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Freedom of the Seas.

Our language today abounds in catchwords and slogans which fall easily from our lips while we are often too indolent or too indifferent to discover their true meaning. If we take the trouble to study them, we are startled by the different significance given them when seen from altered angles. These phrases have their uses, for they serve to "stir emotion, and to over-rule doubt." Was it not feeling about freedom of the seas which had a large share in bringing us into the World War?

Let us try to discover how this expression arose and make an effort to sketch its historical background, before entering into a discussion of its present-day meaning. (By the way, the phrase has its first official ^(over) freedom of the Seas may seem a dry, diplomatic saying, but no freedom ever won over land or sea suggests a drama more thrilling.

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~~pronouncement by the French government in a reply to Catherine 2nd of Russia. In a letter, she used the terms "free ships - free goods," and they in turn the expression "enemy ships - enemy goods." This was in 1780.~~

pronouncement during a controversy between Catherine 2nd of Russia and the French government in 1780. She ~~declared~~ She declared that "free ships make free goods." They answered with "enemy ships - enemy goods," + further used the expression & of the Peace

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The romance of the sea is like a panorama emerging from myth itself. Jason and his Argonauts sailed through the Bosphorus, — was it only in search of the treasure of the Black Sea? They called it the quest of the Golden Fleece! The Greeks, desiring the control of the Dardanelles, launched ten thousand ships to avenge the "private life of Helen of Troy," and Ulysses brought home tales of sirens, and of a great giant with one eye in the middle of his forehead, & thus became the Odysseus of legend!

But when seafaring became a certainty, that certainty began a struggle, which would seem as perpetual as the waves! themselves.

For two thousand years sea-power was confined to the Mediterranean, and battles were fought by men in row-boats, heeded tier above tier. The middle ages brought the glory of billowing sails and glittering armory, and still battles were fought over the question of what should be East, and what should be West.

3.

A new land was discovered, called America, and the importance of the Mediterranean diminished. To whom were these dim, mysterious waters to belong? Spain claimed them, Portugal claimed them — for years their claims held good. Then certain merchant adventurers, Drake among them, began impudently to sail the forbidden seas! The result was the Armada, the greatest and the last of medieval battle-fleets. For two hundred years afterwards, and more, the command of the seas was in dispute. During the eighteenth & nineteenth centuries a new day dawned upon the ~~land~~ ocean, — the very atmosphere of the sea began to change. Maps were perfected, light-houses were built, piracy was suppressed, life-boats were organized, and last, but not least, the slave-trade was ~~abolished~~. Steam-ships replaced ~~sailing~~ vessels, two great water-ways were cut, which together, changed the meaning of the high seas.

4.

As early as the 14th century an effort was made to bring order and international law upon the lawless ocean. This 14th century code should have a particular interest for Americans who have always held that neutrals should be protected in time of war. This code was called the Consolato del Mare, and its effect, briefly stated was that enemy ships and enemy goods were lawful prizes, while neutral property, whether goods or ships, was to go free. This agreement brought some slight relief to neutrals, but the rules were not always followed either by the Mediterranean countries or by others.

Soon the ownership was no longer the sole ^{issue} question. The situation was complicated by the questions of contraband goods and the blockade. The idea of contraband took shape in the 18th century when belligerents began to specify certain goods which neutrals were forbidden to supply to the enemy. This was one of the main questions discussed

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and regulated by Grotius, a Dutch jurist and historian who compiled an important international code about 1625.

In the 19th century the blockade became a recognized institution, distinct from the siege of a defended port. It is interesting and disheartening to find throughout the history of sea-power that international laws and restrictions of war at sea are not guaranteed by any system of codes, but are set aside under pressure. In a recent article upon this ^{side of the subject} in the *Living Age*, George Young says: "Whenever the pinch has come, belligerent sea-power has ignored international law as to neutral rights, in proportion to its own necessity and to the menace of war from injured sea-powers. We had many instances of this fact in the late war, but none more striking than that on March 1st 1915, when Mr. Asquith, a lawyer before he became a statesman, in announcing to Parliament the maritime reprisals that were in effect an illegal blockade said: 'We are

6 not going to let our efforts to be strangled in a network of judicial niceties - under existing circumstances there is no form of economic pressure to which we do not feel ourselves entitled to resort." This occurred after the initial outrages by the German submarines, and Mr. Asquith was only echoing what Queen Elizabeth said to a foreign ambassador in 1597: For your part, you seem to have read many books, but yet to have little understanding of politics. For where you make mention of the Law of Nations, you must know that in a time of war between Kings, it is lawful for one to intercept aids and succours to the other, and to care that no damage accrue to himself."

