

F

1785

.U54

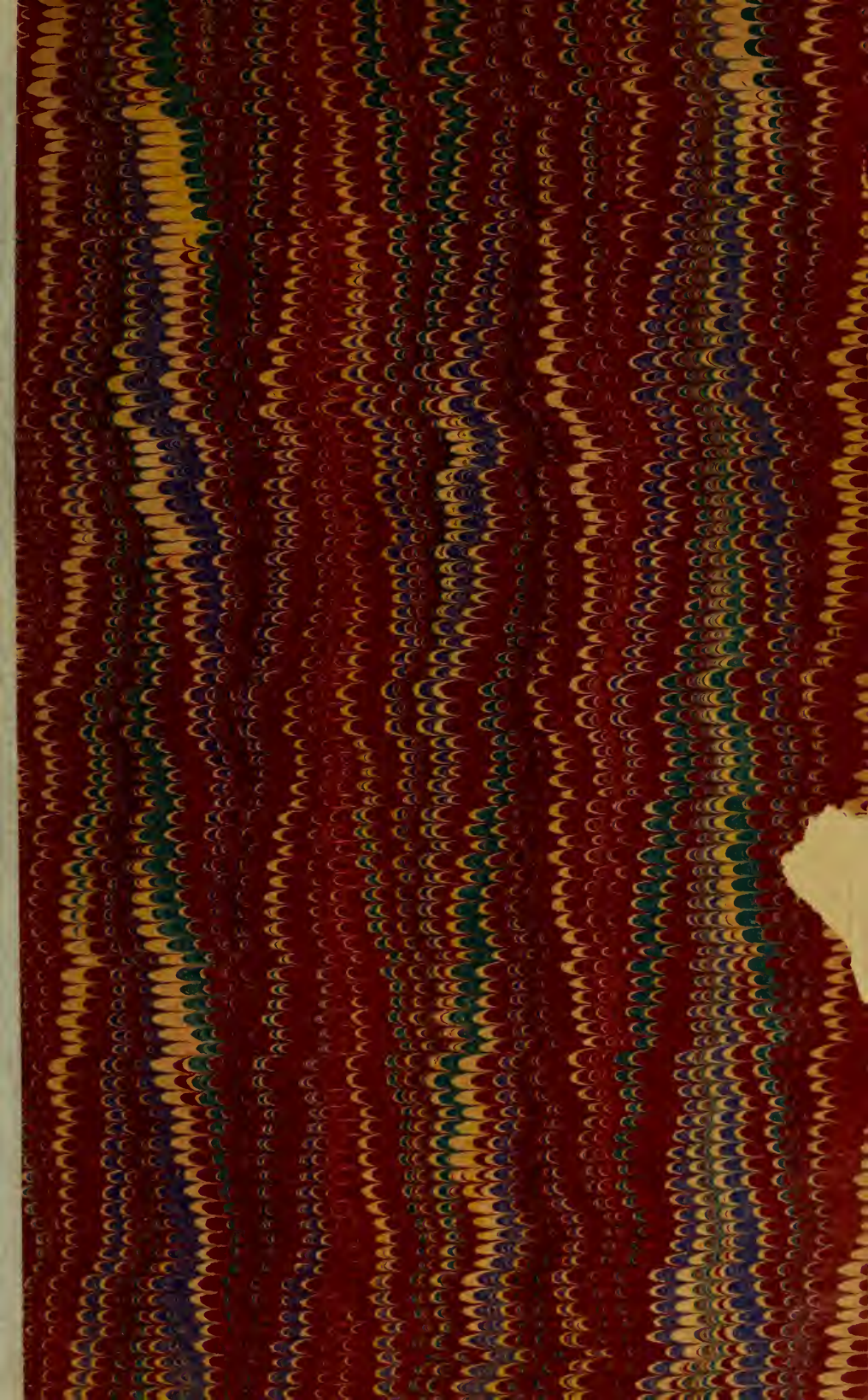


LIBRARY OF CONGRESS.

Chap. F1735

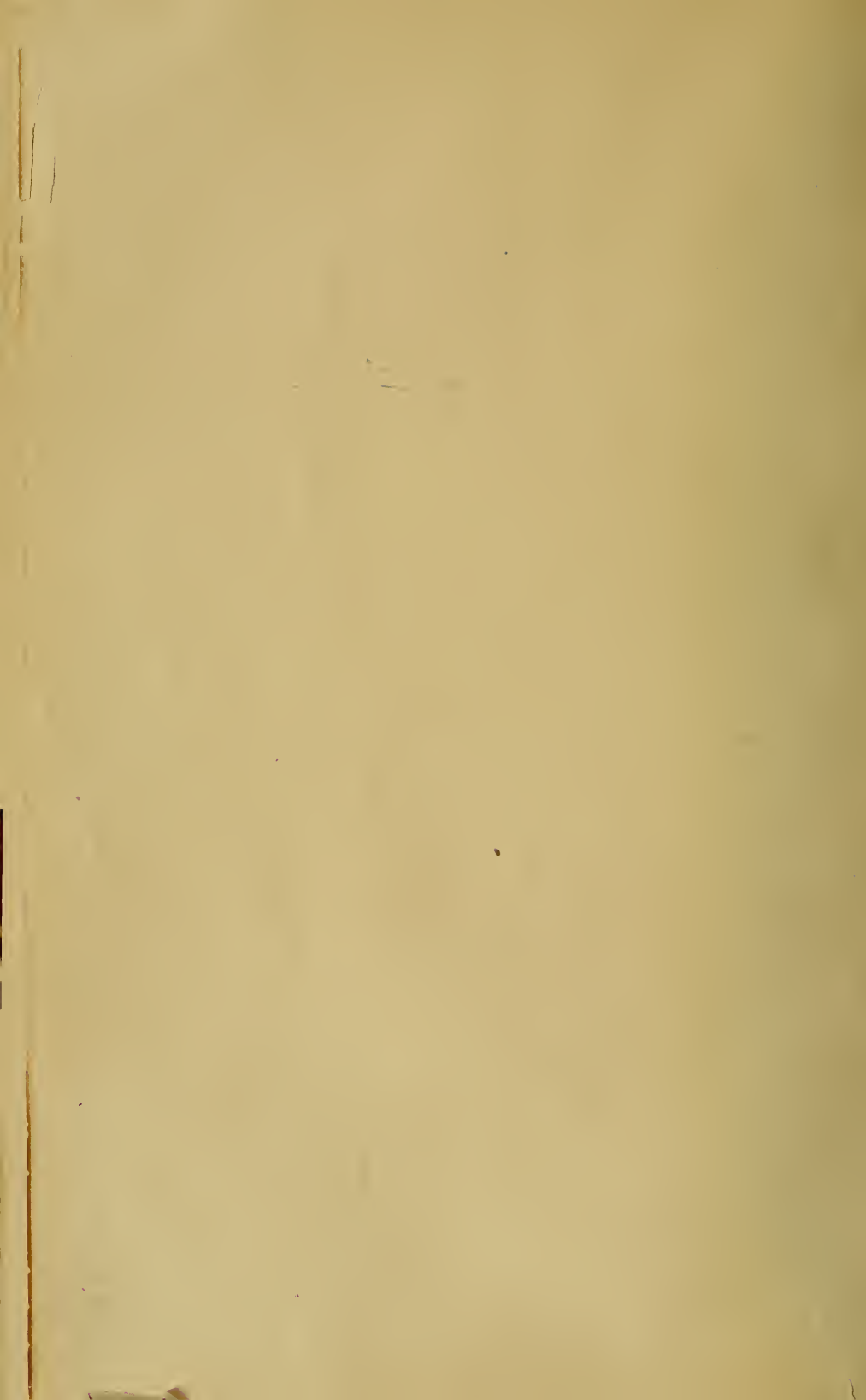
Shelf V54

UNITED STATES OF AMERICA.









CUBA.



JUNE 14, 1870—Ordered to be printed.

Mr. BANKS, from the Committee on Foreign Affairs, made the following

REPORT:

The Committee on Foreign Affairs, to which was referred the petition of H. G. Eastman and one hundred and fifty-four other citizens of Poughkeepsie, New York, presented by Hon. Mr. Ketcham, December 7, 1869; the petition of citizens of Maryland, presented by Hon. Mr. Sicann, December 9, 1869; the petition of citizens of Pennsylvania, presented by Hon. Mr. Cessna, December 13, 1869; the petition of A. Oakey Hall, mayor of New York City, and others, presented December 13, 1869; petition of citizens of Philadelphia, presented by Hon. Mr. Randall, December 20, 1869; petition of citizens of Scranton, Pennsylvania, presented by Hon. Mr. Woodward, December 20, 1869; petition of citizens of Hancock County, Illinois, presented by Mr. Hawley, January 12, 1870; petition of citizens of Kentucky, presented by Hon. Mr. Knott, January 12, 1870; petition of S. S. Hall, P. Preston, and sixty-eight others, presented by Hon. Mr. Logan, January 26, 1870; petition of sixty-four citizens of Illinois, presented by Hon. Mr. Farnsworth, February 11, 1870; petition of sundry citizens of Tennessee, presented by Hon. Mr. Maynard, February 14, 1870; petition of forty-one hundred and thirteen citizens of Pennsylvania, presented by Hon. Mr. Kelley, February 19, 1870, and many others, amounting to 72,384 names, severally praying for the recognition of belligerent rights on the part of the Cubans, or the acknowledgment of the independence of Cuba; and also a resolution of inquiry relative to recognizing the belligerent rights of the Cubans, presented by Hon. Mr. Logan; a joint resolution in relation to the contest between the people of Cuba and the government of Spain, presented by Hon. Mr. Banks, February 16, 1870; a bill to amend the act entitled "An act in addition to the act for the punishment of certain crimes against the United States, and to repeal the acts therein mentioned," presented by Hon. Mr. Hamilton, February 23, 1870; a bill making it a misdemeanor to fit out or equip ships of war, or to sell or furnish arms or munitions of war, with intent that they shall be employed in the service of any foreign prince or state to commit hostilities against the people of any province, district, or colony who are in a state of armed insurrection against such foreign prince or state, and providing for the forfeiture of such ship or vessel, a resolution of the senate of Maryland relative to the revolution in Cuba; petitions and resolutions of lodges of Masons of Flora, Chicago, Springfield, New Boston, Minonk, Jerseyville, Nauroo, Chester, Washburn, and Deleran, in the State of Illinois, in relation to the murder of citizens and Masons in Cuba, presented by Hon. Mr. Logan, April 21, 1870; and joint resolution to authorize the President of the United States to submit propositions to the Spanish government for a settlement of the difficulties in the

F 1735
754

island of Cuba by arbitration or otherwise, presented by Hon. Mr. Prosser, June 6, 1870, have considered the several propositions referred to the committee, and, after mature deliberation thereupon, report, for the approval of the House, the following—

JOINT RESOLUTION in relation to the contest between the people of Cuba and the government of Spain.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the United States be, and hereby is, authorized and instructed to declare and maintain a strictly impartial neutrality on the part of the government of the United States in the contest now existing between the people of Cuba and the government of the Kingdom of Spain.

SEC. 2. *And be it further resolved,* That all provisions of the statute approved twentieth of April, eighteen hundred and eighteen, entitled "An act in addition to the act for the punishment of certain crimes against the United States, and to repeal the acts therein mentioned," shall be construed to apply equally to each of the parties in the existing contest between the people of Cuba and the government of Spain.

SEC. 3. *And be it further resolved,* That the President is hereby authorized and requested to remonstrate against the barbarous manner in which the war in Cuba has been conducted, and, if he shall deem it expedient, to solicit the co-operation of other governments in such measures as he may deem necessary to secure from both contending parties an observance of the laws of war recognized by all civilized nations.

The object of these resolutions is—

- ✓ 1. The recognition of an existing armed contest for liberty in Cuba.
2. The neutrality of the United States in that contest.
3. To place Cubans upon an equal footing with Spaniards in regard to intercourse and trade with the United States.
4. To interpose the protest of the United States against the barbarous manner in which the war has been conducted.

It is a misconception of fact to assume that by this action we grant belligerent rights to the Cubans. This government has no power to create, confer, or define the rights of belligerents. That can be done by the general consent of civilized governments only. They are defined by the law of nations. We are bound to observe them as the rule of the Christian world. The Cubans have an inalienable right to fight against oppression and for liberty. It does not depend upon the consent of governments or men. It is our duty to recognize the fact of the contest and maintain our neutrality. The administration has already informed the government of Spain that the law of nations would justify our intervention in the contest in the interest of humanity; but intervention is the policy of personal, not of republican, governments. Impartial neutrality is our duty. It would be criminal for us to strengthen the hand of the oppressor. If we cannot espouse the cause of liberty, we ought at least to stand neutral. Without a recognition of the contest, neutrality is impossible. When we recognize its existence and declare our neutrality, the law of nations, the enlightened code of the civilized world, defines the rights and duties of neutral nations, and applies to the contestants the law of belligerents. This is the action recommended. It is in the interest of peace. It localizes the war, restrains the power of the conqueror, protects the lives of the vanquished, shields non-combatants from the penalties of war, extends the authority of neutrals, and substitutes for the rapine and murder of barbarous ages the restraints which are now everywhere enforced by Christian nations. We believe this recognition to be consistent with our obligations to Spain, with the law of nations, the interests of humanity, the law of justice, and to be demanded by every consideration of private and public duty.

The recognition of existing war in Cuba by the United States can

11-25788

give no just cause of offense to Spain. The Spanish government recognized the rebellion against the United States sixty-five days after the first shot was fired against Fort Sumter, and before a single life had been sacrificed by the armed forces of the contesting parties. The United States made no protest against the Spanish proclamation, which several times described the rebels as "belligerents," but commended it as a "friendly action."

Mexico, Chili, and Colombia have already recognized the Cubans as entitled to the rights of belligerents under the laws of war, without protest on the part of Spain. Peru has recognized Cuba as an independent state; yet Spain, so far from considering this action as cause of war, discontinued the war which she had long waged against Peru, claiming, even against the protest of Peru, that "the war with that power was ended," and that Spain could not "be induced to recommence it." (Ex. Doc. 160, page 51.)

It is not to be assumed that the United States, which suffers from the contest in Cuba more than any other nation, can be deprived of rights which every other American state is at liberty to exercise, not only without disturbing its peace, but without protest or complaint on the part of Spain.

