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Neutrality and American rights

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NEUTRALITY AND AMERICAN RIGHTS

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SPEECH
OF
HON. GEORGE SUTHERLAND
OF UTAH

IN THE
SENATE OF THE UNITED STATES

MARCH 7, 1916



WASHINGTON
1916

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SPEECH
OF
HON. GEORGE SUTHERLAND.

Mr. SUTHERLAND. Mr. President, what I shall have to say this morning will be not immediately connected with the unfinished business.

Mr. President, it is quite natural in a great war such as now involves almost the whole of Europe that individual American citizens should sympathize with the cause of one side or the other, and this is particularly to be expected in the case of those of foreign birth or of recent foreign ancestry. There is nothing in such a sentiment to condemn or even deplore. For a citizen of German birth or descent to sympathize with or look forward with anxious hope to the success of Teutonic arms, or for a citizen of English or French or Russian birth or descent to sympathize with and pray for the victory of the allies, is precisely what might be anticipated, and constitutes no breach of civic duty as far as this Government is concerned. Such an attitude of mind is entirely consistent with unimpaired loyalty to this country and readiness to bear arms in its defense, if need be, against even the land of one's birth and ancestry. To say that the individual citizen, in the face of the passionate and titanic struggle which holds the foremost nations of Europe in the very shadow of destruction, should remain neutral in thought and speech is to talk nonsense and to ask an impossibility. But, Mr. President, the question with which we are now confronted is not one of sympathy as between outside contending parties, but it is one which threatens or at least gravely affects American rights. Confronted by such a question every sentiment must be merged in the common duty of presenting a firm and united front in support of this country as against the world. Neutrality, as determined by international law, is not an individual obligation. It is a duty which one nation owes to other nations which are at war. A citizen may not only freely indulge his sympathies for one of the belligerents as against the other, but he may within certain limits extend direct aid, as, for example, the sale of munitions of war, the loan of money, and so on. The *Government*, however, is

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bound to rigidly maintain an attitude of strict impartiality between the belligerents. For the Government to commit a breach of neutrality is to put itself in a very serious position—one which may justify a declaration of war upon the part of that belligerent who may be injured by the breach. It is the custom of this Government, though not of all Governments, to issue a proclamation of neutrality at the beginning of a war, setting forth with more or less particularity the general principles by which it will be bound. In accordance with this policy, at the beginning of the present war the President issued such a proclamation, in the course of which certain rules were definitely stated as among the principles by which we should be governed. Among others, I quote the following:

And I do hereby warn all citizens of the United States, and all persons residing or being within its territory or jurisdiction, that, while the free and full expression of sympathies in public and private is not restricted by the laws of the United States, military forces in aid of a belligerent can not lawfully be originated or organized within its jurisdiction; and that, *while all persons may lawfully and without restriction by reason of the aforesaid state of war manufacture and sell within the United States arms and munitions of war and other articles ordinarily known as "contraband of war,"* yet they can not carry such articles upon the high seas for the use or service of a belligerent, nor can they transport soldiers and officers of a belligerent, or attempt to break any blockade which may be lawfully established and maintained during the said wars without incurring the risk of hostile capture and the penalties denounced by the law of nations in that behalf.

On September 19, 1914, in the early days of the war, Mr. Lansing, then Acting Secretary of State, in a circular relating to armed merchantmen, which was sent to representatives of all foreign powers, among other things announced this general rule: "A merchant vessel of belligerent nationality may carry an armament and munitions for the sole purpose of defense without acquiring the character of a ship of war." My understanding is that this correctly states the rule recognized by substantially all the authorities who have spoken upon the subject. In the great struggle which is now raging our position is one of extreme delicacy. The belligerent nations are engaged in a war for what they believe to be their very existence. What they do is done in hot blood; what we do should be done in cool blood. It may not always be possible for us to determine as between conflicting claims what is precisely the wise and impartial thing to do, but there is one general policy that we can creditably follow, and that is to ascertain definitely what were the rules of international law affecting the question of neutrality in force at the opening of hostilities, and then adhere to them strictly and impartially, whatever may be the incidental effect of our adherence upon any of the belligerent powers. If we

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do that, we shall at least preserve our attitude of neutrality. It is possible that we may modify our position and still preserve that attitude, but we are more likely to be guilty of unfairness to somebody, and indeed, as I shall presently show, to be guilty of a breach of neutrality or a distinctly unfriendly act, which may involve serious and perhaps disastrous consequences.

