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On the bicentennial of the Treaty of Ghent, reflecting on its slavery clauses

Today is the bicentennial of the Treaty of Ghent. On Christmas Eve 1814, emissaries of His Britannic Majesty and the U.S. formally agreed to a treaty ending the War of 1812.

Upon ratification by Parliament and Congress, the hostilities ended, and the "treaty of peace and amity" became effective. What Americans called "the second war of independence" was over.

The treaty essentially provided that each country reverted to the position it was in before the war began in June 1812. As was the custom, there were provisions for restitution of private property.

However, this treaty also contained two clauses relating to slavery. Britain had abolished slavery in 1807, and the U.S. Constitution had prohibited the importation of slaves after 1808. The institution of slavery continued in the U.S., however, and the slave states held great power, including the power to influence the negotiation of the treaty.

The first article of the treaty stipulated that "all possessions" taken during the war "shall be restored without delay," including "any slaves or other private property."

Why did John Quincy Adams, head of the American delegation and a lifelong opponent of slavery, agree to this clause? The most obvious answer was that he was ambitious to become president and needed the support of slave states to achieve that goal.

More importantly, that was the position of the U.S. government, headed by a slave-owning President James Madison.

During the war, the British forces welcomed runaway slaves, who even enlisted in the British armed forces. Thousands of American slaves fled to the British. American slave owners feared a loss of cheap labor and

possible rebellion. They wanted the slaves back or, failing that, compensation for their property.

The British resisted Article I, but eventually agreed to it. For more than 10 years, America, led by Adams, tried to enforce the clause, even seeking the help of the czar of Russia as mediator. Eventually, the British paid \$1,204,960 in compensation to the slave owners, probably just to make the issue go away. Apparently, Britain returned no slave to a former master.

The other slave clause was Article X, which read: "Whereas the traffic in slaves is irreconcilable (sic) with the principles of humanity and justice, and whereas both his Majesty and the United States are desirous of continuing their efforts to promote its entire abolition, it is hereby agreed that both the contracting parties shall use their best endeavors to accomplish so desirable an object."

Does this clause contradict Article I? Actually, no. It was a keystone of British foreign policy to eliminate the Atlantic slave trade, in good part because the abolitionist movement in Britain had



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trade on humanitarian principles.

Britain soon began to use its "best endeavors" by seizing "slavers," ships carrying slaves across the Atlantic. Some of these were American-owned, but others were Spanish ships because Spain did not abolish slavery until 1820.

The U.S. began enacting statutes to enforce its treaty obligations. Prosecutions of slavers, whether American or foreign, be-

but returned the ship and the slaves to the French owners.

The second important case was *The Antelope*, 23 U.S. 66 (1825). In 1820, an American revenue cutter captured the slave ship *Antelope* off the coast of Spanish Florida. The American government claimed that the ship was transporting Africans for sale in the U.S. The Supreme Court ordered most of the slaves repatriated to Liberia but also ruled that 30 slaves were the property of the Spanish claimants and must be sent to Florida as slaves.

These two cases set the stage for the famous case *The Amistad*, 40 U.S. 518 (1841). Africans being transported on a Spanish slaver took over the ship and sought to return to Africa. Instead, the crew brought them to New York. By then, the abolitionist movement in America had gained influence. John Quincy Adams, a septuagenarian U.S. representative with no further political ambitions, took the case in the Supreme Court.

One issue in *The Amistad* was the effect of the various treaties entered into among the U.S., Britain and Spain committing those countries to the abolition of the slave trade.

Adams, who had once lobbied Britain to return slaves to their American masters, now found his true voice. His father once famously declared that "all men are created equal." As a U.S. representative, Adams lobbied to have the gag rule repealed so that abolitionists could present their petitions regarding slavery directly to Congress.

Adams had come full circle. He persuaded the Supreme Court that the Africans should be returned to Africa. The Atlantic slave trade was doomed. The aspirations of Article X of the Treaty of Ghent were fulfilled.

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The U.S. also had an interest in abolishing the trade. Slave owners wanted to keep the market price of the slaves already in the country as high as possible. The importation of slaves, which was continuing despite the constitutional ban after 1808, threatened to cause a drop in market price. The American abolitionist movement, which Adams would eventually support, opposed the slave

gan with haphazard success. Several cases showed a clash between humanitarian principles and the law, including treaties that sought to eliminate the slave trade.

The first important case was *U.S. v. La Jeune Eugenie*, 26 F. Cas. 832 (C.C.D. Mass. (1822)). The ship was an American slaver flying a French flag. Writing for the 1st U.S. Circuit Court of Appeals, Justice Joseph Story decried slavery as a violation of international law