It is not the province of this report to speculate upon the probable result of the contest in Cuba; but, after a careful survey of the situation, it will not be found to be more desperate or doubtful, in the view of its enemies, than the American Revolution, was thought to be by the best and firmest of its friends, Edmund Burke, nearly two years after the Declaration of Independence, when we had received, with two exceptions, the friendly recognition of every European government.

"The affairs of America," said Mr. Burke, "seem to be drawing to a crisis. The Howes are at this time in possession of, or able to awe, the whole middle coast of America, from Delaware to the western boundary of Massachusetts Bay. The naval barrier on the side of Canada is broken. A great tract is open for the supply of the troops. The river Hudson opens a way into the heart of the provinces, and nothing can, in all probability, prevent an early and offensive campaign. What the Americans have done is, in their circumstances, truly astonishing; it is, indeed, infinitely more than I expected from them. But, having done so much for some short time, I began to entertain an opinion that they might do more. It is now, however, evident that they cannot look standing armies in the face. They are inferior in everything, even in numbers. There seem by the best accounts not to be above ten or twelve thousand men at most in their grand army. The rest are militia, and not wonderfully well composed or disciplined. They decline a general engagement; prudently enough, if their object had been to make the war attend upon a treaty of good terms of subjection; but, when they look further, this will not do. An army that is obliged at all times and in all situations to decline an engagement may delay their ruin, but can never defend their country." (*Burke's Works*, vol. 5, p. 125.)

The following statement was prepared in February by the direction of the Committee on Foreign Affairs, and is now presented to the House in support of the resolutions which have been reported:

ORIGIN OF THE CONTEST.*

The present struggle for independence in Cuba originated exclusively with the Cubans, and in no manner, directly or indirectly, from the intervention of the people or governments of foreign states. Upon receiving telegraphic intelligence of the revolution of the 29th September, 1868, in Spain, they sought, by a formal adhesion to the new government of the mother country, to obtain an extension of their political rights. To prevent an appeal to arms on the part of those distant from the capital

* The references are to the pages of the correspondence transmitted to the House by the President, March, 1870, Ex. Doc. No. 160, except where other authorities are specified.

still loyal to Spain, a large number of influential and wealthy Cubans endeavored to obtain from General Lersundi an assurance that the Cubans were not to be, as in former revolutions, deprived of the privileges which the new government was expected to confer upon the Spanish nation. Their appeal, made to avoid bloodshed, was insolently repelled, and all expectation that Cubans would participate in the advantages of the revolution was denied them. They asked the privilege of popular meetings for the discussion of public questions and the measures best calculated to secure to the Cuban people the benefits of the advanced political creed which had been proclaimed by the revolutionary government of Spain, but the Captain General decided that such meetings were improper. "No convictions," he said, "were gained by debate, and sometimes the sacrifice of a few lives would save greater and more painful losses." (Doc. 160, p. 173.) His action received the approval of the Spanish ministry, and the war ensued. It is of such events that revolutions are born, and from such seed sprung the present contest for liberty in Cuba.

The people rose under Cespedes, at Yara, in October, 1868. A convention, of which Cespedes was president, assembled at Guaimaro the 10th of April, 1869. A constitution was adopted and officers of government elected. The island was divided into four states, Oriente, Camaguay, Las Villas, and Occidente. Three of them, which cover three-quarters of the territory, and contain a million of people, or two-thirds of the population, are now mainly under the control of the Cubans. Each state has a civil government, and is subdivided into districts, prefectships, and sub-prefectships, with officers chosen by the people.

The government thus improvised was not without legitimate popular foundation. Its elective constituencies were based upon long-existing, benevolent, secret associations, which naturally attracted and faithfully represented that portion of the people who had been excluded from favor and power by the Spanish authorities. Such imperfect organizations often represent popular opinion better than the ordinary elections of established political societies. It is this fact, perhaps, which recently led Captain General De Rodas to bring those still remaining in Cuba under the harsh edicts of his relentless administration.

In these states there are civil governments, tribunals of justice, churches, public journals, schools, post offices, institutions for the poor, and local administrations as permanent as can exist in time of revolution. With military passes, the people move through the country with safety. They begin to manufacture arms and munitions of war. Their industry is generally uninterrupted. They estimate the surplus industrial products of the last twenty-one months in these three independent states at ten or twelve million dollars.

They do not fortify and defend the towns, because their possession would be useless, and their defense a senseless waste of the lives and property of their own people. The towns are without value to the Spaniards, except in name. With a few exceptions, the cities are near the coast; and, upon an island whose average breadth is less than sixty-five miles, the Spaniards can easily concentrate their whole force, by the aid of the navy, upon any fortified place. Such a war would be insanity for the Cubans. That they avoid it is to them an honor and a guarantee of success. The Cubans possess the country and represent the people. The strength of the Spaniards is in their undisputed control of the seas adjacent to the island, by means of which, with the aid of the United States, they occupy, without opposition from the Cubans, several of the principal towns of the interior.

POPULATION.

The population of Cuba, according to the latest Spanish authorities, is 1,230,000, which is divided as follows :

WHITE RACE.—Creoles born in the island.....	550,000
Spaniards born in Europe.....	75,000
Floating population.....	10,000
RED RACE.—Natives of the island and Asiatics.....	15,000
BLACK RACE.—Free mulattoes.....	120,000
Free blacks.....	88,000
Slaves, (mulattoes and negroes).....	372,000
Total.....	<u>1,230,000</u>

The number of slaves stated is far below the actual truth. Their interest in dwarfing it is manifest. The number of blacks brought from Africa since the international treaty against the slave trade in 1817 exceeds 600,000. The British consul at Havana reported to the British Parliament that the importation for 1860 exceeded 26,000 slaves. The actual population of Cuba, upon the estimate of the most intelligent of its people, exceeds 1,600,000 souls, of whom between 600,000 and 700,000 are slaves.* And of this population a million and a half, including nearly the whole of the Cuban people, are in sympathy with the contest for independence.

THE EFFECT OF THE REVOLUTION UPON THE INSTITUTION OF SLAVERY.

The Cuban constitution declares that "all inhabitants of the island are entirely free." An assembly of the people had previously proclaimed: "Slavery is abolished." The declaration of independence of October, 1868, expressed their desire for universal emancipation. The American consul general at Havana appears to have made unsuccessful search for some declaration against emancipation, for he says in his dispatch to the Secretary of State, 16th of September, 1869 :

It does not appear to me to be likely that any other copies than that I now send of the constitution, and those sent by Mr. La Reintre and Mr. Hall, of the proclamations issued, can have been published here that are differently worded with reference to slavery; for these, in the manner in which they have been procured, appear to have been designed for circulation on the island rather than especially to be sent abroad. (Page 142.)

There is no probability of the immediate abolition of slavery in Cuba by the Spanish government. The American consul general in Cuba says he does not find any expression of belief in official quarters that it would be practicable; and he does not think Spain designs to treat the subject in that way. (Pages 148 and 149.) The American minister at Madrid says the Spanish minister of state informed him that in this Cuban conflict the liberal leaders of Spain "stood before the world as opposed to self-government, and resisting the abolition of slavery." (Page 119.)

The Spanish colonial minister read a plan of government for ^{Puerto} Rico to the Cortes, November 24, 1869, after the dissolution by public decree of two commissions for reforms in that island, in consequence of disagreement upon the subject of slavery, (pp. 60 and 161,) which declares that "so long as slavery exists, all public discussion with regard to it is prohibited." (Page 162.)

The American minister in a dispatch, 25th September, 1869, says a

* Revue des Deux Mondes, 15th November, 1869, p. 433.

decree will soon be issued "initiating" the abolition of slavery by giving freedom to all negroes born after the date of this decree. But even that is not yet issued. (Page 145.)

The colonial minister has since declared to the Cortes that "the government would not bring forward any measure of reform for Cuba until the last hostile band was dispersed, and the insurgents had lost all hope." (Page 161.) General Prim said to General Sickles, 12th of August, that no human power could obtain from the Spanish people the most insignificant concession while the rebellion maintained its footing.

Señor Bercerra, colonial minister, in proposing a commission for reforms in Porto Rico, speaks of the discretion with which liberty should be accorded to persons whom it had been considered a crime to call human beings, and for whom labor had been a permanent sign of servitude; and that such changes must receive serious and conscientious study.

The more recent declarations made to the Cortes upon the subject of slavery recognize its existence for an indefinite period, and if they should be approved, which is improbable, would be accompanied by a corresponding extension of the slave trade.

There is, therefore, no just ground for anticipating its abolition by the action of Spain until the Cubans are destroyed, and then only upon a plan which would perpetuate slavery and the slave trade for three generations. The importation of slaves would continue long after the birth of the first free child, whose advent is to be postponed until the surrender of the Cubans. And this is the plan of emancipation proposed by the liberal leaders of Spain.

The American consul at Matanzas, in a dispatch to the Secretary of State, November 18, 1869, says that the Cubans claim that the African slave trade will only definitely cease with the unconditional abolition of slavery in the island. (Hall to Seward, p. 71.) Of a slave population numbering six or seven hundred thousand, two hundred thousand speak the languages of the tribes of Africa.

The government can do nothing in the way of enfranchisement for Cuba, said Mr. Layard to Mr. Sickles, December 29, 1869, while the rebellion is flagrant, without alienating the "Spanish party" in the island. The "Spanish party" is described by Mr. Sickles as a portion of the slaveholders, who are the most influential partisans of the home government, and the persons employed in the colonial administration. (Page 67.) Emancipation of slaves cannot be separated from other questions now paramount, said General Prim to the American minister. (Page 26.)

The maintenance of slavery seems, therefore, to be one of the chief motives of "the Spanish party" for resisting the independence of the island. Mr. Sickles says, in a dispatch, December 29, 1869, that if slavery is abolished in Porto Rico, the Spanish party will have fewer motives to resist the independence of Cuba; for with slavery abolished in Porto Rico, there would be little hope of perpetuating it in Cuba. (Page 67.) The Cubans, on the contrary, seek their own liberty by giving liberty to the slave. "They believe," says Mr. Hall, in a dispatch to Mr. Seward, November 18, 1869, "that while slavery exists there will be no government established in Cuba in which they can have a voice," (p. 71;) and the judgment of Spaniards and natives in Cuba is confirmed by that of the Spanish provisional government. "The abolition of slavery," said General Prim to Mr. Sickles, August 21, 1869, "will immediately follow the emancipation of the island." (Page 30.)

The principles involved in this struggle, therefore, are manifest. The people of Cuba fight for—

- Independence of Spain;
- The right of self-government ;
- Religious liberty;
- The abolition of slavery ;
- Universal suffrage ;
- The emancipation of industry and trade ;
- The freedom of speech and the press ;
- The rights of assembly and petition ;
- For general education; and
- “All other inalienable rights of the people.”

They fight for the termination of European governments on this continent. They fight against Spanish tyranny; against monarchical, aristocratic and personal government; against dignities and titles; against the corrupt duplication of offices; against slavery and the slave trade; and against the government at Madrid, which, to use the language of General Prim, “in this contest stands before the world opposed to self-government, and resisting the abolition of slavery.” It is to aid the Spanish cause that Spain appeals to us, and it is against her policy, revolting to the spirit of the age and the theory and practice of the American government from its foundation, that we protest. The liberal sentiment of the civilized world upon this subject is expressed by Mr. Laboulaye in his introduction to Bluntschli’s Code of International Law. “Spain cannot be permitted,” he says, “to invade Africa with war and pillage, to the injury of the whole world, in order that she may steal some unhappy blacks and send them to die in Cuba. She ought not to be allowed, in pursuit of her abject interests, to disregard the rights of the whole human race.” (Bluntschli’s Code of International Law, introduction, p. 14.)

THE SPANISH WAR FORCES IN CUBA.

In October, 1868, there were 19,760 Spanish soldiers in Cuba. General Prim stated to the Spanish Cortes, 30th November, 1869, that Spain had sent 20,966 troops of the regular army, 2,600 marines, 1,371 recruits for existing regiments, and 9,563 volunteers—a total of 34,500 men, to re-enforce the army and navy of Spain. The American consul at Havana reports to this government, June 4, 1869, that volunteers have been organized from the Spanish residents in Cuba, numbering about 30,000.

There were, in October, 1868, 14 men-of-war in Cuban waters, mounting 128 guns and manned by 15,000 men. This sea force has been strengthened, according to the declaration of General Prim, by 2 iron-clads, 4 frigates, 8 war steamers of large tonnage, 4 war brigs, 14 war ships, manned by 15,000 sailors; and 30 gunboats, mounting one 100-pound Parrott gun each, which were built and manned in the United States. The Spanish forces employed in Cuba since October, 1868, number from 90,000 to 100,000 men, of all arms. The Spanish authorities estimate their force at 107,400 men.

Vast quantities of war stores have been transported from Spain and from New York to Cuba; and contracts are said to have been made at New York for the further delivery of munitions of war to the amount of \$700,000.

General Prim asked the attention of the Cortes to the significant movement of this immense mass of men and munitions of war, which

would have tested, he said, the strength of any government, however peaceful or powerful.

CUBAN FORCES.

The Cubans had at Yara, October 11, 1868, 147 men; 4,000 the 12th of October; 9,700 in November, and 12,000 in December. They have now 10,000 well-armed men. There are 60,000 enrolled and drilled, but without arms. They claim that with a supply of arms they can put into the field 100,000 or 200,000 fighting men—citizens, farmers, and emancipated blacks—men of the country fighting for its liberties.

MILITARY OPERATIONS.

These hostile forces have not forgotten the objects for which they were organized. From the declaration of Cuban independence at Yara to this hour there has not been a week, scarcely a day, which has not been marked in the calendar of war by fierce and bloody contests. No revolution presents a more constant and determined struggle. Although the Cubans were undisciplined and unaccustomed to the use of arms, of which in the beginning they had few or none, and their enemy was composed of the best troops of the army and navy of Spain, whose places in the military posts of the island had been supplied by the resident Spaniards organized as volunteers, the Cubans nevertheless have been ready to meet their foes in skirmish, combat, or battle, and have shown themselves as brave in attack as defense. A record of two hundred skirmishes, combats, engagements, and battles, occurring from the 11th of October, 1868, to the defeat of Puello and Goyeneche, which terminated the campaign of December, 1869, and January, 1870, give an honorable distinction to the struggle of the Cubans for independence that would in nowise discredit a people long accustomed to self-government or trained to the use of arms.

