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The legal personality of foreign states in civil law: *l'affaire Zappa* and the bequest of the Marquise du Plessis-Bellière

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Summary

This article traces the doctrinal debate on the civil legal personality of foreign states occasioned by two famous legal cases during the closing decade of the nineteenth century: the protracted conflict between Greece and Romania following Evangelis Zappa's bequest of immovable property located in Romania to the Greek state for the purpose of resurrecting the Olympic Games, and the contested will of the Marquise du Plessis-Bellière which named Pope Leo XIII as legatee of real estate located in France. As Ernst Rabel and others have thought, the debate confirmed the scholarly consensus that the recognition given to a foreign state according to the rules of public international law, implies recognition of its capacity in private law matters. The objective of this article is to reconstruct the considerations that led to this apparent consensus, thus helping to facilitate an assessment of the persuasiveness of those considerations.

Keywords

civil legal personality – foreign states – private international law – public international law

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1 Introduction

Do foreign states possess legal personality in civil law, and if so, why? In his monumental *The conflict of laws* (1947, 2nd ed. 1960), the renowned legal scholar Ernst Rabel (1874-1955) reports the prevailing answer to this deceptively simple question. ‘From Savigny’s time’, he observes, ‘the generally accepted view has been that recognition given to a state according to the rules of public international law, implies recognition of its capacity in private law matters. States thus enjoy full capacity without any special grant’². It is not necessary to refer to provisions of domestic civil law, including conflict of law rules on the recognition of foreign legal persons, concerning the existence and capacity of legal persons. Once recognised in accordance with the rules of public international law, foreign states may bring suits in domestic courts, acquire immovable property and receive donations and legacies, although these activities may be regulated by local law, as can the activities of any other foreign legal person. These conclusions, Rabel notes, were decided ‘in a careful consideration’ of two notable cases: ‘that of Zappa, a former Greek national, who appointed the Greek state heir to his immovables in Rumania and South Germany; and that of the Countess de Plessis-Bellière, who left her estate in France to the Holy See’³.

The first case, described at the time as ‘une cause célèbre’⁴, concerned the estate of Evangelis Zappa, a wealthy businessman of Greek decent living in Romania. On his death in 1865, he left the usufruct of most of his estate, including considerable immovable property located in Romania, to his cousin Constantin Zappa, while leaving bare ownership to the Greek state for the purpose of resurrecting the Olympic Games. When Constantin Zappa died in 1892 the Romanian government contested the right of the Greek state to acquire full ownership of the property. The two countries severed diplomatic ties after Romania rejected Greece’s proposal to resolve the case in arbitration. The Romanian state requested its courts to declare the estate vacant and put it in possession of the estate as legal successor to those who die in Romania without heirs. The proceedings in the Romanian courts ultimately culminated in a

2 E. Rabel, *The conflict of laws*, 2nd ed., vol. 2, Ann Arbor 1960, p. 10-11. On Rabel’s œuvre and legacy see O. Lando, *Ernst Rabel (1874-1955)*, in: *Festschrift 200 Jahre Juristische Fakultät der Humboldt-Universität zu Berlin*, edited by S. Grundmann, M. Kloepfer, C.G. Paulus, R. Schröder [and] G. Werle, Berlin 2010, p. 605-626.

3 Rabel, *The conflict of laws* (*supra*, n. 2), p. 11.

4 [anonymous], *L'affaire Zappa et le conflit Gréco-Roumain*, *Revue de droit international et de législation comparée*, 26 (1894), p. 165-203, at p. 201.

judgement on 20 May 1896 by the Bucharest Court of Appeal, in which it was decided that while the existence of a foreign state as a civil legal person and its right to acquire immovables must be recognized, a state has a legitimate interest in preventing a part of its territory falling in the hands of a foreign power. No foreign state can therefore obtain real estate in Romania without prior authorization from the government⁵. In July 1896, diplomatic relations between the two countries resumed, apparently after the government of Romania unexpectedly withdrew its claims to the Zappa estate⁶.

The second case revolved around the estate of the Marquise du Plessis-Bellière who had named Pope Leo XIII in her testament as legatee of real estate located in France. After her death the natural heirs objected to the bequest and sought to nullify it. The judicial proceedings that followed mostly focused on the interpretation of the will of the Marquise and the capacity in which the Pope had been named in the will. In its judgement of 4 February 1892, the Tribunal civil de Montdidier considered that the legacy of the Marquise was addressed to the Pope as representative of the sovereign power designated in public international law as the Holy See (the governmental headquarters of the Roman Catholic Church), declared the Holy See a foreign state recognized in France, and judged that foreign states are of necessity civil legal persons capable of entering into contracts as well as owning and inheriting property⁷. A year later the Cour d'appel d'Amiens overturned the judgement⁸. It rather found that the legacy was addressed to the Pope in his capacity as visible head of the Catholic Church, judged the Catholic Church an ecclesiastical institution without legal personality in French law and hence incapable of receiving property by testamentary succession, and declared the legacy to the Pope null and void. The case was then referred to the Cour de cassation but settled before a substantive judgement could be reached⁹.

5 Bucharest Court of Appeal (Romania), 20 May 1896, in: G. Flaischlen, *La jurisprudence Roumaine en matière de droit international*, Revue de droit international et de législation comparée, 31 (1899), p. 145-171, at p. 157.

6 A. Mamelok, *Die juristische Person im internationalen Privatrecht*, Zürich 1900, p. 119, with reference to [anonymous], *L'affaire Zappa* (supra, n. 4), p. 201 where mention is made of 'le bruit qui court en ce moment du désistement de la Roumanie de ses prétentions'.

7 Tribunal civil de Montdidier (France), 4 February 1892, *Journal du droit international privé et de la jurisprudence comparée*, 19 (1892), p. 447-455, at p. 450: 'les États étrangers constituent de plein droit et par nécessité des personnes morales de premier ordre capables de s'engager, d'acquérir et de recevoir par des traités et à plus forte raison par des contrats ou actes du droit civil'.

8 Cour d'appel d'Amiens (France), 21 February 1893, *Journal du droit international privé et de la jurisprudence comparée*, 20 (1893), p. 384-397.

9 *Journal du droit international privé et de la jurisprudence comparée*, 21 (1894), p. 835.

By now all but forgotten episodes in the development of private international law, they prompted a vigorous and wide-ranging debate among many of the most eminent writers in the fields of public and private international law in continental Europe. At issue were a number of vexing legal questions, including the personality of the Holy See in international law, the conflict of law rules applicable to the inheritance of immovable property, and the jurisdiction of domestic courts in civil law conflicts between sovereign states. At the heart of both cases, however, was the matter of principle, as one author had it, of the civil capacity of foreign states¹⁰.

The objective of this article is to reconstruct this debate on the legal personality of foreign states in civil law. This task has particular relevance in the context of lingering uncertainty today about whether foreign states, as far as the application of conflict of law rules is concerned, should be subsumed under the category of foreign domestic corporations and, if not, what is the basis of their personality in the domestic legal order¹¹. Rabel's observations indicate that the civil capacity of foreign states is secured through the operation of public international law. Yet, contemporary studies of the relationship between public and private international law do not appear to confirm this conclusion. Contemporary scholars usually draw a 'sharp distinction'¹² between rules of public and private international law and admit that there are very few, if any, rules of public international law binding states to particular outcomes in the domain of private international law¹³. It is therefore worth returning to the considerations that have led to the apparent scholarly consensus, described by Rabel, in order to help facilitate an assessment of the persuasiveness of those considerations and possibility that public and private international law indeed present a rare convergence in this instance.

I start by revealing the pivotal role of the Belgian jurist and historian François Laurent in setting the stage for the debate that was to come (section 1). Laurent popularised a theory that had been introduced in the legal doctrine by

10 A. Mérygnac, *Traité de droit public international*, Paris 1905, p. 141.

11 L.C.J. van Apeldoorn, *Erkenning van internationale rechtspersonen in het Nederlandse privaatrecht*, *Nederlands Internationaal Privaatrecht*, 2 (2021), p. 274-291, at p. 277-284.

12 A. Mills, *The confluence of public and private international law*, Cambridge 2009, p. 1. See e.g., K. Lipstein, *The general principles of private international law*, *Recueil des Cours*, vol. 135, Leiden 1972, p. 104-227; O. Kahn-Freund, *General problems of private international law*, *Recueil des Cours*, vol. 143, Leiden 1974, p. 147-474; J.G. Collier, *Conflict of laws*, 3rd ed., Cambridge 2001, p. 386-394.

13 J.R. Stevenson, *The relationship of private international law to public international law*, *Columbia law review*, 52 (1952), p. 561-588; W. Riphagen, *The relationship between public and private law and the rules of conflict of laws*, *Recueil des cours*, vol. 102, Leiden 1961, p. 215-334; E. Hambro, *The relations between international law and conflict law*, *Recueil des Cours*, vol. 105, Leiden 1962, p. 7-68; Mills, *The confluence (supra, n. 12)*, p. 295.

Égide Arntz together with two colleagues, according to which foreign states are legal persons in civil law by virtue of having been recognised as members of the society of states. While Laurent initially – in *Principes de droit civil* (1869) – expressed suspicion about this treatment of foreign states he subsequently embraced it in both *Le droit civil international* (1880) and his preliminary draft of a revised Belgian civil code (1883). Both proponents and opponents of the rule that would later be identified by Rabel as generally accepted, could therefore draw on Laurent's authority to bolster their case. I will show how Laurent's mature position was taken up by the vast majority of the jurists engaging with issues raised by the bequests of Evangelis Zappa and the Marquise du Plessis-Bellière (section 2) after which I will detail the arguments of the dissenting voices (section 3). I will close by briefly tracing the subsequent reception in works of early twentieth century authors in public and private international law (section 4). While most concluded that this is an instance where effects in civil law are determined by the operation of public international law, and therefore worth the close study of scholars interested in the confluence of public and private international law, the arguments of the dissenting voices are suggestive of the conclusion – at odds with Rabel's findings – that the recognition of the civil legal personality of foreign states must be based on domestic law alone.

