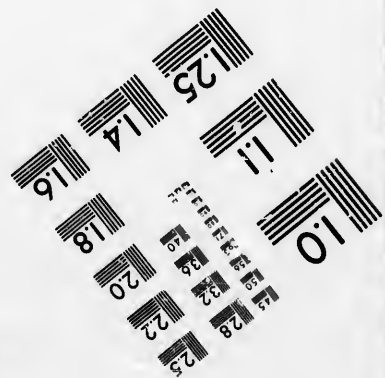
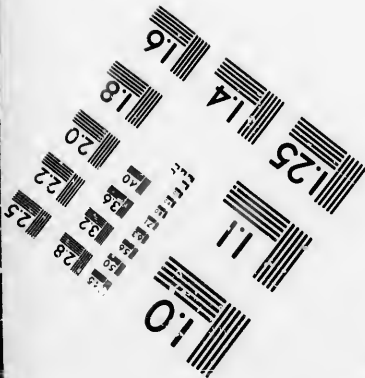
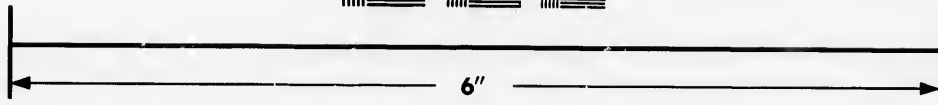
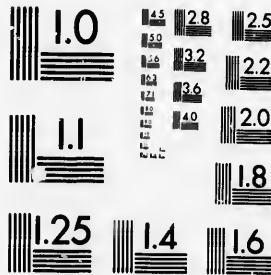


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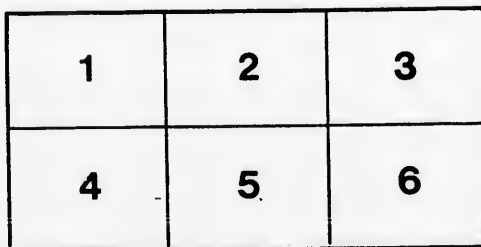
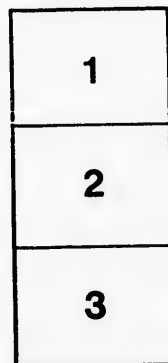
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SPEECH

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OF

MR. CHOATE, OF MASSACHUSETTS,

ON THE CASE OF

ALEXANDER McLEOD.

DELIVERED

IN THE SENATE OF THE UNITED STATES.

JUNE 11, 1841.

WASHINGTON:

PRINTED AT THE NATIONAL INTELLIGENCER OFFICE.

1841.

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SPEECH

The motion of Mr. RIVES to refer so much of the President's Message as relates to our foreign affairs to the Committee on Foreign Affairs being under consideration—

Mr. CHOATE said he regretted to be obliged to consume a moment of the crowded time of the Senate in a discussion which could produce no practical results. But the subject was forced upon the friends of the Secretary of State and of the Administration; it possessed a good deal of interest intrinsically, and therefore, holding a place upon the Committee on Foreign Relations, to whom it might be thought appropriately to belong, he ventured to submit a few thoughts upon it less maturely considered than he could have wished. He feared he could add little to the splendid and masterly speech of the Senator from Virginia, (Mr. RIVES.)

I confess (he proceeded) that when I read, a few days since, the letter of the Secretary of State to Mr. Fox, on which the Senator from Pennsylvania (Mr. BUCHANAN) has commented, it seemed to me written with much ability, and that it ought to and would satisfy the judgment and feelings of the whole American People. The views it presented I thought sound, clear, and some of them new; the manner, not an unimportant consideration, good; frank, decided, not rude, not boisterous, not timid; and the whole tone, temper, and spirit elevated, national, American—worthy of the man, the cause, and the country. The objections taken to it in this debate seemed to me to be its essential merits. By conceding just what he did, and by denying just what he did, he had gone far, I thought, to withdraw this controversy about the Caroline from the false position it rested upon; and to place it on such grounds that it may be adjusted with ease and honor, or, if we must fight, that we may carry into battle the approbation of our own consciences, and the supports of a just pride.

So the letter struck my mind. Other gentlemen, or, at least, one other, regard it differently. And in the first place, a doubt is intimated by the distinguished Senator from Pennsylvania, whether the concession of the Secretary that a person in the asserted predicament of McLeod is entitled to immunity, assumes an accurate proposition of international law. He argues that it does not; and he holds the opinion that we may well enough hang that person for robbery and murder; that we may do this in entire conformity with the received ameliorated codes of international law of the nineteenth century, and without justly bringing on ourselves a murmur of disapprobation from any of the families of man, or any individual of any family. Sir, let us pause for a moment on this great question of the nations.