It is unnecessary, for the purposes we have in view, to speculate upon the advantages gained by Spaniards or Cubans in these constantly-repeated hostile encounters. The record is presented as indisputable proof of the long-continued existence of civil war in Cuba; but we recall the incidents of the campaign of the past winter, in which, after exhaustive preparations by the Spanish government and the most confident assurances of the speedy termination of the war, her best generals, Puello and Goyeneche, in a concerted campaign under Valmaseda, were both defeated, the former with the loss of thirteen hundred out of twenty-seven hundred men, as evidence of the spirit and capacity of the Cubans for successful war. The Spanish campaign in Cuba has thus far failed, writes Mr. Sickles from Madrid to the Secretary of State. "Their great reliance is now on the gunboats from the United States." (Page 66.)

WHAT HAS BEEN THE RESULT?

These conflicts have had various results, the exact truth of which cannot be ascertained, nor is it necessary for our purpose—which is to consider the present condition of the island as to peace or war. The official reports of the Spanish government state that 16,980 Cubans have been killed in action, 9,113 wounded, 2,092 prisoners captured, and that 16,500 have surrendered and received pardon, making a total of 44,685 men lost to the Cuban cause. These statements are doubtless greatly exaggerated.

An official report of the Captain General states that the Spanish army lost 14,000 men in 1869 by disease and battle. (Page 169.)

Owing to imperfect communications, the Cubans have reported their principal actions only. In the early part of the war, the people rallied for a fight, and separated when it was over, leaving no means of estimating the losses they might have sustained. It is not possible, therefore, to give an exact estimate of their loss in the numerous conflicts in which they have been engaged; but it is not doubted that it has been very great.

Such warlike organizations, preparations, conflicts, losses of men, and destruction of property are wholly inconsistent with the idea of "a mere civil commotion," as it has been regarded by our government, or "a domestic disturbance," as it has been represented by Spain. The facts, taken by themselves, and still more when their inevitable consequences are considered, are absolute proofs of protracted, barbarous, and bloody war.

IT IS REGARDED AS WAR BY SPAIN AND THE UNITED STATES,
AND IS SO INTENDED BY CUBA.

The documents transmitted to the House of Representatives recognize, on the part of the Spanish, American, and Cuban governments, a condition of war. The Secretary of State says, in a letter to the Spanish minister, April 17, 1869, that a portion of the people of Cuba have been in arms against the government of Spain for more than six months. (Page 80.)

The proclamation of the Captain General, dated July 8, 1869, declares that the war of insurrection against Spain demands speedy and exemplary punishment, and decrees the penalty of death upon those who may be captured in arms.

A proclamation from the Cuban secretary of state, May 4, 1869, published by the Spaniards, declares that "from this time forward all liberties are established in their widest sense, subject, however, to the state of war in which the public now is." (Page 65.)

The Spanish minister of state says, in reply to the American minister at Madrid, 11th of October, 1869, that if they have not realized their desire to mitigate the horrors of war, it is owing to the conduct of their enemies, who have so much contributed to prolong the insurrection; but that mercy and humanity have been generally recommended in the conduct of the war.

The American consul general at Havana informs the Secretary of State, June 4, 1869, that the Spanish residents, dissatisfied with the conduct of the war, are inclined to take the management of affairs into their own hands. "They contribute," he says, "largely to the support of the war, by money and by service as volunteers, and desire to see the war ended." (Page 190.)

The American consul at Santiago de Cuba informs the Secretary of State, June 19, 1869, that the Spanish government applies the most rigorous and barbarous laws, which have made it a war of extermination, shocking to every civilized nation. (Page 98.)

Count Valmaseda issued a decree, April 4, 1869, which declares that there is no longer a place for neutrality; that those who were not for him were against him; and, that his soldiers might know how to distinguish them, they were called upon to observe the orders they themselves carried:

1. Every man, from the age of fifteen years upward, found away from

his habitation, who does not prove a justified motive therefor, will be shot.

2. Every habitation unoccupied will be burned by the troops.

3. Every habitation, from which does not float a white flag, as a signal that its occupants desire peace, will be reduced to ashes. (Page 83.)

The Secretary of State, May 19, is instructed by the President to protest, in the most forcible manner, against such a mode of warfare, and demands that persons having a right to claim the protection of the United States shall not be sacrificed or injured in the conduct of hostilities upon this basis. In a note to the American minister at Madrid, May 11, 1869, the Secretary of State protests against the "infamous proclamation" of Valmaseda, (p. 84;) and he is instructed, (10th of August, 1869,) solemnly to protest, in the name of the President, against carrying on the war in Cuba in this barbarous way. (Page 104.)

The American minister at Madrid reminded the Spanish minister of state that this government had before remonstrated against certain proclamations of the Captain General of Cuba, that threaten a mode of warfare at variance with the recognized customs of civilized nations; and he protests with all solemnity, in the name of the President of the United States, against the deplorable excesses which have thus far characterized the war in Cuba, and insists, in the name of humanity, while hostilities are prolonged, that the war shall be conducted in a manner more in accordance with the humane and Christian sentiment of the age. For nearly a year, he says, the insurgents have maintained themselves against all the forces which Spain and the Catalan volunteers have been able to put into the field against them. In the judgment of the President, in which the whole civilized world will coincide, the time has come, he says, when this struggle should be carried on in a more humane way. To shoot prisoners of war simply because they are taken with arms in their hands, is not in accordance with the custom of the Christian world. We have a right, on our part, to insist that Spain shall carry on this war hereafter in a manner more in accordance with the humane and Christian sentiments of the age. (Pages 105 and 106.)

General Prim, at another time, said his colleagues did not realize the difficulties of carrying on a war in America. (Mr. Sickles to Mr. Fish, 16th August, p. 25.) It is also known that Captain General Dulce sent two commissions, under flag of truce, to Céspedes, president and general-in-chief, to negotiate for a cessation of hostilities; which commission passed through the lines and held conference with him. (Page 170.)

IT IS CALLED "CIVIL WAR" BY SPAIN AND THE UNITED STATES.

The Spanish minister said to Mr. Sickles, 12th August, 1869, that "in face of civil war" it had been impossible to carry out the reforms proposed in Cuba. (Page 20.) The correspondence transmitted to the House states that the President, June 29, 1869, tendered the good offices of the United States to the government at Madrid, for the purpose of bringing to a close the "civil war" now raging in the Island of Cuba. (Page 15.)

The term "civil war," the Secretary of State says, was used advisedly, in recognition of a condition of the contest which could not much longer justify withholding the rights of belligerents from the revolutionary party. (Page 16.)

The Secretary of State, in a dispatch to the Spanish minister, October 13, 1869, says, that the "civil war" in Cuba has continued for a year;

battle after battle has been fought, thousands of lives have been sacrificed, and the result is still in suspense; and the minister is reminded of the frequency with which, in the interest of humanity, he has been obliged to remonstrate against the atrocities and cruelties which have attended the conflict in Cuba for the last year. The principle of neutrality has controlled the proceedings of the administration, he says, with regard to the war in Cuba; but he cannot admit the indefinite protraction of a conflict such as has existed for the past year in that island—a conflict marked with cruelties, destruction, and devastation, *without parallel in modern civilized warfare.* (Page 137.)

The American minister writes to Mr. Fish, September 19, 1869, that he has been assured by the president of the Cortes, that among the first subjects brought before that body will be the cruel and vindictive manner in which the war in Cuba is prosecuted. Captain General Concha also expressed to him his abhorrence of the treatment of prisoners of war and other captives in Cuba. (Page 139.)

He informs the Secretary of State that he had expressed the hope that the Spanish government had taken measures to prevent those barbarous and cruel executions that had hitherto marked the progress of the war; and that the sufferers in these outrages were not Cuban insurgents only, but Americans, and in many instances persons entirely innocent of any participation in the insurrection. He suggested to General Prim that the adoption of the system of cartel, and the treatment of prisoners according to the rules of ordinary warfare, would at once divest the war of its savage character. (Page 145.)

The Spanish colonial minister informed the Cortes, October 6, 1869, that the government would adopt necessary measures to cause the suppression of the insurrection in Cuba to proceed in accordance with the forms of "regular warfare." (Page 161.)

WHAT INTEREST HAVE THE UNITED STATES IN THIS STRUGGLE?

The immediate proximity of Cuba to the United States gives to these grave events an importance which cannot be fully appreciated by any other state, European or American. The Spanish government seeks here the re-enforcement of its navy; its war supplies; the repair of its war vessels; and, through the public journals, a defense for the harsh measures adopted to maintain its sovereignty. The Cubans appeal to our people for sympathy and support in their unequal struggle for liberty and independence. The Cuban question becomes, therefore, an American question, and the government of the United States is constantly compelled to interfere, in behalf of its citizens, against the unjust decrees of the authorities and people of Spain; and for the protection of the lives of innocent and unoffending Americans, as well as to excuse by argument the almost universal sympathy which is felt, and, in part, expressed, by the American people for the cause of liberty in Cuba. Mr. Martos said to Mr. Sickles that the welfare of Cuba "was more important to the United States than to the mother country." (Page 61.) We cannot recall all the cases in which the intervention of this government has been demanded for the protection of American citizens and American interests.

The consul general at Santiago de Cuba informs the Secretary of State, June 19, 1869, that a native of New Orleans and two naturalized American citizens, part of the expedition of the steamer *Perrit*, taken prisoners at Ramon, were publicly shot, without trial, at Santiago de Cuba. (Page 97.)

Speakman, a native of Pennsylvania, a perfectly innocent man, was cruelly murdered "after the formality of a trial," the Secretary of State says, "that amounted only to a farce." Many others have been executed under circumstances of equal barbarity. The brutal butchery of Greenwald, because he was thought to be an American, and the treatment his dead body received from the authorities at Havana, as well as the attempted assassination of other American citizens who were his companions, is too recent to require a detailed statement.

The consul general at Havana transmits to the Assistant Secretary of State, August 21, 1869, an account of the recent murder of prominent citizens of Santiago de Cuba with their friends and attendants—twenty in all—by order, it is stated, of a subordinate officer of the Spanish army, while being conveyed as political prisoners to the headquarters of Count Valmaseda, the commander-in-chief of the eastern department of the island. (Page 121.)

The officers of our government report that the treatment of the patriots by the Spaniards applies both to Cubans and foreigners; but it appears that their ferocity is chiefly felt by Americans.

Admiral Hoff, who was sent by the President to Cuba, with a vessel of war, to investigate the case of Speakman, reports that Great Britain's laws of citizenship had enabled her to obtain from Spain the entire revocation of the proclamation of the 24th March, 1869; which fact seemed to be known and observed by the Spaniards throughout the island, and gave British subjects greater consideration when captured or wrecked upon the Cuban coast. (Page 103.)

The Secretary of State instructs the American minister at Madrid to call the attention of the Spanish government to the report of Admiral Hoff, and to say that "we shall expect citizens of the United States to be treated with as much consideration, and to enjoy as broad rights, as the citizens of any other country." (Page 104.)

The President stated in his late annual message that a schooner of the United States had been arrested on the high seas by a Spanish frigate, and two passengers taken from it were carried as prisoners to Cuba. The government protested against the act; and the men were released. The Captain General of Cuba subsequently (July 7) issued a proclamation authorizing search of neutral vessels on the high seas. After remonstrance by the American government, the proclamation was modified by limiting the Spanish cruisers to the rights conferred by the treaty of 1795; and after further remonstrance this proclamation appears to have been withdrawn. (Message, 1869, p. 8.)

Captain General, Dulce, 24th March, 1869, issued a proclamation declaring that all vessels captured in Spanish waters, on the high seas, or near to the island, having on board men, arms, or effects that could in any manner be used to promote the insurrection, should be treated as pirates; and all such persons, without regard to their number, should be immediately executed.

The Secretary of State, April 3, 1869, informed the Spanish minister that the United States claimed the right of carrying to the enemies of Spain, whether Spanish subjects, or citizens of other countries, merchandise not contraband of war, and articles contraband of war subject to the right only of capture by Spain, and could not consent to the punishment of any American citizen for the exercise of this privilege, secured to him by the law of nations and by treaties. (Page 75.)

Captain General Cabalero de Rodas, upon this protest, issued a decree, July 7, in substitution for that of March 24, and three other decrees of prior date, substantially reaffirming their provisions, and

expressing the hope that it would be satisfactory to the government of the United States.

The Secretary of State informs the Spanish minister, July 16, that this decree (7th July) assumes powers and rights over the trade and commerce of other peoples inconsistent with a state of peace, and to which the United States can only be expected to allow their vessels to be subjected when Spain avows herself to be in a state of war, or shall be manifestly exercising the rights conceded only to belligerents in time of war, and the Spanish minister is informed that the continuance of this decree will be regarded by the United States as a recognition by Spain of a state of war with Cuba. And the Secretary of State desires to know whether the "insurrection which the United States have hitherto treated only as a civil commotion within the dominions of Spain, that did not give rise to what are understood as belligerent rights, on the part of either party to the conflict," is regarded by Spain as a state of war in which she claims the rights of a belligerent.

In consequence of this demand, General de Rodas modified the decree of the 7th of July, by the suppression of the sixth article only, relating to the search of neutral vessels on the high seas; but the provision that individuals suspected of being in the service of the insurrection who might be captured with arms, with the crews of their vessels, were to be treated as pirates, is still retained and enforced. (Pages 113 and 114.) The government had before protested against the general provisions of these decrees "in the interest of civilization and humanity." The suppression of the sixth article in nowise changed their barbarous character.

Captain General Rodas, on the 28th of September, 1869, issued another decree, which declares that if any person be found without a passport on board a vessel about to start from a Cuban port, he should be liable to a fine of \$100, and the master of the vessel to a fine of \$200.

The Secretary of State informs the American consul at Havana that the government of the United States cannot acquiesce in the application of this decree to citizens of the United States, especially to those who may be passengers on board vessels which merely touch at Havana on the way to some other port. The application of the decree to passengers on board the steamers which ply between New York and New Orleans, he says, would be particularly offensive; and he instructs the consul general, with firmness and with courtesy, to protest against the indiscriminate execution of that decree. (Page 154.)

This decree was modified 19th of November by merely limiting its application to passengers, whether or not Americans, embarking in the ports of the island. (Page 155.)