2 Friedrich Carl von Savigny, François Laurent and the state as a necessary person

Undoubtedly most influential in setting the terms of the debate on the bequests of Evangelis Zappa and the Marquise du Plessis-Bellière, was the jurist and historian François Laurent (1810-1887). Celebrated by some as the greatest legal mind in Belgian history¹⁴, Laurent was a professor of civil law at the University of Ghent, member of the Institut de Droit international, and a prolific writer, perhaps best-known today for *Histoire du droit du gens et des relations internationales* (1855-1870), a wide-ranging 18 volume study of state practice in public international law¹⁵. His contributions to the field of private internation-

14 D. Heirbaut [and] M.E. Storme, *De Belgische rechtstraditie: van een lang zoeken naar onafhankelijkheid naar een verlangen naar afhankelijkheid?*, Tijdschrift voor Privaatrecht, 3 (2008), p. 979-1041; D. Heirbaut, *Weg met De Page? Leve Laurent? Een pleidooi voor een andere kijk op de recente geschiedenis van het Belgische privaatrecht*, Tijdschrift voor Privaatrecht, 54 (2017), p. 267-322.

15 On the influence and contemporary relevance of this work, which is also known as *Études sur l'histoire de l'humanité*, see A. Nussbaum, *A concise history of the law of nations*, New York 1954, p. 292-93; F. Dhondt, *L'histoire, parole vivante du droit?*, *François Laurent en*

al law are contained in three no less ambitious works: *Principes de droit civil* (33 vols., 1869-1878), considered for at least half a century the most authoritative commentary on the Napoleonic code¹⁶; *Le droit civil international* (8 vols., 1880-1881), widely regarded a foundational text in the emerging discipline¹⁷; and *Avant-projet de révision du Code civil* (6 vols., 1882-1885), a preliminary draft of a revised Belgian civil code that proved too radical to ever be implemented but did leave a lasting impression on the subsequent development of Belgian civil law¹⁸. In these works, Laurent addressed the issue of the civil personality of foreign states as ancillary to the question whether and when foreign domestic corporations, such as public limited companies or charitable foundations, should be admitted as having civil personality in the domestic legal order. His general approach, which was 'extremely hostile'¹⁹ to international commercial interests, can be traced back to a consultation on the personality of foreign public limited companies in Belgian civil law, published in 1846 in the journal *La Belgique judiciaire* by two of the journal's founding editors Égide Arntz (1812-1884) and Jules Barthels, together with Louis Bastiné, one of Arntz' colleagues at the Free university of Brussels²⁰.

Ernest Nys als historiografen van het volkenrecht, in: De 'Belle Époque' van het Belgisch recht (1870-1914), edited by B. Debaenst, Brugge 2016, p. 91-115. On Laurent's engagement with the Institut de droit international, see E. Bruyère, *Principes, esprit et controverses: L'Avant-projet de Code civil de François Laurent ou l'œuvre séditieuse d'un libre-penseur*, Gand 2019, p. 395-96.

- 16 G. Baert, *François Laurent: zijn leven, zijn tijd en zijn strijd (1810-1887)*, in: Liber Memorialis François Laurent 1810-1887, edited by J. Erauw, B. Bouckaert, H. Bocken, H. Gaus [and] M. Storme, Brussels 1989, p. 43-44.
- 17 Witness appraisals by A. Lainé, *Introduction au droit international privé*, vol. 1, Paris 1888, p. xviii; L. von Bar, *The theory and practice of private international law*, Edinburgh 1892, p. 75. See also Baert, *François Laurent (op. cit.)*, p. 54; J.W. Steenhoff, *Theory and practice of international solidarity in Dutch private international law since 1880*, in: Liber Memorialis François Laurent 1810-1887, edited by J. Erauw, B. Bouckaert, H. Bocken, H. Gaus [and] M. Storme, Bruxelles 1989, p. 1053.
- 18 For a detailed study of the content, reception and impact of Laurent's *Avant-projet*, see Bruyère, *Principes, esprit et controverses (supra, n. 15)*. See also, D. Heirbaut, *Codificatie van het burgerlijk recht in België en Nederland: parallel lives?*, in: Tweehonderd jaren codificatie van het privaatrecht in Nederland, edited by J.H.A. Lokin, J.M. Milo [and] C.H. van Rhee, Groningen 2010, p. 147-60; D. Heirbaut, *Een hopeloze zaak: François Laurents ontwerp van burgerlijk wetboek voor België*, Pro memorie, 15 (2013), p. 261-283.
- 19 E. Hilton Young, *Foreign companies and other corporations*, Cambridge 1912, p. 15.
- 20 E. Arntz, L. Bastiné [and] J. Barthels, *La société anonyme, légalement établie dans un pays étranger ... peut-elle être admise à ester en justice en Belgique*, *La Belgique judiciaire*, 4 (1846), col. 1781-1811; A. Rivier, *Notice sur M. Arntz*, *Annuaire de l'Académie royale de Belgique*, 56 (1887), p. 293-418, at p. 315, 388.

Drawing primarily on Friedrich Carl von Savigny (1779-1861), Arntz and his colleagues accepted that legal persons – at least those that are arbitrary and accidental ('arbitraire et accidentelle') and may or may not exist without infringing fundamental principles of natural or public law – are created at will by the legislator²¹. They are fictional ('purement idéal') and their existence is limited to the jurisdiction of the legislator that created them²². This so-called fiction theory of legal persons, they concluded, implies that foreign public limited companies must submit to the formalities of article 37 of the Belgian Code de commerce, which declares the establishment of domestic public limited companies conditional on the formal approval of the executive²³. Foreign public limited companies cannot operate in Belgium without such royal authorisation, since only that authorisation secures their existence as persons in the Belgian legal order. The authors thought, however, that this requirement does not apply to some other foreign legal persons. They accepted with Savigny that not all legal persons are dependent on the will of a legislator, but that some are 'necessary persons'. In *System des heutigen Römischen Rechts* (8 vols., 1840-1849), Savigny appeared to have excluded some legal persons from his fiction theory when he observed that one could attribute to some legal entities, including states, municipalities, cities and villages, a necessary juridical existence²⁴. Based on these somewhat tentative passages the authors of the consultation concluded that the state, by its very existence, has the quality of civil legal person in Belgian law²⁵. Their arguments for denying the civil capacity of foreign public limited companies that had not been authorised by the Belgian authorities, would therefore not be applicable to foreign states.

These conclusions were soon put to the test when the Belgian Cour de cassation in its judgement of 23 July 1847 ruled on the precise issues they had

21 The influence of Savigny may reveal Arntz' German background. Arntz had studied Roman law in Heidelberg with the civilians Anton Thibaut (1774-1840) and Carl Salomon Zachariae von Lingenthal (1769-1843) and subsequently lectured on the subject in Brussels. See Rivier, *Notice sur M. Arntz* (*supra*, n. 20), p. 305, 314. On the influence of German immigrants in Belgium as mediators of ideas, see R. Cahen, J. De Brouwer, F. Dhondt [and] M. Jottrand (eds.) *Les professeurs allemandes en Belgique*, Bruxelles 2022.

22 Arntz et al., *La société anonyme* (*supra*, n. 20), col. 1785.

23 Arntz et al., *La société anonyme* (*supra*, n. 20), col. 1787.

24 F.C. von Savigny, *System des heutigen Römischen Rechts*, vol. 2, Berlin 1840, p. 242: 'Einigens derselben können wir ein natürliches oder auch notwendiges Daseyn zuschreiben ... Ein natürliches Daseyn haben die Gemeinden, Städte und Dörfer, welche meist älter sind als der Staat selbst (nämlich in seiner gegenwärtigen Einheit und Begrenzung), und welche die Hauptbestandteile des Staates bilden. Das juristische Daseyn derselben ist fast nie zweifelhaft'.

25 Arntz et al., *La société anonyme* (*supra*, n. 20), col. 1784.

considered in their article²⁶. A French insurance company had sued its agent in Belgium for the payment of a debt arising from contract. The defendant disputed the demand, arguing the action was inadmissible as the company was not entitled to sue in Belgium since it lacked royal authorisation pursuant to article 37 of the Code de commerce.

In his advisory opinion, the procureur général Leclercq closely followed the arguments as they had appeared in the pages of *La Belgique judiciaire* in support of the defendant's case. After apologetically observing that he could not avoid entering into somewhat abstract or metaphysical considerations, he proceeded to argue that legal persons are fictions of the law, that their existence and capacity is dependent on having complied with the requisite formalities stipulated in domestic law, and that the French insurance company therefore must submit to the requirements of the Belgian Code de commerce before it can be admitted before the Belgian courts²⁷. Like Arntz and his colleagues he duly emphasised that he wished to exclude from his observations the state and its various subdivisions. This class of necessary legal persons must be considered being endowed with civil capacity in the domestic legal orders of those nations that have recognised them and with whom they maintain relations of friendship and business²⁸.