What is the concession of the Secretary of State? Why only and exactly this: that a soldier or sailor—de facto such—actually engaged in a military or naval enterprise of force, under the authority, in obedience to the command of his Government, and keeping himself within the scope of that authority, is not guilty, as the law of nations is administered to-day, of a

crime against the municipal code of the country upon which he thus helps to carry war; that he is not punishable as for such crime by that country; and that the responsibility rests upon his own Government alone to answer, as nations answer for their crimes to their equals. That is the concession. He does not deal at all with the case of a soldier straggling away from his colors to commit a solitary and separate murder. He does not deal with a case of alleged excess of authority. He supposes him to obey the precise directions of his Government, and, so doing, he declares him clothed with a personal immunity.

It has been said in some of the discussions of this subject, although not here, that McLeod left the Caroline after the whole object of the enterprise had been accomplished, and committed an unnecessary and distinct and malicious murder on shore. I can say only to this that no such fact forms any part of the basis of the opinion of the Secretary. He had either never heard of it, or he disbelieved it, or he assumed that the courts of law or the Attorney General would allow its proper influence to a discriminating circumstance so important.

If you turn to the fourth page of his letter you may see that the murder for which he supposes McLeod is indicted was "a murder alleged to have been committed *in the attack*," forming an inseparable, very painful part of the entire military violence exerted to capture and destroy the vessel, and not succeeding it. For the purposes of the concession, he takes for true the express declaration of Mr. Fox, "that the transaction on account of which Mr. McLeod has been arrested and is to be put on his trial," including the homicide as an unavoidable incident in it, "was a public transaction" conducted by Her Majesty's Government.

Such is the concession. I have the honor to submit, *first*, that the concession is right in point of international law; and then, that it was the duty of the Secretary of State to make it, and of the Government to act upon it, exactly as it was made and acted upon.

In entering on this investigation, then, you observe that, to a certain distance, we proceed on all sides of the Senate harmoniously together.

Thus, it is admitted by the Senator from Pennsylvania, and by every body, that persons taken fighting, or for having fought, in the battles of an open, general, regularly declared war, are not responsible as for crime committed by the act of fighting against the country which they devastate and wrap in mourning and blood. They become technically prisoners of war. As such, on a principle of policy, as a mode of prosecuting war, they are subjected to restraint, imprisoned, held to ransom, exchanged, and otherwise disposed of, with more or less indulgence and humanity, according to circumstances. But criminals, robbers, murderers, by the act of fighting, although the act involved the destruction of property and life, they are not, by the theory or practice of any civilized race of men.

Thus far we proceed together. On this admitted principle we all stand; and from this we all take our departure. The truth is, the nations have agreed, and that agreement makes the law of nations, that it is a duty and a virtue in the individual citizen, his first duty, his highest virtue, to be obedient to his own Government. They have agreed to regard him, as our own Decatur, the elder Decatur, said of his children, as the property of his country. Withersoever he goes, whatsoever he does, wheresoever he lies down slain in battle, in obedience to her sacred and parental command, it is, as the general rule, not imputed to him for crime

at all. His nation, his nation, the collective natural person, must answer it on the high places of the world, and to the whole extent of the undefinable responsibilities of war.

The principle is thus laid down by Rutherford: "In consequence of the general consent of mankind to consider nations as collective persons, whatsoever is done by the members of a nation at the command of the public, or of the constitutional governors who speak the sense of the public, is the act of the nation; and if the act is unjust, the guilt, in the view of the law of nations, is chargeable upon THE NATION, AND NOT UPON THE INDIVIDUAL MEMBERS." "In the less solemn kinds of war, what the members do who act under the particular direction and authority of their nation, is, by the law of nations, no personal crime in them; they cannot, therefore, be punished, consistently with this law, for any act in which it considers them only as the instruments and the nation as the agent."

If, therefore, McLeod had been one of those bodies of troops which, during the last war, occasionally passed our line of boundary, burning our dwellings and killing our people, and had been taken even at the time, and with the red hand, he could not have been declared guilty of a crime against any law of a State or of the Union.

Setting out from this admitted principle, the real question is, whether the special circumstances under which McLeod's Government sent him forth to this midnight work of strife and blood, withdraw him from the protection of the principle of individual immunity with which humanity and wisdom have relieved and adorned the law of nations. What were those special circumstances? Exactly these. He was a soldier or sailor, *de facto*, for the time, for the act, in a military and naval expedition of force, planned and sent abroad by his own legitimate Government, having the right to exact his service to the last drop of his blood: sent abroad, not to plunder, but, as it represented to him when it called him out of his bed, and disclosed its purpose, to do an act for the defence of the country he lived in against invasion. This expedition was a single act, not preceded nor followed by any other; it was preceded by no declaration of war, and, as this Government alleges, it was unjustifiable. Such were the circumstances; and the question we debate is, Do they withdraw him from the principle of personal responsibility?