A proclamation of April 1, 1869, by Captain General Dulce, declares that all contracts for the sale of every description of property, without revision of government, are null and void; and that all individuals, merchants, brokers, presidents and directors of corporations violating this decree would be subject to punishment under the penal code of Spain.

The Secretary of State, 30th of April, demands a modification of this decree, so that it shall not be applicable to property of citizens of the United States; but no modification appears to have been accorded. (Pages 82 and 83.)

More recently the American steamer *Aspinwall* was seized by a Spanish war vessel, on the high seas, upon the suspicion that she had arms and ammunition for the insurgents, in direct violation of international law and treaty stipulation. She had no contraband goods on board, and was re-

leased after having been taken to Havana; but no reparation has yet been made in answer to the demands of this government for the wrong done to our commerce and the national flag.

Reference has been made to but few of the many harsh and cruel decrees issued by the government of Spain during the progress of the war, yet they are sufficient to show the character of the struggle, and the direct interest which the people of the United States, at home and abroad, have in the grave issues which are to be decided in Cuba. It is also to be remembered that, notwithstanding the constant protests of our government, these decrees stand substantially as they were issued; and that they are executed, not according to instructions of the government of Madrid, but in the ferocious spirit of the Catalan volunteers, without regard to the conclusions to which the Spanish and American governments may arrive.

The American consul general at Havana recently received from the British naval officers the assurance of their protection and the offer of a file of marines to protect him whenever it became necessary to seek his safety on board a British man-of-war. And, still later, the American vice-consul at Santiago de Cuba was called to account for dispatches sent to his government, and published by the order of Congress, by the unauthorized and irresponsible volunteers who govern Cuba; and, under the advice of the Spanish governor, who was unable to protect him, sought his safety from personal violence by taking refuge on board a French frigate, under the protection of French naval officers.

THE PROBABLE ACTION OF SPAIN IN CUBA.

Adhering strictly to the traditional policy of this government, it has been the wish of the people to avoid any participation in this contest; nevertheless, it should be said that their sympathy for the Cubans and their prayers for their success are well-nigh universal. They have cherished confident hopes that the necessities of the case and the justice of their cause would lead the Spanish nation to concede to the Cuban people the liberties they had, by revolution, secured for themselves. This, we are assured, has been the wish of some of the prominent leaders of the late revolution, and is still the hope of the liberal party and press of Spain, as it is of other European states.

The popular organ of the volunteers in Havana is the *Voz de Cuba*. That paper informed its readers, 20th September, 1869, that not alone the newspapers of the United States, the *London Times*, *La Patrie* of Paris, or the republican journals of Madrid urge the separation of Cuba from Spain, but that thoroughly Spanish and conservative publications of high standing, which exercise great influence over public opinion, now counsel Spain to the cession of the island; such as the *Diario de Barcelona*, which from its age, its influence, its moderation and practical good sense, is read with interest in all the Catalan provinces, and in foreign states, which lately made the following declaration: "In our judgment, no other resource remains to us but to open negotiations with the United States for the cession to them of our Antilles." (Mr. Plumb to Mr. Fish, 21st September, 1869, p. 144.)

The Cubans informed Captain General Dulce, the most liberal of the Spanish officers, early in 1869, that if he would concede the independence of the island, they would unite cordially with the Spaniards in its self-government. But separation from the mother country was re-

fused, and the Cubans, not having faith in the power of Spain to establish the reforms promised them, rejected its proposals. (Page 92.)

The colonial minister declared to the Cortes, October 6, 1869, their determination to sacrifice the last man, the last cent, and the last cartridge sooner than to suffer detriment in relation to the integrity of Spanish territory. (Page 161.)

By the project of reform for Porto Rico, read to the Cortes November 25, 1869, all discussions that tend to promulgate ideas touching a separation of the island from the mother country, or designed to impair the integrity of the Spanish territory, and all discussion in regard to slavery, so long as it shall continue to exist, is prohibited. (Page 162.)

The Spanish minister of state said to Mr. Sickles, October 8, 1869, that Spain did not and could not see in Cuba the sentiment and capacity of independence; and, therefore, if she should consent to a separation from that rich and ancient colony, she would not have the consolation of giving existence to a new nation, but the remorse of leaving a people of her own language and race to miserably perish and disappear. Spain could not admit that the majority of Cubans incline to separation from the mother country; but that a turbulent and blind minority, excited and aided by filibusters and pirates, aspire to overcome the general will of their countrymen; and this was the sole cause of the discord they deplored. (Page 156.) There is, therefore, no reasonable hope of permanent peace from the voluntary action of the Spanish ministry.

It is represented, on the other hand, that the entire Cuban people, without respect to age, rank, color, or condition, are for independence, urged thereto by a long-continued and unexampled oppression; that they are fully determined to sacrifice their lives rather than live under the tyranny of Spain; and that, should the war be prolonged, the dominion of Spain must cease, or the entire property of the island be destroyed.

The President has informed Congress that, in order to put a stop to bloodshed in Cuba, he had proposed the good offices of this government to bring the contest to a termination; but that the offer was withdrawn, because Spain would not agree to any basis *that he believed could be accepted by Cuba*. (Message, 1869, p. 8.)

It is apparent, therefore, that a contest so barbarous in itself, already so long in duration, and imperiling our national interests in so many ways, is not likely to be terminated by the voluntary act of Spain, by Cuba, or by the friendly intervention of the United States. Looking, therefore, to continued force alone for a solution of the war, it becomes us to inquire—

WHAT IS THE POWER OF SPAIN IN CUBA?

This pregnant question has already challenged the attention of the administration. The Assistant Secretary of State informed the consul general at Havana that they had been informed from Madrid that measures had already been taken to disarm the volunteers; that General de Rodas had engaged, at all hazards, to stop the scandalous execution of captives and other barbarous cruelties; but they received, at the same time, information from Cuba that Valmaseda, the atrocious perpetrator of the worst of the cruelties, had received promotion for his services from the government of Spain. The administration is also informed from Madrid that the government will declare the immediate abolition of slavery; while the general tenor of information from Cuba is the other way, and that it was of great importance that the government of

the United States should know how far the news from Madrid can be depended on. (Page 146.)

The American consul general at Havana, October 21, 1869, answers that inquiry. The disarmament of the volunteers, he says, whatever may be the desire of Spain, is, at present, impracticable; and there are many reasons for the belief that no time will arrive, while Cuba is connected with Spain, when such a measure will be practicable. The organization of volunteers appears now to be a permanent power in the island. It was owing to its presence in the early part of 1869, and after, that the island had been saved to the mother country. It now numbers upward of forty thousand men, well organized, armed, and equipped, and is considerably accustomed to the exercise of arms. It holds all the ports and towns. The re-enforcements sent from Spain were made, in great part, by loans and contributions of the volunteers. He does not doubt the good intentions of General de Rodas; but the circumstances with which he has to deal are stronger than his power to overcome them. (Pages 147 and 148.) The cessation of hostilities, he says, looking to any other end than the submission of the insurgents, would be scouted. And as to the immediate abolition of slavery, he does not find any expression of belief in official quarters that it would be practicable. (Page 148.)

The consul at Matanzas informed this government, June 19, 1869, that the island was in complete anarchy. The Catalan volunteers do not allow Spanish rulers to administer justice. The governor of Matanzas informed him, when applied to for aid in the case of Speakman, that he was without power, and had been compelled to seek his own safety by appeasing the wrath of the volunteers, and that his commanding officer was then a fugitive on board a Spanish man-of-war. (Pages 97 and 98.)

Admiral Hoff, sent by the President to investigate the cases of Speakman and Wyeth, reported to the government that these American citizens were cruelly murdered, owing entirely to the weakness of the Spanish officials in yielding to the demands of the Catalan volunteers, and in misconstruing, or acting upon, the cruel decree of the 24th of March, 1869. In this view, the President concurred.

The American consul at Santiago de Cuba says he has been informed by the officers of the Spanish government that, owing to the active measures which he (the consul) had taken in behalf of his countrymen, and to prevent their making any declaration, it is their determination, in future, to shoot all American prisoners immediately on the spot. (Page 102.)

"While I am willing to admit," says the American consul at Matanzas, February 7, 1870, "that the Americans are as well protected as any other class of residents, still, in a state of affairs bordering on anarchy, there can be little safety or security of any kind." (Ex. Doc. 140, p. 2.)

The Secretary of State says to the American minister at Madrid, September 1, 1869, "Anarchy prevails over much of the island. Murders of American citizens are committed by volunteers, and confiscation of their property is attempted by Spanish authorities."

The American minister says to the Spanish minister of state, "The unprovoked injuries to American citizens become more and more frequent and fatal within the Spanish lines as the contest is prolonged." (Sickles to Bercerra, p. 34.)

"It is impracticable to ascertain the will of the Cubans by a vote," says the Secretary of State to the American minister at Madrid, August 16, 1869, "because of the disorganization of society; the terrorism that prevails, and the violence and insubordination of the volunteers." (Page 25.)

"Spain desires to terminate civil war," says Mr. Sickles to Mr. Fish, "and will agree to armistice, if necessary to peace; but the measure must

be left to the *discretion of the Captain General.*" (Page 41.) That is to say, it must be with the consent of the volunteers.

"It is notorious," says the American minister to Mr. Bercerra, "that these irregular troops have sometimes set at defiance the authority of their government, and the orders of their superior officers, when the measures of government have failed to satisfy their vindictive demands." (Sickles to Bercerra, p. 34, 3d September, 1869.)

The Secretary of State says to the American minister at Madrid, July 29, 1869, "We want to arrest the destruction of life and property, and to stop the outrages and annoyances to our citizens." (Page 31.) "The Spanish authorities in Cuba," he says again, July 29, "ARE IMPOTENT FOR PROTECTION OF THE LIVES OF OUR CITIZENS." (Page 18.)

THE VOLUNTEERS.

The Spanish volunteers, the authors of the atrocities of the war, who thus appear to be masters of the island, number forty thousand men. The Spanish troops are inferior in number, and generally fraternize with them. The volunteers are supported in their policy by national clubs and committees, representing Spaniards of wealth and influence, and to these it is now proposed to add a volunteer reserve corps, composed of persons not hitherto enrolled in military organizations. (Page 143.) Holding the balance of power, this force is absolute in Cuba. The policy of the government at Madrid must conform to its views. If the volunteers strike for independence, the authority of Spain will be destroyed. They compelled the resignation of Captain General Dulce, because he was too lenient in the conduct of the war. They boldly threaten the removal of General De Rodas if he fails to satisfy their demands. They secured the promotion of Valmaseda at the moment when our government was receiving assurances from Spain that the cruelties to which he owed his advancement should be suppressed. They disregard all laws and all authority which is not in accord with their sanguinary purposes. Few or none are natives of Cuba. They swarm from every part of Spain in search of wealth. None remain in the land they plunder, to live among the people they have wronged. Small fortunes generally satisfy their desires, but they often accumulate great wealth, according to their aspirations and capacity. They are unaccompanied by families, unrestrained by social ties, and represent the most adventurous classes of Spain.

A late distinguished diplomatic representative of this government, in a letter printed in the public journals of this country, over his own signature, describes the volunteers, "with some honorable exceptions, adventurers, of whom one-half at least are Spanish convicts and desperadoes." And he states further, "that every intelligent man with whom he conversed, Spaniards, volunteers, Cubans, foreigners and Americans, with a solitary exception, freely proclaimed the fact."*

They are often without religious culture or education, and of low moral character. Many attain wealth, without scruple, by the worst means. They monopolize the dignities, offices, and emoluments of the church. They control all commercial employments and all the advantages of trade. They usurp the patronage of every grocery, tavern, and office in the interior of the island. They occupy, to the last man, every appointment and post of civil or military administration. They are the protégés and protectors of tyranny, monopoly, slavery, and the slave trade, and implacable enemies of Cubans, Americans, and other foreigners who

* N. Y. Tribune, March 15, 1870, letter of General James Watson Webb.
H. Rep. 80—2.

are of necessity hostile to tyranny, monopoly, slavery, and the slave trade. They have little taste for mechanical science, and less for methodical industry. Engineers and mechanics are generally Cubans or foreigners. The Spaniards are advocates of license and enemies of law. The Cubans, and those who sympathize with them, are advocates of law and enemies of license. They are owners of land, but they share no government employment; none of the dignities, offices, or emoluments of the church; none of the advantages of trade or commerce; and none of the immunities which elsewhere attach to the cultivation of the soil. The culture of wheat, which grows luxuriantly, is restricted. Breadstuffs from the United States, and other products, are excluded or burdened with heavy duties for the benefit of Spanish producers.

The Spanish volunteers support themselves in Cuba, their families and friends in Spain, and amass large fortunes besides. Nothing attaches them to Cuba; nothing weans them from their native land. The most wealthy send back even the annual increase of their capital, and at the close of their American ventures they take everything to Spain, leaving nothing to the island they abandon but a numerous progeny of mixed blood, which is generally sold to slavery. And this has been the history of Spanish colonization in America for three centuries, and in Europe since colonies were recognized as an element of civilization.

Coming from among the most adventurous classes of Spain, the Catalan volunteers return to their native land laden with ill-gotten wealth, improved by an imperfect education picked up in an average residence of seven or eight years; and emboldened by unrestrained exercise of political power, they fight at home against liberty and equality, and for the supremacy of intolerance in religion, corruption in administration, monopoly in trade, tyranny in the state, and the perpetual servitude and slavery of the Spanish people. The power of Spain in Cuba is mainly in the hands of those men. Wanderers from Spain, commorant only in Cuba, indifferent to the interests of the island, and regardless of the rights of its people—no principle and no power imposes upon them restraint.

Our consular officers in Cuba are commercial agents only, without diplomatic powers or authority. We cannot of right insist upon the recognition of our political interests by the government of the island. Our diplomatic relations are with Spain, not with Cuba. Our inquiries and protests must be communicated to Madrid, reported to Cuba, returned to Spain, and transmitted again to the United States—a circuit of many thousand miles and wasting months of time—before either party can appreciate or comprehend the views of the other; and then the circuit is to be repeated, it may be, many times before a conclusion is reached, or action even recommended. And what is still worse, our success in gaining the favor of the Spanish government may cause the defeat of our rights in Cuba. The government of Spain is “impotent for protection of the lives of our citizens,” says the Secretary of State.