The Cour de cassation initially remained unmoved by these arguments, deciding against the conclusion of the attorney general in its judgement of 23 July 1847. It rather found recourse in a principle accepted by all civilised nations²⁹, according to which the status and capacity of persons is governed by the laws of the nation to which they belong. This principle, the court submitted, applies to natural persons as well as legal persons. Often cited as the first to authoritatively state this liberal doctrine of recognition was the 'Gaius of the *Code Napoléon*'³⁰, Philippe-Antoine Merlin de Douai (1754-1838), who recorded in his *Répertoire universel et raisonné de jurisprudence* (5th ed., 18 vols., 1826-1828) the medieval practice of treating as the personal law of corporations ('gens de mainmorte') the foreign law by which they were established, in analogous application of the conflict of law rule that regulates the legal capacity of natural

26 Cour de cassation (Belgium), 23 July 1847 (*La Société la France | C. Tongre-Hambursin*), Pasirisie 1847, 1, p. 392.

27 Cour de cassation (Belgium), 23 July 1847 (*supra*, n. 26), p. 399-400.

28 Cour de cassation (Belgium), 23 July 1847 (*supra*, n. 26), p. 400, speaking of 'ces personnes civiles que quelques jurisconsultes ont appelées nécessaires'.

29 Cour de cassation (Belgium), 23 July 1847 (*supra*, n. 26), p. 404.

30 Young, *Foreign companies* (*supra*, n. 19), p. 10.

persons³¹. On the basis of this doctrine, which would eventually become generally accepted, the Cour de cassation concluded that courts faced with questions concerning the existence and capacity of a foreign legal person must apply the law of the country where it was established. Accordingly, the civil capacity of a French insurance company is determined by French law, and the stipulations in the Belgian Code de commerce, including the requirement of a royal authorisation, only apply to public limited companies established in Belgium³².

Two years later, in its judgement of 8 February 1849, the Belgian Cour de cassation remarkably relented from its earlier decision³³. The court now followed Leclercq's reasoning and refused to recognise the civil capacity of a different French insurance company because the requirement of article 37 of the Code de commerce had not been met. The principle that the status and capacity of persons are governed by the laws of the country to which they belong, the court now argued, cannot be applied to legal persons because the principle presupposes the existence of a person to whom capacities can be attributed. Yet, as a legal person established in French law, it does not exist in Belgium prior to being recognised and authorised, in the case of a public limited company in accordance with requirements of the Code de commerce³⁴. But the Cour de cassation stipulated, like the attorney general, that the argument does not apply to foreign states: foreign states are recognised as civil legal persons in the domestic legal order by virtue of the application of public international law and hence they do not require governmental authorisation before being capable of exercising civil rights in Belgium³⁵.

31 P.-A. Merlin, *Répertoire universel et raisonné de jurisprudence*, vol. 10, 5th ed., Paris 1826, p. 323.

32 Cour de cassation (Belgium), 23 July 1847 (*supra*, n. 26), p. 404-405. Young, *Foreign companies* (*supra*, n. 19), p. 11, erroneously cites this judgement as in agreement with the opinion of Leclercq.

33 Cour de cassation (Belgium), 8 February 1849 (*Assurances Générales de Paris / C. Rue-lens*), Pasicrisie 1849, 1, p. 221-241, repeated in Cour de cassation (Belgium), 30 January 1851, Pasicrisie, 1851, 1, p. 307. Cour de cassation (France), 1 August, 1860, Dalloz, 1860, 1, p. 414, followed suit soon after, judging that public limited companies established abroad are only a 'fiction de la loi', and that since the law is an emanation of sovereignty which is territorially limited, foreign public limited companies exist in France only by the effect of French law and after submitting to its prescriptions granting civil legal personality.

34 Cour de cassation (Belgium), 8 February 1849 (*supra*, n. 33), p. 240-241.

35 Cour de cassation (Belgium), 8 February 1849 (*supra*, n. 33), p. 240: 'si les communes des États étrangers ... sont reconnus en Belgique comme des personnes civiles capables d'y posséder et d'y exercer des droits, ce n'est pas en vertu des dispositions du droit civil particulier à ces États, mais bien par application du droit des gens international'.

It was the theory initially espoused by Arntz and put in practice by the Belgian Cour de cassation, that Laurent took up and defended in *Principes de droit civil*, *Le droit civil international*, and *Avant-projet de révision du Code civil*³⁶. Laurent accepted Savigny's analysis of the disparity between natural and legal persons, and the restrictive conclusions that appeared to follow from it for the recognition of foreign domestic corporations³⁷. After approvingly citing the consultation in *La Belgique judiciaire*, he argued that unlike natural persons who have a real being, legal persons are created and sustained only by the positive act of a legislator³⁸. Domestically, legal persons receive their civil capacity from the law that sustains them, but abroad this grant is without effect. The capacity to have civil rights and duties presupposes that one exists, but beyond the jurisdiction of the legislator that created them, civil legal persons cease to exist. Hence, the civil capacity of foreign legal persons must of necessity be the result on the legislative act of domestic authorities³⁹. Or as he concisely put it in the commentary on article 536 of his draft of the civil code, in which he proposed to codify this restrictive doctrine of the recognition of foreign legal persons: only the legislator can incorporate ('La législateur peut seul incorporer')⁴⁰. To this conceptual point, Laurent added reasons of public order. Civil le-

36 Laurent was not the only one to follow in Arntz' footsteps. Hippolyte Lippens (1847-1906) devoted a chapter to the recognition of foreign legal persons in his doctoral dissertation *Exposé du système de la législation civile sur les droits dont les étrangers jouissent en Belgique*, Gand 1871. The work was praised by T.M.C. Asser as displaying great erudition (*Revue de droit international et de législation comparée*, 4 [1872], p. 507) but it was less detailed than Laurent's, particularly on the matter of the recognition of foreign states. While Lippens cited Savigny's apparent claim that states are necessary persons he did not explain why such necessary persons would have 'un existence légale en Belgique', as he put it, 'sans l'intervention du pouvoir belge' (p. 271-275). Lippens, by the time he was mayor of Ghent, was one of the speakers at Laurent's funeral. *François Laurent, Discours prononcés lors de ses funérailles*, Gand 1987, p. 56.

37 F. Laurent, *Principes de droit civil*, vol. 1, Bruxelles 1869, p. 370; F. Laurent, *Droit civil international*, vol. 4, Bruxelles 1880, p. 231, 257; F. Laurent, *Avant-projet de révision du Code civil*, vol. 2, Bruxelles 1883, p. 408.

38 Laurent, *Principes* (*supra*, n. 37), p. 398, 407.

39 Laurent, *Principes* (*supra*, n. 37), p. 399.

40 Laurent, *Avant-projet* (*supra*, n. 37), p. 409. The first paragraph of draft article 536 reads: 'Les corporations étrangères, autres que l'État, les provinces et les communes, n'ont d'existence légale en Belgique que par une autorisation du gouvernement, sauf disposition contraire dans les traités. L'autorisation peut toujours leur être retirée' (*Ibid.*, p. 408). D. Heirbaut, *Van Laurent tot Erauw: over codificatie van het internationaal privaatrecht in België*, in: *Liber amicorum Johan Erauw*, edited by M. Piers, H. Storme [and] J. Verhelten, Antwerpen 2014, p. 107-119, places this article in the context of Laurent's struggles against the Catholic Church and his attempt to deprive religious institutions of civil legal personality. By making the legal personality of foreign domestic corporations conditional

gal persons are established by legislators with an eye on public utility. But what appears useful to one nation may appear harmful to another⁴¹. Nations should therefore have the capacity to prevent foreign legal persons whose activities or purposes they reject, from undertaking activities within their territory. To think otherwise is to leave public order at the mercy of a foreign sovereign⁴².

Hence, from the idea that legal persons are fictitious, as Savigny had proposed, Laurent consistently inferred that foreign domestic corporations such as public limited companies and charities must obtain express recognition from the domestic authorities. On the implications of this doctrine for the recognition of foreign states, however, Laurent had a profound change of heart. Initially, in *Principes de droit civil* (1869), he rejected the solution proposed by the Belgian Cour de cassation in 1849. He observed that the distinction between arbitrary and necessary persons, introduced in the legal doctrine by Arntz and his colleagues, was borrowed from Savigny, which would be a sufficient reason to carefully consider it⁴³. However, he remained unconvinced by the apparent implications of this distinction for the recognition of foreign states, which he called vague and uncertain⁴⁴. It is true that the state has a necessary existence, but it does not necessarily appear as a civil legal person. A state can fulfil its purposes at home and maintain foreign relations abroad without the capacity to assert civil rights in the domestic law of other states⁴⁵. To think otherwise is to confuse its existence and capacity in public international law with its existence and capacity in civil law. To this conclusion Laurent only allowed one exception: a state must be considered to have

on governmental authorization, Heirbaut suggests, Laurent attempted to prevent religious institutions from circumventing Belgian law by obtaining recognition as a foreign legal person. This may be somewhat too narrow a perspective on Laurent's treatment of foreign legal persons, however, particularly because it was also dictated by his acceptance of Savigny's fiction theory. See also Bruyère, *Principes, esprit et controverses* (*supra*, n. 15), p. 253-254; D. Heirbaut, *Het artikel 544 dat er nooit gekomen is: het ontwerp burgerlijk wetboek van François Laurent en de kerkelijke instellingen*, in: *Een leven van inzit, liber amicorum Michel Magits*, edited by D. De Ruyscher, P. De Hert [and] M. De Metsenaere, Mechelen 2012, p. 143-168.

41 Laurent, *Principes* (*supra*, n. 37), p. 400.

42 Laurent, *Principes* (*supra*, n. 37), p. 401; also Laurent, *Droit* (*supra*, n. 37), p. 232, 240; Laurent, *Avant-projet* (*supra*, n. 37), p. 410.

43 Laurent, *Principes* (*supra*, n. 37), with reference to Arntz et al., *La société anonyme* (*supra*, n. 20), col. 1783.

