

**A LETTER ADDRESSED TO CAPTAIN A.T.  
MAHAN AND HON. GUSTAV H. SCHWAB,  
CHAIRMAN, &C., IN REGARD TO FREEDOM  
OF PRIVATE PROPERTY ON THE SEA FROM  
CAPTURE DURING WAR; A MEMORIAL TO  
THE PRESIDENT OF THE UNITED STATES**

Published @ 2017 Trieste Publishing Pty Ltd

ISBN 9780649226085

A Letter Addressed to Captain A.T. Mahan and hon. Gustav H. Schwab, Chairman, &C., in  
Regard to Freedom of Private Property on the Sea from capture during war; A Memorial to the  
president of the United States by Charles Henry Butler

Except for use in any review, the reproduction or utilisation of this work in whole or in part in  
any form by any electronic, mechanical or other means, now known or hereafter invented,  
including xerography, photocopying and recording, or in any information storage or retrieval  
system, is forbidden without the permission of the publisher, Trieste Publishing Pty Ltd, PO Box  
1576 Collingwood, Victoria 3066 Australia.

All rights reserved.

Edited by Trieste Publishing Pty Ltd.  
Cover @ 2017

This book is sold subject to the condition that it shall not, by way of trade or otherwise, be lent,  
re-sold, hired out, or otherwise circulated without the publisher's prior consent in any form or  
binding or cover other than that in which it is published and without a similar condition  
including this condition being imposed on the subsequent purchaser.

[www.triestepublishing.com](http://www.triestepublishing.com)

# **CHARLES HENRY BUTLER**

**A LETTER ADDRESSED TO CAPTAIN A.T.  
MAHAN AND HON. GUSTAV H. SCHWAB,  
CHAIRMAN, &C., IN REGARD TO FREEDOM  
OF PRIVATE PROPERTY ON THE SEA FROM  
CAPTURE DURING WAR; A MEMORIAL TO  
THE PRESIDENT OF THE UNITED STATES**