Let me say, then, first, that in proceeding to determine whether that principle shall or not be applied to a given special case arising in the ever-varying developments of things, the inclination of civilized States will be, and ought to be, to take the principle largely and liberally in favor of individual immunity, and of exclusive national responsibility. Every motive which operated to introduce the principle into the law of nations at first, is a motive to an enlarged and benignant construction and application of it to-day. Its adoption originally marked a vast advance on the ferocious systems of what we call natural society. It was a grand triumph of reason as well as of humanity. Policy and wisdom carried the world up to it, as well as right feeling. It was resorted to to relieve war of its horrors while it lasted; to make it easier to go back to peace, which is the true condition of man; to ameliorate the stern lot of the millions whom, in one age and in one country and another, force or patriotism crowds into the ranks of their country; and to lift up war itself from a vulgar and dreary business of general butchery to a service of glory, in

which great souls may engage without degradation and without deterioration. These were the motives in which the principle was made part of first of the law of nations, and every one of them is a motive to give it the most expanded application in the light of this better day. Sir, it is one of the brightest glories of civilization. Do not cause it to be dimmed by a penurious and reluctant interpretation and application! To do so would be to misconceive the direction in which the world is moving. I do not know when wars shall wholly cease, but I believe, I trust, that as the world comes nearer to that time, it will regard war more and more every day as an enormous evil, if a necessary evil, and will desire to relieve it, more and more every day, by the offices of Christian and of chivalrous forbearance towards individual actors, struck down, disarmed, and unresisting.

Giving, then, to the law of personal immunity that enlarged effect which the time and the country demand, let us attend to the special circumstances, one by one, which mark the case of McLeod, and see if they do or do not leave him the protection which is thrown round the captive of open, regular war.

In the first place, observe that the expedition on which he went out was an expedition of war. It was not an expedition to rob the mail, or to rob a hen roost, or to throw an assassin or spy into an enemy's camp, by which happy analogies we have had it illustrated. It was an enterprise of war; undertaken under the iron responsibilities, surrounded by the iron rights of war. Its exact legal denomination is "*informal, in-solemn hostility.*" Let us call things by their right names, and hold England and hold ourselves up consistently to this view of the transaction. Look at it. There was a forcible temporary occupation of our territory by an armed foreign body, acting in organization, sent across by a foreign Government, as a Government, not for plunder, but as an alleged grave measure of state policy—for the alleged defence of its own soil and its own law against revolutionary invaders from without. What sort of act is that, sir? The mover is a Government; the inducement a high reason of state; the instruments and the effects such as ordinarily do the work, and mark the giant tread of war. Armed men violently assail a vessel moored on our waters, owned by our citizens, reposing, as we allege, beneath the protection, not forfeited, of the folds of our flag. It is the cry of brief but actual battle, which rises above the murmur of that onward, unreturning stream. The peace of our territory was disturbed, its sanctity was violated, the charmed life of an American citizen was taken in fight, the property of an American citizen, itself part of the general wealth of the community, was destroyed. This, sir, in the language of the publicists, is "*informal hostility*" against the United States, and the responsibility of England, who ordered it to be committed, and the immunity of the soldiers who enforced the order with the bayonet and cutlass, result, of course, according to the principle on which, as I have said, we all take our stand, and in which all publicists agree. I do not say that by this act England intended to begin a war on the United States, or to impair our strength, diminish our treasure, or insult our flag as a nation. Certainly not. But the act which she does is to invade our territory forcibly and unlawfully, for the purpose of reaching and destroying the property of one of our citizens, which she had no right so to reach and so to destroy, an

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to effect that purpose by military violence and by shedding innocent blood in battle. And this act is hostility against us, because our rights are outraged, and they are outraged by the methods and the processes, and according to the forms of war; and because every nation and every man must be holden to intend the acts which he does, and their necessary consequences. How do you distinguish this proceeding from the attack on Copenhagen, in 1808, to which the Senator from Virginia alluded last evening? What was that transaction? England, cherishing no hostile feeling against Denmark, (for Denmark, like herself, was actually in arms against the Emperor of the French,) conceived a fear that that ancient, gallant, but not very powerful nation might fall before him, in which case her sixteen ships of war would become his—a formidable accession to the strength by which he was urging forward his aim of universal dominion. Thereupon she sent Admiral Gambier to Copenhagen, bombarded it, killed and wounded above a thousand persons, and carried off the whole Danish fleet. That is, she forcibly invades the Danish territory for the purpose of possessing herself of divers ships, of which, as against Denmark, she had no right to take possession; not for the purpose of weakening or insulting her, but to prevent their becoming, in other hands, the instruments of annoyance against herself. So here. She invades our territory with military force, for the purpose of possessing herself of a vessel, of which, as against us, she had no right thus to take possession; not to weaken or insult us, but to prevent its being, in other hands, the instrument of annoyance against herself. The cases are alike cases of informal war against the nation whose national rights are invaded. In the affair of Copenhagen, the object of the invasion was the capture of Danish Government ships. If, instead of that, it had been Danish merchant ships, lest their cargoes might go to fill the coffers of France, or to transport French munitions of war, would the act have been at all the less an act of hostility against Denmark? Nay, if Denmark had been neutral, and the object had been to cut out a French ship which had fled to Copenhagen for shelter, it would still have been a hostile aggression against Denmark herself. The attack upon Copenhagen was upon a grander scale than that upon the *Caroline*; more ships, more men, greater names, a more picturesque arrangement of the spectacle of war. But the essential character, the legal name, the legal consequences, national and personal, were the same. Sir, if one Government trespasses on the rights of another by the employment of warlike instruments, it is, to the extent of the trespass, war on the injured nation.