The United States has differed with Great Britain on the question of Freedom of the Seas, in principle and in practice, since the close of the Revolutionary War. In 1812 we went to war about it, - in 1865 and again in 1914 and '15 war between the two countries was a

4. possibility. Let us try to discover the reasons for this difference of opinion. Every thing pertaining to the sea stirs British feeling to the utmost. They are an island people, and have a highly developed sea sense. For three hundred years they have owed their prosperity to their "Command of the Seas". Since the Industrial Revolution which introduced the factory system into Great Britain, that country has become still more dependent upon its commerce than ~~it~~ it had been in the 18th century. It must not be forgotten that Great Britain does not produce enough food to support one quarter of its population. The only way it can afford to pay for the other three quarters is to sell all over the world what it manufactures in its factories, and to obtain from all over the world the raw material to manufacture.

Stephen Duggan, in
"The Annual" July 1928

8. Let us quote Lord Balfour when he spoke at the Washington Conference for the Limitation of Armament in November 1921 "The very heart of the British Empire is a small crowded island depending upon overseas communication, not merely, not chiefly for its luxuries, but depending upon overseas communication for the raw material of those manufactures by which the superabundant population ~~subsist~~ lives, — depending upon the same overseas communications for the food upon which they subsist; supposing it were a familiar thought in your minds that there never were, at any moment of the year, within the limits of the country more than seven weeks' food, and that that food had to be replenished by overseas communication — then if you draw that picture, if you will see all that it implies, all that it carries with it, you will understand why every citizen of the British Empire, whether he comes from the far dominions of the

9. Pacific, or whether he comes from a small island of the North Sea, can never forget that it is by sea-communication that he lives, — and that without sea-communication he and the Empire to which he belongs would perish."

On the other side, the United States has been a self-sustaining unit; but as we are a commercial people, it is to our interest that our shipping should be unmolested. We have asserted our right to trade where we would, and resisted every effort to restrict that right. As early in our history as 1783 Benjamin Franklin undertook to have written into our Treaty of Peace the following: "All merchants or traders with their unarmed vessels employed in commerce, exchanging the products of different nations, and thereby rendering the necessary conveniences and comforts of human life more easy to obtain and more general, shall be allowed to pass freely, unmolested." In the early part of its

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history, the overseas trade, which was so important to the development of the United States, was more than once cut to pieces by the belligerents in European wars. It is easy to understand therefore, our position as the exponent of neutral rights in time of war. Thomas Jefferson said: "Reason and usage have established that when two nations are at war those who choose to live in peace, retain their natural right to pursue their agricultural, manufacturing and other ordinary vocations, to carry the produce of their industry for exchange to all nations, belligerent or neutral, as usual. Again in 1828 President Monroe set forth ^{the} American position that in time of war as in time of peace, neutral vessels must be free to come and go at their own discretion. Great Britain has (heretofore) steadfastly maintained that this freedom is conditional upon certain rules as to blockaded ports, and contraband cargoes. Attempts at international agreements have been made - at Paris in 1856, at the Hague in 1907 which

" last named conference ^{culminated} ~~resulted~~ in an agreement signed at London in 1909. The Declaration of Paris dealt with the question of blockade, that of neutral goods on enemy ships, and enemy goods on neutral ships. Of these questions the one relating to blockade was decided in favor of Great Britain who had always stood firm for it. She in turn renounced the right to capture enemy goods on neutral ships, and accepted the doctrine of "free ships, free goods." France had always seized neutral goods on enemy ships, and this practice was also renounced. Our government failed to sign this declaration because it was thought it did not go far enough in the protection of merchantmen, and also because it abolished privateering. (A privateer was a vessel privately owned and officered, but ^{enabled to} carry on maritime war by "letters of marque" which authorized reprisal upon an enemy.) Our government decided that privateering was the weapon of the weaker naval power, was essential to freedom of the seas. This is an interesting fact

because, in the present day, at the coming naval conference, France, Italy and possibly Japan will probably make the same claim for the submarine, and the which England and the U.S. do not favor.

