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President McKinley's position with reference to the Cuban republic is painfully anomalous. According to the constitutional doctrine which he has borrowed from President Cleveland, it is the prerogative, not of congress, but of the executive, to recognize new governments. The responsibility, therefore, of recognizing Cuban belligerency, pursuant to his own theory, rests upon President McKinley. Accepting this responsibility he nevertheless refuses to make the recognition. Two representatives of the Cuban government—the vice president and the secretary for foreign affairs—are now in the United States awaiting an official audience which the president denies them. Thus the president, while uniting forces with the Cubans in the field, places the American government in the attitude of regarding them as Spain regards them—as banditti, as outlaws, whom the Spanish government may continue to shoot as fast as it catches them.

The Cuban republic has no belligerent rights. Under the law of nations its soldiers have no right to pull a trigger or strike a blow. They are subject to the municipal law of Spain, under which when they kill they commit legal murder. Nor have we conferred upon them the legal right to kill by amalgamating them in our armies. The Cuban troops are not under the command of our officers. Yet they are fighting for us, and with us. As commander-in-chief of the army and navy of the United States, President McKinley has made them our allies, though as our civil

executive he refuses to recognize them as belligerents.

Is a greater anomaly in international affairs conceivable? If Gen. Garcia, our military ally, were captured by the Spanish, what protection could we give him? None. In the eye of the municipal law of Spain he is a murderer and outlaw. Legally, he is a murderer and outlaw also in the eye of the municipal law of the United States, so long as the United States refuses to recognize the war-making rights of the government whose commission he holds. Spain, then, would be free to shoot him or hang him if it caught him, and our lips would be closed, our arms paralyzed. We could not threaten the Spanish with retaliation. We have no retaliatory rights with reference to any civilized punishment the Spanish may choose to inflict upon unrecognized belligerents whom they capture. If they attempted to take Hobson's life, we could protect him by threats of executing Spanish prisoners; for Hobson is a belligerent in our own armies. So, if the belligerency of the Cuban republic were recognized by the United States, and the Spanish, having captured Garcia, undertook to treat him as an outlaw, we could protect him by threatening to retaliate upon Spanish prisoners; for then Garcia would be a belligerent in the army of our ally. But without our recognition of Cuban belligerency, if the Spanish were to capture Garcia, we should be powerless to protect him. Threats of retaliation on our part would be unlawful; and if he were shot or hanged, actual retaliation by the execution of Spanish prisoners in our hands would be legal murder. This is the position in which the president's refusal to recognize the Cuban republic in accordance with

his own claim of prerogative places the American people.

How do Americans who have justified this war on the only ground on which it can be justified, as an intervention in behalf of the Cuban republic in its struggle for freedom from Spanish despotism, how do they like the attitude in which the president is placing their country by accepting, in his capacity of commander-in-chief, the aid of the Cuban patriots as allies, while in his capacity of chief magistrate denying them belligerent recognition and therefore belligerent protection? Does he intend after all to make the war what Spain tauntingly told us at the outset it would be made—a war of conquest? If not, why deny to the Cuban republic that simple recognition of belligerency which would at once confirm our disinterested pretensions and protect Cuban soldiers from Spanish barbarity?

It is not likely that Spain would execute Garcia as a murderer and outlaw if she captured him. She might fear the retaliation of the United States, in spite of its lack of right under the laws of war to resort to retaliation. Or she might withhold her bloody hand out of respect to the opinions of mankind. And we, on the other hand, might in fact, though without right under the laws of war, visit upon some of her great men who fell into our hands the penalty which she, in the case supposed, inflicted upon Garcia. But, however all this might be, the fact remains, and that is the important consideration, that we have allied ourselves in war with soldiers whose right to make war we continue to deny.

The Spanish have recognized the anomalous situation in which Presi-

dent McKinley's refusal to recognize Cuban belligerency places us. Gen. Blanco's official organ at Havana, *La Lucha*, goes even so far as to claim that our own soldiers, by cooperating with military forces having no recognition as belligerents, lose their belligerent rights. Editorially, in its issue of June 22d, that paper declares that the American army of invasion will not be accorded belligerent rights, because it is acting in concert with "malcontents in rebellion against proper and established government—malcontents who have yet to be recognized as belligerents by any nation." The *La Lucha* editorial significantly adds: "If these rebels are not to be considered as a regular army, but only as a civil element warring against the established government of the state, the Americans cannot pretend or expect that the Spanish government will grant the forces they send to Cuba the right which they would accord to an army with an ally recognized as a belligerent power."

