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London, Jan. 20 1843, William Nassau Senior à François Guizot

Auteurs : Nassau Senior, William (1790-1864)

Les folios

En passant la souris sur une vignette, le titre de l'image apparaît.

8 Fichier(s)

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Madison Office
London. Jan 20. 1843

Dear Sir,

I was happy to hear from Lord Polson that I have the honor of remaining in your Excellency's recollection. There is no public man, & I have known the most eminent in my own country, & many abroad, whose virtues & talents have impressed me with more respect. It was not however to say this that I have ventured to intrude on your valuable time, but to make some remarks on the right of search.

It seems to me that in the debates in your chambers the right of search for the purpose of detention & the right of search for the purpose of inquiry have often been confounded, & that they have been supposed to rest, as between France & England, on the same foundation, the treaties of 1831 & 1833. Now these rights are perfectly distinct

in their origin in their object.

The first is, of course, the result of treaty. A ship is part of the territory of its nation, & no country can exercise jurisdiction in a foreign territory except by treaty.

But the second, the result of reason for the purpose of inquiry, is the result not of treaty but of necessity. It arose as soon as all Europe declared the maritime slave trade to be a crime & agreed to use the utmost exertions to put it down. The treaties of 1831 & 1833 do not create, or extend, but limit it: and if they were abandoned the right would remain not only undiminished but enlarged.

On land the rule that no one can enter a foreign territory without

territory is easily ^{reflected} ascertained, for the frontiers²
of most countries are marked & known. But
the only sign of a ship's nationality is
her flag, & she can assume any given
flag, & change it as often as she chooses.

If therefore the mere assumption of a
flag were conclusive evidence of the
right to use it, a vessel on the
high seas would be practically
exempt from all jurisdiction. She
need only hoist the flag of some
power whose cruisers are not to be
met with in the seas in which she
is sailing, & all enquiry is at an end.

It follows that if any jurisdiction
is to be exercised on the high seas
it must either be exercised over
all vessels without reference to their
nationality, or it must carry with it
the right to ascertain their nationality.

Until the present century the only
crime of which a ship could be

guilty was piracy. And by international
law pirates have no nationality & may
be seized & punished by the force & tribunals
of any country. It was therefore unnecessary
in time of peace ever to ascertain the
nationality of a ship, for unless she were
a pirate she could not be interfered
with, and, if she were a pirate, she
might be seized whatever were her flag.
Now was it necessary in time of war,
since war gives a universal right
of search & detention, in order to search for
enemies goods & contraband of war.

When the Slave Trade was declared a
crime, the British Government assimilated
it to piracy, and directed their cruises to
detain all vessels engaged in it. Had their
attempt succeeded it would have remained
unnecessary to ascertain the nationality of
a ship on the high seas - since she
could not be detained unless a pirate or a
slave, & ^{then} might be detained whatever
were her country. The English

Courts repeated this attempt. They denied
restitution of foreign slaves & established
the doctrine that slave trading is an
offence cognizable only by the country
of which the offender is a subject, or
by some authority to which that country
has expressly delegated its jurisdiction.

The necessary consequence is, an enquiry
into the nationality of a vessel suspected
of slave trading. If she could protect
herself from all investigation by merely
hoisting a flag different from that
of the cruiser which attempts to detain
her, all attempts to intercept slaves
on the high seas must cease. If a
ship with her deck crowded with
negroes, & "the Mary of London" painted
on her stern had a right on showing
Swedish colours to pass unchallenged
thru' a British fleet the mutual
engagements of the Christian world
to put down the maritime slave

trade must become solemn emptiness.
But had an inquiry takes time,
& loss of time at sea is always
expense, & sometimes danger. If vexation
carried on it may occasion intolerable
annoyance & can never be endurable
unless conducted with the utmost
moderation & lenity. And even
then it is made at the peril of
the inquirer, that is to say on the
condition of making full compensation
if the suspicion, however fair, shall
appear to be groundless.

All the nations of Europe and America
therefore, with one solitary exception in
our hemisphere; have determined by
mutual treaties where, & by whom,
& how it shall be effected.

The United States & Portugal have
as yet, ~~been~~ refused to become parties
to these arrangements, & the consequence
is, as Mr W Lenton has remarked

in his work on the right of slave, L 161
that these notions are placed in a worse
situation than if they had not thus
separated themselves from the rest
of the Christian world. The treaties
which regulate the right of slave provide
a remedy for all injuries which it may
inflict on the subjects of the contracting
parties. But no remedy can be provided
for the members of a nation which refuses
to recognise the right.

In fact to refuse the right is to
say you shall not exercise your own
liberty, on the basis of the rest of the
Christian world on your own vessels
or on the vessels of countries with
which you have treaties - if those vessels
choose to uprise our flag, you
shall not inquire into their right
to it. A French squadron shall
allow a French vessel laden with
slaves to pass thro' her, if she hoist
the American ensign.

Such a pretension as that shall not be
allowed by France to England or by

England to France: or in fact, by any
one nation to any other. The result,
as respects the United States, will be
that her vessels will from time to time
be visited by mistake, that she will
complain, that we shall justify ourselves
by the reception of the case, & that
ultimately she will join the rest
of the civilized world.

No portion of these remarks is wholly
new to you, but I thought
that it might be useful if they
were shortly stated.

Have the honor to be with great
respect Your Excellency's very truly

Stupre W. Fenner.

His Excellency

Monsieur Guizot.

It is to be recollected that in relation to the confidence
reposed in the sincerity of France as to the abolition of the
slave trade will be the tendency to believe, when a
slave trade is seen, that it is usurped.