44 Laurent, *Principes* (*supra*, n. 37), p. 408.

45 Laurent, *Principes* (*supra*, n. 37), p. 410: 'Oui, l'État existe, mais en quel sens, et dans quel but? Comme organe de la nation, il traite avec les nations étrangères, voilà sa seule raison d'être en face de l'étranger. Il n'a pas besoin, pour remplir cette mission, d'être propriétaire, de posséder des biens meubles ou immeubles en dehors des limites de son territoire.'

the right to sue in foreign courts⁴⁶. Hence, with the exception of the right to sue, foreign states must be treated as any other foreign domestic corporation and may hold property, conclude contracts and appear before the courts, only once having received governmental authorisation.

A decade later in *Droit civil international* (1880), however, Laurent abandoned his initial doubts and acknowledged that foreign states are indeed civil legal persons independently of any act of royal authorisation. He now embraced as profoundly true the doctrine attributed to Savigny according to which the state is a necessary person⁴⁷, and conceded that he had erred on account of excessive subtlety in his original critique of the Belgian Cour de cassation⁴⁸. The two qualities of the state – as a ‘corps politique’ and a ‘personne civile’, as a legal person in public international and in civil law – must be considered inseparable⁴⁹. If state recognition under public international law did not imply the recognition of a civil capacity, one would for instance expect states to conclude treaties to secure the reciprocal recognition of their civil capacity in their respective legal systems. But such a practice has never been observed. Indeed, it would be very strange if a state could acquire a province by treaty but could not acquire a residence for its ambassadors by private contract. It must therefore be supposed that, according to the law of nations, a state once recognised possesses complete legal capacity (‘personnalité complète’) and is capable of concluding private contracts as well as being party to diplomatic conventions⁵⁰.

Laurent repeated these arguments in the commentary on article 536 of *Avant-projet* (1883), in which he excepted foreign states and their subdivisions

46 Laurent, *Principes* (*supra*, n. 37), p. 411. Laurent may have had in mind English case law establishing the right of foreign states and monarchs to sue as a matter of public international law. See House of Lords (United Kingdom), 18 June 1828, *Hullett and Widder / King of Spain* [1828] 2 Bli. (N.S.) 31, p. 60; Chancery (United Kingdom), 6 March 1867, *United States of America / Wagner* [1867] L.R. 3 Eq. 724, p. 729. For discussions see F.A. Mann, *Foreign affairs in English courts*, Oxford 1986, p. 145; J.A. Foote, *Foreign and domestic law: a concise treatise on private international jurisprudence*, London 1878, p. 87–91.

47 Laurent, *Droit* (*supra*, n. 37), p. 151.

48 Laurent, *Droit* (*supra*, n. 37), p. 251.

49 Laurent, *Droit* (*supra*, n. 37), p. 251.

50 Laurent, *Droit* (*supra*, n. 37), p. 251. Laurent’s willingness to follow the Belgian Cour de cassation and accept the efficacy of customary international law in the domestic legal order further contributes to qualify the stereotypical view of Laurent as exponent of the ‘exegetical school’ with a blind reverence for the domestic legislator. See for a nuanced assessment of Laurent’s work along these lines, D. Heirbaut, *François Laurent: een vreemde eend in de bijt van de Belle Époque?*, in: *De ‘Belle Époque’ van het Belgisch recht (1870–1914)*, edited by B. Debaenst, Brugge 2016; Bruyère, *Principes, esprit et controverses* (*supra*, n. 15), p. 80–90.

from the requirement that they receive authorization from the government before being incorporated as legal persons in Belgium⁵¹. Expressing a debt to the 1849 judgement of the Belgian Cour de cassation and the advisory opinion of Leclercq, Laurent observed that while in the intricacy of the law there is a distinction between incorporation (in civil law) and recognition (in public international law), this distinction has never been drawn in practice⁵². Hence, as soon as a foreign state is recognised in accordance with the rules of public international law it must be considered to exist as a civil legal person in the domestic legal order.

3 François Laurent and the bequests of Evangelis Zappa and the Marquise du Plessis-Bellière

Laurent's treatment of the civil legal personality of foreign states was formative for the legal debate occasioned by the bequests of Evangelis Zappa and the Marquise du Plessis-Bellière. Among the strategies pursued by the Romanian government to dispute the Greek claim to the Zappa estate was to deny the capacity of foreign states to acquire property in Romania. As Romanian law did not contain provisions on the matter, the Romanian government supported its case by turning to general principles of law and the domestic law of other states⁵³. (The Romanian constitution did contain a clause limiting the right of foreign persons acquiring immovable property located in Romania, but it was introduced after the death of Evangelis Zappa in 1865.) Both the Romanian and Greek authorities invited legal scholars and representatives of foreign governments to submit expert opinions. The resulting submissions, however, provided little support for the Romanian position. Representatives of the Belgian and French governments dutifully reported the presumption that foreign states are civil legal persons in the domestic law of their respective countries and can own immovable property⁵⁴. Members of the law faculty of the Humboldt Uni-

51 See the text of draft article 536 (*supra*, n. 40). Heirbaut, *Het artikel 544* (*supra*, n. 40), par. 3, has noted affinities between Laurent's *Droit civil international* and his draft of the civil code composed only a few short years after.

52 Laurent, *Avant-projet* (*supra*, n. 37), p. 410.

53 G. Streit, *L'affaire Zappa conflit Gréco-Roumain*, Paris 1894, p. 32-34.

54 Louis Renault (1843-1918), professor of international law at the university of Paris and member of the Institut de droit international, for the French government and Charles Woeste (1837-1922) and Jules le Jeune (1828-1911) for the Belgian government. L. Renault, *Du droit pour une personne morale étrangère de recueillir par succession un immeuble situé en France*, Journal du droit international privé et de la jurisprudence comparée,

versity of Berlin, with some reservations, observed the same with respect to German law⁵⁵. The consulted experts – among them Arthur Desjardins (1835-1901), Friedrich Martens (1845-1909), André Weiss (1858-1928), Armand Lainé (1841-1908) and Pasquale Fiore (1837-1914) – all concluded that the Greek state must be considered a civil legal person in Romanian law⁵⁶. The Romanian government therefore took recourse to Laurent's initial position in *Principes de droit civil* that foreign states, like foreign domestic corporations, are fictional and that their existence and capacity in civil law is therefore dependent on a prior legislative act by the public authorities⁵⁷. The appeal to the authority of Laurent on this point was more than a little disingenuous because the Romanian government neglected to mention that Laurent had subsequently abandoned this opinion in *Droit civil international*⁵⁸. In fact, in their consultations most experts explicitly deferred to Laurent's mature analysis, perhaps remarkably even if they rejected his fiction theory of legal persons and the restrictive theory of the recognition of foreign domestic corporations associated with it.

Among the authors who offered consultations on the Zappa controversy, André Weiss in all respects followed Laurent most closely. Weiss was a professor of civil law at the university of Paris where in 1908 he would succeed Armand Lainé in the chair of public and private international law⁵⁹. In the sec-

20 (1893), p. 1118-1123; Ch. Woeste, *Du droit pour une personne morale étrangère de recueillir par succession un immeuble situé en Belgique*, *Journal du droit international privé et de la jurisprudence comparée*, 20 (1893), p. 1123-1126; J. le Jeune, *Du droit pour une personne morale étrangère de recueillir par succession un immeuble situé en Belgique*, *Journal du droit international privé et de la jurisprudence comparée*, 20 (1893), p. 1126-1128.

55 *Du droit pour les États étrangers de posséder des immeubles en Allemagne: consultation fournie par la Faculté de droit de Berlin à l'occasion de la succession Zappa*, *Journal du droit international privé et de la jurisprudence comparée*, 20 (1893), p. 727-754.

56 A. Desjardins, *Des droits en Roumanie d'un État étranger appelé par testament à recueillir la succession d'un de ses sujets*, *Journal du droit international privé et de la jurisprudence comparée*, 20 (1893), p. 1009-1033, at p. 1027. F. Martens, *Mémoire sur le conflit entre la Grèce et la Roumanie concernant l'affaire Zappa*, Athènes 1893, p. 44. The contributions of Weiss, Lainé and Fiore are discussed below.

57 Streit, *L'affaire Zappa* (*supra*, n. 53), p. 36.

58 As noted by Streit, *L'affaire Zappa* (*supra*, n. 53), p. 37. Certainly, Laurent was a celebrated figure in Romanian legal scholarship, but this could not warrant ignoring his later work that contained inconvenient conclusions for the Romanian government. On Laurent's reputation in Romania see M.C. Bocsan, *Démètre Alexandresco, historien du droit et fondateur de la doctrine civiliste roumaine moderne*, in: *Histoire de l'histoire du droit*, edited by J. Poumarède, Toulouse 2006, p. 234, 236.

59 Weiss would later become president of the Institut de droit international and vice-president of the Cour permanente de justice internationale. On Weiss' œuvre and career see

ond volume of *Traité théorique et pratique de droit international privé* (5 vols., 1892-1905), published in 1894, Weiss enthusiastically accepted Laurent's reasoning concerning the civil law recognition of foreign domestic corporations as well as foreign states⁶⁰. He contended that foreign domestic corporations are fictitious persons that only exist in France and may assert rights in French courts only by virtue of the express or tacit recognition of the French legislator⁶¹. He also accepted that the same inference cannot be drawn with regard to foreign states. Citing general opinion, he concluded that a foreign state possesses civil legal capacity in domestic law as soon as the receiving state has officially recognized its political existence ('existence politique') and maintains diplomatic relations with the government that represents it⁶².

