

IMPORTANT STATE PAPER.  
(Laid before the American Congress, June 5.)

MR. FOSTER TO MR. MUNROE.  
Washington, May 30, 1812.

SIR—Notwithstanding the discouraging nature of the conversation which I had the honor to have with you a few days since at your office, and the circumstance of your continued silence in regard to two letters from me furnishing additional proof of the existence of the French decrees, nevertheless there does now appear such clear and convincing evidence in the report of the Duke of Bassano, dated the 10th of March of the present year, of those decrees having not only never been rescinded, but of their being recently extended and aggravated in the republication of them contained in that instrument, that I cannot but imagine it will seem most important to the President that it should be communicated to Congress without delay, in the present interesting crisis of their deliberations, and therefore hasten to fulfil the instructions of my government in laying before the government of the United States the enclosed Moniteur of the 16th of last March, in which is contained that report as it was made to the ruler of France and communicated to the Conservative Senate.

This report confirms, if any thing were wanting to confirm, in the most unequivocal manner, the repeated assertions of Great-Britain that the Berlin and Milan decrees have never been revoked, however some partial and insidious relaxations of them may have been made in a few instances as an encouragement to America to adopt a system beneficial to France and injurious to Great-Britain, while the conditions on which alone it has been declared that those decrees will ever be revoked are here explained and amplified in a manner to leave us no hope of Bonaparte having any disposition to renounce the system of injustice which he has pursued so as to make it possible for Great-Britain to give up the defensive measures she has been obliged to resort to.

I need not remind you, sir, how often it has in vain been urged by Great-Britain that a copy of the instrument should be produced by which the decrees of Bonaparte were said to be repealed, and how much it has been desired that America should explicitly state that she did not adopt the conditions on which the repeal was offered.

It is now manifest that there was never more than a conditional offer of repeal made by France which we had a right to complain that America should have asked us to recognize as *absolute*, and which if accepted in its extent by America, would only have formed fresh matter of complaint and a new ground for declining her demands.

America must feel that it is impossible for Great-Britain to rescind her orders in council whilst the French decrees are officially declared to remain in force against all nations not subscribing to the new maritime code promulgated in those decrees, and also without something more explicit on the part of America with regard to her understanding as to the conditions annexed by France to the repeal of those decrees. For, after what has passed, unless a full and satisfactory explanation be made on both these points, Great-Britain cannot relinquish her retaliatory system against France, without implying her consent to the admissibility of the conditions in question.

These observations will, I am sure, appear sufficiently obvious to you, sir, on perusing the enclosed paper.

It will be at once acknowledged that this paper is a republication of the Berlin and Milan decrees, in a more aggravated form, accompanied as it is with an extension of all the obnoxious doctrines which attend those decrees, inflamed by a declaration that Bonaparte had annexed to France every independent state in his neighborhood which had eluded them; and that he was proceeding against all other maritime ports of Europe on the pretence that his system could not be permanent and complete, so long as they retained their liberty with regard to it.

The outrageous principle here avowed connects itself obviously with the proposition too much countenanced by America, that the continental system of Bonaparte, as far as it operates to the confiscation of neutral property on shore, on the ground of such property being British produce or manufacture, is a mere municipal regulation which neutral or belligerent nations have no right to resent, because it does not violate any principle of the law of nations. It is unnecessary to recur to the various arguments by which it has been shewn that this system does not partake of the character of municipal regulation, which neutral or belligerent have no right to resent because it does not violate any principle of the law of nations; but that it is a mere war measure directed with the most hostile spirit against Great-Britain, and in order to extend this system on the principle of municipal regulation, all the rights of independent neutral nations are to be violated, their territories to be seized without any other cause of war whatever, but that they may be incorporated with the French nation, and thence becoming subject to her rights of dominion, receive the continental system as a municipal regulation of France, and thus the mere possibility of noncompliance with the whole of the system is made the ground for the occupation or invasion, the incorporation or extension of every state where the French arms can reach.

