Lincoln Lore

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Lincoln and the Blockade: An Overview

Within a week of the firing on Fort Sumter, President Abraham Lincoln had decided on one of the grand strategies for winning the Civil War. On April 19, 1861, he issued a proclamation "to set on foot a blockade of the ports" from South Carolina to Texas. He added the coasts of Virginia and North Carolina eight days later. The policy would be steadily adhered to until the end of the war.

Much of the literature on the subject, especially that part which focuses on Lincoln, has emphasized the question of legality. There are really two questions involved. First, was it legal for Lincoln to declare the blockade? Second, did the blockade established by Lincoln meet the generally accepted criteria for legality from the standpoint of international law?

Both questions can still occasionally cause tempers to flare among students of the Civil War. The legal problem in the first instance was that it was almost universally held that a legal blockade was an aspect of war with a foreign belligerent, but the Lincoln administration, steadfastly and inconsistently with its own declaration of blockade, maintained that the Confederacy was not a belligerent but rather a group of disloyal individual citizens of the United States. Opponents of Lincoln's view — and they included his own Secretary of the Navy, the very man charged with the responsibility of enforcing the blockade, and his own Attorney General, the man to whom in theory at least Lincoln turned for advice on legal questions — thought that a nation's only legal recourse was to close the ports of insurrectionary areas.

The argument over legality on this score has made few, if any, advances in recent years. Perhaps it should be sufficient to say that the United States Supreme Court upheld the legality