But I advance to a second and far more important circumstance. The expedition in which he served was the act of a Government competent to compel him to serve. Independent of, and prior to any knowledge or approval of the act by the mother country, it was so. I wholly reject the suggestion that this daring enterprise was at first an unauthorized proceeding of individuals, and that it subsequently became the act of a Government by ratification. From beginning to end it was the work of a Government, and of a Government having the right to exact McLod's obedience to the last drop of his blood. Who planned and conducted the attack? The colonial authorities. Such is, for substance, the explicit declaration of Mr. Fox. Such is the legal conclusion from the facts stated by Sir Francis Head in his despatch of the 20th of January, 1838. Sir, the matter stands exactly thus. The colonial authorities specially em-

powered Colonel McNab to defend Her Majesty's territories, and to defend Her Majesty's subjects. Such is the concurrent statement of Mr. Fox and Sir Francis Head. For this purpose they expressly empowered him to adopt all needful defensive measures, and they thereby clothed him by inevitable implication with the discretionary power of judging what measures were needful. In the exercise of that discretion, he judged this measure to be needful, and he adopted it. Now, for the protection of the soldiers by whom it was achieved, it is precisely as if the colonial authorities had directly and in terms planned and commanded it. Colonel McNab for this purpose conclusively represented them. How could a common soldier pronounce or conjecture that the judgment of the official representative was erroneous? Sir, he had the right, and was bound to assume it to be the judgment of the colonial authorities. And who were they? Why, as between them and McLeod, and for the purposes of this question of individual immunity as between McLeod and ourselves, they were his rightful and only Government. Nice questions may be moved on the competency of a colonial Government from its subordinate relations to the imperial head, to set on foot an enterprise of war. But it is every where conceded that such a Government may undertake defensive war. The mother country, by the act of establishing it, clothes it with the power and imposes on it the duty of defending itself; and it clothes it also with the power of judging for itself in the first instance how that duty shall be done. When, therefore, it resolves that a particular measure of war is necessary for its defence, and that the crisis requires a blow to be struck at once, and without waiting for advice from the paramount power at home, it may call the whole colonial population to arms by day or night, and obedience to such a call is as rightful as unavoidable, and as effective for individual immunity as the obedience of a conscript or an impressed seaman. Such was this case. Was McLeod to say that the colonial authorities misjudged on the question of necessity? They told him the defence of the territory and of the Constitution of Upper Canada required this act. Did he know better? Did he command a wider horizon of view? Could he be sure he had all the elements of a sounder opinion? Consider that to the colonial residents the colonial Government is every thing. It is all of majesty, of monarchy, of aristocracy that he ever sees in his life. To that all his duties appear to be owing; and consider, too, that the spirit of this grand principle of individual responsibility is, that *bona fide* obedience to his actual and lawful Government on a requisition of warlike service shall never be reckoned a crime in any man.

I do not mean to say that the subsequent approval and adoption of this act of the colonial authorities, by the mother country, are not of themselves equivalent precisely to a previous command of the mother country. Under the special circumstances I think they are. But had the destruction of the *Caroline* been the act of a mere mob, such effect could hardly be ascribed to a subsequent ratification. It is because it was the act of a local government; subordinate indeed, yet competent to defend itself, competent to judge for itself on the mode of self defence, in the first instance, and, in the exercise of its own discretion, to call out its subjects to an act of war; it is because it was the act, not of a mob, but of such a Government, that it is susceptible of a ratification by the imperial head,

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which is equivalent to a previous authority. But for the same reason; for the protection of the individual subject whom the local government calls to arms; such ratification is unnecessary. If given, however, as here it has been, then, according to every author, and all analogy, it makes the title to personal immunity perfectly indisputable. "If the sovereign ratify the act of war undertaken by his minister, this approbation renders the war *solemn* by *reflecting back*, as it were, an authority upon it; so that it obliges the whole commonwealth."—2 *Burlemaqui*, 266. "But if a nation or a chief approves and ratifies the act of the individual, it then becomes a public concern, and the injured party *is to consider the nation as the real author of the injury*; of which the citizen was, perhaps, only the instrument."—*Vattel*, book 2, chap. 4, sec. 74.

You have before you, then, the case of a Government commanding a subject, who was bound to obey, to shoulder his musket for the defence of his country. It is true, the Senator from Pennsylvania tells us, that McLeod was a volunteer. But he deduces no legal conclusion from the fact; undoubtedly because he remembers that, by the admitted doctrine of international law, no distinction is recognised between volunteer and any other soldiers. He will remember that *Vattel*, at page 401, is a direct authority for this. In the reason of the case there can be no distinction. The regularly enlisted soldier engages voluntarily, at first, for a longer term and for all service; the volunteer engages for a shorter term and for a special service. But both alike go forth to execute an authoritative public will, and both stand, therefore, on the same plane of immunity and hazard. Consider, sir, what a great concern of all nations it is, and of ours more than all others, to hold a rule of international law on this subject that shall make their inhabitants willing and ready to leap to arms, at half a moment's warning, at the midnight cry of their country.