The moderation of the home government, and the sympathy of Americans for Cuba, which ought to modify their rapacity and cruelty, infuriates the volunteers. Who can wonder that Cubans revolt against such rulers, and fight against such injustice? How long are we required to shut our eyes to facts, which are patent to all the world, and endure indignities never before practiced upon any nation?

These grave events, covering a period of nearly two years, show an established condition of affairs, injuriously affecting in every way the rights, the interests, and the honor of the American government. That condition is described by Spanish officials and American representatives

as "anarchy." It is not war merely, but the protraction of hostilities by ferocious men, without the restraints of the laws of war or the authority of government. It is barbarous and bloody internecine war.

It is unnecessary to assume that this disregard of authority and decency is in accordance with the wishes of the present government of Spain, or that it makes professions of regard for the rights of the United States at Madrid which it does not intend to observe in Cuba. On the contrary, the character of its military forces in Cuba, the official declarations of the officers of the United States and of Spain, and the record of current events from the beginning of the war, prove conclusively that the government of Spain in Cuba is unable to conquer the people of Cuba, to suppress the rebellion, to enforce its authority, to secure the observance of its orders by the Spaniards even, to support its own officers, to protect the rights of foreign nations, or to punish crimes which the civilized world must condemn.

The character thus given to the volunteers is that of the organization to which they belong rather than of the individuals which compose it. Without doubt, the same men, attached to the island, identified with its interests, and recognizing themselves as a part of its people, subject to the same destiny, would become estimable citizens, contributing their share to the prosperity and honor of the country.

The existing condition of things is the result of the system of colonial despotism which has been maintained by Spain for hundreds of years in all the colonies which it has possessed. Her colonial policy has been more unjust to her subjects than any other system of colonial government that history records; and it is owing to this fact that every American colony except Cuba and Porto Rico has resisted its rule and overthrown its power; and these will soon be numbered with other colonies that have achieved independence of the Spanish Crown. Her rule has been alike destructive of the interests of her subjects and the peace of the home government. Disorder, anarchy, and revolution in Spain have kept pace with the tyranny which she has practiced upon her colonies. This is the natural result of her system of government and the distance which separates them from the mother country. The inevitable effect of such separation and such tyranny is well described by Mr. Burke in his remarks upon the abuse of power in remote colonies:

It is difficult for the most wise and upright government to correct the abuses of remote delegated power, productive of unmeasured wealth, and protected by the boldness and strength of the same ill-got riches. These abuses, full of their own wild, native vigor, will grow and flourish under mere neglect. But where the supreme authority, not content with winking at the rapacity of its inferior instruments, is so shameless and corrupt as openly to give bounties and premiums for disobedience to its laws; when it will not trust to the activity of avarice in the pursuit of its own gains; when it secures public robbery by all the careful jealousy and attention with which it ought to protect property from such violence; the commonwealth then is become totally perverted from its purposes—neither God nor man will long endure it. In that case there is an unnatural infection, a pestilential taint, fermenting in the constitution of society, which fever and convulsions of some kind or other must throw off; or in which the vital powers, worsted in an unequal struggle, are pushed back upon themselves, and, by a reversal of their whole functions, fester to gangrene, to death; and, instead of what was but just now the delight and boast of creation, there will be cast out, in the face of the sun, a bloated, putrid, noisome carcass, full of stench and poison, an offense, a horror—a lesson to the world.

WHAT IS THE DUTY OF THE UNITED STATES?

Clearly it is to recognize the actual condition of affairs, and adopt

such measures as are prescribed by the law of nations for the protection of our rights, until peaceful, permanent government can be established. It is no longer a "civil commotion," as it has been hitherto regarded by the United States; nor a mere "domestic question," as it is represented by the Spanish government. It is protracted and atrocious civil war.

A civil commotion is directed against individuals or against civil magistrates. It may reach the standard of sedition or insurrection in which a sovereign may be disobeyed; but it is still a state crime, to be suppressed and punished by state authority, without intervention and without affecting the rights of foreign governments. A civil war, on the contrary, is a contest of arms between a part of the citizens on one side, and the sovereign or those who obey him on the other; in regard to which the action of foreign governments may become absolutely necessary. "It is sufficient," Vattel says, "that the malcontents have some reason to take up arms, in order that the disturbance should be called *civil war*, and not *rebellion*." (Vattel, liv. 3, ch. 18, §§ 290-295.)

The people of Cuba present the best reasons for the contest they wage. It has every claim to the sympathy and support of the friends of liberty, equality, and justice. It is a race struggling for independence; an enslaved people contending for liberty; a nation fighting for national existence. The contest in which they are engaged has all the attributes of barbarous and bloody civil war, aggravated by the disorders and crimes of anarchy. Our first duty is to treat it as war, and, in accordance with the law of nations, to declare and maintain, in regard to the parties engaged therein, a strict and impartial neutrality.

"A *civil war*," Vattel says, "is when a party arises in a state which no longer obeys the sovereign, and is sufficiently strong to make head against him, or when, in a republic, the nation is divided into two opposite factions, and both sides take up arms."

"Civil war breaks the bonds of society and of the government; it gives rise in a nation to two independent parties, who acknowledge no common judge. They are in the position of two nations who engage in disputes, and, not being able to reconcile them, have recourse to arms. The common laws of war are, in civil wars, to be observed on both sides. The same reasons which make them obligatory between foreign states render them more necessary in the unhappy circumstances where two exasperated parties are destroying their common country." (Vattel, liv. 3, ch. 18, §§ 290-295.)

When a nation becomes divided into two parties absolutely independent, and no longer acknowledge a superior, the state is dissolved, and the war betwixt the two parties, in every respect, is the same as that of a public war between two different nations. The obligation of observing the common law of war is, therefore, absolutely indispensable to both parties, and the same which the law of nature obliges all nations to observe between state and state. (Vattel, *Droit des Gens.*, liv. 3, ch. 18, §§ 290-295.)

"When a part of a state takes up arms against the government, if it is sufficiently strong to resist its action, and to constitute two parties of equally balanced forces, the existence of civil war is thenceforward determined. If the conspirators against the government have not the means of assuming this position their movement does not pass beyond a rebellion. A true civil war breaks the bonds of society by dividing it in fact into two independent societies; it is for this consideration that we treat of it in international law; since each party forms, as it were, a separate nation, both should be regarded as subject to the laws of war. This subjection to the law of nations is the more necessary in civil wars,

since these, by nourishing more hatred and resentments than foreign wars, require more the corrective of the law of nations in order to moderate their ravages." (Riquelme, Elementos de Derecho Publico, cap. 14, tomo 1, p. 172.)

"When a faction is formed in a state, which takes up arms against the sovereign, in order to wrest from him the supreme power, or impose conditions on him; or when a republic is divided into two parties which mutually treat each other as enemies, this war is called civil war. Civil wars frequently commence by popular tumults, which in nowise concern foreign nations; but when one faction or party obtains dominion over an extensive territory, gives laws to it, establishes a government in it, administers justice, and, in a word, exercises acts of sovereignty—it is a person, in the law of nations; and however so much one of the two parties gives to the other the title of rebel or tyrant, the foreign powers which desire to maintain their neutrality ought to consider both as two states, independent as respects one another and other states, who recognize no judge of their differences." (Bello, Principios de Derecho International, cap. 10, p. 267.)

M. Bluntschli, whom Laboulaye places in the first rank of jurists and publicists, and styles "the illustrious professor of Heidelberg," in one of the most recent and learned of the works on international law, is more emphatic as to the duty of governments to recognize contending factions as belligerents.

In his code of international law, in defining the character of war and the principles of neutrality, he says: "War is an armed contest between different states upon a question of public right." They recognize the quality of belligerents in armed forces, who, not having been recognized by any state, already existing, as having the right to contend in arms, have secured to themselves a military organization, and combat in good faith—in the place of, and as, a state—for a principle of public right." (Bluntschli, p. 270, 271.)

"There is an exception," he continues, "to the rule that wars can take place only between States. When a political party seeks the realization of certain public objects, and organizes itself as a state, it becomes in a certain measure the state itself. The laws of humanity demand that the quality of belligerents should be accorded to that party; and its people should not be considered a mass of criminals. A party that is sufficiently strong to create a power analogous to that of a state, which offers, by its military organization, sufficient guarantees of order, and gives evidence by its acts of its intention to become a state, that party has a natural right to demand for its army the same treatment that is accorded to a state already in existence. The sacrifices of war are, in that way, diminished, not only for the new party, but for all its adversaries. If, on the contrary, the volunteers of the new party are pursued as criminals the contest becomes more savage; and neither of the adversaries will allow itself to be surpassed by the other in the barbarism of its acts or the cruelty of its reprisals. Under this head are ranged the expeditions undertaken by certain forces called *Corps Franc*, or free corps. When these corps are regularly organized and respect the laws of war, they ought to be considered as belligerents." (Bluntschli, p. 271.)

M. Phillimore, in his work on international law, which is of the highest authority, says: "There is no proposition of law upon which there exists a more universal agreement of all jurists than that the virtual and *de facto* recognition of a new state (recognizing the commercial flag and sanctioning the appointment of consuls to its ports) gives no just cause of

offense to the old state, inasmuch as it decides nothing concerning the asserted rights of the latter." He makes a distinction between the "virtual" recognition of a new state by admitting its commercial flag and the appointment of consuls, and the formal recognition by sending ambassadors and entering into treaties with the new state by foreign powers, which should not be done until after "a practical cessation of hostilities," though it does not demand a "perfect and undisturbed internal tranquillity" within its borders. This would, in fact, be an admission of the competency of the new powers to negotiate and contract engagements under the law of nations. (Phillimore's Int. Law, vol. 2, pp. 17-22.)

In case of revolution, Wheaton says the civil war does not necessarily extinguish the existence of the sovereign or parent state, but that "until the revolution is consummated, while the civil war involving a contest for the government continues, other states may remain indifferent spectators of the controversy, still continuing to treat the ancient government as sovereign, and the government *de facto* as a society entitled to the rights of war against its enemies, or may espouse the cause of the party which they believe to have justice on its side. In the first case, the foreign state fulfills *all its obligations* under the law of nations, and neither party has any right to complain, provided it maintains an impartial neutrality." (Part 1, ch. 2, § 6.)

And, again, he says: "It has already been stated that while the contest for the sovereignty continues and the civil war rages, other nations may remain passive, allowing to both contending parties all the rights which war gives to public enemies; or may acknowledge the independence of the new state, forming with it treaties of amity and commerce, or may join in alliance with one party against the other. *In the first case neither party has any right to complain*, so long as other nations maintain an impartial neutrality and abide the event of the contest." (Wheaton, part 1, ch. 2, § 10.)

Such are the views of modern jurists. In the late civil war in America, all the nations in Europe recognized and acted upon this doctrine. Belgium, France, the Netherlands, Portugal, Denmark, Prussia, Russia, Spain, and Great Britain issued proclamations declaring their neutrality, and setting forth regulations for the government of their subjects. Our government protested against the manner in which some of their declarations were made, and against the manner in which they were executed, but it never denied the right of any government to declare its neutrality in any contest.

The declarations of Great Britain and Spain were substantially alike. That of Great Britain was as follows:

BY THE QUEEN—A PROCLAMATION, VICTORIA R.

Whereas we are happily at peace with all sovereigns, powers, and states; and

Whereas hostilities have, unhappily, commenced between the government of the United States and certain States styling themselves the Confederate States of America; and

Whereas we, being at peace with the government of the United States, have declared our royal determination to *maintain a strict and impartial neutrality in the contest between the said contending parties*, we therefore have thought it fit, by the advice of our privy council, to issue this, our royal proclamation, &c. Dated May 13, 1861.

That of Spain was as follows:

PROCLAMATION BY THE QUEEN OF SPAIN.

Considering the relations which exist between Spain and the United States of America, and the expediency of not changing the reciprocal feelings of friendly understanding on account of the grave events which have happened in that republic, *I have resolved to maintain the strictest neutrality in the struggle engaged in between all the federal States of the Union and the Confederate States of the South*; and, in order to avoid the losses which our subjects might suffer, both in shipping and commerce, for want of definite rules to which their conduct might conform, in accordance with my council of ministers, I decree as follows: (And then the regulations which govern neutral nations are given as in the British proclamation.) Dated June 17, 1861.

We protested against the manner in which the British proclamation was issued, and the faithless manner in which it was executed; but we made no protest against that of Spain, whose declaration was identical with that of England, except that it repeated the word "belligerents," which was not used in the British proclamation. On the contrary, we accorded to the Spanish government our thanks for its prompt and friendly action.

Mr. Schurz, American minister at Madrid, writes to Mr. Seward, July 15, 1861, as follows: "Senor Calderon Collantes then asked me whether the declaration of neutrality on the part of Spain, in regard to our domestic troubles, was satisfactory to my government?" I replied "that, as to the declaration of neutrality on the part of Spain, I had received no expression of opinion from my government; and that I thought *it would be considered satisfactory.*"

Mr. Schurz writes to the Spanish minister of state, Senor Calderon Collantes, July 31, 1861, as follows: "Sir: Yesterday I received a dispatch from the Secretary of State of the United States, informing me that *the President has read, with the greatest satisfaction, the proclamation of her Catholic Majesty*, concerning the unfortunate troubles that have arisen in the United States; and it affords me the sincerest pleasure to express to your excellency the high sense which the President entertains of her Majesty's prompt decision *and friendly action upon this occasion.*"

A measure that is right in itself cannot be made wrong, because it is in accord with the practice of all civilized nations; nor can the action of this government in defense of its rights against the policy of Spain in Cuba be less defensible, because it follows literally and exactly the precedent of Spain in its action with regard to the civil war in this country. All nations have been notified that we should follow the examples set by other governments in their conduct to us, when other methods of redress of wrongs were closed against us. The President, in his Inaugural Address, made that declaration. "I would respect the rights of all nations," he said, "demanding equal respect for our own. If others depart from this rule in their dealings with us, we may be compelled to follow their precedent." (Inaugural Address, 4th March, 1869.)

What objection can Spain make to a proclamation of neutrality in the case of Cuba, identical with her own "prompt decision and friendly action" in the case of the United States? What objection can the European nations, who instantly proclaimed their neutrality in the civil war in this country, urge against the neutrality of the United States in the war between Spain and Cuba, after the unparalleled atrocities of twenty-one months and the brutal murder of scores of American citizens and repeated insults to our consular and commercial agents?