Great-Britain cannot believe that America will not feel a just indignation at the full development of such a system—a system which indeed Bonaparte has partially opened before, and has in the instances of the Hanseatic towns, of Portugal and other countries, carried into complete execution, but which he has never

completely unfolded in all its extent until the present moment; and in what an insulting and preposterous shape does he now attempt to bring forward and promulgate this code which he is to force upon all nations? He assumes the treaty of Utrecht to be in force, and to be a law binding upon all nations; because it suits his convenience at this moment when the navy of France is driven from the ocean, to revive the doctrine of "free ships making free goods," he has recourse to a treaty no longer in force, in which such a stipulation existed—a treaty which by his own express refusal at Amiens to renew any of the ancient treaties, was not then revived as even binding on Great-Britain and France, between whom alone as parties to it, and only while they were at peace with each other could it have had any legal effect; yet even this treaty is too narrow a basis for his present pretensions, since he cannot find in it his rule for limiting maritime blockades to fortresses actually invested, besieged, and likely to be taken; no provision of any description having been made in that treaty either for defining or regulating blockades.

Surely at such an instant, America will not urge Great-Britain to abandon or to soften any precautionary, any retaliatory rights against such a power. The British government not only feels itself imperiously bound to defend them, as they respect Great-Britain, with all vigour, but to call upon every nation to resist such exorbitant pretensions.

If Great-Britain at such a moment, were to relax her orders in council against France, would not all other nations have reason to complain that the common cause was abandoned.

America must feel that Bonaparte is not acting, as indeed he never has acted, with any view of establishing principles of real freedom, with respect to navigation; but is merely endeavouring to cloak his determination, if possible, to ruin Great-Britain, by novel demands and rejected theories of maritime law; and America must see, that Bonaparte's object is to exclude British commerce from every coast and port of the continent; and that in pursuit of this object trampling on the rights of independent states, he insultingly proclaims his determination to effect it by direct invasion of those independent states, which he as insulting terms a *guarantee*, thus making the most solemn and sacred term in the law of nations synonymous with usurpation of territory and extinction of independence. America must see, that as all the states hitherto in his power have been seized on to *guarantee* his system, he is now proceeding to destroy whatever remains of independence in other neutral states, to make that *guarantee* complete. From his want of power to pass the Atlantic with his armies, a want of power for which the United States are indebted to the naval superiority of Great-Britain, his system of a *guaranteeing* force may fail as to America, but as he cannot hope to shut American ports against Great-Britain by occupancy and invasion, he hopes to effect his purpose by management and fraud, and to accomplish that by insidious relaxation which he cannot accomplish by power.

Great-Britain he feels is only to be ruined by excluding her from every port in the world; he hopes therefore to shut every port in Europe by force, and every port in America by management; he pretends to conciliate America by applause of her conduct, and a partial relaxation of his system in her favor. He accompanies the promise of repealing his decrees with conditions which he trusts America will not disavow, and which he knows Great-Britain must reject; knowing at the same time that the relaxation of his decrees will be of little use to America, without a corresponding relaxation by Great-Britain, he throws every obstacle against concession to America by Great-Britain, making her perseverance in her retaliatory system more than ever essential to her honor and existence. And surely it will not escape the notice, or fail to excite the indignation of the American government, that the ruler of France, by taking the new ground now assumed, has retracted the concession which America supposed him to have made. He has inconsistently and contemptuously withdrawn from her the ground upon which she has taken a hostile attitude against Great-Britain, since the repeal of our orders in council, and even the renunciation of our rights of blockade, would no longer suffice to obtain a repeal of the Berlin and Milan Decrees.

His Majesty's government cannot but hope that America, considering all the extravagant pretensions set forth by the ruler of France, in the Duke of Bassano's report, and at the same time the resolution to march his armies into all states, into the ports of which the English flag is admitted, will acknowledge, that this doctrine and resolution constitute a complete annihilation of neutrality, and that she is bound as a neutral state to disavow and resist them. Every state that acquiesces in this report, must act upon the principle, that neutral and enemy are to be considered henceforward as the same in the language of the French law of nations, and Great-Britain has a right to consider that every nation who refuses to admit her flag upon the principle assumed, admits and recognizes the doctrine of the report.

I will not now trouble you, sir, with many observations relative to the blockade of May, 1806, as the legality of that blockade, assuming the blockading force to have been sufficient to enforce it, has latterly not been questioned by you.