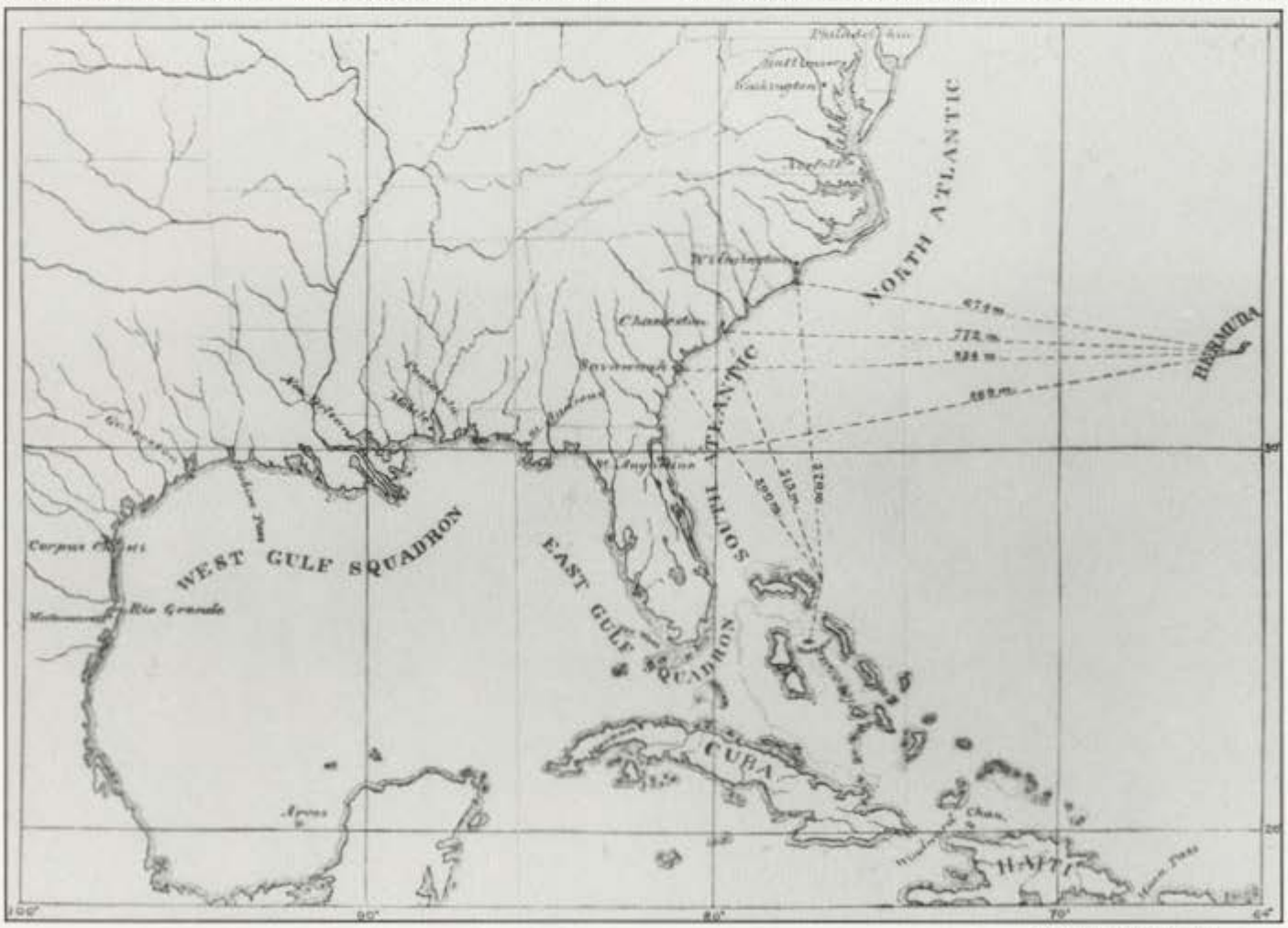

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FIGURE 1. Map of the blockaded coast from James Russell Soley, *The Blockade and the Cruisers.*

of Lincoln's blockade in the *Prize Cases* decision in 1863. Justice Robert C. Grier's majority opinion stated that the Court refused "to affect a technical ignorance of a war which all the world acknowledges to be the greatest civil war known in all the history of the human race" simply because Congress happened not to be in session to declare war in April 1861.

By engaging in endless disputes over the legality of the blockade, historians have tended to forget that the law is what the judges say it is, and the judges said the blockade was legal. Historians have also tended to overlook the possible effects on the operation of the blockade that doubt in high places may have had.

These doubts apparently went deeper than previously thought. Marvin R. Cain, for example, in his biography of *Lincoln's Attorney General, Edward Bates of Missouri*, argues that Bates, though confused and forced to use somewhat tortured logic, essentially supported Lincoln's action. I myself thought so, too, when I wrote *The Abraham Lincoln Encyclopedia*, but a letter recently acquired by the Louis A. Warren Lincoln Library and Museum, reveals Bates' continuing doubts.

On November 12, 1862, well over a year into the actual operation of the blockade, Bates wrote Columbia College's expert on the law of nations, Francis Lieber, explaining the central legal problem with the blockade. The "naked question," Bates wrote, was this: "can a nation (any nation) at any time, under any circumstances, in time of peace or time of war — blockade its own port — its own by *right* and by *actual possession* — so as to render a ship and cargo of a friendly alien, guilty of an offence, and so, confiscable, for entering or attempting to enter that port? I hold the negative. And for the plain reason that Blockade, in the modern & concrete sense of the word, is always *hostile*, is *per se*, an *act* or *war*, which a nation cannot wage against *itself*."

Some clues in regard to the practical effects on the blockade of such persistent doubts about its legality can be found in an article by John B. Heffernan, a rear admiral in the Navy and