Great Britain declared her purpose in regard to the American rebellion in the House of Commons the 6th of May, 1861—twenty-three days after the attack on Fort Sumter, and before a single life had been sacrificed, or a drop of blood had been shed, except in the conflict between soldiers and citizens in Baltimore, the 19th of April, 1861. Spain issued her proclamation of neutrality describing the contestants as belligerents, the 17th of June—sixty-five days after the fall of Fort Sumter, and before a single life had been sacrificed, except at Baltimore.

What objection can Spain make to a declaration of neutrality on the part of the United States in the Cuban contest, after a bloody and brutal civil war of nearly two years?

The limitations and conditions under which neutrality should be declared are sternly and strongly stated by Mr. Adams in his correspondence with Lord John Russell upon the Alabama claims. To every position assumed by him our assent is cheerfully conceded.

“Whenever an insurrection against the established government of a country takes place, the duty of governments under obligations to maintain peace and friendship with it appears to be, at first, to abstain carefully from any step that may have the smallest influence in affecting the result. Whenever facts occur of which it is necessary to take notice, either because they involve the necessity of protecting personal interests at home or avoiding an implication in the struggle, then it appears to be just and right to provide for the emergency by specific measures, precisely to the extent that may be required, but no further. It is, then, facts alone, and not appearances or presumptions, that justify action. But even these are not to be dealt with further than the occasion demands; a rigid neutrality in whatever may be done is, of course, understood. If, after the lapse of a reasonable period, there be little prospect of a termination of the struggle, especially if this be carried on upon the ocean, a recognition of the parties as belligerents appears to be justifiable; and at that time, so far as I can ascertain, such a step *has never in fact been objected to.*”

It is impossible to affirm that there is the slightest departure by this government from the stern rules laid down by Mr. Adams, either in its past action on the Cuban question or in the course now proposed. So far from taking any step that could affect disadvantageously the cause of Spain, we have rendered her important assistance in the suppression of the Cuban rebellion. Who can question, in the face of the record presented to this House by the President, that “facts” have occurred which not only involve, but demand, the protection of our personal interests at home? Who can deny, in the face of the constant protests of the Secretary of State against the outrages upon the rights and persons of American citizens that it has been difficult for us to avoid “an implication” in the Cuban struggle? The record would justify the government in recognizing the independence of Cuba or a declaration of war; but we propose only “to provide for the emergency by specific measures, precisely to the extent required, but no further.” “It is,” then, “facts alone, and not appearances or presumptions, that justify (our) action;” and this not only “after the lapse of a reasonable period,” but after a brutal internecine war of twenty-one months; after nearly two hundred armed conflicts; after the sacrifice of thousands of lives; and when there is not only “little” but no “prospect of a termination of the struggle.” And it is to be noticed, especially, that the resolutions proposed follow the specifications of Mr. Adams in another essential point—that it contemplates a continuance of the struggle on the land, and not “upon the ocean.” It is perfectly within the power of the government to maintain the neu-

trality of the United States within this limit, under the resolutions for which we ask the approval of the House.

But, while the resolutions are thus within the almost bloodless schedule of "facts" prescribed by Mr. Adams, it is gratifying to know that they approach at least the elevated standard of action which this government has hitherto adopted whenever and wherever the cause of liberty has been involved.

The principles which have governed the American people in cases of this character are stated by Mr. Webster in his letter, as Secretary of State, to the representative of the empire of Austria, at Washington, December 21, 1850. No state paper was ever more enthusiastically or unanimously approved by the American people than the "Hülsemaun letter."

It carries us back to the doctrines of the founders of our government. It recalls the declaration of Phillimore, the ablest of English commentators on international law, that the right of a government to protect its citizens wherever commorant, and the right of one government to recognize the existence of another, constitute the foundation of the law of nations. It is the American protest against the doctrines of the Holy Alliance, as expressed in the Layback Circular, that new states could only be tolerated when recognized by existing governments. Had Mr. Webster lived only to make this declaration, his life would have been a victory.

"It is the right of every independent state," said Mr. Webster, "to enter into friendly relations with every other independent state. Of course questions of prudence naturally arise in reference to new states, brought by successful revolution into the family of nations; but it is not to be required of neutral powers that they should await the recognition of the new government by the present state. No principle of public law has been more frequently acted upon within the last thirty years, by the great powers of the world, than this. Within that period, eight or ten new States have established independent governments, within the limits of the colonial dominion of Spain, on this continent; and in Europe the same thing has been done by Belgium and Greece. The existence of all these governments was recognized by some of the leading powers of Europe, as well as by the United States, before it was acknowledged by the states from which they had separated themselves. If, therefore, the United States had gone so far as to acknowledge the independence of Hungary, although, as the result has proved, it would have been a precipitate step, and one from which no benefit would have resulted to either party, it would not, nevertheless, have been an act against the law of nations, provided they took no part in her contest with Austria." (Works of Daniel Webster, vol. 6, pp. 498, 499.)

These are indisputable American doctrines; but we do not go so far as to ask the House to apply them in the case of Cuba.

Mr. Canning said upon the same subject in the House of Commons, February 4, 1825, that "as to the propriety of admitting states which had successfully shaken off their dependence on the mother country to the rights of nations, there could be no dispute. There were two ways of proceeding: were the case more questionable, recklessly and with a hurried course to the object, which might soon be reached, or almost as soon lost; or by another course, so strictly guarded that no principle was violated and no offense given to other powers." (Hansard's Par. Deb., 2d series, vol. xii, p. 78.)

"It is not by formal stipulations or solemn declarations," said Sir James Mackintosh, in speaking of the proposed acknowledgment of the

Spanish-American colonies by Great Britain, "that we are to recognize the American States, but by measures of practical policy, the most conspicuous part of which is the act of sending or receiving diplomatic agents. It implies no guarantee, no alliance, no aid, no approbation of the successful revolt, no intimation of an opinion concerning the justice or injustice of the means by which it has been accomplished. The tacit recognition of a new state, not being a judgment of the new government, or against the old, is not a deviation from a perfect neutrality, or a just cause of offense to the dispossessed ruler." (Mackintosh's Works p. 749.)

But we do not ask the assent of the House to such self-evident and patriotic doctrines. We ask only, that in the armed contest in Cuba, the existence of which it would be a crime to question, the neutrality of the United States shall be proclaimed and enforced. We ask for Cuba nothing but justice—that justice which, it is said, is the chief concern of mankind.

WHAT IS NEUTRALITY ?

There is no word in the Greek or Latin tongue that is the exact equivalent to the term *neutral*, or *neutrality*. The reason of this defect in the ancient languages, says Wheaton, is evident. The rules of war, followed by the most civilized nations of antiquity, did not permit one nation to enjoy peace while neighboring states were engaged in war. The people were allies or enemies. That appears now to be the doctrine of Spain.

The development of the laws of neutrals is one of the most fruitful and useful conquests of modern civilization. The neutral states contribute, in effect, to localize the war, seeking, as far as possible, to extend and protect the interests of peace. (Bluntschli, p. 375.)

There are degrees of neutrality. Strict neutrality implies that a state stands entirely aloof from the operations of war, giving no assistance or countenance to either belligerent.

Impartial neutrality is where both belligerents have equal liberty to pursue operations of war, or to purchase military stores within the neutral's territory. Neutrals must be impartial; and powers, not parties to the war, must treat both belligerents alike as friends. (Woolsey's International Law, p. 351.)

The essence of neutrality, says Hautefeuille, is—

1. The most perfect impartiality.
2. Abstaining absolutely from all hostile acts. (Hautefeuille, vol. I, p. 370.)

General neutrality, says Hübner, is the condition of a nation that, without allying itself to any of the belligerent parties in a war, is ready to extend to any and all of them the aid which is due from one state to another. The neutral is the common friend of both parties, and, consequently, is not at liberty to favor one party to the detriment of the other. (Lawrence's Wheaton, p. 697.)

Bynkershoek states it to be the duty of neutrals "to be in every way careful not to interfere in the war, and to do equal and exact justice to both parties."

Neutrality consists in entire inaction relative to the war; and in exact and perfect impartiality manifested by acts in regard to the belligerents, so far as that impartiality has relation to the war and to the means direct and immediate of prosecuting it. This definition by Hübner is cited with warm approval by Hautefeuille. (Vol. 1, p. 363.) Wheaton speaks of Hübner, in the Supreme Court of the United States, as "the great champion of the rights of neutral states."

Since the time of Grotius, the law of Europe has become settled that neutrals have the right to trade with belligerents, except in those cases in which neutral commerce would affect the issue of a war by interfering so as to assist either party in the contest. It is now provided in most treaties of commerce that either party shall have full liberty to trade with the enemies of the other during war. (Manning's Laws of Nations, p. 192.)

With the exception of the treaties of Whitehall, in 1689, between Great Britain and Holland, against France, and that of the European powers against France, in 1793, there has been no interruption of the general rule that neutrals have the full right of trading with belligerents as in time of peace, except in those cases when such commerce would interfere with belligerent rights. There is nothing in commerce that can be said to affect, directly, the issue of a war, and with which, therefore, belligerents have a right to interfere. (Manning's Laws of Nations, pp. 192-194.)

During the Greek revolution the same course was pursued by the British government. To a complaint of the Porte against allowing the Greeks belligerent rights, in which it was said that "to subjects in rebellion no national character belonged," Mr. Canning replied that "the character of belligerency was not so much a principle as a fact; that a certain degree of force and consistency acquired by a mass of population engaged in war entitled that population to be treated as a belligerent, and even when this title was questionable, rendered it the interest well understood of all civilized nations so to treat them. Their cruisers must be treated as belligerents or dealt with as pirates." (Lawrence's Wheaton, p. 43.)

When Texas declared herself independent of Mexico, March, 1836, to a remonstrance that the Texas flag was admitted to the port of New York, it was answered that in previous civil wars between Spain and her colonies "it had never been held necessary, as a preliminary to the extension of the rights of hospitality to either party, that the chances of war should be balanced and the probability of eventual success determined. For this purpose it had been deemed sufficient that the party had actually *declared its independence, and was at the time maintaining it.*" (Mr. Forsyth, Secretary of State, to Mexican minister, September 20, 1836.)

Mr. Webster said, in answer to the complaint of Mexico, that citizens of the United States had been engaged in a commerce by which Texas, an enemy of Mexico, had been supplied with arms and munitions of war: "It was not the practice of nations to undertake to prohibit their own subjects, by previous laws, from trafficking in articles contraband of war. Such trade is carried on at the risk of those engaged in it, under the liabilities and penalties by the law of nations or by particular treaties. If it be true, therefore, that citizens of the United States have been engaged in a commerce by which Texas, an enemy of Mexico, had been supplied with arms and munitions of war, the government of the United States, nevertheless, was not bound to prevent it; and could not have prevented it without a manifest departure from the principles of neutrality, and is in no way answerable for the consequences." (Lawrence's Wheaton, p. 813.)

The treaty with Mexico enumerated articles contraband of war, &c., but did not prohibit commerce therein.

Mr. Marcy, in the discussion of the questions involved in the treaty of Paris, 1856, makes the following declaration: "Humanity and justice demand that the calamities incident to war should be strictly limited to the belligerents themselves, and to those who voluntarily take part with

them; but neutrals abstaining in good faith from such complicity, ought to be left to pursue their ordinary trade with either belligerent, without restrictions in respect to the articles entering into it." (Lawrence's *Wheaton*, p. 815.)

"If the foreign state professes neutrality," says Mr. Wheaton, "it is bound to allow impartially to both belligerent parties the free exercise of those rights which war gives to public enemies against each other, such as the right of blockade and of capturing contraband and enemies' property." (Wheaton, p. 1, ch. 2, § 6.)

SPANISH TREATY OF 1795.

It has been suggested that in the event of war in Cuba certain provisions of the treaty of 1795 with Spain might cause embarrassment to the United States. A brief examination of this subject will dispel such fear. Previous to the treaty of 1795 the right of search of vessels on the high seas was asserted by the European governments in war and peace. The United States constantly and successfully resisted this claim. The treaty of 1795 with Spain, was negotiated to secure freedom from the right of search, except under limited conditions, to which this government assented. The American minister who negotiated the treaty declares in his official communications to the government that the provisions of the treaty were entirely in the interest of the United States. The same treaty had been negotiated with Holland in 1782, Prussia in 1785, France in 1788, and Spain in 1795. "The intention of the treaty," said the Supreme Court, "was to ingraft into the law of nations a great and new principle." The form of passports required had been annexed to all these treaties except that of Spain. Spain refused to execute the treaty of 1819 for nearly two years, until the President recommended a declaration of war if further delay occurred. No treaty of commerce and navigation has been executed with Spain, and no treaty of limits and boundaries except those of 1795 and 1819, from both of which so much embarrassment has occurred. By the treaty of 1795, Spain virtually surrendered the right of search so long exercised by European nations. It was for this reason, probably, that she failed to carry into execution the articles of the treaty relating to this subject. It is susceptible of historical proof that the passports required were prepared and printed with the treaty, at the royal printing office in Madrid; but they were never annexed to the treaty in conformity with its express terms. These articles were held by the Supreme Court of the United States to be, so far as the right of search was concerned, imperfect and inoperative in consequence of the omission to annex the form of passport required by the treaty. The question arose in the case of the *Amiable Isabella*. (5 *Wheaton*, page 1.) It was three times argued before the court by the ablest counsel of the United States. William Wirt, Attorney General of the United States, and Mr. Wheaton represented the government. The judgment of the court was given by Judge Story. Six out of the seven judges—Chief Justice Marshall, Washington, Livingston, Todd, Duval and Story—concurred in the judgment. Judge Johnson of Pennsylvania dissented. He saw no reason "for nullifying the operation of the seventeenth article," which was the effect of the judgment of the court. The decision of the court is in these words:

Unless this court is prepared to say that all forms and solemnities were useless and immaterial; that neither government had a right to insist upon a form after having assented to the terms of the article; that a judicial tribunal may dispense with what its own notions of equity may deem unimportant in a treaty, though the parties have

chosen to require it, it cannot consider the seventeenth article of this treaty as complete or operative until the form of the passport is incorporated into it by the joint act of both governments.