Weiss applied this theory in his consultation on the occasion of the Zappa controversy, published in *Archives Diplomatiques* in 1893⁶³. In response to the question whether the Greek state should, on the basis of the merits of the law, be allowed to receive the Zappa bequest, Weiss responded in the affirmative⁶⁴. The pretention that the Greek state was not a civil legal person in Romania before being granted civil capacity in domestic law should be resisted. After citing at length Laurent's argument in *Droit civil international* that the international legal personality ('personnalité politique') and civil legal personality ('personnalité juridique') of states are inseparable, he concluded by saying he had nothing to add to Laurent's eloquent considerations⁶⁵.

That Laurent's treatment of the civil legal personality of foreign states proved attractive to authors, like Weiss, who also embraced Laurent's restrictive doctrine of the recognition of foreign domestic corporations, should perhaps be expected. What could come as a surprise, however, is that it was also taken up by authors who rejected it. As the English politician and legal scholar Edward Hilton Young (1879-1960) observed when discussing Laurent's analysis of the recognition of foreign states, 'to those who maintain the liberal system the whole of this discussion can be of little interest', since on the liberal system – as originally proposed by Merlin – foreign states 'like any other foreign juristic person,

J.P. Niboyet, *Trois jurisconsultes*, *Revue de droit international privé*, 24 (1929), p. 577-591, at p. 583.

60 A. Weiss, *Traité théorique et pratique de droit international privé*, vol. 2, Paris 1894, p. 400.

61 Weiss, *Traité* (*supra*, n. 60), p. 396.

62 Weiss, *Traité* (*supra*, n. 60), p. 397-98. Weiss largely repeated this argument in A. Weiss, *Manuel de droit international privé*, 6th ed., Paris 1909, p. 308-312.

63 A. Weiss, *Consultation pour le Gouvernement royal hellénique*, *Archives Diplomatiques*, 48 (1893), p. 128-135.

64 Weiss, *Consultation* (*supra*, n. 63), p. 130.

65 Weiss, *Consultation* (*supra*, n. 63), p. 133.

possess juristic personality in civil law in the same manner and for the same reasons that foreign natural persons possess it⁶⁶. Consequently, one might expect proponents of the liberal doctrine who contributed to the debate on the bequests of Evangelis Zappa and the Marquise du Plessis-Bellière, to have ignored Laurent's reflections on the civil capacity of foreign states. But this was not the case for Armand Lainé and Pasquale Fiore, who Young himself singled out as among the most influential early proponents of the liberal doctrine⁶⁷.

The consultation of Lainé, the first professor of private international law at the University of Paris after the creation of the chair in 1880, was written on the invitation of the Greek government and published in expanded and revised form as *Des personnes morales en droit international privé* (1893)⁶⁸. Lainé – who in 1890 had published a penetrating study on the Belgian attempts to revise the civil code⁶⁹ – was critical of Laurent's emphasis on the fictional character of legal persons and the conflict of law implications he drew from it. He found the sharp distinction between natural and legal persons, central to Laurent's theory, to be exaggerated: if a state admits foreigners the enjoyment of civil rights, this concession should be thought to include the category of foreign domestic corporations⁷⁰. Lainé had particularly harsh words reserved for Laurent's objections to Merlin's classic expression of the practice to treat as the personal law of foreign legal persons the foreign law that secures their existence and capacity, calling them extremely weak⁷¹. Contrary to Laurent's conclusions, foreign domestic corporations have civil legal personality independently of an explicit authorisation by the domestic legislator. Concerning the recognition of foreign states, however, Lainé fully endorsed the solution of his Belgian colleague⁷². The state can be viewed in law as a public power ('puissance publique') or as a civil person ('personne civile ou morale'), yet, these qualities are so closely linked that it is impossible to establish an absolute demarcation between them⁷³. In public international law, the recogni-

66 Young, *Foreign companies* (supra, n. 19), p. 313.

67 Young, *Foreign companies* (supra, n. 19), p. 11.

68 A. Lainé, *Des personnes morales en droit international privé*, Journal du droit international privé et de la jurisprudence comparée, 20 (1893), p. 273-309. I cite from A. Lainé, *Consultation pour le Gouvernement royal hellénique*, Archives Diplomatiques 48 (1893), p. 135-161. On Lainé's life and work see N. Hatzimihail, *Preclassical conflict of laws*, Cambridge 2021, p. 68; A. Pillet, *L'œuvre de M. Lainé*, Revue de droit international privé et de droit pénal international, 5 (1909), p. 1-11.

69 A. Lainé, *Étude sur le titre préliminaire du projet de révision du Code civil belge*, Paris 1890.

70 Lainé, *Consultation* (supra, n. 68), p. 143.

71 Lainé, *Consultation* (supra, n. 68), p. 147.

72 Lainé, *Consultation* (supra, n. 68), p. 152.

73 Lainé, *Consultation* (supra, n. 68), p. 152.

tion of a foreign state as a member of the society of states implies recognition of a foreign state as legal person in domestic law⁷⁴. On this basis Lainé supported the capacity and right of the Greek state to receive the Zappa estate. The civil capacity of a state, which comes with its recognition in international law, implies the capacity to acquire property by testamentary succession⁷⁵. It is true that a state may 'veto' the acquisition – by means of general legislation or, in exceptional circumstances, by means of ad hoc measures – in order to prevent property on its territory falling in the hands of a foreign state⁷⁶. But since no such reservations could be found in Romanian law at the time of Evangelis Zappa's death in 1865, the Greek state enjoyed at that time the right to acquire property of any kind without restrictions, and hence must be considered the legatee of the Zappa estate⁷⁷.

Lainé's engagement with Laurent exhibits many similarities to that of Fiore, a professor of public international law and comparative private law at the University of Naples and after Pasquale Mancini (1817-1888) the most prominent legal authority in Italy⁷⁸. Fiore did not address the recognition of legal persons in the first edition of *Diritto internazionale privato* (1869, French trans. 1874)⁷⁹, but in subsequent editions – after the publication of Laurent's work on private international law in 1880 – Fiore dedicated a chapter to foreign domestic corporations in which he developed his view in dialogue with Laurent. Fiore agreed with Laurent that the simple assimilation of legal and natural persons, by applying to the recognition of the former the rules applicable to the recognition of the latter, is inappropriate. However, with Lainé he rejected the severe implications of Laurent's fiction theory⁸⁰. While a positive act of recognition is required for reasons of public order, this act does not constitute or create the legal person in domestic law as Laurent had thought. Regarding the recognition of foreign states, however, Fiore did defer to Laurent's reasoning. Foreign states differ from foreign domestic corporations in essential respects,

74 Lainé, *Consultation* (*supra*, n. 68), p. 152: 'en droit international, dès qu'un État se trouve politiquement reconnu par un autre État, de plein droit il devient pour ce dernier une personne civile en même temps qu'une personne politique'.

75 Lainé, *Consultation* (*supra*, n. 68), p. 157.

76 Lainé, *Consultation* (*supra*, n. 68), p. 158.

77 Lainé, *Consultation* (*supra*, n. 68), p. 160.

78 Lassa Oppenheim (1858-1919), *Yale Law Journal*, 28 (1918), p. 102, reviewing Fiore's most influential work – P. Fiore, *International law codified and its legal sanction*, New York 1918 – praised him as 'a leader of Italian thought in the science of International Law'. See also the translator's introduction to the aforementioned work (p. v-xv).

79 P. Fiore, *Diritto internazionale privato*, Firenze 1869.

80 P. Fiore, *Droit international privé*, 2nd ed., trans. of Italian 3rd ed., vol. 1, Paris 1890, p. 348, 351.

since states are civil legal persons as soon as they are recognised in public international law⁸¹. Hence, the recognition of the civil legal personality of foreign states is tacit, implied in the acceptance of their existence as international legal persons⁸².

Fiore further developed these observations in his consultation on the invitation of the Greek government on the Zappa estate, which was subsequently published as *Successione Zappa: Controversia tra la Grecia e la Romania* (1894)⁸³. Fiore repeated his theory of the recognition of foreign domestic corporations⁸⁴, and maintained that these principles are inapplicable to foreign states. It would be a great error, he observed, to treat foreign states as equivalent to foreign domestic corporations, since one would confuse entities of a very different nature⁸⁵. The state does not receive civil legal personality in its domestic law by legislative fiat, like domestic corporations, but it is natural and necessary to its existence as a state⁸⁶. To this conclusion, Fiore added one qualification, absent in his earlier work, which is that capacity of a foreign state in domestic law may be limited by treaty, by express provisions in domestic law, or by the terms under which foreign relations were established and the foreign state was recognised. Apart from these cases, the capacity of foreign states in domestic law must be presumed to be complete ('*entière et complète*')⁸⁷. Fiore therefore concluded that the lack in Romanian law of a formal act of recognition of the civil legal personality of the Greek state cannot form an obstacle to the capacity of the Greek state to be the lawful beneficiary of the Zappa estate. As Romania maintained diplomatic relations with Greece and any provisions in the Romanian constitution limiting the rights of foreigners to acquire immovable property were not yet in force when the Greek state acquired bare ownership of the estate, Greece must be deemed to have the legal capacity that belongs to all states, including the right to acquire property by succession⁸⁸.

As the consultations on the Zappa affair coalesced in this manner around Laurent's mature analysis of the civil capacity of foreign states, so did the commentaries on the bequest of the Marquise du Plessis-Bellière. The case essen-

81 Fiore, *Droit international privé* (*supra*, n. 80), p. 348.

82 Fiore, *Droit international privé* (*supra*, n. 80), p. 351.

83 P. Fiore, *Successione Zappa: Controversia tra la Grecia e la Romania*, Roma 1894, containing the consultation both in Italian and French, as well as several extracts from diplomatic communications and other relevant materials.

