neutral government,

\* Executive Documents, Second Session, 33d Congress.

† *Ibid.*

‡ Wharton's "Digest," pp. 381-83.

§ Snow's "American Diplomacy," p. 357.

|| Tucker's "Monroe Doctrine," pp. 77-78.

and one which can be granted or withheld at pleasure. Those writers who like Vattel and Bluntschli urge a right of recognition on grounds of humanity and the like, evidently consider the moral rather than the legal aspect of the question.

Recognition of belligerency is determined by two classes of facts: the existence of actual war in the sense of international law, and the policy or necessity of recognizing the existence of such a war on the part of the neutral state. The former are questions of law; the latter of policy.

The true ground of recognition as a matter of policy as stated by Hall (one of the few writers who seems to have clear and definite ideas on this subject) is "based upon a possibility that the interests of a state may be so affected as to make recognition a reasonable measure of self-protection."\*

Hall distinguishes three cases in this connection: (1) The case of a struggle in the midst of loyal and isolated provinces. In this instance, he thinks, the question is one which can hardly arise. (2) The case of a contiguous state. Here he admits that recognition is a possibility, and is, he says, at the option of the contiguous state. (3) The case of maritime warfare. Here the presumption is in favor of recognition. He even thinks recognition may be granted if a reasonable expectation of such hostilities exists. †

It may seem difficult, perhaps, to place Cuba in any of the above categories. We certainly cannot look upon her as an isolated province, and there does not exist even the pretence of maritime warfare. But to claim that she is not to all intents and purposes contiguous to our territory would be sacrificing a great deal to the literal meaning of a word. After all, the position of contiguity or non-contiguity is not an essential part of the problem. It is an insignificant detail, and the real ground or basis of recognition should be the matter of the commercial or property interests and the protection of the persons of our own citizens.

Dana, in an invaluable note to Wheaton,‡ on the recognition of belligerency, correctly states the question which the neutral state must ask itself, as follows: "Whether its own rights and interests are so far affected as to require a definition of its own relation to the parties."

It seems clear that apart from any considerations arising out of our *peculiar* interest in Cuba, our rights and interests are very seriously threatened and affected by a prolonged struggle between Spain and

\* Hall's "International Law," p. 35.

† Ibid., pp. 36-37.

‡ Wheaton's (Dana's Ed.) "International Law," note 15, pp. 34-39.

the Cuban insurgents. Cuba has been in a state of more or less active or slumbering revolution ever since the period in which the Spanish-American Colonies achieved their independence, and in the struggle which preceded the present insurrection (1868-1878) the agony was prolonged for ten years. The loss of American property, as well as the injury to our commercial interests, was very great. President Hayes said, in his first annual message to Congress, in 1877: "It is impossible not to feel that it [the insurrection] is attended with incidents affecting the rights and interests of American citizens. Apart from the effect of hostilities upon trade between the United States and Cuba, their progress is inevitably accompanied by complaints having more or less foundation, of searches, arrests, embargoes, and oppressive taxes upon the property of American residents, and of unprovoked interference with American vessels and commerce."\* In 1874, Secretary Fish, in a communication to Mr. Cushing, had complained that "for any injury done to the United States or their citizens in Cuba we have no direct means of redress there, but can obtain it only by slow and circuitous action by way of Madrid." In the same communication he says: "Meanwhile this condition of things grows, day by day, more and more insupportable to the United States. The government is compelled to exert constantly the utmost vigilance to prevent infringement of our law on the part of the Cubans purchasing munitions or materials of war, or laboring to fit out military expeditions in our ports; we are constrained to keep a large naval force to prevent violations of our sovereignty, either by the Cubans or the Spaniards, etc." †

The much-needed "series of extensive reforms," of which Secretary Fish says in a communication dated October 29, 1872, to General Sickles, "the present ministry of Spain has given assurance to the public, through their organs of the press, and have confirmed the assurance to you personally," ‡ have not been carried out except that of the abolition of slavery, and the result is another insurrection, perhaps more serious and injurious to our interests than the last, and the term or outcome of which no man can predict.