You have, then, I repeat, the case of a Government commanding a subject to go forth to an enterprise of war. Why is he not, then, within the terms and spirit of the great principle of immunity which we all agree surrounds the soldier of a formal and public war? What are the peculiarities that distinguish this particular service from the general trade of war? Why, sir, they are said to be these: that it was a single act of hostility, not preceded nor followed by any other, not preceded by a declaration, and wholly unjust. This is all true; but for the objects of this inquiry it is wholly immaterial. Sir, publicists and the practice of nations recognise various modes, kinds, and degrees of hostility. War is not always general or "perfect," nor is it always preceded by a declaration. It sometimes begins and ends with one single crushing blow. Such was the attack on Copenhagen, in 1801, and that in 1808. It may be limited to one single act of reprisals, by a single individual, under a license communicated to him alone. A foreign Power has seized his ship, and his own Government gives him letters of marque to help himself to another. In point of fact, too, war often begins without any declaration at all, at home or abroad. The bolt outruns the flash. Modern history is full of such instances; but I spare you the rehearsal of them. Now, sir, what I would say is, that, for the purposes of immunity to the soldier and sailor, all these modes, kinds, and degrees of war come exactly to the same thing. They are all and all alike modes of governmental action, involving only governmental responsibility. In many things they certainly differ one from another; some of them are more chivalrous, more

magnanimous, more conformable with a strict and punctilious proceeding and a technical law of war than others. Some of them afford less ground of complaint to the Government assailed than others. But, for the purpose of personal irresponsibility, they are all one and the same thing. In reason it must be so. Consider that a leading object of this principle of immunity is the protection of the unfriended instruments of ambition or patriotism who furnish the rank and file of war. It is to protect the common soldier. And what an unavailing, uncertain, ensnaring thing it would prove for him if his title to it depended on such shades of diversity as these! How does he know whether the war, to which you hurry him away from all that is dearest to him in the world, is just or unjust? How does he know by what heralds of declaration it has been preceded? How does he know whether the desperate midnight enterprise for which you have called him up from sleep is to be a single enterprise, or whether it is designed to kindle the fires of a war that shall encircle the world? Sir, he knows only that his own Government, in obedience to which he was bred—that the land of his birth—that the land of his fathers' graves, bids him go forth; and that, if he shrinks for a moment from his post when the storm of battle rages highest, he dies by the hands of his officers; and he goes forth relying on the armed but manly justice of civilized war.

And so are all the authorities. The Senator from Virginia recited them so copiously to you last evening that I shall spare you the repetition, and content myself with a reference or two. The Senator from Pennsylvania and the Secretary of State tell you that the attack on the *Caroline* was unjust. But look into Vattel, on pages 380 and 383, and Rutherford, 2d volume, page 546, and you find that they concur that the injustice of the war does not affect the soldier's title to immunity. If it did, the nations would at once return to the murder of prisoners; for was there ever a war in which each belligerent did not think his antagonist in the wrong?

But you say this was only a single act of hostility; breaking out in a time of general peace, unannounced by any declaration. So it was. But Rutherford expressly declares that this does not withdraw it from the law of immunity. I read at large the passage from page 548 of his second volume, and commend it to the meditations of the Senator from Pennsylvania. "This external lawfulness, in respect of the members of a civil society, extends to public wars of the imperfect sort, to reprisals, or to other acts of hostility."

Such is the doctrine of this publicist, vindicated and illustrated by a masterly train of reasoning; approved by the heart and judgment of universal civilized man. Against this authority there cannot be placed one solitary act of a Christian nation for the last five hundred years, nor one word of any writer who undertakes to record the existing systems of international law. What is the nation now on earth, or descended into the graves of empire; where is the modern Christian nation that has shed the blood of a prisoner because the war to which his Government detached him was informal, insolemn, unannounced by a declaration, beginning and ending with one single act? Call up the nation, if such there is or has been, and let it answer to the outraged spirit of law! Did Denmark claim the right to do such an atrocity; humbled and exasperated by the repeated bombardment of her capital; did that ancient and gallant race ever dream of avenging the defeats of the castle by the triumphs of the gallows? Did Spain, the most formal the most punctilious of Governments, and adhering

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the most tenaciously to the slow and prescriptive solemnities and technicalities of the old fashions of war; did Spain dream of it, when, in 1804, England, in a time of peace, intercepted her treasure ships returning from America, and captured or destroyed them?