These general observations have a bearing upon the two questions that have led to much recent discussion: First, that relating to the arming of merchant vessels for defensive purposes and the use of such vessels by our citizens for travel; and, second, that relating to the trade of our citizens in munitions of war. I desire very briefly to discuss both of these matters, and first that of the right of a merchant vessel of a belligerent nation to carry arms for defensive purposes only. That such right exists is clearly laid down in the circular of the State Department from which I have already quoted. The general rule is established by substantially all the authorities and has nowhere been more clearly stated than by Mr. A. Pearce Higgins, in a recent article, from which I quote as follows:

The right of a merchant ship to defend herself and to be armed for that purpose has not, so far as I am aware, been doubted for two centuries, until the question has again become one of practical importance. The historical evidence of the practice down to the year 1815 is overwhelming. Dr. Schramm, in his elaborate denial of the right falls to distinguish between the position in which a belligerent warship stands to an enemy merchant ship, and that in which it stands to a neutral merchant ship. This failure is important and goes to the root of the matter, for whereas the visit of a belligerent warship to an enemy merchant ship is, under existing law, merely the first step to capture and is itself a hostile act, and is undertaken solely in order to enable the captor to ascertain that the ship is one which is not exempt by custom, treaty, or convention from capture, the visit to a neutral ship, though justified by the fact of the existence of war, is not a hostile act. By long custom a belligerent warship has a right of visit and search of all neutral merchant vessels, and this right is exercised in order to ascertain whether a vessel is in fact neutral and not engaged in any acts such as attempting to break blockade, the carriage of contraband, or the performance of any unneutral service which would justify its detention and condemnation. "It has been truly denominated a right growing out of and ancillary to the greater right of capture. Where this greater right may be legally exercised without search (as in the case of enemy ships) the right of search can never arise or come into question." A belligerent warship has a right to capture an enemy merchant ship, and the latter is under no duty to submit; it has a corresponding right to resist capture, which is an act of violence and hostility. By resisting, the belligerent violates no duty, he is held by force, and may escape if he can. But forcible resistance, as distinct from flight, on the part of a neutral merchant ship is universally admitted as a just ground for the condemnation of the ship, for a neutral is under a duty to submit to belligerent visit. (S. Doc. No. 332, 64th Cong., p. 32.)

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It is said, however, that the advent of the submarine, a new weapon, weak in defensive power; has brought about an alteration of the rule, upon the principle embodied in a very old and respectable maxim of the common law, *cessante ratione legis cessat ipsa lex*—the reason of the law ceasing, the law itself ceases. No one doubts the wisdom of the maxim, but does it apply? We must not confuse the *reason* which gives life to the law with the *incidental circumstances* which may accompany the operation of it, but do not condition the law itself. The crime of murder was never dependent upon the character of the instrument by which it was committed. The crime itself antedated the invention of gunpowder, but the advent of that substance in no way altered the constituent elements which characterized the crime. When the gun took the place of the knife and the bludgeon as the implement of assassination, these constituent elements were not in any manner affected. The rule of international law was that a belligerent merchant ship might arm for defense and might forcibly defend herself against the attack of an enemy—not an enemy armed in a particular way, but an enemy armed in any way. It is true that a merchant vessel so armed seldom, if ever, resisted the attack of a warship, but that was not because it had no right to resist, but because resistance was futile. The rule was, further, that the merchant ship could not lawfully be sunk until after warning and an opportunity given to crew and passengers to escape in safety. The claim that the submarine is a war vessel of such weak defensive ability that a merchant vessel may not defend against its attack, and that it is absolved from giving warning because to do so might invite its own destruction, does not, in my judgment, present a case that calls for the application of the maxim. The rule allowing defensive armament upon and requiring previous warning to a merchant vessel was not based upon the reason that a ship of war was in no danger from the slight defensive armament that was carried, but it was based upon the supreme right of self-defense, and upon the consideration that it was not in accordance with the principles of civilized warfare that the lives of civilian crews and passengers should be destroyed without previous warning and full opportunity to save themselves. That reason, founded upon the dictates of humanity, is not affected in the least because a vulnerable submarine may be used in place of an invincible man-of-war. This humane rule has heretofore existed without qualification. If it could not be complied with for any reason, it was not admissible to destroy the ship and jeopardize the lives of her crew and passengers.