Ref  
/ 2065  
79

A LETTER ADDRESSED

TO

CAPTAIN A. T. MAHAN

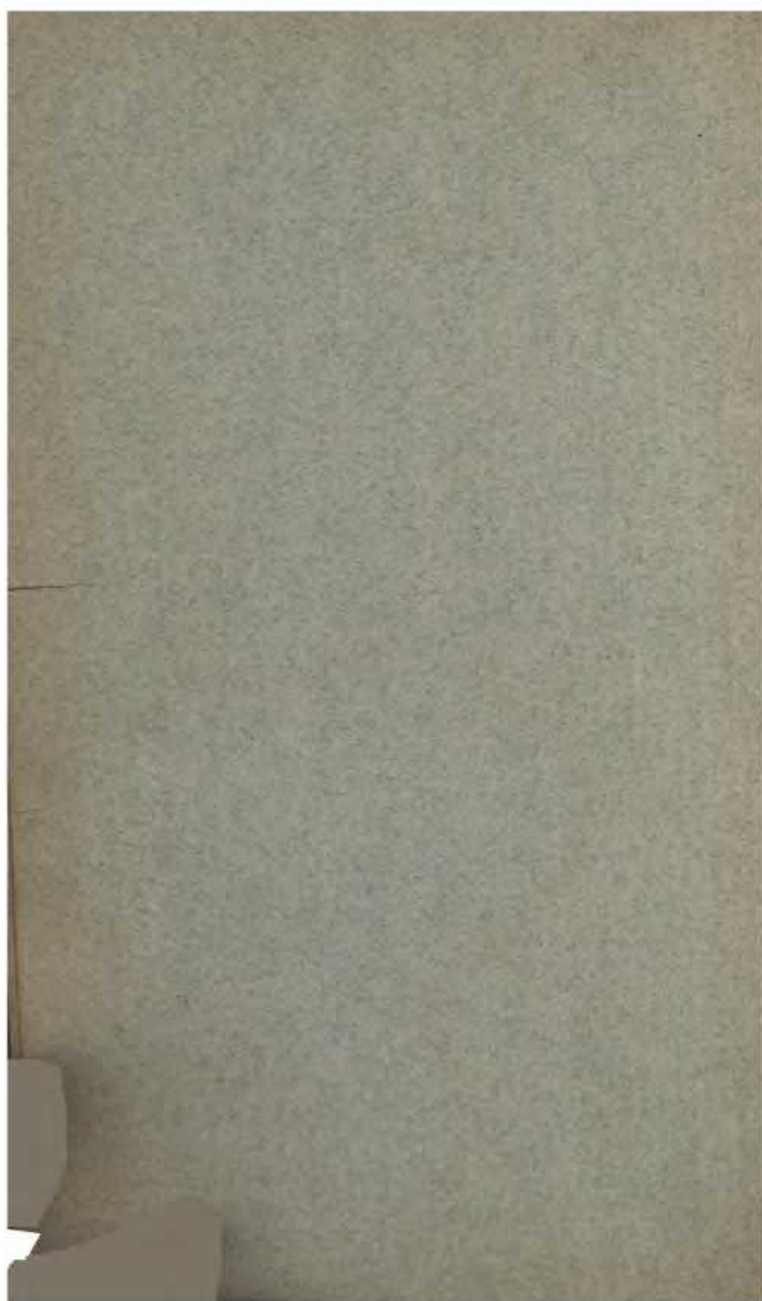
110906

IN REGARD TO

FREEDOM OF PRIVATE PROPERTY ON THE SEA  
FROM CAPTURE DURING WAR.

By CHARLES HENRY BUTLER.

WASHINGTON, D. C., NOVEMBER 24, 1898.



Washington, D. C., November 24, 1898.

Capt. A. T. Mahan.

My Dear Sir: I have read with great interest your letter recently published in the New York Times, in which you state that, while the idea of promoting the freedom from capture of private property, on the sea, in time of war is plausible on its surface, a careful examination discloses a certain amount of fallacy and failure to recognize the true influence of commerce upon war.

It may be presumptuous on my part to enter the lists with the biographer of Nelson and the historiographer of the Sea Power of our own country, but while I fully recognize the weight which any statement made by you must necessarily carry, I must beg leave to differ with you, and to call your attention to what I consider, from my examination of the subject, a few errors in your premises.

The term "private property," as it is used in the Memorial now under consideration, does not relate to the *nature* of the property as distinguished between commercial goods and personal effects, but to the *ownership* as distinguishing the property of individuals from that belonging to the State, which, of course, is, and always must be, confiscable; in this respect the contention is that private property consisting of ship and cargo, including commercial goods and personal effects, should be free from the risk of capture exactly the same as all private property, both personal and commercial, which is not contraband of war or necessarily seized for the purpose of maintaining the occupying army, is free from capture upon land, and the ownership thereof sacredly respected and protected under the Articles of War which have been for so many years in force in our own country, and which have formed the model of similar rules in other countries.

The distinction between the rules of warfare upon land and upon sea was evidenced recently, when, upon the capitulation of Santi-

ago, the vessels lying in the harbor, together with whatever merchandise was in them, became the lawful prize of war (whatever the ultimate disposition thereof may be), entailing enormous individual losses upon their owners, while the warehouses upon the land, and all of their contents, remained untouched, and continued to be the property of the original owners without change of title.

Can it be said that this difference in the disposition of the two classes of property had any effect whatever upon the capitulation of Santiago, or the final result of the recent hostilities, or that it had any effect whatever except to show how much farther the rules of civilized warfare have advanced, as to war waged upon the land, than they have as to war upon the sea?

The real fallacy at the present time is in the idea that capture of private property at sea operates as "a humane and scientific process of exhausting the resources of a nation, and so compelling peace," as expressed in the closing paragraph of your letter.

You seem to have overlooked the fact in this connection that, ever since the Declaration of Paris in 1856, when neutral commerce asserted itself with such tremendous force, the neutral flag now covers the enemy's goods, and the enemy's goods are free under a neutral flag, thereby eliminating from the danger of warfare the vessels and goods of neutral nations, and also permitting the continuance of commerce with the enemy through the medium of those nations not involved in the struggle, and whose commerce can now freely supply the belligerent enemy, except so far as contraband of war and the entry of blockaded ports are concerned, in which respect it is not suggested any change should be made, for unquestionably those belligerent rights must be preserved.

That the arguments in regard to the weakening of the enemy's commerce were rendered futile by the Declaration of Paris, was admitted by Sir John Stuart Mill, who, while he opposed the accession of England to the Declaration on the very grounds that you have urged, expressed as his opinion that England should either repudiate the Declaration, or add the fifth rule for



the exemption from capture of private commerce, adopting what has, to the honor of this country, always been known as the American suggestion.

It is unquestionably too late now to abrogate the Declaration of Paris, and the United States, while not a party to the entire Declaration, has practically, and in honor, acceded to the principles therein expressed so far as neutral commerce is concerned.