84 Fiore, *Successione Zappa* (*supra*, n. 83), p. 133-39.

85 Fiore, *Successione Zappa* (*supra*, n. 83), p. 142.

86 Fiore, *Successione Zappa* (*supra*, n. 83), p. 143-144.

87 Fiore, *Successione Zappa* (*supra*, n. 83), p. 149.

88 Fiore, *Successione Zappa* (*supra*, n. 83), p. 162-165.

tially raised the same question about the civil capacity of foreign states, but was complicated by uncertainty about the capacity in which Pope Leo XIII had been named in the will of the Marquise – as sovereign representative of the Holy See or as the visible head of the Catholic Church – and the status and capacity of the Holy See in international law.

There were authors who accepted the conclusions of the Tribunal civil de Montdidier that had considered in its judgement of 4 February 1892 that the Pope was addressed in the will as representative of the Holy See and that the Holy See was in French law recognized as a foreign state. They could then conclude, drawing on the idea of the state as a necessary person with an inseparable public and civil capacity, that the will was valid and the Holy See could receive the immovable property that had been left by the Marquise. This was the strategy of Théophile Ducrocq (1829-1913), by then a professor of administrative law at the University of Paris⁸⁹. After establishing that the Pope had (also) been addressed in the will as the sovereign representative of the Holy See – contrary to the conclusions of the Cour d'appel d'Amiens – he argued that foreign states and sovereigns are civil legal persons in French law, and the Holy See is addressed as a foreign state in the relations it maintains with France. These conclusions, Ducrocq submitted, follow from the application of public international law⁹⁰. A state is simultaneously a public power and a civil person – indeed, it is always the primary civil person within its territory ('la première et la plus grande personne civile de ce pays') – and the recognition of a state as a political power ('puissance politique') implies its recognition as a civil power ('puissance civile')⁹¹. As Ducrocq took these considerations to be applicable to the Holy See, he supported the initial judgement of the Tribunal civil de Montdidier, which had accepted the validity of the bequest of the Marquise to the Pope⁹².

There were also authors, including Fiore and Léon Michoud (1855-1916), who denied the strict equivalence between the Holy See and states in interna-

89 T. Ducrocq, *De la personnalité civile en France du Saint-Siège et des autres puissances étrangères*, *Revue du droit public et de la science politique*, 1 (1894), p. 47-77. On Ducrocq, who spent most of his career at the University of Poitiers, see G. Fagniez, *Allocution prononcée par M. Fagniez à l'occasion du décès de M. Théophile Ducrocq*, *Séances et travaux de l'Académie des sciences morales et politiques*, 180 (1913), p. 477-479.

90 Ducrocq, *De la personnalité* (*supra*, n. 89), p. 55.

91 Ducrocq, *De la personnalité* (*supra*, n. 89), p. 55-56. For this conclusion Ducrocq relied on his own T. Ducrocq, *Cours de droit administratif*, 6th ed., vol. 2, Paris 1881, p. 104, where he had argued that the public and private law capacities of the state cannot be distinguished.

92 A similar conclusion on this point was reached by A. Weiss in an annotation of the judgement of the Tribunal civil de Montdidier in *Pandectes françaises*, vol. 5, Paris 1892, p. 17-19, at p. 18.

tional law, arguing rather that the Holy See is an international legal person *sui generis*⁹³. Michoud, who held the chair in administrative law at the University of Grenoble, observed in an article published in the inaugural volume of the *Revue générale de droit international public* in 1894, that the Holy See could no longer be deemed a state and a territorial power after the defeat of the Papal states in 1870 and the unification of Italy. However, the Pope had always been a spiritual sovereign more than a temporal one, and the sovereignty granted to him as head of the Catholic Church had never been dependent on his territorial jurisdiction⁹⁴. Michoud therefore identified within European public law, the notion of an independent sovereign power without territory or subjects (in the worldly sense), but nevertheless with an equal standing as a member of the society of states⁹⁵. The consequence, in private law, of accepting the sovereignty of the Holy See in public international law, he submitted, is the same as it is for foreign states. While Michoud was an early adherent of the liberal doctrine of the recognition of foreign legal persons⁹⁶, he also accepted as unassailable the reasoning of those who adhered to Laurent's restrictive doctrine while making an exception for foreign states, thus suggesting the inescapability of the civil capacity of foreign states independently of the application of the liberal doctrine of recognition: the state is a necessary person ('une personne morale *nécessaire*') with a political as well as civil capacity, and hence, the recognition of a state as member of the society of states implies the recognition of its civil capacity⁹⁷. This argument also holds for the Holy See. Its spiritual power cannot be exercised without material means, which requires the capacity to contract and acquire property. The Holy See must therefore be considered a person in civil law in the same manner and for the same reasons as foreign states⁹⁸.

93 See also J. Dubois, *La Papauté devant le droit international public et privé*, *Journal du droit international privé et de la jurisprudence comparée*, 37 (1910), p. 374-389. For a recent defense of this position in relation to the Holy See, see C. Ryngaert, *The legal status of the Holy See*, *Goettingen journal of international law*, 3 (2011), p. 829-859.

94 L. Michoud, *De la capacité en France des personnes morales étrangères et en particulier du Saint-Siège*, *Revue générale de droit international public*, 1 (1984), p. 193-221, at p. 211. The legal personality of the state would remain of abiding interest to Michoud, whose most influential work (L. Michoud, *La théorie de la personnalité morale et son application au droit français*, 2 vols., 3rd ed., Paris 1932) concerned the nature of legal persons. See M. Hauriou, *Notice sur les œuvres de Léon Michoud*, *Annales l'université de Grenoble*, 29 (1917), p. 7-56.

95 Michoud, *De la capacité* (*supra*, n. 94), p. 212-213.

96 Michoud, *De la capacité* (*supra*, n. 94), p. 194, 203.

97 Michoud, *De la capacité* (*supra*, n. 94), p. 204.

98 Michoud, *De la capacité* (*supra*, n. 94), p. 215.

Fiore agreed with Michoud on many of his premises, but came to the opposite conclusion in an article on the estate of the Marquise du Plessis-Bellière, published almost a decade after his consultation for the Greek government⁹⁹. Fiore had already briefly addressed the case in his consultation¹⁰⁰, but the article is noteworthy because it clarifies how Fiore conceived of the civil capacity of foreign states in relation to their international legal personality. Like Michoud, Fiore qualified the importance of the distinction between the Holy See and the Catholic Church, accepting that the Catholic Church is an international legal person with certain rights as a member of the society of states¹⁰¹. However, he denied that the reasons that may be invoked in the defence of the civil capacity of foreign states are applicable to the Catholic Church. In particular, he observed that for the realization of its purposes as a moral order ('d'ordre éthique et moral'), the Catholic Church does not require the capacity to acquire property or conclude contracts¹⁰². Indeed, he approvingly cited Laurent, who was fiercely anticlerical and had described the attribution of a necessary civil legal personality to the Church from a legal point of view as a heresy¹⁰³. Fiore's disagreement with Michoud, thus, boiled down to the fact that Michoud considered civil capacity a necessary prerequisite for any international legal person, while Fiore thought it depends on the particular purposes for which the international legal person is established. Hence, Fiore concluded, even if one would accept, as the Tribunal civil de Montdidier had initially done, that the legacy of the Marquise was addressed to the Pope as representative of the entity known in public international law as the Holy See, one could reject with the Cour d'appel d'Amiens the capacity of the Pope to acquire the bequest of the Marquise, on the grounds that the reasons deriving from the law of nations that require accepting the civil capacity of foreign states do not apply to the Catholic Church, and its personality must therefore be determined exclusively with reference to domestic civil law.

As the preceding discussion attests, numerous authors who commented on the legal struggles surrounding the bequests of Evangelis Zappa and the Marquise du Plessis-Bellière coalesced around Laurent's mature treatment of the civil capacity of foreign states in domestic law, even as the fiction theory of legal

99 P. Fiore, *De la capacité de l'État étranger, de l'église et du Saint-Siège d'acquérir par succession*, *Revue de droit international et de législation comparée*, 5 (1903), p. 5-30.

100 Fiore, *Successione Zappa* (*supra*, n. 83), p. 156-160.

101 Fiore, *De la capacité* (*supra*, n. 99), p. 23.

102 Fiore, *De la capacité* (*supra*, n. 99), p. 25.

103 Fiore, *De la capacité* (*supra*, n. 99), p. 26, with reference to Laurent, *Droit* (*supra*, n. 37), p. 336.

persons and the restrictive doctrine of recognition were becoming increasingly contested. In *L'affaire Zappa conflit Gréco-Roumain* (1894), a widely praised¹⁰⁴ early synthesis of the available scholarly and diplomatic material concerning the Zappa case, Georges Streit (1868–1948), professor of international law at the University of Athens, summarised the emerging consensus as follows: from Savigny to the present day, states have been unanimously recognised as necessary civil persons ('personnes morales nécessaires') and their personality derives from public international law ('*découle du droit des gens*'), in effect offering the same assessment as Rabel would half a century later¹⁰⁵. To say that opinion was unanimous, however, would be to overstate the consensus.

