Strategies of Legal Change: Great Britain, International Law, and the Abolition of the Transatlantic Slave Trade*

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From the beginning of the sixteenth to the beginning of the nineteenth century, the transatlantic slave trade was legally carried on by traders from most Western European nations. On 25 March 1807, however, the British Parliament declared it illegal for British subjects to trade in slaves, effective 1 May 1807. Not only did Great Britain endeavor to prevent its own citizens from further participation in the slave trade, it was also unwilling to see it continued by traders from other countries. Abolition “should not be thwarted nor frustrated by the pertinacity of other Powers, in allowing their subjects to continue this disgraceful Traffick,” wrote George Canning, the British Foreign Secretary, in 1807. But to the indignation of successive British cabinets, international law restricted what actions the Royal Navy – Britain’s principal instrument for the suppression of the traffic – could take against a trade that was now almost exclusively carried out under foreign flags.

While the last three decades have seen a reinvigorated interest in almost all aspects of the transatlantic slave trade, legal historians have completely neglected it. This is all the more surprising when one considers the major impact that international law had on British suppression attempts. Since it was a well-established principle of law that on the high seas countries could only exercise authority over their own ships and

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1 47 Geo. III, Sess. 1, c. 36. This decision of Parliament has been the subject of a veritable historiographical debate. For many years, Britain’s determination to abolish the slave trade and, in 1833, slavery had been regarded as a triumph of humanitarian sentiments over economic interests. This explanation was in turn challenged by Marxist historians such as Eric Williams, for whom changing economic conditions, especially the declining profitability of slavery, were the fundamental cause of British policy. Later work has largely rejected the revisionist view, reaffirming the crucial role of the abolitionist movement and humanitarian concerns. See Robert William Fogel, *Without consent or contract: the rise and fall of American slavery* (New York, 1989) for a good overview of the debate.

2 Canning to Lord Viscount Strangford, 15 April 1807, Parliamentary Papers (henceforth PP) (1810) XIV: 475-476, quotation at 476.

nationals, slave traders under foreign flags could carry on their trade without fear of British interference. This proved especially convenient for the principal slave trading nations: Spain, Portugal, Brazil, France, and the United States. To overcome this legal obstacle, between 1807 and 1862, Great Britain set out to modify the law of nations so as to obtain a legal environment more conducive to the implementation of its suppression policy. These British strategies of international legal change are examined in this article.

The Napoleonic Wars

In Great Britain, “An Act for the Abolition of the Slave Trade” was passed in March 1807. The United States prohibited the trade in the same year, effective 1 January 1808; Denmark had already prohibited the trade in 1792, effective 1803. During the Napoleonic Wars, the superiority of the Royal Navy was de facto able to suppress the French trade and that of its allies, due to the enemy character of their ships. But how could the slave trade under neutral and allied flags be checked? Great Britain expected Portugal, an ancient ally, to heed its wishes and within three weeks of the passage of the Abolition Act, appeals were made to Portugal to end the slave trade. Yet the Prince Regent refused to do so and declared that to abolish or even discourage the trade was “utterly impracticable” because of hostile public opinion and Portugal’s colonial interests. At the end of 1807, however, Portugal’s fortunes had changed. Occupied by French forces and with the Portuguese Court transferred to Rio de Janeiro, it was completely dependent on British protection. Canning was not slow in pointing this out to the Prince Regent, who, after lengthy negotiations, in January 1810 signed a new

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5 Already in 1794, Congress had prohibited Americans from carrying on the slave trade to foreign countries. In 1808, the importation of slaves into the United States was proscribed. For both acts, see British and Foreign State Papers (henceforth BFSP) I: 984-93. See also Don E. Fehrenbacher and Ward McAfee, The slaveholding republic: an account of the United States government’s relations to slavery (Oxford, 2001), 135-136. For the Danish edict see BFSP I: 971-972.

6 Canning to Lord Viscount Strangford, 15 April 1807, PP (1810) XIV: 475-476; Alan K. Manchester, British preeminence in Brazil: its rise and decline (Chapel Hill, 1933), 162-167.

7 Lord Viscount Strangford to Canning, 4 June 1807, PP (1810) XIV: 477-478, quotation at 477.

8 Leslie Bethell, The abolition of the Brazilian slave trade (London and New York, 1970), 6-8; Manchester, British preeminence, 54-68.