Our commerce with Cuba is stated in round numbers to consist of \$82,000,000 worth of imports, and \$19,000,000 of exports. The "Statesman's Year Book" for 1895 records, that out of 718,204 tons of sugar, exported from Cuba in 1893, 680,642 tons went to the United States. During that same year we also imported 7654 hogsheads of molasses. We purchase about two-thirds of the tobacco

\* Wharton's "Digest," Vol. i, p. 410.

† Ibid., pp. 397-98.

‡ Ibid., p. 389.



which Cuba raises, and nearly one-half of her cigars. In 1892, Cuba purchased in our markets a little less than one-third of all her imports—securing a little over one-third from Spain, and considerably less than one-third from Great Britain. Her main imports are rice, beef, and flour—articles which we are desirous of selling.

In determining our policy towards Spain with reference to Cuba, we have a right not only to consider the actual and temporary loss which our commerce sustains through those protracted struggles which Spain seems unable or unwilling to prevent or extinguish, but we have a right to look to our ultimate and permanent interests.

The number of American citizens domiciled in Cuba and the amount of American capital invested there is another element in the problem which must not be ignored. Statistics are here unavailable, but the number and amount must be large.\* Our duty to protect these people and these interests, and the necessity of fixing both parties to the contest with responsibility, may make the recognition of Cuban belligerency imperative at any moment. Up to the present time the Cubans, desirous of preserving our good will and retaining our sympathy, seem to have furnished this protection of their own accord.

Up to this point we have considered only one class of facts—those relating to our own peculiar and commercial interests, and the policy toward which these point may readily be inferred. There is, however, another class of facts which must be considered and tested before our decision can be final.

It is not alone sufficient that we follow the line indicated by our own interests, but unless we would be found guilty of an unfriendly, almost a hostile act toward Spain, we must convince ourselves that the struggle now going on in Cuba amounts in fact to a war, for a recognition of belligerency is simply a recognition of a *de facto* state, viz., that of war, or regulated violence.

The main grounds for refusal to recognize Cuban belligerency during the previous insurrection, a step, however, which President Grant at one time at least seems to have contemplated,† are thus summed up by him in his seventh annual message, 1875: "I fail to find in the insurrection the existence of such substantial political organization, real, palpable, and manifest to the world, having the forms and capable

\* Señor Fidel y Pierra, chairman of the Cuban Revolutionary Committee in New York and former Secretary of the Pan-American Congress of 1889, claims that not less than \$25,000,000 of United States money is vested in Cuban plantations, sugar refineries, and other enterprises. Besides there is, it is stated, a sum estimated at from \$10,000,000 to \$15,000,000 advanced by American merchants upon the Cuban sugar crop of 1896.

† See the recently published extracts by the Associated Press, March 15, from Hamilton Fish's diary.

of the ordinary functions of government towards its own people and to other states, with courts for the administration of justice, with a local habitation, possessing such organization of force, such material, such occupation of territory, as to take the contest out of the category of a mere rebellious insurrection, or occasional skirmishes, and place it on the terrible footing of war, to which a recognition of belligerency would aim to elevate it." \*

A careful reading of the speeches delivered in Congress † while the question of the recognition of Cuban belligerency was under discussion in June, 1870, will, I think, convince the skeptic that President Grant, while absolutely in the right in insisting upon these tests, was wrong in their application to Cuban affairs, and that he committed a grave error in allowing his first and better judgment to be overruled by that of his Secretary of State. ‡

Among the tests then, accepting the principles laid down by General Grant and by one of the most exacting and authoritative writers on international law, § which we would apply to the question

\* Wharton's "Digest," Vol. i, p. 406.

† *Congressional Globe*, Second Session, Forty-first Congress, Parts 5 and 6.

‡ The Republic of Cuba was organized in April, 1869, by a convention of delegates from the rebellious districts, and a liberal constitution was adopted. Full legislative powers were given to a House of Representatives, to which body was also entrusted the nomination of a President and Commander-in-Chief. Sessions of the assembly were held, and the revolution was general in the central and eastern portions of the island. The President was assisted by a Cabinet of five members, and in each State there was an elected Governor; in each district a Lieutenant-Governor. The districts were divided into prefectships and subprefectships. The prefects and sub-prefects are described as "justices of the peace, with administrative duties."