The proposition now insisted upon, baldly stated, is simply this, that when a new engine of destruction is invented that can not be made entirely effective without violating the law, the law is *ipso facto* automatically modified. Under these circumstances my own view of the matter is that the new weapon must yield to the law and not that the law must yield to the new weapon. What would be thought of a similar claim made by a citizen with reference to a domestic law, namely, that if new and unforeseen conditions arise rendering it highly inconvenient to comply with the law compliance must be dispensed with? It seems to me a far more logical conclusion is that if the submarine can not be utilized effectively without violating this long-established and humane rule of international law that fact constitutes persuasive ground not for repudiating the law but for holding that the submarine, since it can not be used in accordance with the law, may not be used at all against merchant shipping, but must be confined to operating against vessels of war alone. However this may be, according to all fundamental principles and rules of logical construction, the invention and use of a new weapon of warfare should not be considered as depriving the noncombatant civilian of long-established and heretofore universally recognized rights. If we concede that the rule no longer applies to ships armed for defense alone we must be prepared to face a probable condition much more serious than that involved in the destruction of an armed vessel without warning. To concede the right of a submarine to sink a vessel so armed without giving warning and opportunity for crew and passengers to escape in safety will be to invite the sinking of unarmed vessels without warning as well, since it is well-nigh impossible for the officers of a submarine, under the conditions which surround them, to determine in advance whether a given vessel is armed or not. They will, therefore, be tempted to act upon conjecture or suspicion. It is said that the ship can not be halted in order to make an inspection, for that would be to risk the destruction of the submarine if it turned out that the merchant ship was in fact armed. Indeed, that is the basis of the claim that an armed vessel may be sunk without warning. It is a general rule that if one is authorized to do a thing upon the existence of a particular condition he is justified in acting upon the reasonable belief that such condition does in fact exist.

If therefore the commander of a submarine claims to act upon appearances, we shall never be able to determine whether these appearances justified his conclusion until after the vessel and her crew and passengers have gone to the bottom of the sea,

and in some cases not even then. The result will be that unarmed vessels, while possessing immunity in theory, will have none in fact; and while ostensibly conceding the right to sink armed vessels only, we shall in fact have conceded the right to sink unarmed vessels as well, since if the submarine possess the right to sink an armed vessel, the claim of justification will be difficult to meet whenever the commander, sinking any vessel, insists that he had reasonable ground for the belief that it was armed.

The question next arises—and, indeed, it is really the crucial question—shall our citizens be officially advised to forbear from traveling upon belligerent merchant vessels armed for defense only? Or, indeed, shall we go further, as some people insist, and forbid their doing so under penalty for disobedience? If I am correct in what I have already said, namely, that these merchant ships have the right to carry defensive armament, it follows that such a ship has the same status as though unarmed and that the right of a neutral citizen to transport his goods or travel upon either is the same, and not a different right; and that, in fact, is the decision of our own Supreme Court in a great case decided many years ago and never since overruled or modified. (*The Nereide*, 9 Cranch, 388.) The decision was rendered by Chief Justice Marshall, and in the course of it he said:

A belligerent has a perfect right to arm in his own defense, and a neutral has a perfect right to transport his goods in a belligerent vessel. These rights do not interfere with each other. The neutral has no control over the belligerent right to arm—ought he to be accountable for the exercise of it? * * * The object of the neutral is the transportation of his goods. His connection with the vessel which transports them is the same whether that vessel be armed or unarmed. The act of arming is not his; it is the act of a party who has a right to do so. He meddles not with the armament nor with the war. Whether his goods were on board or not, the vessel would be armed and would sail. His goods do not contribute to the armament further than the freight he pays and freight he would pay were the vessel unarmed. It is difficult to perceive in this argument anything which does not also apply to an unarmed vessel. In both instances it is the right and the duty of the carrier to avoid capture and to prevent a search. There is no difference except in the degree of capacity to carry this duty into effect. The argument would operate against the rule which permits the neutral merchant to employ a belligerent vessel without imparting to his goods the belligerent character. The argument respecting resistance stands upon the same ground with that which respects arming. Both are lawful. Neither of them is chargeable to the goods or their owner where he has taken no part in it. They are incidents to the character of the vessel, and may always occur where the carrier is belligerent. *If the neutral character of the goods is forfeited by the resistance of the belligerent vessel, why is not the neutral character of the passengers forfeited by the same cause?*

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The master and crew are prisoners of war; why are not those passengers who did not engage in the conflict also prisoners? That they are not would seem to the court to afford a strong argument in favor of the goods. *The law would operate in the same manner on both.*

Nothing, Mr. President, it seems to me, could be more clear and more conclusive than that statement made by the great Chief Justice.

If, therefore, a citizen take passage upon a ship so armed and lose his life by the sinking of the ship without warning, what must be the contention and claim of this Government? To my mind, clearly this: That the citizen in the exercise of a clear right has been deprived of his life by the deliberately illegal act of the belligerent Government which sent the submarine on its mission of death. Others are welcome to their own opinions, but I can conceive of no other position for this Government to assume; and unless it is willing to forfeit the respect of mankind by becoming a craven thing, it must be prepared to sustain that position at whatever cost or consequence. However desirable it may be that our citizens for their own sakes should refrain from traveling upon defensively armed ships, it is quite another matter for the Government to advise or order them to do so. So long as he violates no law an American citizen may pursue his business in his own way, even though it may be a dangerous business or a dangerous way. It is not to be presumed that he will recklessly or needlessly put his life in danger—indeed, all presumptions are to the contrary—and no resolution of Congress can possibly advise him of any danger of sea travel which he does not already fully understand. But, Mr. President, what of the American citizens scattered about the world engaged in lawful pursuits who are from time to time obliged to travel upon the sea from and to ports between which neutral ships do not ply? What is the citizen so placed to do? Is he to indefinitely maroon himself, however imperatively his presence may be required elsewhere? If not, and he be entitled to the protection of his Government in the exercise, and perhaps in the vitally necessary exercise, of his lawful right of travel upon a belligerent merchant vessel armed for defense, upon what theory consistent with national courage and self-respect can Congress or the Executive interfere with or forbid the use of his own discretion in the matter? I am one of those who desire peace. I detest the bully and the brawler among nations as I do among individuals. I would sacrifice much to avoid war—pride of opinion, money, property, comfort—I would fight over no wrongs which money could compensate—but a nation, when all other means fail, that will not resent a flagrant and illegal attack upon the lives of its own citizens is only less detestable

than a man who will not fight for his wife and children. And so, sir, believing as I do about that, satisfied as I am that—advice or no advice—if the life of an American citizen be again taken by the illegal and deliberate sinking without warning of a merchant ship, unarmed or armed only for defense, that this Government should hold the offending nation to a stern reckoning, I shall never give my consent to the issuance of a formal and official notice such as has been proposed, which, if not heeded, would, without minimizing our duty in the least, have the effect of embarrassing and weakening our moral standing if we should once more be under the sad necessity of seeking reparation for the destruction of the lives of our people. I repeat, sir, that I do not want war at any time, and I pray God that it may not come now; but I would rather have war with all its sacrifices and suffering than that this Nation, with its long history of heroism and glory, should play the poltroon when confronted by a supreme national duty, because it places a greater value upon its ease than upon its honor.

Nothing in the long run can be more certain to bring trouble upon us than a policy of timidity and vacillation. Such a policy is not in keeping with American traditions or spirit. It is the duty of a self-respecting Nation to stand, and to stand firmly, for the rights of every citizen however humble against foreign aggression from any source however powerful. That is what the Federal Government is for, since the State in which the citizen lives protects him in his domestic rights. The doctrine that the citizen exists for the sake of the Government has never found place in our political philosophy. If ours is a government of the people and for the people, it exists for the sake of the citizen. If the individual owes the duty of support and obedience to the Government, surely the Government owes him the reciprocal duty of protection.