4 'Une pure négation de ce que tout le monde affirme': Augusto Pierantoni and Félix Moreau

Among the dissenting voices was that of Augusto Pierantoni (1840–1911), an Italian Senator, founding member of the Institut de droit international, and professor of international law at the University of Rome, having succeeded (his father-in-law) Mancini in that role¹⁰⁶. In an article that seems to have mostly gone unnoticed after its publication in 1903, Pierantoni strongly objected to the general opinion that foreign states possess civil personality as of necessity¹⁰⁷. First, he rejected as overly metaphysical the assertion that a state must possess civil capacity in order to fulfil its functions¹⁰⁸. While a state must certainly have command over land and resources in order to procure the common good, these materials must not necessarily be the object of private ownership¹⁰⁹. Whether a state is capable of holding private property depends on its administrative and constitutional law and is not something that can be determined a priori. Second, he objected to Laurent's equivalence between the

104 A. Tylpado-Bassia, review of Streit, *L'affaire Zappa* (*supra*, n. 53), *Bulletin de la Société législation comparée*, 24 (1895), p. 318–320; A.-N. Sacopoulo, *Des personnes morales en droit international privé*, Genève 1898, p. 105. On Streit, who would go on to enjoy a distinguished career as international lawyer, politician, and diplomat, see P.G. Vallindas, *Georges S. Streit (1868-1948)*, *Revue hellénique de droit international*, 2 (1949), p. 115–116.

105 Streit, *L'affaire Zappa* (*supra*, n. 53), p. 41.

106 E.F. Malaspina, 'Toil of the noble world': *Pasquale Stanislao Mancini, Augusto Pierantoni and the international legal discourse of 19th century Italy*, *Cleo Themis*, 18 (2020), p. 1–23.

107 A. Pierantoni, *L'incapacité des États d'acquiescer par succession dans un pays étranger*, *Revue de droit international et de législation comparée*, 35 (1903), p. 252–285.

108 Pierantoni, *L'incapacité* (*supra*, n. 107), p. 265.

109 Pierantoni, *L'incapacité* (*supra*, n. 107), p. 265.

recognition of a foreign state as an independent power in diplomatic relations and the recognition of the state as a civil legal person in domestic law¹¹⁰. To think that recognition of a state in public international law confers civil capacity is to confuse public international and domestic law¹¹¹. The former is solely intended to recognize international sovereignty ('souveraineté internationale')¹¹², the capacity of a foreign state to exercise rights on the international plane, and has no implications for its capacity in domestic civil law. To think that it does, Pierantoni submitted, is simply to neglect that a state may in its domestic law be incapable of holding private property, for instance because it lacks a civil code altogether¹¹³.

The very same arguments had received a hostile reception a decade prior, when they were put forward by Félix Moreau (1859-1934), professor of administrative law at Aix-Marseille University¹¹⁴. As Streit observed at the time, Moreau upset the unanimity in legal doctrine when he questioned the civil capacity of foreign states in French law in an article on the bequest of the Marquise du Plessis-Bellière¹¹⁵. Like Fiore and Michoud, Moreau expressed scepticism about the opinion that the Holy See should be considered equivalent to a foreign state¹¹⁶. However, even if it should, Moreau argued, the Holy See nevertheless lacks the capacity to acquire property by testamentary succession. The recognition of a foreign state by the French government is an act of international policy, implying its existence as a member of the international community and capable therefore of bearing the rights and obligations conferred in public international law. It does not entail the recognition of a civil legal person which is an act of a domestic legislator¹¹⁷. In support of this essential distinction between legal capacity in different legal orders, he pointed to entities in French constitutional law – such as the Sénat and the Chambre des députés – that lack capacity in French civil law¹¹⁸. He also drew on Laurent's early analysis in *Principe de droit civil* of the states' essential functions. Laurent

110 Pierantoni, *L'incapacité* (*supra*, n. 107), p. 271-272.

111 Pierantoni, *L'incapacité* (*supra*, n. 107), p. 273.

112 Pierantoni, *L'incapacité* (*supra*, n. 107), p. 273.

113 As an example, that may not be entirely apt, Pierantoni, *L'incapacité* (*supra*, n. 107), p. 273, notes that Italy was recognized as an independent state in 1861 and 1862 but only adopted statutes of private international law in 1865.

114 F. Moreau, *De la capacité des États étrangers pour recevoir par testament en France*, *Journal du droit international privé et de la jurisprudence comparée*, 19 (1892), p. 337-352.

115 Streit, *L'affaire Zappa* (*supra*, n. 53), p. 38.

116 Moreau, *De la capacité* (*supra*, n. 114), p. 337.

117 Moreau, *De la capacité* (*supra*, n. 114), p. 346.

118 Moreau, *De la capacité* (*supra*, n. 114), p. 348.

had noted that even if a foreign state exists as of necessity, it does not necessarily possess civil capacity in the domestic law of other states. In order to execute its tasks beyond its territorial limits it is sufficient to have international legal personality. It does not additionally require civil legal personality and certainly not the capacity to receive property by testamentary succession¹¹⁹. In response to Laurent's later admission that this could lead to the absurd implication that a state could acquire a province by treaty but could not acquire embassy buildings by private contract, Moreau pressed the conceptual distinction between territorial jurisdiction and private property: sovereignty is a property sui generis of public international law while civil capacity is a capacity established in domestic civil law, and these two issues can be resolved differently without any absurdity¹²⁰. Hence, Moreau concluded, the legal personality of foreign states must be determined with reference to French civil law, which does not count them among the entities with civil capacity¹²¹.

Moreau's arguments immediately attracted strong opposition in the literature. Lainé, who characterised Moreau's contribution as an outright rejection of the general consensus¹²², responded by emphasising that the state is exceptional precisely because its political personality necessarily generates its civil personality¹²³. Fiore observed similarly that Moreau failed to see that foreign domestic corporations receive civil capacity by a legislative act while states may exercise civil rights 'jure proprio' and by virtue of being a state¹²⁴. Michoud rejected Moreau's suggestion that the state could be assimilated to other subordinate political bodies, such as the French *Chambre des députés*, that lack civil capacity. Those subordinate political bodies are not dependent for their functioning on having civil legal personality. The state, however, cannot exist without the capacity to participate in civil law, by concluding contracts and acquiring property¹²⁵. Other responses observed that all authors after Savigny had accepted that the state is a necessary person with a civil capacity that is inseparable from its political existence¹²⁶, and criticized Moreau's reading

119 Moreau, *De la capacité* (*supra*, n. 114), p. 348-349.

120 Moreau, *De la capacité* (*supra*, n. 114), p. 349.

121 Moreau, *De la capacité* (*supra*, n. 114), p. 352.

122 Lainé, *Des personnes morales* (*supra*, n. 68), p. 290, approvingly cited by Streit, *L'affaire Zappa* (*supra*, n. 53), p. 39. M. Sabatier, *Études et discours*, Paris 1911, p. 312 agreed, writing contemptuously that 'tout le monde est d'accord, sauf un professeur de la Faculté d'Aix, dont le nom m'échappe'.

123 Lainé, *Des personnes morales* (*supra*, n. 68), p. 291.

124 Fiore, *De la capacité* (*supra*, n. 99), p. 10.

125 Michoud, *De la capacité* (*supra*, n. 94), p. 205.

126 Sacopoulo, *Des personnes morales* (*supra*, n. 104), p. 28.

of French law¹²⁷. But while these initial reactions were brisk and gave the impression of robust agreement among many of the most eminent writers in public and private international law, the doubts that Moreau and Pierantoni had raised about the ostensibly necessary capacity of foreign states in civil law would linger in the literature.

5 Subsequent reception and conclusion

When surveying the responses of the European governments in the context of the Zappa affair to the question whether foreign states are civil legal persons, Desjardins was still hesitant to identify within ‘*consensus gentium*’ a universal rule establishing the affirmative¹²⁸. In subsequent years, however, writers of general studies and handbooks of public international law noted with increasing confidence the existence of a rule according to which states are civil legal persons as soon as they are recognized as members of the international community¹²⁹. Frantz Despagnet (1857-1906), professor of public international law at the University of Bordeaux, maintained in *Cours de droit international public* (1894) that it would be an affront to the sovereignty of foreign states for a domestic legislator to deny or limit their civil capacity, as this capacity forms an expression of their sovereignty¹³⁰. Alexandre Mérignac (1857-1927), professor of public international law at the University of Toulouse, concluded in *Traite de droit public international* (3 vols., 1905-1912) that international legal personality ‘confers’ civil capacity¹³¹. Henry Bonfils (1835-1897) observed in his frequently reprinted *Manuel de droit international public* (1894), that the recognition of the civil personality of foreign states is regulated by international custom, since to deny foreign states the status of civil legal persons would be

127 Renault, *Du droit* (*supra*, n. 54), p. 1119-1120.

128 Desjardins, *Des droits en Roumanie* (*supra*, n. 56), p. 1026.

129 E.g. L.-J.-D. Féraud-Giraud, *États et souverains devant les tribunaux étrangers*, Paris 1895, vol. 1, p. 47, vol. 2, p. 321-22; P. de Paeppe, *Études sur la compétence civile à l'égard des états étrangers*, Paris 1894, p. 30. A. Wynen, *Die Rechts- und insbesondere die Vermögensfähigkeit des apostolischen Stuhles nach internationalem Recht*, Freiburg 1920, p. 85.

130 F. Despagnet, *Cours de droit international public*, Paris 1894, p. 177: ‘les États étrangers, ... avec une souveraineté complète, fixent dans leur indépendance leur propre personnalité civile et leur capacité’. Also, F. Despagnet, *Précis de droit international privé*, 5th ed., Paris 1909, p. 159-160. On Despagnet’s œuvre, see Ch. de Boeck, *Notice sur les travaux de M. Despagnet*, in: A la mémoire de Frantz Despagnet, Bordeaux 1907, p. 15-44.