The next important step in the development of maritime law was the Hague conference in 1907, when our representatives urged the adoption of freedom of the seas, except in the case of effective blockade. The British delegation announced their intention of giving up the principle of contraband in case of war between the powers which would sign a covenant to this effect. The right of search would be exercised only for the purpose of ascertaining the neutral character of the merchant ships.

Twenty four nations voted for this proposal, - four abstained from voting - five voted in the negative.

These were Germany, France, Russia, Montenegro - and the United States. This point however, was rigidly defined in the Declaration of London, two

13 years later, and signed February 26th 1909 at the opening of the world war, President Wilson tried to secure an agreement among the belligerents that they would observe the rules of this agreement. The Central Powers were willing to do this but the British government evaded the question, and began a series of "Orders-in-Council" that gradually destroyed all the rights that for so long a time, had been accumulating. This condition might have brought us in the war against England had not the Germans offended more deeply and unpardonably by her submarine ~~raider~~ ^{raiders}. Upon our entry into the war the force of circumstances compelled us to acquiesce in the application of restrictions upon commerce, and we were first as ruthless and as rigid as the Allies in administering them.

President Wilson, however, never lost sight of our tradition, and in the second of his fourteen points declared for "absolute freedom upon the seas, outside territorial waters, alike in peace and in war except

14 as the sea may be closed in whole or in part by international action for the enforcement of international covenants." Although the Allies, as well as Germany, accepted the fourteen points as the basis of the armistice, the British government, at the instance of the Admiralty, repudiated the section relating to freedom of the seas and President Wilson was compelled to acquiesce. The failure of our Senate to ratify the ³Versailles Treaty, and our absence from the council chamber at Geneva, has made impossible any effective action of the League upon the freedom of the seas and has left it an outstanding issue between England and the United States. In this connection I will quote an editorial from an English newspaper to show the gradual change of feeling in England and the slow assimilation by the popular mind of changed conditions, — perhaps partly due to the menace of the submarine and air-planes ^{not only} around the

15 British Isles, but also to her trade routes to Bombay, to Halifax, and to Melbourne. The Manchester Guardian said on Sept 14th 1929: "There is probably no Englishman, however pacific whose blood, at some time of his life has not thrilled to the splendid arrogance of Thomson's poem. But 'Rule Britannia' must be read now with a difference, — a rational and a liberal difference. The British navy must still be formidable, but can no longer be arrogant. Nor should it be. The United States' doctrine of the freedom of the seas, which is also the doctrine of the other civilized nations, must now in one form or another, supersede our own. Indeed we must do so in our own insular interest. Of all nations we are most dependent upon freedom of the seas, — of the right, that is, of neutral nations to feed the people and the factories of this island nation, if we are attacked and our supplies threatened. Interest

and sentiment alike urge us to accept the American doctrine which clearly also is in the interest of the world".

In the discussion which has filled the decade since the peace treaty it must be acknowledged that the British have had the sympathy of the European governments. They have felt that our position was in opposition not only to Britain, but to the whole system of the League for the maintenance of peace. Our arguments at the Geneva Conference in 1927 failed because we were demanding a naval parity which we did not need, except for purposes against the effort of Europe to organize for peace.

It is possible that it may never be necessary to settle the issue of freedom of the seas. Does not the Pact of Paris alter the situation? In this simple direct ^{agreement} ~~statement~~, every State party to it, renounces war as an instrument of national policy, and agree never to

seek the solution of any controversy arising between it and another signatory except by peaceable means. Is it the mere expression of a yearning of the peoples of the world for the unattainable? Or is it, as its language purports it to be, the most solemn of all possible undertakings to which the faith and honor of the American people are pledged? Foreign Affairs.

Articles in
Source material - Current magazines - the Living Age,
Review of Reviews, Current History, Foreign Affairs,
The Annals of the American Academy of Political & Social
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Daily newspapers, principally the New York Times
and the Manchester Guardian