If we shall ever again have a war with another country, it is more likely to result from some deprivation of rights suffered by our citizens than from any other cause. In Mexico they have been unspeakably outraged—insulted, robbed, murdered—and this series of Mexican outrages has been interspersed with maritime horrors involved in the sinking of the *Lusitania*, the *Ancona*, and the others, with their shocking loss of American life; and we have borne it and are bearing it all with a patience which begins to have a suspicious look of pusillanimity. We have demanded reparation, and have kept on making such demands, with decreased rather than increased insistency. The offenders have not been held to accountability, strict or otherwise, and we are now confronted with the proposal not that we shall insist

upon reparation for wrongs already suffered but that we shall restrain our citizens from the further exercise of their rights for fear we may be put to the trouble and perhaps the danger of vindicating them. Mr. President, I for one am becoming sick and tired of the spineless policy of retreat and scuttle—the policy that, among other things, has ordered our people to abandon their rights in Mexico and that has made us flee our plain duty in the Philippines. Instead of forever telling our citizens to run, I should like for once to hear somebody bid them stand, with the assurance that their Government will stand with them. Instead of warning our own people to *exercise* their rights at their peril, I would like to see issued a warning to other people to *interfere* with these rights at *their* peril. The danger of it all is that by this policy of always backing down instead of backing up we shall encourage an increased encroachment upon our rights until we shall finally be driven into a crisis from which nothing but war can extricate us.

I come now to a brief discussion of the second question. There is a demand on the part of a good many people that we shall prohibit the exportation of munitions of war. I am opposed to any such embargo for two reasons: First, because it would clearly constitute a breach of neutrality; and, second, it would inaugurate a policy from which the United States itself in the future might become the greatest sufferer, since if we should be attacked by a great nation possessing overwhelming military strength we might be dependent upon neutral countries—at least in the early stages of the conflict—for a supply of munitions with which to repel the attack. The rule of international law, recognized almost universally, is that citizens of a neutral country have a lawful right to sell and deliver to belligerent powers arms and munitions of war, without limit as to character or quantity. This has been the rule laid down by the responsible officials of the United States from the beginning of our history to the present day. As early as 1793 Mr. Jefferson said:

Our citizens have always been free to make, vend, and export arms; that it is the constant occupation and livelihood of some of them. To suppress their callings—the only means, perhaps, of their subsistence—because a war exists in foreign and distant countries, in which we have no concern, would scarcely be expected. It would be hard in principle and impossible in practice. The law of nations, therefore, respecting the rights of those at peace has not required from them such an internal derangement in their occupations. It is satisfied with the external penalty pronounced in the President's proclamation—that of confiscation of such portion of these arms as shall fall into the hands of any of the belligerent powers on their way to the ports of their enemies. To this penalty our citizens are warned that they will be abandoned; and that the purchases of arms here may work no inequality between the parties at war, the liberty to make them will be enjoyed equally by both.

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Alexander Hamilton the same year said :

The purchasing within and exporting from the United States by way of merchandise articles commonly called contraband, being generally warlike instruments and military stores, is free to all the parties at war and is not to be interfered with.

President Pierce in 1855, in his third annual message to Congress, said :

In pursuance of this policy the laws of the United States do not forbid their citizens to sell to either of the belligerent powers articles contraband of war or take munitions of war or soldiers on board their private ships for transportation ; and although in so doing the individual citizen exposes his property or person to some of the hazards of war, his acts do not involve any breach of national neutrality nor of themselves implicate the Government. Thus, during the progress of the present war in Europe, our citizens have, without national responsibility therefor, sold gunpowder and arms to all buyers, regardless of the destination of those articles. Our merchantmen have been, and still continue to be, largely employed by Great Britain and by France in transporting troops, provisions, and munitions of war to the principal seat of military operations and in bringing home their sick and wounded soldiers ; but such use of our mercantile marine is not interdicted either by the international or by our municipal law, and therefore does not compromise our neutral relations with Russia.