Upon the whole, it is the opinion of the court, in which opinion six judges agree, that the form of the passport not having been annexed to the seventeenth article of the treaty, the immunity, whatever it was, intended by that article never took effect; and therefore, in examining and deciding on the case before us, we must be governed by the general law of prize. (Page 9.)

To ingraft into this treaty the principles of the armed neutrality was the object, and for this purpose the fifteenth article declares those principles in detail. The sixteenth furnishes the exceptions to them; the seventeenth prescribes the evidence on which those privileges shall be conceded; and the eighteenth, after regulating the conduct of cruisers toward vessels so protected, proceeds to declare that "the ship, when she shall have showed such passport, shall be free and at liberty to pursue her voyage, so as it shall not be lawful to molest or give her chase in any manner, or force her to quit her intended course." It is impossible for language to be stronger. (5 Wheaton, pages 20, 21.)

A motion for rehearing of the case was overruled without dissent. The articles are herewith presented. It is immaterial whether they are regarded as operative or not. The practice of all nations is now the same as that guaranteed to the United States by the treaty of 1795. From this review of the question the Committee on Foreign Affairs is irresistibly led to the conclusion that it is the right and duty of the United States in regard to the struggle in Cuba—

1. To recognize the existence of the contest:
2. To declare and maintain an impartial neutrality:
3. To give to both parties the same advantages of intercourse and trade with the United States:
4. To invite the President to remonstrate against the barbarous manner in which the war has been conducted.

And they therefore recommend the adoption of the accompanying resolutions.

For the committee:

N. P. BANKS, *Chairman.*

NOTE TO MAJORITY REPORT.

Extracts from treaty of 1795.

ART. 12. The merchant ships of either of the parties which shall be making into a port belonging to the enemy of the other party, and concerning whose voyage and the species of goods on board her there shall be just grounds of suspicion, shall be obliged to exhibit, as well upon the high seas as in the ports and havens, not only her passports, but likewise certificates expressly showing that her goods are not of the number of those which have been prohibited as contraband.

ART. 17. To the end that all manner of dissensions and quarrels may be avoided and prevented on one side and the other, it is agreed that in case either of the parties hereto should be engaged in a war, the ships and vessels belonging to the subjects or people of the other party must be furnished with sea-letters or passports expressing the name, property, and bulk of the ship, as also the name and place of habitation of the master or commander of the said ship, that it may appear thereby that the ship really and truly belongs to the subjects of one of the parties, which passport shall be made out and granted according to the form annexed to this treaty. They shall likewise be recalled every year; that is, if the ship happens to return home within a space of a year.

It is likewise agreed that such ships, being laden, are to be provided, not only with passports as above mentioned, but also with certificates containing the several particulars of the cargo, the place whence the ship sailed, that so it may be known whether any forbidden or contraband goods be on board the same: which certificates shall be made out by the officers of the place whence the ship sailed, in the accustomed form. And if any one shall think it fit or advisable to express in the said certificates the person to whom the goods on board belong, he may freely do so; without which requisites

they may be sent to one of the ports of the other contracting party, and adjudged by the competent tribunal, according to what is above set forth, that all the circumstances of this omission having been well examined they shall be adjudged to be legal prizes, unless they shall give legal satisfaction of their property by testimony entirely equivalent.

ART. 18. If the ships of the said subjects, people, or inhabitants of either of the parties shall be met with, either sailing along the coasts or on the high seas, by any ship of war of the other, or by any privateer, the said ship of war or privateer, for the avoiding of any disorder, shall remain out of cannon-shot, and may send their boats aboard the merchant ship which they shall so meet with, and may enter her to number of two or three only, to whom the master or commander of such ship or vessel shall exhibit his passports concerning the property of the ship, made out according to the form inserted in this present treaty; and the ship, when she shall have showed such passports, shall be free and at liberty to pursue her voyage, so as it shall not be lawful to molest or give her chase in any manner, or force her to quit her intended course.

MINORITY REPORT.

The undersigned, members of the Committee on Foreign Affairs, do not concur with a majority of the committee in recommending for the approval of the House the joint resolution in relation to the contest between the people of Cuba and the government of Spain, but do recommend, as a substitute for said proposed joint resolution, the passage of the following bill:

A BILL making it a misdemeanor to fit out or equip ships of war, with intent that they shall be employed in the service of any European prince or state, for the purpose of subduing American colonists claiming independence, and providing for the forfeiture of such ship or vessel.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That if any person shall, within the limits of the United States, fit out, arm, or equip, or attempt to fit out, arm, or equip, or procure to be fitted out, armed, or equipped, or shall knowingly be concerned in the fitting out, arming, or equipping, of any ship or vessel, with intent that such ship or vessel shall be employed in the service of any European prince or state, for the purpose of subduing American colonists claiming independence, or shall issue or deliver a commission within the territory of the United States for any ship or vessel, with the intent that she may be employed as aforesaid, every person so offending shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not exceeding five thousand dollars, and be imprisoned for a period not exceeding two years, nor less than six months; and every such ship or vessel, with her tackle, apparel and furniture, together with all materials, arms, ammunition, and stores, which may have been procured for the building and equipment thereof, shall be forfeited, one-half to the use of the informer, and the other half to the United States.

SEC. 2. *And be it further enacted,* That in every case where a ship or vessel shall be fitted out, armed, or equipped, or attempted to be fitted out, armed, or equipped, contrary to the provisions of this act, it shall be lawful for the President of the United States, or such person as he shall have empowered for that purpose, to employ the land or naval forces, or the militia of the United States, or any part thereof, for the purpose of taking possession of and detaining any such ship or vessel.

SEC. 3. *And be it further enacted,* That the provisions of the act approved April 20, 1818, entitled "An act in addition to the 'Act for the punishment of certain crimes against the United States,' and to repeal the acts therein mentioned," shall be held to apply and be in force, as to all attempts of American colonies, or parts thereof, to assert their independence; and the words "colonies, districts, or peoples" in such act shall be held to apply to and include all such American colonists claiming independence, as described in the first section of this act.

The minority of the committee, in making this recommendation, is influenced by the conviction that the passage and due enforcement of the proposed bill will have the effect of establishing perfect neutrality, on the part of this government, between the government of Spain and the revolutionary party in Cuba; and that it will have the same effect upon any future conflict of a like character in any American possessions of a European power, without reference to the questions that would otherwise arise as to the extent and character of the insurrection or revolution. It is, in fact, an enlargement of the principle known as the Monroe doctrine; and without giving any reasonable cause of offense to any European nation, is an affirmation of the doctrine, that this nation, while it opposes unauthorized interference on the part of its citizens with the concerns of other nations or colonies, is decidedly adverse to the continuance of a colonial system for the government of any portion of the American Continent. It also declares that this government will, from the beginning, refuse assistance to a European government in maintaining its supremacy whenever an attempt is made by an American

colony to cast it off, nor will it permit its citizens to give such assistance. In short, the policy suggested will prevent European governments from obtaining hereafter in the United States any armaments, or munitions of war, for the purpose of suppressing insurrections in American colonies, which the law now forbids to be sold to the insurgents themselves, thus putting the parent country and the insurgents on terms of precise equality in that respect.

The neutrality law, so called, passed in 1818, defines the acts which it declares to be criminal in the following sections:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That if any citizen of the United States shall, within the territory or jurisdiction thereof, accept and exercise a commission to serve a foreign prince, state, colony, district, or people, in war, by land or by sea, against any prince, state, colony, district, or people, with whom the United States are at peace, the person so offending shall be deemed guilty of a high misdemeanor, and shall be imprisoned not exceeding three years.

SEC. 2. *And be it further enacted,* That if any person shall, within the territory or jurisdiction of the United States, enlist or enter himself or hire or retain another person to enlist or enter himself, or to go beyond the limits or jurisdiction of the United States, with intent to be enlisted or entered in the service of any foreign prince, state, colony, district, or people, as a soldier, or as a marine or seaman, on board of any vessel of war, letter-of-marque, or privateer, every person so offending shall be deemed guilty of a high misdemeanor, and shall be fined not exceeding one thousand dollars, and be imprisoned not exceeding three years: *Provided,* That this act shall not be construed to extend to any subject or citizen of any foreign prince, state, colony, district, or people, who shall transiently be within the United States, and shall on board of any vessel of war, letter-of-marque, or privateer, which at the time of its arrival within the United States was fitted out and equipped as such, enlist or enter himself, or hire or retain another subject or citizen of the same foreign prince, state, colony, district, or people, on board such vessel of war, letter-of-marque, or privateer, if the United States shall then be at peace with such foreign prince, state, colony, district, or people.

SEC. 3. *And be it further enacted,* That if any person shall, within the limits of the United States, fit out and arm, or attempt to fit out and arm, or procure to be fitted out and armed, or shall knowingly be concerned in the furnishing, fitting out, or arming, of any ship or vessel with intent that such ship or vessel shall be employed in the service of any foreign prince or state, or of any colony, district, or people, to cruise or commit hostilities against the subjects, citizens, or property of any foreign prince or state, or of any colony, district, or people, with whom the United States are at peace, or shall issue or deliver a commission within the territory or jurisdiction of the United States, for any ship or vessel, to the intent that she may be employed as aforesaid, every person so offending shall be deemed guilty of a high misdemeanor, and shall be fined not more than ten thousand dollars, and imprisoned not more than three years; and every such ship or vessel, with her tackle, apparel, and furniture, together with all materials, arms, ammunition, and stores, which may have been procured for the building and equipment thereof, shall be forfeited; one-half to the use of the informer, and the other half to the use of the United States.

SEC. 5. *And be it further enacted,* That if any person shall, within the territory or jurisdiction of the United States, increase or augment, or procure to be increased or augmented, or shall knowingly be concerned in increasing or augmenting, the force of any ship of war, cruiser, or other armed vessel which, at the time of her arrival within the United States, was a ship of war, or cruiser, or armed vessel in the service of any foreign prince, or state, or of any colony, district, or people, or belonging to the subjects or citizens of any such prince, or state, colony, district, or people, the same being at war with any foreign prince, or state, or of any colony, district, or people with whom the United States are at peace, by adding to the number of the guns of such vessel, or by changing those on board of her for guns of a larger caliber, or by any addition thereto of any equipment solely applicable to war, every person so offending shall be guilty of a high misdemeanor, shall be fined not more than one thousand dollars, and be imprisoned not more than one year.

SEC. 6. *And be it further enacted,* That if any person shall, within the territory or jurisdiction of the United States, begin or set on foot, or provide, or prepare the means for, any military expedition or enterprise, to be carried on from thence against the territory or dominions of any foreign prince or state, or any colony, district, or people, with whom the United States are [at] peace, every person so offending shall be deemed guilty of a high misdemeanor, and shall be fined not exceeding three thousand dollars, and imprisoned not more than three years.

The friends of the insurgents in Cuba have claimed that the words

“colony, district, or people, with whom the United States are at peace,” are broad enough to include these insurgents, and that the fitting out of the Spanish gunboats was as much an offense against the law as the fitting out of the Hornet. The executive department of the government has, however, decided that the Cuban insurgents are not “a colony, district, or people with whom the United States are at peace.” It is not now necessary, in view of the action we recommend, to inquire whether this construction of the law is or is not correct, inasmuch as the bill we report, if it becomes a law, will give the insurgents all that a construction of the neutrality law most favorable to them could give them. We have copied these sections of the statute, however, to enable the House more readily to see, by a comparison of the law with the bill we propose, the full scope of this measure.

It will be observed that the policy proposed by the minority of the committee, in the present and all future cases, waives any question of power, character, or prospects of the revolutionary party. It assumes the right of American countries to self-government, and declares the policy of this government as not inimical to the assertion of that right in any case.

In view of the action we propose, it is unnecessary to consider the reasons or the facts which are urged by the majority of the committee in support of the resolutions recommended by them. We are constrained, however, to say that the alleged facts, if true, do not, by any process of reasoning or logic, lead necessarily to the conclusion reached by the majority. They only prove, at the most, that this government *may* declare itself neutral, if it chooses so to do; but they by no means confine the legislative department to that particular line of policy. Congress is the law-making power. It can declare a policy not only for this case but for all cases, while the Executive has no choice except to do as he has already done, or recognize a state of war as existing. It seems to the minority to be at once more manly and more statesman-like for Congress, if it is to act at all, to declare some general doctrine applicable to all similar contests, and thus, while affirming and giving effect to the American doctrine, avoid offense to any European nation by declaring its policy in a general law.

The undersigned would further submit that no cause of offense can arise from this legislation, as it is but repeating what was supposed to be the effect of the act of April 20, 1818, by a large proportion of the American people; and the necessity for this legislation arises from the construction given to that act by the Attorney General in the matter of the release of the Spanish gunboats.

The undersigned confess their inability to arrive at the same conclusions attained by a majority of the committee, as to the condition of the insurrection in Cuba. We have seen no evidence that there is a Cuban revolutionary government in existence, and exercising permanent control over any portion of the island, and we are constrained to believe that the constitution, political divisions, and control of the island are mainly on paper. The manner of the promulgation of the constitution, the long-continued doubts as to its provisions, the absence of elections, and the uncertainty which hangs over everything connected with the insurrection, seem to the undersigned not at all compatible with an actual, existing, and established government entitled to any sort of recognition. In our opinion, the revolutionary government of Cuba has no existence outside of the camps of the “*patriot bands.*”

It is not pretended that the insurgents control any considerable town or city; indeed, the majority concede they do not. The only towns

claimed as within their control are Sibameá, a mere hamlet, and Guamaro, an interior village of about five hundred inhabitants, and so far as we are advised both of these have been destroyed. (See Doc., pp. 158, 159.) It is submitted that a revolution that has not yet acquired a single town as its capital, has not command of a single seaport, and has not a vessel afloat, is hardly in condition to claim that it is a "government" entitled to a formal declaration of neutrality, which in effect is a recognition that it is entitled to belligerent rights. This brings us to a consideration of the probable result of passing the resolutions reported by the majority of the committee.