Nor can you find, as I have said, a word in any approved expounder of the actual law of nations, to oppose to the text of Rutherford. *Dieta*, of Grotius, seem to conflict with it. But they only seem to conflict with it. Even these the Senator from Pennsylvania has not availed himself of, because he knows that Grotius, admirable for his genius, his studies, his most enlarged and excellent spirit, lived too early to witness the full development of his own grand principles and the accomplishment of his own philanthropic wishes. The existing law of nations has been slowly built up since his time, and to learn it we must have recourse to writers, far his inferiors in capacity and learning, but fortunate in being able to record the ameliorated theory and practice of a better day than his. From none of these can you cite any thing in opposition to the authority I have relied on. The Senator from Pennsylvania thought he had discovered some such doctrine as he needs in the 75th section of book 2d, chapter 6th, of Vattel. But the Senator from Virginia was entirely accurate in his observation upon this passage; that it plainly refers to the case of an individual acting without authority from his Government, and to nothing else. And then, in support of the position of Rutherford, I may remind that, as the law of nations is holden now, no war requires to be preceded by a declaration. Martens, 274; 2d Wheaton's Law of Nations, 12; 1st of Kent's Commentaries, 54, 2d edition. Defensive war never required it according to any theory. Vattel 317. But it was defensive war to which McLeod's Government assured him that he was summoned forth. The want of declaration, therefore, cannot affect him, unless we are guilty of the indecent and ludicrous barbarity of requiring him to judge better than his Government on the necessity of resorting to a particular measure of armed resistance to a threatened invasion.

I submit, then, sir, that McLeod is not responsible as for crime against the municipal law of New York or of this Union by participating in this act of English national wrong. Criminal in England, in him it was no crime. Let me add that if, in thoughtlessness or anger, we had stooped to shed his blood, it would have impressed a stain on the radiant flag of our pride and love which a hundred victories, ay, a hundred years of victory, would not wipe away.

The concession of the Secretary of State was right, then, in point of international law. But the Senator from Pennsylvania thinks he ought not to have made it, right or wrong. I submit, then, in the second place that he ought to have made it, and the Government to have acted on it, exactly as it was made and acted on.

What was the duty of the Secretary of State on the 12th of March last, when McLeod, guilty of no manner of crime against the law of New York, by participation in the attack on the *Caroline*, had been indicted, imprisoned, and ordered for trial to be had on the 22d of March, as for such crime, under circumstances justifying a reasonable anxiety lest he might fall a victim to a natural and a tremendous popular excitement; and when Her Majesty's minister came forward, announced the doctrine of international law, which we all know to be just, and demanded that McLeod should be holden entitled to immunity under it? What was the

Secretary of State to do? Should he have wrapped his diplomatic mantle about him and have answered, Sir, I do not know about your doctrine of international law; the American Government is not advised exactly whether it may hang prisoners of war or not; besides, it happens to have nothing at all to do with the matter; McLeod is in the hands of the State of New York; a great and patriotic State, Mr. Minister, giving forty odd electoral votes; she will do what is right; if she hangs him, why then we shall know that he deserved it; and if she does not, so much the better for himself. Should he really, so saying, have bowed the minister out, and have retreated into an Epicurean heaven of indifference and non-committal, until he and you were startled by the thunder of an enemy's cannon—a music I acknowledge at which a brave nation has no great objection at any moment to wake up? No, sir. I submit, on the contrary, that the duty of our Government was perfectly clear; to avow its acknowledgment of the doctrine of international law advanced by the minister; to declare its purpose to do what it constitutionally might to secure McLeod the benefit of it; to do it; and then, having removed this disastrous interlocutory controversy out of the way, to demand satisfaction at once of England for the burning of the *Caroline*, as that language is understood among nations of the first class. To simplify the matter somewhat, suppose that McLeod had at that moment been in our jail, in our courts, instead of those of New York, then, I repeat, it was most palpably our duty to have conceded the proposition of law; to have expressed our assurance that the courts would acquit him of the accusation of crime against our municipal codes, and even that the Attorney General representing the Government would enter a *nolle prosequi*, thus committing him to the disposal of the Executive as a prisoner, or a quasi prisoner of war, or whatever else his legal character might be; and then and thus having washed our hands clean, and set ourselves right before God and man, to call this island mistress of a thousand ships of war to instant account.

That this was the duty of our Government is too plain to be debated. Was it not its duty to cause this nation to keep the law of nations? Was it not its duty to be just? And was not this bare justice to McLeod, to England, to the universal spirit of humanity? Was it not its duty to preserve peace if it might be had with honor, and if war must come, to secure us one in which a Christian people might draw its sword? Now, sir, the difficulty was, that, on the 12th of March, we were in an eminently false position. With ample materials of the highest tone of complaint, perhaps even of reprisals or war against England, for her conduct towards us, here she was holding us up before all the world, for a little piece of our own conduct, in which we were, or were apparently, just about to be entirely in the wrong. With the burning of the *Caroline*, with the groundless yet pertinacious grasp of our territory in the Northeast, with the repeated seizures and searches of our ships at sea to complain of and go to war about, if a wise and moral people had a taste for such entertainment, we were actually just about compelling England to declare war on us for hanging one of her soldiers because he did not run away from his colors! Why, sir, this was not a position for men of sense to stand on long enough for Her Majesty's minister to pull off his hat. Policy, honor, justice, honesty, humanity, all required us to quit it in an instant. Why give England such a perilous advantage as to make up a false issue like this? Why unite all her classes, and every man in every class, in what they must