Even the strong advocates of the continuance of the rule of capture have recently somewhat swerved in their opinion, and it is no longer an admitted fact that England does not recognize, not so much the justice or humanity of the principle, but its advantages from a purely commercial and self-interested standpoint.

Your arguments are all based upon the assumption that we would be the commerce-destroying power. Have you not thought of the fact that we might occupy the position of being the destroyed as well as the destroyer? Professor Hall, who at one time advocated the continuance of the present system, in 1875, in an article devoted exclusively to this subject, admitted that when "two men set fire to each other's houses, he loses the most who has the most to lose," and he also admitted that it was about time for Englishmen to recognize the fact that their tenacity to this rule might in the end be dangerous to themselves.

Sheldon Ames, of London, says that while England has a mercantile marine five times as great as any other state, and a naval force capable of coping with any other two states, she also has a colonial and Indian empire which renders her assailable in every portion of the globe. He deduces from these facts the following conclusions:

"The principal necessities of England's navy is to protect her commerce, defend her coasts, and overpower the enemy; it is obvious that if the navy could be relieved of any one of these functions, so much the more disposable it would be for the efficient discharge of the other two. In other words, if England had not to protect her mercantile marine, her forces would be all the more free to defend her coasts and to overpower the naval forces of the enemy. She would not,

indeed, be able to attack the mercantile marine of the enemy, but as her own mercantile marine is so large, her total gain in exemption from injury would far exceed her loss of power through the restrictions she would encounter. If, again, it be argued that the mercantile marine is a natural source of supply for the navy, and, therefore, must be struck at as a potential arm of the national force, then the value of rescuing such a reserve force is far greater to England than to any other state in proportion to the vastly superior magnitude of the mercantile marine of England."

This argument seems to fit our own case as well as England's, and had we been obliged to cope in the recent war with a power whose naval force exceeded that of our own, would not the duties of the Strategic Board, of which you were a member, and which rendered such efficient aid to the Commander-in-Chief, have been far more extensive and difficult in distributing our own naval forces so as to have efficiently protected our mercantile marine, which is one of the principal duties of our naval force?

Looking at it from another point, does not an equally heavy commercial loss fall upon the individuals of the victorious nation as upon those of the other belligerent? I venture to say that the loss of the American mercantile marine, by reason of goods shipped, either by land, thus injuring the coastwise trade, or under foreign flags, thus injuring our foreign commerce, together with war premiums paid on goods shipped in American bottoms, exceeded the value of all the prizes of enemies' vessels taken under the general rule of war capture, and possibly even including those which were taken while violating blockade.

To-day our mercantile marine is on the increase, reaching out the whole wide world around, and we have a sea coast probably longer than almost any other nation in the world, exceeding twelve, or, possibly, fifteen thousand miles in extent. Our navy will have all that it can do to protect that coast, and to represent us in foreign and territorial ports, and would it not be well to relieve it at once of the additional burden of being obliged to protect our peaceful commerce? War to-day is an exceptional con-

dition of affairs, and yet because it is not impossible, the fact that marine property is subject to absolute confiscation during the war has a depressing effect upon the extension of our commerce, and must necessarily continue to be a depressing factor until it is removed, together with all of the disabilities and disagreeable possibilities which are necessarily connected with it; granting that under the rule existing there might be some possible advantage during war to ourselves, and pushing aside entirely the possibility that we might be the losing party during war, can we not afford to give up what may be a benefit to us, or an injury to our enemy, during the remote period of war, for the greater advantages and benefits which will accrue to our commerce during the longer, and, happily, more assured, periods of peace?

But most of all, and most emphatically, I must differ with you in your statement that the adoption of the rule of exemption would either have any effect in encouraging, or in not deterring, war. War is a paradox, and everything about it is paradoxical. War for humanity's sake sounds ridiculously inconsistent, and yet only recently, as the proclamation which sets this day apart for thanksgivings for the blessings and the victories of the past year declares, "we ourselves were compelled to take up the sword in the cause of humanity," and you yourself aided in producing the successful results of the war which was undertaken for no other purpose whatsoever. Our own Supreme Court has stated that a war is not necessarily waged for conquest, although it results in the acquisition of territory, as was its decision in regard to the Mexican War in the *Castellario* case.

The Red Cross of Geneva and our own rules of war have softened the horrors, and in many instances have eliminated the barbarities of war; the same regulations which permit the complete destruction of resisting towns and the death of all the inhabitants who remain therein exposed to bombardment, provide for the immediate amelioration of the suffering of the wounded, burial of the dead, and preservation of private property as soon as the besieged town shall have surrendered.