A declaration of neutrality is a concession of belligerent rights. It recognizes a condition of war as existing, and entitles both parties, so far as the neutral nation is concerned, to belligerent rights. Such a declaration would enlarge the rights of Spain as against this country. Spain would, after such a recognition, be entitled to all the rights granted in the treaty of 1795—rights which she has already claimed, but abandoned after remonstrance by our government. (Message, 1869, p. 8.) This treaty, among other things, concedes the right of search as therein specified and limited; and no form of manifest or certificate having been agreed on, it would give the right to search for contraband of war, under the law of nations, every American vessel found in Cuban waters, or on the high seas; and the carrying of such goods would then become unlawful. That this would be an advantage to Spain, and a constant source of embarrassment to our large commerce in the West Indies, is manifest. The corresponding advantage to us, or even to the Cuban insurgents, is not so clear, while the probability that the exercise of this right would lead to complications, difficulties, and perhaps war, would seem too certain, in the light of the history of this country and the known character of Spain, to need argument. It is not wise to take such action as will lead to these complications unless some duty on the part of this government requires such action.

We do not deem it necessary to raise any question as to the right of this government to make a general declaration of neutrality. The American doctrine on the subject is thus stated by Mr. Adams:

Whenever an insurrection against an established government of a country takes place, the duty of governments, under obligations to maintain peace and friendship with it, appears to be, at first, to abstain carefully from any step that may have the smallest influence in affecting the result. Whenever facts occur of which it is necessary to take notice, either because they involve the necessity of protecting personal interests at home, or avoiding an implication in the struggle, then it appears to be just and right to provide for the emergency by specific measures, precisely to the extent that may be required, but no further. It is, then, facts alone, and not appearances or presumptions, that justify action. But even these are not to be dealt with further than the occasion demands; a rigid neutrality in whatever may be done is, of course, understood. If, after the lapse of a reasonable period, there be little prospect of a termination of the struggle, especially if this be carried on upon the ocean, a recognition of the parties as belligerents appears to be justifiable; and at that time, so far as I can ascertain, such a step has never, in fact, been objected to. (Mr. Adams's correspondence with Earl Russell, quoted in Dana's Wheaton, p. 37, note.)

Mr. Dana, in his edition of Wheaton's International Law, (page 35, note,) says:

In a contest wholly upon land, a contiguous state may be obliged to make a decision, whether or not to regard it as war; but in practice this has not been done by a general and prospective declaration, but by actual treatment of cases as they arise.

And on the preceding page Mr. Dana says:

The occasion for the accordance of belligerent rights arises when a civil conflict exists within a foreign state. The reason which requires and can alone justify this step by the government of another country, is that its own rights and interests are so far affected as to require a definition of its own relation to the parties.

It will be observed that all writers leave the question so far an undetermined one, that the point of time when a nation may make a declaration of neutrality must, after all, be decided by each nation for itself.

Generally, it is the duty of any nation to remain strictly neutral—to do nothing which may in the least degree affect the result.

This has been done by this government so far as the law permitted, the only instance in which the government was not impartial being in relation to the gunboats; and its course in respect to the gunboats was controlled by the fact that under the law, as interpreted by the Attorney General, it had no right to detain them, unless it was prepared to recognize a state of war as existing in Cuba; and this it was not satisfied it ought to do. This defect of the law will be entirely remedied by the passage of the bill recommended by the minority. In other respects it is submitted that the entire conduct of this government has been neutral and fair.

But the *right* to declare neutrality is one thing; the *duty*, quite another. The right may exist long before there is any duty at all.

When it becomes our *duty* to recognize a state of war as existing and declare our neutrality, we trust there will be no hesitation, either in this or any other case. We ought to discharge our *duties* "though the heavens fall." But when the question is one of right merely, we may rightfully, and we *ought*, to consider the consequences. Now, surely, the only demand that the Cubans can rightfully make upon us is, that we shall establish a neutrality *in fact*; and this is done as effectually by the action we propose as by the resolution proposed by the majority. The difference is, that the majority propose a declaration of neutrality in this struggle; we propose a declaration that will be sufficient for this and all struggles of like character. The majority resolutions seem to assume a condition of things in Cuba that requires us to declare our neutrality as to that struggle; we propose to crystallize into a statute the American doctrine, that in all struggles of American colonies against European domination this government will not stop to inquire as to the extent or power of the revolutionary party, but the fact of an insurrection against the European power shall of itself entitle that insurrection to consideration, so that it shall be unlawful for an American to assist in its suppression. It is a declaration that we will not, even as a commercial transaction, sell ships or vessels of war to aid in suppressing revolts among American colonists, but will, from the beginning of such struggle, do nothing for the European government that it is not lawful to do for the insurrectionary party. We cannot resist the conclusion that this course is in every regard the best for this country, and as favorable to the Cubans as the resolution proposed by the majority, while it prevents complications that would be likely to arise under the treaty of 1795 and the law of nations by the adoption of the majority resolutions, and at the same time settles the future policy of the government.

We have purposely avoided a reference to the reported outrages on American citizens in Cuba, because these matters are, as we conceive, in nowise involved in the discussion of the present question. It is an unfortunate fact that such outrages have occurred, although it is questionable to what extent the Spanish government in Cuba is responsible for them, as there exists in the island a third power, neither Spanish nor Cuban, which dominates the government and controls the military forces of the island apparently against the will of the constituted authorities. This condition of things and these outrages upon American citizens seem to call for such action on the part of our government as will prevent such

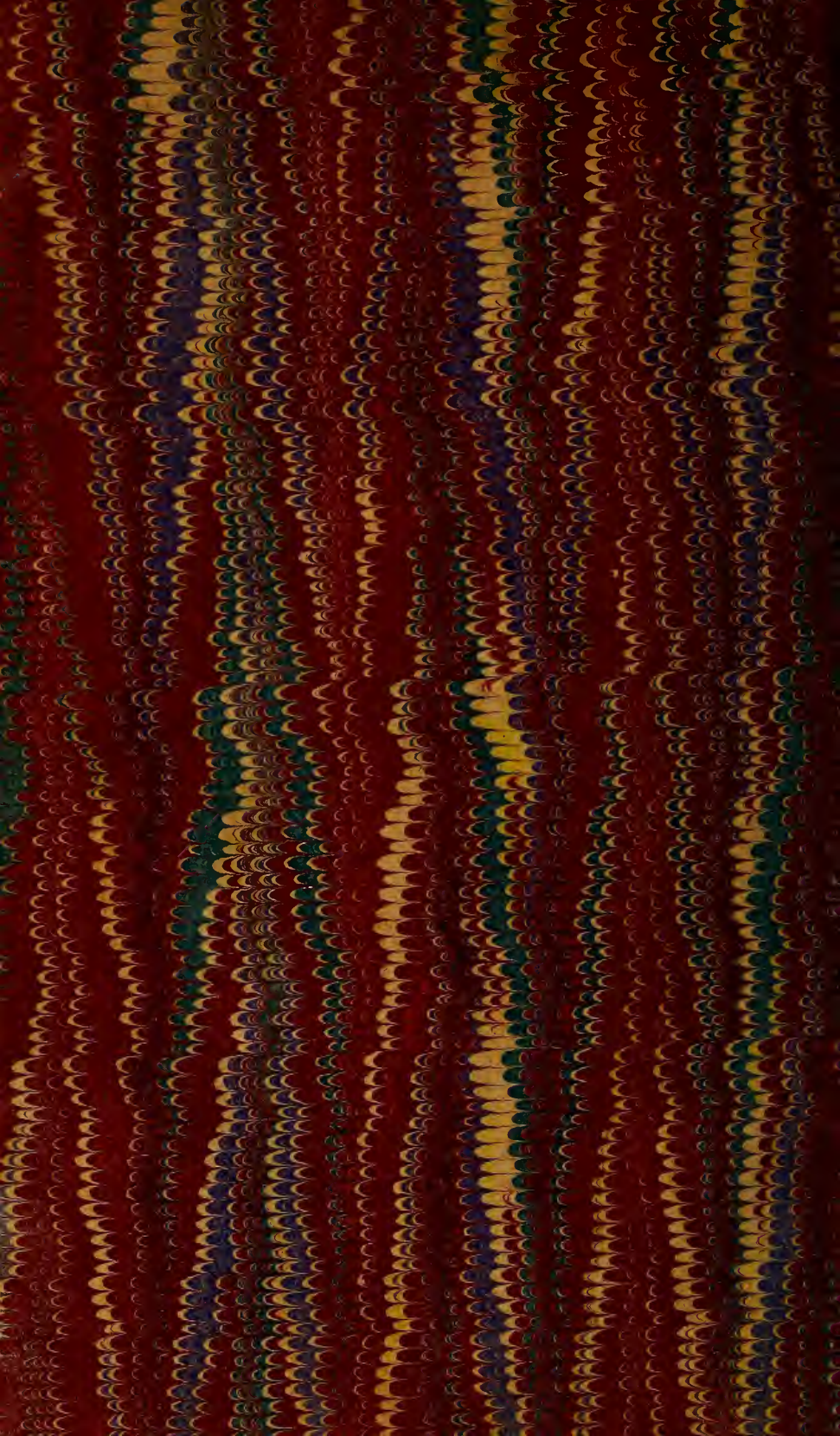
outrages in the future; but the undersigned are not able to see that a declaration of neutrality would have any such effect, or, indeed, tend in any such direction. Indeed, we are persuaded that the conduct of American citizens, resident in this country and interested pecuniarily in the success of the attempted revolution, has had much to do with producing the feelings of exasperation which have resulted in these outrages, and we cannot but condemn the conduct of those persons who, without the courage to assist in the actual struggle, have made war at the safe distance of New York or Washington, and sought to involve this government in Cuban affairs for the advancement of their own selfish ends—ends that we are persuaded refer not to Cuban independence as an object so much as to the enlargement of their own private fortunes. If these persons have the passionate desire for Cuban independence which they pretend to have, their presence on Cuban soil, with arms in their hands aiding Cespedes, would be more courageous, as well as more seemly, than their present course, engaged, as they seem to be, in inventing reports, violating the laws of the United States, and resorting to other practices of a hardly less questionable character, to induce our government to espouse the cause of a rebellion in which they do not seem disposed to risk much themselves.

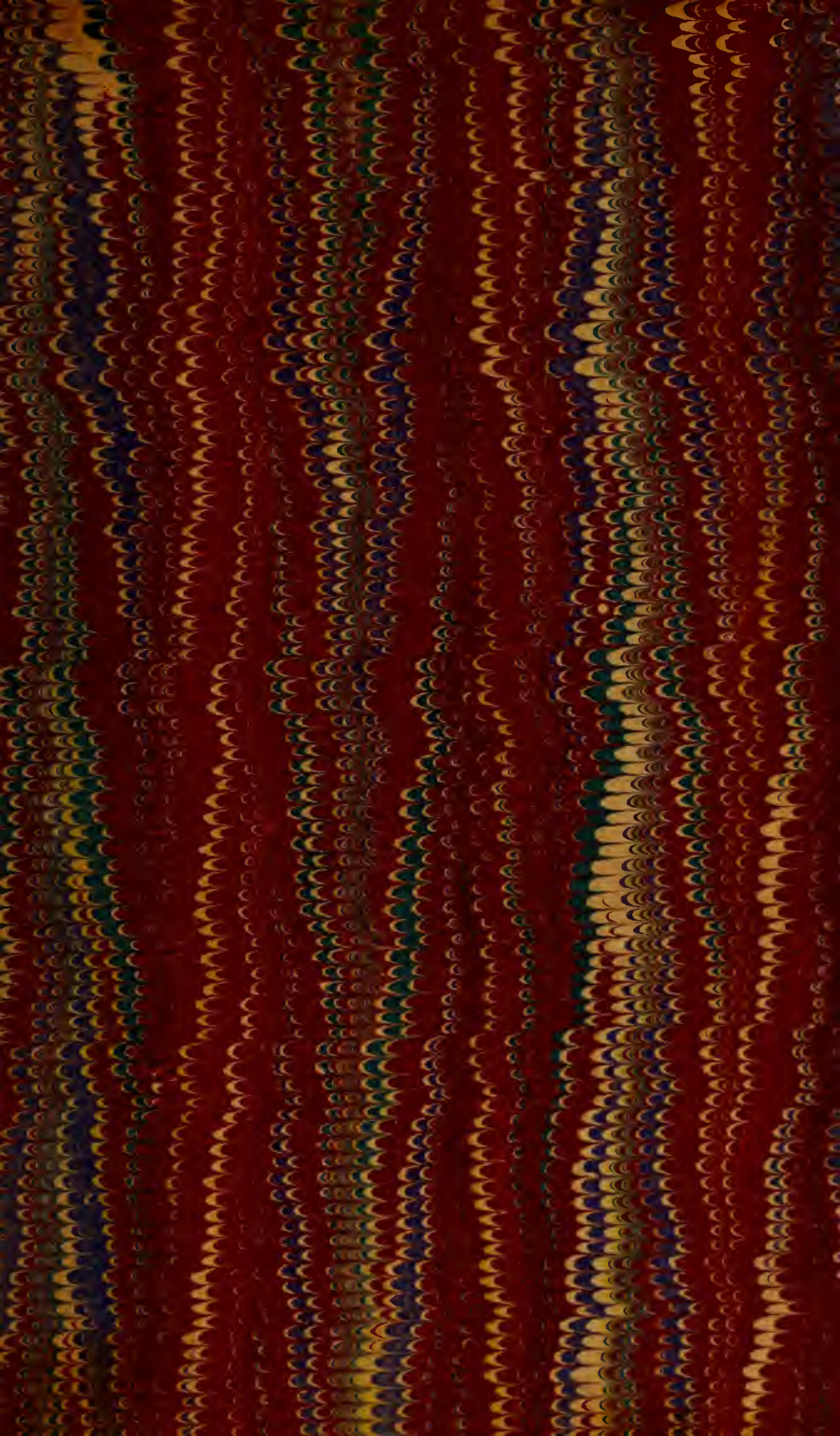
Under the circumstances, we deem it the duty of the United States to preserve an impartial neutrality between the parties to this struggle in Cuba, as in every other struggle against European supremacy on any portion of this continent; and that it may have a rule of action for this and all similar cases, we recommend the passage of this bill.

And we cannot refuse to avail ourselves of this opportunity to express our conviction that this government should maintain such a naval force in Cuban waters as will fully protect our citizens in their rights, and insure them a fair trial on any criminal charges that may be preferred against them.

The present condition of things in Cuba requires this for the protection of our citizens and commerce. There is sufficient available naval force in the waters about the West Indies for this purpose, and we submit that it can be put to no better use.

GODLOVE S. ORTH.
N. B. JUDD.
C. W. WILLARD.
J. A. AMBLER.





LIBRARY OF CONGRESS

0 015 825 973 4