Mr. Marcy, Secretary of State, declared to Mr. Molina, minister from Costa Rica, Guatemala, and Salvador, on March 16, 1854, that—

The mere exportation of arms and munitions of war from the United States to a belligerent country has never, however, been considered as an offense against the act of Congress of the 20th of April, 1818. All belligerents enjoy this right equally, and a privilege which is open to all can not justly be complained of by any one party to a war.

The Supreme Court of the United States has announced the same doctrine. Mr. Justice Story, in the *Santissima Trinidad* (7 Wheat., 283), says :

But there is nothing in our laws or in the law of nations that forbids our citizens from sending armed vessels, as well as munitions of war, to foreign ports for sale. It is a commercial adventure which no nation is bound to prohibit, and which only exposes the persons engaged in it to the penalty of confiscation.

The neutrality proclamation issued by our Government at the beginning of the war, as I have already shown, contained the following language :

All persons may lawfully and without restriction, by reason of the aforesaid state of war, manufacture and sell within the United States arms and munitions of war and other articles ordinarily known as "contraband of war."

Would a change in this rule made now constitute a breach of our neutrality? Clearly I think it would. It will be conceded by everybody that to now forbid the sale and exportation of arms to the nations at war would be to the great advantage of Germany

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and the powers cooperating with her and to the great disadvantage of the entente allies. It is probably safe to say that it would be equivalent to adding a half million men to the German Army. A nation, like an individual, is presumed to intend the consequences resulting from its actions. In Hall's International Law, fourth edition, page 80, it is said:

An act of the State which is prejudicial to the belligerent is necessarily done with the intent to injure.

If we now put an embargo on arms and war munitions we could not escape the conclusion, therefore, that we intend thereby to aid one of the belligerents and injure the other, since that would be the inevitable and clearly foreseen result. The allies would be justified in regarding it not only as a breach of neutrality but as a deliberately unfriendly act. This is the effect of all the authorities. Mr. Webster, in a letter to Mr. Thompson, dated July 8, 1842, says:

The trade in articles contraband of war is carried on at the risk of those engaged in it, under the liabilities and penalties prescribed by the law of nations or 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, has been supplied with arms and munitions of war, the Government of the United States nevertheless was not bound to prevent it, *could not have prevented it without a manifest departure from the principles of neutrality*, and is in no wise answerable for the consequences.

Westlake, page 190, says:

Neutrality enjoins abstinence from taking part in any operation of war and from interfering with any operation of war which is legitimate as between the belligerents, but not abstinence from anything merely because it strengthens a belligerent.

Hall states the rule as follows:

If, therefore, a people desires not to be an enemy of either belligerent, its amity *must be colorless* in the eyes of both; in its corporate capacity as a State it must abstain altogether from mixing itself up in their quarrel.

Mr. John Bassett Moore, in a recent speech delivered before the American Academy of Political and Social Science, at Philadelphia, says:

What we call neutrality is a system of conduct regulated not by the emotions nor by the individual conceptions of propriety but by certain well-defined rules, and it is synonymous with impartiality only in the sense that *those rules are to be enforced with impartial rigor upon all belligerents*.

The question was considered by the second Hague conference under the heading, "Rights and duties of neutral powers in naval war" (sixth paragraph of preamble to convention):

Seeing that it is desirable that the powers should issue detailed enactments to regulate the results of the attitude of neutrality when adopted by them;

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Seeing that it is, for neutral powers, an admitted duty to apply these rules impartially to the several belligerents;

Seeing that, in this category of ideas, these rules *should not, in principle, be altered in the course of the war* by a neutral power except in a case where experience has shown the necessity for such change for the *protection* of the rights of that power.

Attorney General Charles Lee, of Virginia, rendered the following opinion (1 Op. Atty. Gen., 61) :

That an enemy may come into the territory of a neutral nation and there purchase and thence remove any article whatsoever, even instruments of war, is a law of nations long and universally established. Horses are, and for a long time have been, an article of commerce from the United States; and though they are by certain treaties an article of contraband, as by the treaty with France, yet, according to the above principle, they may be purchased and exported by the enemies of France. To deny a right to either of the belligerent powers to carry on this trade without denying to both would be a departure from that line of perfect neutrality which the United States have invariably observed. It is true this right may be denied to all nations by a law to be passed for that purpose at this time; *but if the reason for passing such a law be to impede the military operations of either belligerent power and to favor the other*, it is manifest that such conduct would be a breach of neutrality; consequently, while the French and the British are equally permitted to purchase horses and export them from any of the States, as they heretofore have been and now are permitted, neither have any just cause of complaint.