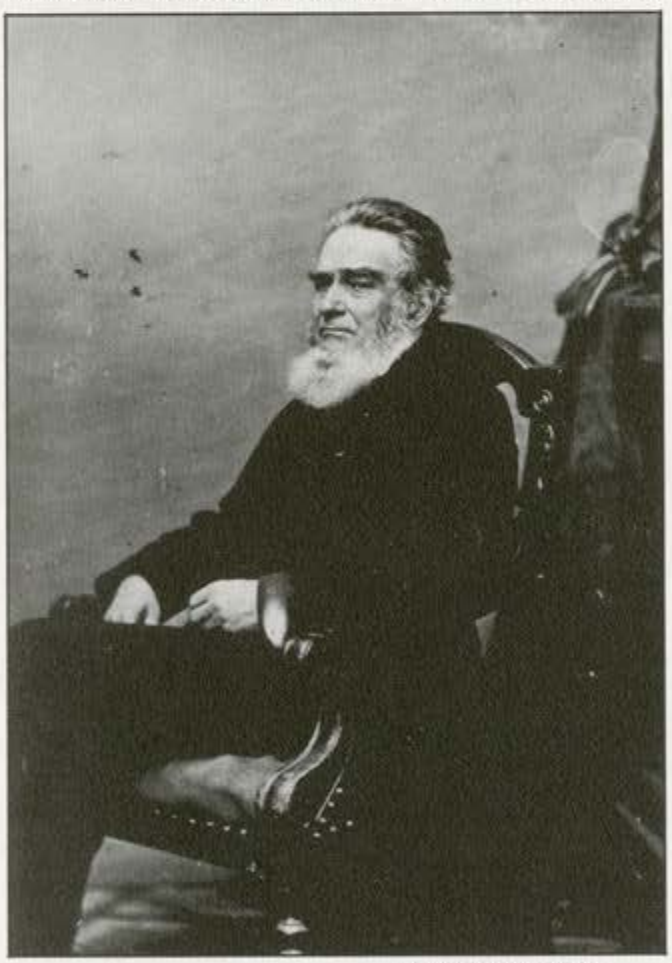

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FIGURE 2. Edward Bates.

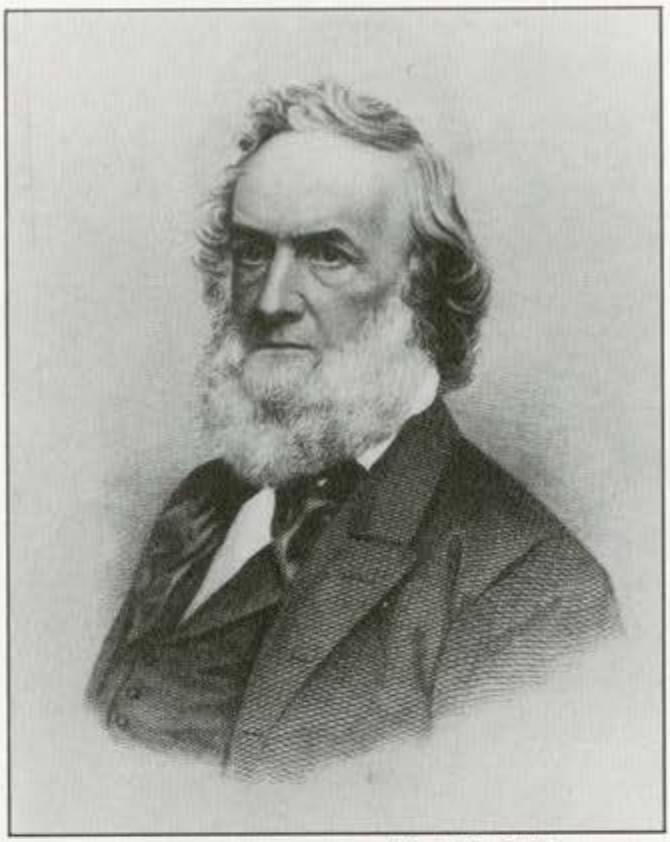

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FIGURE 3. Gideon Welles.

a veteran of the war at sea in World War II. His article on "The Blockade of the Southern Confereracy: 1861-1865" appeared in the *Smithsonian Journal of History* in the winter of 1967-1968, and it deserves to be better known than it is.

Admiral Heffernan accuses Secretary of the Navy Gideon Welles of slighting the administration's grand strategy of blockade because he did not believe it was legal. Welles advised the president against imposing a blockade in the summer of 1861. Over a year later he remained unconvinced, saying in his famous diary that he had been "overruled" on the blockade and that the policy "was one of [Secretary of State William H.] Seward's mistakes." "In short," Heffernan argues, "Lincoln proclaimed a blockade of the seaports of the Confederacy, but the Secretary [Welles] preferred to occupy the seacoasts, and the blockade was neglected."

Heffernan continues:

> Study of the *Naval Records* reveals that the Federal Navy Department did not make use of the knowledge and experience available and never formulated well-considered plans for the blockade. The reports of the du Pont Board [which made no recommendation to seize other ports than New Orleans] were not interpreted accurately, and the basic reasoning in its reports was not recognized or understood. In addition, the Board itself went out of existence. Experienced naval officers, too old for active service at sea, might well have been employed to codify accepted international law and applicable precedents relating to blockades. Comprehensive and specific blockading instructions might have been prepared and revised as conditions warranted. As it was, such instructions were lacking. The Welles *Diary* entry for 16 August 1862 contains these words: "Mem. It may be well, if I can find time, to get up a complete set of instructions, defining points of international and statute law which are disputed or not well understood."