The strength and obstinacy of the Cuban resistance can only be judged by the enormous expenditure of men, money, and effort which it cost Spain to maintain the struggle during ten years—a struggle in which the Cubans were only induced to lay down their arms by the promise on the part of General Campos of thorough and far-reaching reforms. In a debate in the Cortes in 1876 it was stated that 145,000 soldiers had been sent to Cuba in eight years with little or no result. Up to 1871, *i. e.*, in three years, Spain had spent \$70,339,658.70. By 1871 Spain had 100,000 men under arms, and was in possession of 52 vessels and 30 gunboats. In three years, it is said, Spain lost 68,000 out of 80,000 men, while the Cubans lost only 13,000; 43,000 Cubans, however, were under arrest, many of whom were shot or died in prison.

Of course it must be recognized that a powerful ally of the Cubans was disease which played a greater part than insurgent ammunition in this fiendish work of destruction. In 1870 General Jordan, the Commander-in-Chief of the insurgent forces publicly confessed that there were not in Cuba 10,000 arms.—See articles on Cuba, in "Encyclopedia Britannica" and "American Encyclopedia;" also *Congressional Globe*, Second Session, Forty-first Congress, Parts 5 and 6.

§ Dana, in the above-mentioned note to Wheaton, note 15. It would not have been difficult to collect from great and highly respected authorities and leading cases, principles or tests which it would have been much easier to apply to the

of Cuban belligerency are these: In the first place, is there a "*de facto* political organization sufficient in character, population and resources to constitute it, if left to itself, a state among the nations, reasonably capable of discharging the duties of a state."

The New York *Times* on November 10, 1895, published a fac-simile of the Cuban Declaration of Independence and the Provisional Constitution of the Cuban Republic. It appears that this Constitution, although adopted by elected delegates, is entirely provisional in its character, and has not established democratic or representative institutions. There is no Congress or representative body, there are no elective offices (as was the case during the previous revolution), but at the end of two years an Assembly is to be convened for the purpose of choosing a new government and revising the Constitution. "The supreme power of the Republic is vested in a council composed of a President, Vice-President, and four Secretaries for the dispatch of War, of the Interior, of Foreign Affairs, and of the Treasury." (Art. I.) This council exercises all the ordinary functions of sovereignty, but shall "intervene in the direction of military affairs only when, in their judgment, it shall be absolutely necessary to do so." \* (Art. IV.)

The letters of Mr. Wm. Mannix, † a newspaper correspondent, have made it clear that Cuba has in her President a man of high character—a naturalized American, and a regular system of administration organized, it seems, on the French prefect plan, covering within the range of its activities from two-thirds to three-fourths of Cuban territory. The number of "*prefectos*" is stated to count up to about 200, and there are in addition an indefinite number of "*sub-prefectos*." The *prefecto* is described by Mr. Mannix as a "combination of justice of the peace, mayor and general overseer of the people of his district." They report and are responsible to the President of the Cuban Republic, by whom they are appointed.‡ In January of this year, the President left his mountain capital, Cubitas, which Mr.

present state of affairs in Cuba than those which have been selected.—*e. g.*, the opinion expressed by Justice Grier, in *The Prize Cases*, 2 Black., 665, "when the party in rebellion occupy and hold in a hostile manner a certain portion of territory; have declared their independence; have cast off their allegiance; have organized armies; have commenced hostilities against their former sovereign, the world acknowledges them as belligerents and the contest a war."—See also Vattel, §§ 293-4, and Bluntschli, §§ 5-12

\* There is an interesting provision to the effect that the property of foreigners, whose governments recognize the rights of belligerency to Cuba, shall be exempt from taxation during the revolution.—Art. XX.

† See *e. g.*, *Chicago Inter-Ocean* of February 7, 10 and 27, 1896.

‡ The reader will not fail to compare this account of the organization of the present Cuban Republic with that given of the previous Republic in the foot-note on p. 82.