131 Mérignac, *Traité de droit* (*supra*, n. 10), p. 143: ‘la personnalité internationale confère à l’Etat la personnalité juridique et la capacité civile’.

to paralyse international relations¹³², a point Paul Fauchille (1858-1926) would repeat when he published an extended and updated edition of Bonfils' work as *Traité de droit international public* (1922)¹³³.

The view also remained current among scholars of private international law, even as the liberal doctrine of the recognition of foreign legal persons became generally accepted. Certainly, there were many authors who did not specifically address the recognition of foreign states, likely since it raised no special difficulties for the liberal doctrine, as Young had observed¹³⁴. However, the suggestion that foreign states could not simply be subsumed to the class of ordinary legal persons persisted. In *Des personnes morales en droit international privé* (1914), Antoine Pillet (1857-1926), who succeeded Weiss in the chair of private international law at the University of Paris, accepted the liberal doctrine of recognition but nevertheless felt the need to address Moreau's endorsement of a strict distinction between recognition in public international law and recognition of the states' civil capacity in domestic civil law¹³⁵. This view, Pillet objected, is entirely mistaken, since recognition of an international legal person is not merely a political but also a legal act ('un acte profondément juridique') by which the foreign state is recognized in the entirety of its functions and legal capacities¹³⁶. To deny this would be to deprive states in international relations of the resources that are most necessary to them, which can often only be procured and managed by means of contracts and property in civil law¹³⁷. Jean-Paulin Niboyet (1886-1952), who was Pillet's doctoral student in Paris and later succeeded him in the chair of private international law,

132 H. Bonfils, *Manuel de droit international public*, Paris 1894, p. 146-147. Translated in German as *Lehrbuch des Völkerrechts für Studium und Praxis*, Berlin 1904. Described by A. Fitzmaurice, *Liberalism and empire in nineteenth-century international law*, *American historical review*, 117 (2012), p. 122-140, at p. 134, as 'probably the most influential French textbook in international law at the end of the century'.

133 P. Fauchille, *Traité de droit international public*, Paris 1922, p. 447. On Fauchille, see A. de Lapradelle, *Paul Fauchille (1858-1926)*, *Revue générale de droit international public*, 33 (1926), p. 5-47.

134 E.g. C.-A. Brocher, *Cours de droit international privé*, Paris 1882; Von Bar, *The theory and practice* (*supra*, n. 17); E. Audinet, *Principes élémentaires du droit international privé*, Paris 1894; J. Koster, *Het internationaal burgerlijk recht in Nederland*, Haarlem 1917, p. 702.

135 J.-P. Niboyet, *Antoine Pillet 1857-1926*, *Revue de droit international et de législation comparée*, 8 (1927), p. 23-32.

136 A. Pillet, *Des personnes morales en droit international privé*, Paris 1914, p. 302. See for the same conclusion, A. Pillet, *Principes de droit international privé*, Paris 1903, p. 179, which is generally considered Pillet's seminal work. See Niboyet, *Antoine Pillet* (*supra*, n. 135), p. 27.

137 Pillet, *Des personnes morales* (*supra*, n. 136), p. 304.

defended the same view in *Manuel de droit international privé* (1928)¹³⁸, and *Traité de droit international privé* (6 vols., 1938-1950). Outside of France, the view was taken up by authors such as Gustav Walker in Austria¹³⁹, Arthur Mamelok in Switzerland¹⁴⁰, Heinrich Triepel in Germany¹⁴¹, and Josephus Jitta in the Netherlands¹⁴².

Rabel was therefore correct to conclude that the legal debate occasioned by the bequests of Evangelis Zappa and the Marquise du Plessis-Bellière had resulted in a large measure of agreement among scholars on the legal personality of foreign states in civil law. Most authors accepted that recognition given to a foreign state according to the rules of public international law, implies recognition of its capacity in private law matters. International and civil legal personality are simply two sides of the same coin, a coin minted by the reciprocal recognition of members of the society of states who tolerate no superior authority over them capable of limiting their legal capacity. While this theory was originally developed by authors like Laurent who were extremely reluctant to accept the existence and operation of foreign legal persons in civil law, it was also welcomed by those who had no qualms recognising foreign legal persons simply by applying the foreign law that governed them. The defenders of the liberal theory of recognition, too, could accept that foreign states are unique among foreign legal persons in being 'necessary persons' that cannot function without the capacity to contract and acquire property. That authors like Lainé, Fiore, and Michoud – who could effortlessly uphold the civil capacity of foreign states without recourse to a notion that Pierantoni dismissed, one must admit with some justification, as overly metaphysical – defended this doctrine is reflective of its pervasiveness.

To say that this view was accepted from Savigny onwards, as Rabel seemed to have it, would be inaccurate however. Savigny never used the term 'necessary person', and he was altogether more circumspect in suggesting the inescapability of the states' (civil) legal personality. Moreover, the passages in Savigny's work, relied upon by those who followed Arntz and Laurent in developing this notion of the state, did not specifically concern the recognition of their legal personality in the civil law of other states. Savigny never suggested that

138 J.-P. Niboyet, *Manuel de droit international privé*, Paris 1928, p. 377.

139 G. Walker, *Internationales Privatrecht*, Wien 1922, p. 138.

140 Mamelok, *Die juristische Person* (*supra*, n. 6), p. 104.

141 H. Triepel, *Gerichtbarkeit über fremde Staaten*, Archiv des öffentlichen Rechts, 28 (1912), p. 212-251.

142 D. Josephus Jitta, *De Wederopbouw van het internationale recht op den grondslag van eene rechtsgemeenschap van het menschelijk geslacht*, Haarlem 1919, p. 102.

the recognition given to a state according to the rules of public international law implies recognition of its civil capacity. Rabel can, however, be excused for implying that he did, as it was the oft repeated conclusion of those who summarised the results arrived at by Laurent and others. Savigny's cursory observations about the necessary existence of the state were transformed by these authors into a virtually uncontested theory about how the capacity of the state to operate on both the domestic and the international plane can be derived from its essential purposes and functions. The rules applicable to the civil law recognition of foreign states, it is therefore safe to say, warrants the careful consideration of scholars who seek to identify those areas where public international law dictates substantive outcomes in the domain of private international law.

One should nevertheless not lose sight of the doubts raised by Pierantoni and Moreau, which were never fully silenced in the literature. In a comment on the Zappa affair, the Belgian jurist and diplomat Édouard Rolin-Jacquemyns (1863-1936), then chief editor of the *Revue de droit international et de législation comparée* and associate member of the Institut de droit international, expressed admiration for Moreau's reasoning, noting it merits most serious attention¹⁴³. Others would periodically return to Moreau's doubts when they defended a principled distinction between the legal personality of states in public international as opposed to domestic civil law¹⁴⁴. Young, who did not think all of this was of much importance once the liberal doctrine of recognition is accepted, nevertheless acknowledged the force of Moreau's arguments: 'If express recognition were necessary in order that a state might possess a personal status in civil law, it is difficult to see how that requirement could be supplied by a recognition given to it for another purpose by an authority different from that whose function it is to confer personal status in civil law'¹⁴⁵. Young was approaching the issue primarily from the perspective of domestic law, and in particular English common law, but the worry also resonates from the

143 É. Rolin-Jacquemyns, *Note a propos de l'article qui precede et du recent conflit Gréco-Romain (affaire Zappa)*, *Revue de droit international et de législation comparée*, 25 (1893), p. 178-184, at p. 183. On Édouard Rolin-Jacquemyns – son of Gustave Rolin-Jacquemyns (1835-1902), co-founder of both the *Revue de droit international et de législation comparée* and the Institut de droit international – see T. Ruys, *De Gebroeders Rolin en de opkomst van het moderne internationaal recht*, in: *De 'Belle Époque' van het Belgisch recht (1870-1914)*, edited by B. Debaenst, Brugge 2016.

144 E.g. T. Tissier, *Traité théorique et pratique des dons et legs aux établissements publics ou d'utilité publique*, Paris 1896, p. 461; L. Challandes, *Das völkerrechtliche Rechtsverhältnis: ein Beitrag zur Konstruktion des Völkerrechts*, *Archiv für öffentliches Rechts*, 16 (1901), p. 587-88; N. Karadgé-Iskrow, *La personne juridique publique*, *Revue du droit public et de la science politique*, 51 (1934), p. 406-441.

145 Young, *Foreign companies (supra, n. 19)*, p. 313.

perspective of public international law. Why should recognition of the state's international legal personality imply anything at all about its civil capacity, which is ordinarily granted by a different authority and for different reasons? It is true, as Rabel observed, that foreign states today enjoy full capacity without any special grant. But so do other foreign domestic corporations on the liberal system of recognition. The common practice of recognizing the legal personality of foreign states can be fully explained as the consequence of the general endorsement of the liberal doctrine that calls for the application of the 'personal law' of foreign domestic corporations to determine their status and capacity: foreign states are civil legal persons, not by virtue of their international legal personality, but because and insofar as they are civil legal persons in the domestic law of their own making. The requirement of a special grant or royal authorization is a relic from a time when the restrictive doctrine recognition, championed by Laurent, could still count on common support. One might therefore wonder whether Laurent's initial hesitation to acknowledge the necessary civil capacity of foreign states, for reasons he would later dismiss as excessively subtle, should be vindicated as reflective of a progressive appreciation of the independence of public international and domestic civil law in these matters. That he subsequently acquiesced to the general consensus may have had more to do with the fervour with which this consensus was sustained by his contemporaries – including by the Belgian and French Cours de cassation – than with the strength of the arguments that supported it. Whatever one concludes, however, one ought not to dismiss but welcome the subtlety of his original reasoning and that of the authors, including Pierantoni and Moreau, who followed in his footsteps.