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think a holy war? Why alienate the sympathies of the world by such a thing? Why commit a blunder as well as a crime? Why forget he is trebly armed that has his quarrel just? Why shock and shame the pride of America by turning away from England to strike down McLeod? Sir, if you speak of blows, I believe the people of this country would choose to be seen aiming full at the front of the proud and giant master, rather than dragging the servant, unarmed, unfriended, and handcuffed, to the gallows. They feel that no laurels are to be won in such a field by a nation of gallant men, of men of honor and of Christians. They will seek those laurels rather where they do naturally grow, far up on the "perilous edge of battle when it rages." Sir, I was just now told that the late Chief Magistrate observed to a friend, some time during that fleeting month of his administration, that in a just cause, if Congress would give him men and money, he had no objection to going into a war with England, but that he could not bring himself to buckle on his armor and take the field against Alexander McLeod. I can appreciate the disinclination of the kind, brave, and just old man to such a service.

I repeat, then, sir, that if, on the 12th of March, McLeod had been awaiting trial in the courts of the United States, we ought to have replied to the demand of Her Majesty's minister thus: We admit your proposition of international law; we are not quite so rude and recent among the nations as not to know the elements of the code that knits the families of the earth together. From this accusation of municipal offence your subject is safe. And now will you in your turn inform us (for three years we have waited in vain to know) on what pretence Her Majesty's forces, at the dead hour of night, crossed the inviolate line of our boundary, invaded our soil, dishonored our flag, wasted the property and shed the blood of American citizens?

It happened, however, that at the time when this demand was made, McLeod was awaiting his trial in the courts of New York. He was in a New York prison, under New York process; and the distinguished Senator from Pennsylvania insists that for this cause, at least, the Government should have done nothing, and said nothing to the demand, but just have directed Mr. Fox to tell his story and carry his law to New York. We should have made no concessions of the legal principle; we should not have dared to communicate to the Executive of that State the official evidence of the claim, and of the doctrine of England, and our own opinion of it; we should not have lifted a finger; we should have stood speechless, unconscious, innocent, and dignified, to see England, New York, and McLeod settle this little concern of national law, peace, war, life and death, among themselves.

Sir, the position McLeod stood in to that great and admirable State undoubtedly limited the rights and embarrassed the action of the General Government. But because we could not do all that we would, were we not to do the little that we could? Were we to do nothing? Whom have we offended? The State of New York? How? By desiring to secure to this prisoner, to whose fate interests so large and so precious were attached, a fair trial? Sir, I cannot believe it. New York was proceeding against him in the ordinary course of the administration of criminal law. To recognise her jurisdiction over him, which in the amplest manner this Government did, and then to wish for him just what New York wished for him, that first of social privileges—a fair trial: was there

in this any thing to affront her pride of character? any thing to ruffle a feather in the plume of her acknowledged prerogative?

But we sought to operate on the Government of that State by communicating our opinion on the points of international law, and in effect advising it what course to pursue. Well, sir, does the conveyance of advice imply disrespect towards the object of it, or a distrust of his integrity or his capacity? Does it prove any thing more than that you feel a deep solicitude that, in a great crisis of his fortunes and yours, he shall, for his sake and yours, make no mistake? Sir, here was a State with the physical power of engaging you in a national war. If hostilities followed the execution of McLeod, it would not have been a war on New York alone, but on Louisiana, on South Carolina, on Maryland, on Massachusetts. If they should be more immediately aimed at her, your valor and your treasure must have united with hers, for her defence. A State, then, might plunge you in a general war; and yet, under the Constitution, no State has the legal and direct right to make a war for you or for herself. She has no right to terminate it, by treaty, after it has begun. That great prerogative is yours alone. Those transcendent imperial powers, by which and through which we are known to the nations, are your powers. And now is it possible that a State, prohibited by the Constitution from making war, from making treaties, may consummate an act for which we must answer with our best blood, on the field and on the deck; and yet that this Government, clothed by the Constitution with all these great trusts, charged with the conservation of peace, with the conduct, expenditures, and hazards of war—this Government, whose flag alone it is that waves over the universal American family, wheresoever a member of it wanders, on land or sea—that we cannot respectfully approach any State with the communication of advisory suggestion, and deliberate with her on a subject of great novelty, difficulty, and importance? I have no great opinion of such transcendentalism of delicacy as this—good for winning electoral votes, possibly, but unfitting a man or a Government for manly and useful action. Sir, New York is ably represented here, by gentlemen of both political parties, and they can answer for her; but I believe she will laugh to scorn the suggestion we hear of out of doors, that any disrespect has been shown or felt for her Government or her people, for her judicial learning, or for the temper, feelings, and views of any portion of her widespread community.