Mannix visited and describes, and made an extended tour of inspection throughout the island, lasting several weeks. During this time he appointed, it is said, thirty new *prefectos*.

Another test of the status of belligerency, as stated by Dana, is "the actual employment of military forces on each side, acting in accordance with the rules and customs of war, such as the use of flags of truce, cartels, exchange of prisoners and treatment by the parent state as prisoners of war."

The number of Cuban forces in the field is variously estimated at from 20,000 to 50,000 men.\* It seems certain that the Cuban Army is on a much better war footing to-day than at any time during the previous insurrection. The men seem to be well commanded, and are amenable to discipline so far as one can judge by the plan of campaign and their occasional successes won against great odds; and they seem to be fairly well fed, clothed and equipped, although in the latter respect there is still much to be desired. The fact that a large number of Spanish soldiers, estimated at from 700 to 1700 men, are held by the Cubans as prisoners of war, shows that they at least pay some regard to the usages of civilized warfare. Besides, these prisoners furnish a guarantee that General Weyler will not wholly ignore those usages. The war, at least as conducted by General Campos, was carried on in as humane and praiseworthy a manner as circumstances would permit, and furnishes a noteworthy contrast to the conduct of both parties during the last Cuban revolution. The Cubans seem to have in their Commander-in-Chief, General Gomez, an experienced leader and an able strategist. As long as there is general unity and responsibility in the plan of campaign, reasonable method in the madness even of guerilla warfare, an observance of the rules of war, and capable leadership, I fail to see why the Cuban manner of fighting should be made a source of reproach to them. Guerilla warfare has frequently been resorted to by the Spaniards themselves, and the annals of our own military history show that we have not always disdained similar methods.

The number of men and the amount of money already expended by Spain in this contest has been very great. Early last autumn, the Spanish Prime Minister, in an authorized interview, declared that a few weeks after the beginning of October would see the end of the Cuban Rebellion. Since then the rebellion has extended over the greater part of the island, and Havana itself has been threatened. Virtually, the whole Spanish Army is in service in Cuba, and the number of soldiers who have been sent to Cuba probably exceeds

\* The latter estimate is that of General Gomez himself, and of course its accuracy cannot be trusted. Probably the lowest estimate is nearest the truth.

120,000 men. In an interview on December 4, 1895, General Campos is reported to have said: "The war is of more importance than I was at first willing to believe or admit. The insurgents are no longer confined to any particular district, but are all over the island." \*

The third and last test of the status of belligerency as stated by Dana is "at sea, the employment by the insurgents of commissioned cruisers, and the exercise by the parent state of the rights of blockade of insurgent ports, of stopping and searching neutral vessels at sea." No writer or authority so far as I know, including even Dana himself, holds this test to be one which is absolutely essential. He merely claims that it is more decisive than the others. It is in fact conclusive, and if this test can be applied, recognition almost follows as a matter of course. To hold this to be an essential test of the fact of belligerency, would imply a denial that war can be carried on solely on land.

It is certainly true that the favorite argument in the newspapers—"because the Spaniards are cruel, therefore we ought to recognize the belligerency of the Cubans"—is not based on any principle of international law. But a recognition of Cuban belligerency would, under the circumstances, we hold, be the exercise of a strictly legal right, and being under no special obligations to Spain, there would be no impropriety on our part in following the lines indicated by our own sympathy and interests—temporary and ultimate—*i. e.*, to assist Cuba in the only possible way which is legally permissible, *viz.*, by recognizing her belligerency.\*

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ADAM SMITH AND JAMES ANDERSON.

In spite of the suggestiveness of certain passages in the "Wealth of Nations," it seems clear that Adam Smith conceived rent as a constituent element, determining, and not as a differential surplus, determined by marginal price. There is no evidence in the numerous editions of the "Wealth of Nations" published during Smith's lifetime, nor in any of his recorded utterances, of a change of opinion in this direction, in the interval from 1776 to his death in 1790. This cannot be explained by the mere failure of his written thought to attract criticism. Hume's dissent is familiar: "I cannot think that the rent of farms makes any part of the price of the produce, but that

\* *New York Times*, December 4, 1895.