See statement of Secretary Pickering (1 American State Papers, p. 649), as follows:

It is well known that a considerable portion of the exports of the United States consists of articles contraband of war. It is well known that these have, during the whole of the present war, been freely exported to the dominions of France as well as to those of the other belligerent powers. It seems, then, too late (agreeably to Galliani's fourth position) for France to desire that the citizens of the United States should now abandon a commerce of which she has availed herself during the several years of the war at this time; and still less ought she, while continuing to enjoy an otherwise unrestrained trade in contraband goods, to expect such an abandonment of only a particular article of contraband of which she may have no need, and is therefore willing to renounce, because it may chance to be very useful to her enemy. Under these circumstances a compliance on the part of the United States *would compromise their interests as well as their neutrality*. The wants of two or more belligerent powers may together embrace the general objects of the commerce of a neutral nation, but if each were possessed of a right to require the neutral nation to renounce that portion of its commerce which was peculiarly useful to its enemy, the entire commerce of such neutral nation might be annihilated.

Finally, the views of an eminent German writer, Paul Elnicke, may be quoted:

The opinion of Liepmann that a neutral State by forbidding contraband trade assists one of the belligerents and influences the chances of war consequently impairs neutrality is not founded on practice.

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Belligerents have never objected to the issuance of prohibitions. However, such prohibitions may be regarded as impairing neutrality, or even as unfriendly acts, if they ensue during hostilities and unexpectedly dam the sources upon which one party had until then relied. (Rights and Duties of Neutrals, p. 99.)

It is plain, therefore, that if a change in the rule with respect to the sale of munitions of war or with respect to the arming of belligerent merchantmen for defense is to be made by our domestic law, such a change can not be made now, since it would constitute a serious breach of neutrality, which would be tremendously emphasized when our action in the midst of the conflict was contrasted with our proclamation of neutrality and our circular of instructions of a diametrically opposite character issued at the opening of hostilities. But even if peace prevailed, a change in the rule is, to say the least, of doubtful wisdom and doubtful morality. There are many nations, like our own, who do not customarily maintain great military establishments in time of peace, while there are other nations who have adopted a contrary policy. If, then, the rule which permits the citizens of a neutral country in time of war to sell and furnish arms and munitions to the belligerents should be abolished and every country engaging in war be compelled to rely upon its own resources, we should probably be putting a premium upon extravagant military preparation, because one nation, knowing that it must depend wholly upon its own resources in case of war, would look with increased alarm upon great military preparation on the part of another nation with which it might come into armed conflict and would increase its military strength accordingly. Such a change in the rule would be to the disadvantage of every real democracy and to the advantage of every autocracy in the world, because democracies are notoriously weak in military preparation in time of peace. Under the rule, however, by which the whole neutral world in time of war becomes a market place in which the belligerent democracies may purchase their weapons of defense the military superiority of the autocracy is, in a large measure, offset. If we should now take the first step which would finally result in the establishment of a general rule prohibiting the sale of munitions of war by citizens of neutral countries to belligerents, it is not at all unlikely that we might ourselves become the first victims of the new dispensation. It has been our custom, in accordance with the usual practice of democracies, to delay serious military preparation until war was declared. Thus far we have sometimes creditably gotten through, and sometimes muddled through; but suppose at no

far-distant day some great military power with a vast army, vast military resources, dissatisfied with something we have done, or pretending to be dissatisfied, should take advantage of our defenseless condition and set in motion its tremendous instruments of war against us. If in that situation there should be added to our lack of a trained army a lack of arms and munitions, and if the neutral markets of the world should be closed to us, none of us, I think, would care to contemplate the unhappy and humiliating fate which we might be compelled to face.

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