It might be objected to Heffernan's criticism that capture of the Confederate ports effectively killed blockade running early in 1865 in a way that patrolling off the shores never did, but the Admiral is definitely correct in pointing to the absence of well-defined rules and instructions for the blockading fleets.

The second legal dispute — regarding the status of the blockade in international law — has not advanced notably in recent years, either. Here the problem stems from the widely

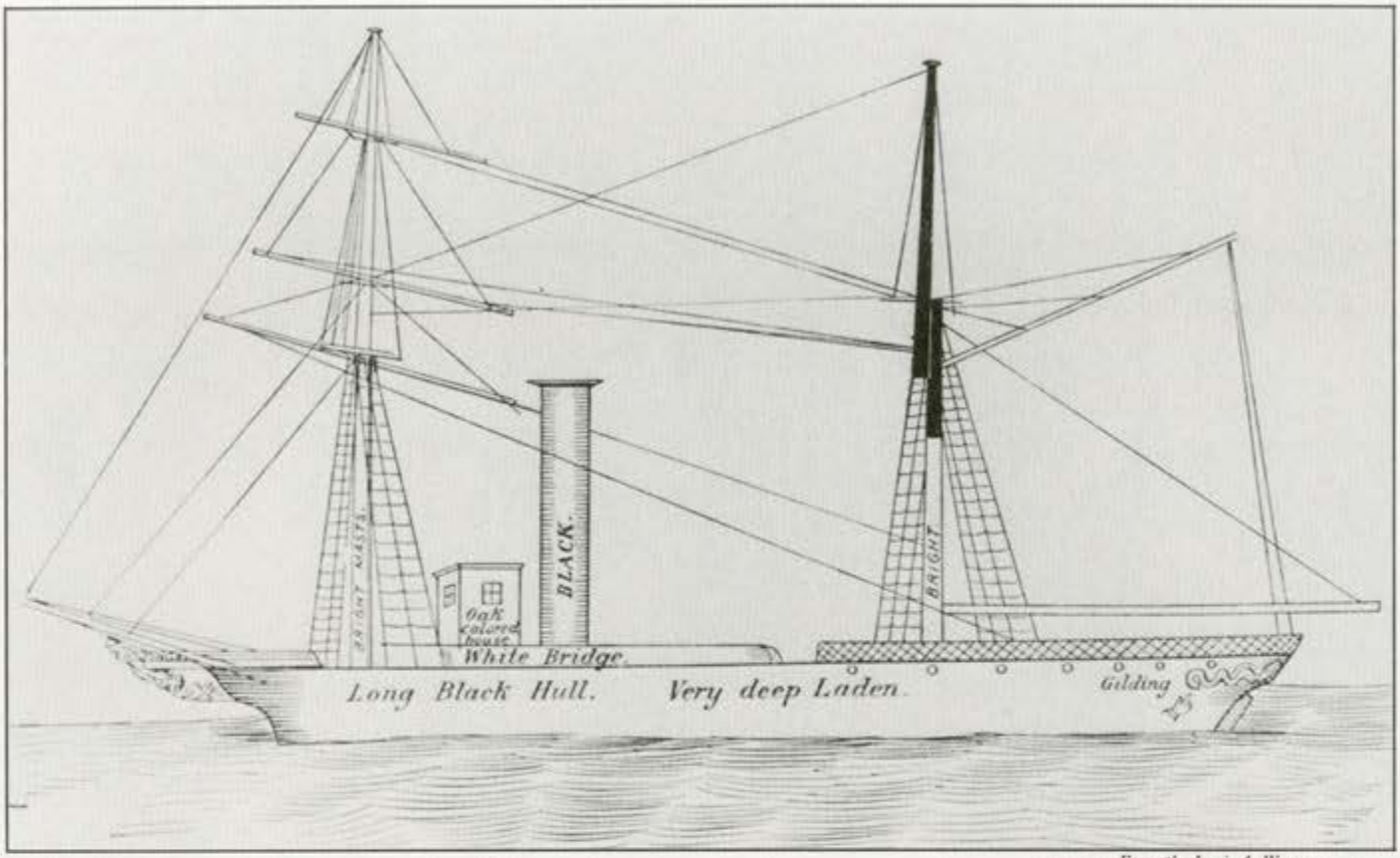

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FIGURE 4. Diagram of a blockade runner circulated for identification.