I will merely remark, that it was impossible Great-Britain should receive otherwise than with the utmost jealousy the unexpected demand made by America for the repeal of the blockade as well as of the orders in council, when it appeared to be made subsequent to, if not in consequence of, one of the conditions in Bonaparte's pretended repeal of his decrees, which condition was our renouncing what he calls "our new prin-

ciples of blockade;" that the demand on the part of America was additional and new, is sufficiently proved by a reference to the overture of Mr. Pinkney, as well as from the terms on which Mr. Erskine had arranged the dispute with America relative to the orders in council. In that arrangement nothing was brought forward with regard to this blockade. America would have been contented at that time without any reference to it. It certainly is not more a grievance or an injustice now than it was then. Why then is the renunciation of that blockade insisted upon now if it was not necessary to insist upon it then? It is difficult to find any answer but by reference to subsequent communications between France and America, and a disposition in America to countenance France in requiring the disavowal of this blockade and the principles upon which it rested, as the condition *sine qua non* of the repeal of the Berlin and Milan decrees. It seems to have become an object with America only because it was prescribed as a condition by France.

On this blockade, and the principles and rights upon which it was founded, Bonaparte appears to rest the justification of all his measures for abolishing neutrality, and for the invasion of every state which is not ready with him to wage a war of extermination against the commerce of Great-Britain.

America, therefore, no doubt, saw the necessity of demanding its renunciation; but she will now see that it is in reality vain either for America or Great-Britain to expect an actual repeal of the French decrees until Great-Britain renounces: First, the basis, viz. the blockade of 1806, on which Bonaparte has been pleased to found them; next the right of retaliation as subsequently acted upon in the orders in council; further, till she is ready to receive the treaty of Utrecht, interpreted and applied by the Duke of Bassano's report, as the universal law of nations; and, finally, till she abjures all the principles of maritime law which support her established rights, now more than ever essential to her existence as a nation.

Great-Britain feels confident that America never can maintain or ultimately sanction such pretensions, and His Royal Highness the Prince Regent entertains the strongest hope that this last proceeding of France will strip her measures of every remnant of disguise, and that America, in justice to what she owes to the law of nations, and to her own honor as a neutral state, will instantly withdraw her countenance from the outrageous system of the French government, and cease to support by hostile measures against British commerce the enormous fabric of usurpation and tyranny which France has endeavoured to exhibit to the world as the law of nations.

America cannot now contend that the Orders in Council exceed in spirit of retaliation what is demanded by the decrees, the principles, or the usurpations of Bonaparte. The United States' government must at last be convinced that the partial relaxations of those decrees in favor of America have been insidiously adopted by France for the mere purpose of inducing her to close her ports against Great-Britain, which France cannot effect herself by force, and she must admit that if Great-Britain were now to repeal her Orders in Council against France, it would be gratuitously allowing to France the commerce of America and all the benefits derivable from her flag as an additional instrument for the annoyance of Great-Britain, and that at a moment when every state is threatened with destruction or really destroyed for merely supporting their own right to trade with Great-Britain.

I am commanded, sir, to express on the part of His Royal Highness the Prince Regent, that while His Royal Highness entertains the most sincere desire to conciliate America, he yet can never concede—that the blockade of May, 1806, could justly be made the foundation, as it avowedly has been, for the decrees of Bonaparte; and further, that the British government must ever consider the principles on which that blockade rested (accompanied as it was, by an adequate blockading force) to have been strictly consonant to the established law of nations and a legitimate instance of the practice which it recognises.

Secondly, that Great-Britain must continue to reject the other spurious doctrines promulgated by France in the Duke of Bassano's report, as binding upon all nations. She cannot admit, as a true declaration of public law, that free ships make free goods, nor the converse of that proposition, that enemy's ships destroy the character of neutral property in the cargo—she cannot consent by the adoption of such a principle to deliver absolutely the commerce of France from the pressure of the naval power of Great-Britain and by the abuse of the neutral flag to allow her enemy to obtain, without the expence of sustaining a navy, for the trade and property of French subjects a degree of freedom and security which even the commerce of her own subjects cannot find under the protection of the British navy.

She cannot admit as a principle of public law, that a maritime blockade can alone be legally applied to fortresses actually invested by land as well as by sea, which is the plain meaning or consequence of the Duke of Bassano's definition.

She cannot admit as a principle of public law that arms and military stores are alone contraband of war, and that ship timber and naval stores are excluded from that description. Neither can she admit without retaliation that the mere fact of commercial intercourse with British ports and subjects should be made a crime in all nations, and that the armies and decrees of France should be directed to enforce a principle so new and unheard of in war.

Great-Britain feels that to relinquish her just measures of self-defence and retaliation, would be to surrender the best means of her own preservation and rights, and with them the rights of other nations so long as France maintains and acts upon such principles.