The above quotation clearly intimates that captured Americans may not be treated by the Spanish as prisoners of war. There is little likelihood, of course, that the intimation will be made good. Even the fatuous Spanish government will hardly go so far as to shoot or hang Americans captured in battle, though it may so dispose of our captured allies. But the theoretical strength of *La Lucha's* position is impregnable. We have made an alliance with a government whose belligerent rights we refuse to recognize. Though our military arm cooperates with its soldiers, the civil side of our government treats them as assassins.

The way out of this dilemma, since the president takes no action in his civil capacity to protect his military allies, is for congress to act. Of its right to do so there can be no reasonable question. Aside from all other authority, under its constitutional power "to make rules for the government and regulation of the land and

naval forces," it may recognize the belligerent rights of the Cuban republic, simply as a basis for conforming and authorizing the otherwise unlawful acts of our army and navy in making a military alliance with that republic. Recognition of the belligerent rights of a military ally being the first condition of a lawful military alliance, legislative authority to regulate military alliances—and that is involved in authority to govern the land and naval forces of a nation—implies authority to recognize as belligerents the forces of a de facto government with which an alliance is desired.

Capt. Capron, who died fighting so bravely at the battle of La Quasina, had the misfortune just before sailing from Tampa to Cuba to write a letter to a most injudicious friend. It was after the transports had made their false start from Tampa and returned. Capron, still in his twenties, and full of energy and ambition, felt a keen sense of disappointment. He had gone out—vigorous, ambitious, doubtless patriotic, too—to fight under his country's flag; and here was a strong probability that the privilege might be denied him. While in this humor he wrote to his friend: "I am nearly wild for fear the Spanish government will try peace before we get started." From Capt. Capron, the athletic, hopeful, eager army officer, too young yet to realize the awfulness of welcoming war merely for war's sake, the unhappy feeling expressed in that letter may well be pardoned. It was but a passing passion of boyhood. But the man to whom he wrote the letter, a man old enough and mature enough to bear the title of "judge," yet who, after the young man's death, gave his letter to the public press as if its writer's passionate words were something to be proud of instead of an unfortunate expression to be excused, can plead nothing in mitigation, nothing whatever unless it be imbecility. In having worked his own way from private in the regular army to the commission that bore him to

his death, Capt. Capron made a record which his countrymen will remember with satisfaction, while they try to forget his boyish fear that peace might come before fighting, and they will not thank the injudicious friend who has obtruded that unfortunate letter upon their attention.

A distinguished senator, one who is not to be classed with the plutocrats who have made the word "senator" a stench in American nostrils, makes a thoughtless comment upon the death of young Hamilton Fish, at the battle of La Quasina. While feelingly referring to this brave young man's death as a hard blow to his family, Senator White, of California—for it is to him that we allude—says: "It will have a great effect on the country in obliterating the lines between the different classes," and then adds:

His service in the army shows that there is a common feeling between the rich and the poor, and the death of this millionaire, together with that of the poorest men in that troop, will do more toward promoting a better feeling among all classes of people than if Mr. Fish had ten times more money and ability than he possessed, and had lived a hundred years.

With abundant respect for the common sense and good feeling of Senator White, we beg leave to suggest that young Fish's death neither will nor ought to have any such effect. The lines between classes in this country cannot be obliterated by the death, however valorous, of rich men. Those lines are due to institutions, imbedded in the laws, which divert the earnings of the many to the pockets of the few. While such laws remain, working that result, class lines will be drawn. Does Senator White in sober thought believe that the rich will ignore class lines because a rich man now and then proves, what no one doubts, that despite his riches he is nevertheless a man? Does Senator White in sober thought believe that the poor will be blind to class lines because in the face of a common enemy a rich man drops into the same grave with poor men?