In judging on this part of the subject, in this inquiry how far this Government has exceeded its powers, invaded State rights, or betrayed indecorous anxiety and haste to save this person from the gallows, I ask you to take one thing into your consideration. Sir, it is no answer at all to England to say this is the affair of New York. She knows nothing even of that magnificent Empire State as a separate State. We do not allow her to know any thing of any State by our Federal Constitution in that capacity. We do not allow her to have diplomatic access to any. To attempt to make a treaty with any would be clear ground of war. We inform her that, by our Federal Constitution, the foreign relations of New York are repositied here; and if she has any cause of complaint against her, she will please to leave her card at our door. England, of course, all the nations, must hold us to this; and if any State affords her ground of war, it is against us that we ourselves direct her to turn her steel. At the same time, therefore, that our Federal relations to New York hindered

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us from doing much, our obligation on the laws of nations, to England, to do every thing was not in the least degree lessened by them. The clear course of the Government, therefore, was to do what it did; to apprise that patriotic and noble State of our opinions on the justice of the demand of England; to do what we decorously could to avert so senseless and fatal an act as the execution of the prisoner; to have his case fairly tried, and, if needful, to have it brought into the national tribunals; to explain to England why we could go no further, and then abide the result. Any thing, every thing were better than a war on such a ground, that no man could hear of a defeat or a victory without tears of bitterest humiliation for America.

Mr. President, I have one duty more to perform, not so much to the Secretary of State as to my own feelings, and then I shall have done. I have said that it was the business of the Government, after, as far as was practicable, clearing itself of fault in the matter of McLeod, to demand satisfaction, withholden and slept upon by England under the last Administration for three years, for the destruction of the *Caroline*. Gentlemen will do the Secretary of State the justice to remember that far the larger part of the letter to Mr. Fox is devoted to the performance of what he must have felt, as we feel it to be, his most agreeable duty. They will concede, too, that this part of his work is eminently well done. I should but degrade the seat which I hold in this high place by public adulation of any man, even of him. That he is my strong and constant friend would be no apology at all. Yet I will say that the ability and spirit with which this paper is written will give it a high place among the ablest diplomatic compositions which enrich the archives of even the Department of State. He has vindicated the Government of his country under all Administrations, making no narrow, unnational discriminations between them, from every shadow of blame in reference to the Canadian border troubles; has proved that, so far from permitting or conniving at any participation in them by our people, we have set an example to the world; we have been the first nation in the world to prohibit our citizens from making any form of war on a country with whose Government our own Government was at peace; has proved that England had no right to make so rash and fatal an invasion on this. Sir, with this letter unrecalled, I think no English Minister will tell us again, at the end of three more years, that he understood our claim for satisfaction had been withdrawn.

That this argument is ably conducted, you all admit. But the course of the distinguished Senator's observations makes it more immediately due to Mr. Webster to remind you that the argument is so conducted as not only to inform the public judgment about this wrong, but to excite just sensibilities in relation to it. It is so conducted as not only to enlighten the understanding, but to lift up the spirit of the country. He has not stooped to pick out and bluster about what is called the language of threat, but he has met the whole claim and the whole case of England with a composed and firm dignity, and with a manly decision; in the temper of a statesman who holds the peace and glory of his country in his hands.

The Senator from Virginia [Mr. RIVES] last evening read to us a portion of this paper. Let me enable its distinguished author, now no more among you, again, though absent from this scene of his long and splendid series of patriotic service, to speak for himself:

“Under these circumstances, and under those immediately connected with the transaction itself, it will be for Her Majesty’s Government to show upon what state of facts and what rules of national law the destruction of the *Caroline* is to be defended. It will be for that Government to show a necessity of self-defence, instant, overwhelming, leaving no choice of means and no moment for deliberation. It will be for it to show, also, that the local authorities of Canada, even supposing the necessity of the moment authorized them to enter the territories of the United States at all, did nothing unreasonable or excessive; since the act, justified by the necessity of self-defence, must be limited by that necessity, and kept clearly within it.

“It must be shown that admonition or remonstrance to the persons on board the ‘*Caroline*’ was impracticable, or would have been unavailing; it must be shown that day-light could not be waited for; that there could be no attempt at discrimination between the innocent and the guilty; that it would not have been enough to seize and detain the vessel; but that there was a necessity, present and inevitable, for attacking her in the darkness of the night, while moored to the shore, and while unarmed men were asleep on board, killing some and wounding others, and then drawing her into the current, above the cataract, setting her on fire, and, careless to know whether there might not be in her the innocent with the guilty, or the living with the dead, committing her to a fate which fills the imagination with horror. A necessity for all this, the Government of the United States cannot believe to have existed.”

To these hands, for one, I am willing to entrust the rights and the fame of my country.

Mr. President, I concur entirely with both the Senators who have preceded me that there need be felt no apprehension of a war with England. Like them, I neither expect nor desire it. Heaven forbid! I know of nothing between the Governments that ought not to be and may not be easily and honorably composed. But whatever may befall, I claim it as the praise of this Administration, that it has had the manliness to seek peace by justice; and that, if war shall come, it has done all that man can do to enable us so to go into it that we may have the approval of our own consciences, self-respect, the moral judgments of the world, and, may I not add, the God of our fathers with us in the conflict.