accepted rule that blockades, to be legal, must be effective. Traditionally, the United States had been the sworn enemy of "paper blockades." America's experience up to 1861 had been quite one-sided. We had been the neutral shipper buffeted about the seas by Great Britain's naval might when she locked in war with France. As a great naval rather than military power, Great Britain relied heavily on blockades, and she was quick to declare them and to force neutral shippers to obey the rules, whether she had the real naval might (in terms of numbers of ships per mile of coastline) to enforce them.

The Civil War saw these traditional roles suddenly and, for the Lincoln administration, somewhat embarrassingly reversed. A paper blockade for the first time looked quite attractive to the United States.

The practical problem lay not only in America's puny navy but also in the enormous physical size of the Confederate States of America. Like much else in the American Civil War, the scale of the blockade was unprecedented. As Kathryn Abbey Hanna pointed out in the *Journal of Southern History* in 1945, "The area covered [in the Civil War] exceeded that affected by the British Orders in Council against Bonaparte's Empire by five hundred miles," and the United States had regarded that earlier British blockade as a mere paper blockade.

Both of the major statistical studies of the effectiveness of the blockade argue that it was ineffective until near the end of the Civil War. These studies, one by Frank Lawrence Owsley in *King Cotton Diplomacy: Foreign Relations of the Confederate States of America* and the other by Marcus W. Price in a series of articles published in the *American Neptune*, are the work of Southerners.

Owsley's is the most pungent and the most widely cited. His statistical conclusion was this:

> It seems from all the evidence that the captures ran about thus: 1861, not more than 1 in 10 [attempts to run the blockade]; 1862, not more than 1 in 8; 1863, not more than 1 in 4; 1864, not more than 1 in 3; 1865, . . . 1 in 2. This is an average for the war of about 1 capture in 6.

Defenders of the reputation of the Union blockade point out that the number of ships that got through is a poor measure of the blockade's effectiveness because it ignores the number that did not dare to try and because it ignores the question of the size of the ships that ran the blockade. They were certainly small and light and lacking in great cargo capacity. But Owsley also had trade statistics on his side: the blockade runners brought in enough stands of small-arms, for example, to supply from a third to a half of all Confederate soldiers.

Moreover, comparative history seems to support Owsley as well. In *King Cotton Diplomacy* he estimates that half the Southern cotton crop made it through the blockade to Europe or the North after 1862 (that is, after the Confederates themselves quit trying to deny cotton to the British by means of their disastrous embargo policy). The records of the British blockade of the United States in the War of 1812 was far, far better. That blockade dealt a nearly mortal blow to America's trade. In 1814 imports and exports fell to less than 10% of what they had been in the peak year of 1807.

Owsley's overall conclusion is even more hard-hitting:

> Lincoln, then, laid down a blockade which, for two years at least, made the old-fashioned English blockade look like a stone wall in comparison. To gain a doubtful advantage over the Confederacy, he flew in the face of all American precedents, all American permanent interests and doctrines of neutral maritime rights, vitiated the principles in the Declaration of Paris [of 1856] that a blockade to be binding must be effective, and thereby furnished an interpretation of the Declaration of Paris for Great Britain which was destined to release that power from the one burdensome and objectionable feature of that pact. Over a century of struggle on the part of the weaker maritime powers to force Great Britain to recognize the rights of neutrals on the high seas was rendered futile, and international law was put back where it was in the old days of the orders in council and the Milan decrees. Old Abe sold America's birthright for a mess of pottage.

Owsley had reference especially to the embrace and extension of the doctrine of "continuous voyage" by the United States. Great Britain had devised the doctrine to justify the seizure of contraband goods on ships sailing between neutral ports. It fit American interests in the Civil War because of the pattern of blockade running. Large ships carried cargoes from Europe to neutral ports near the Confederacy like Nassau, Bermuda, and Havana. There the goods were transferred to

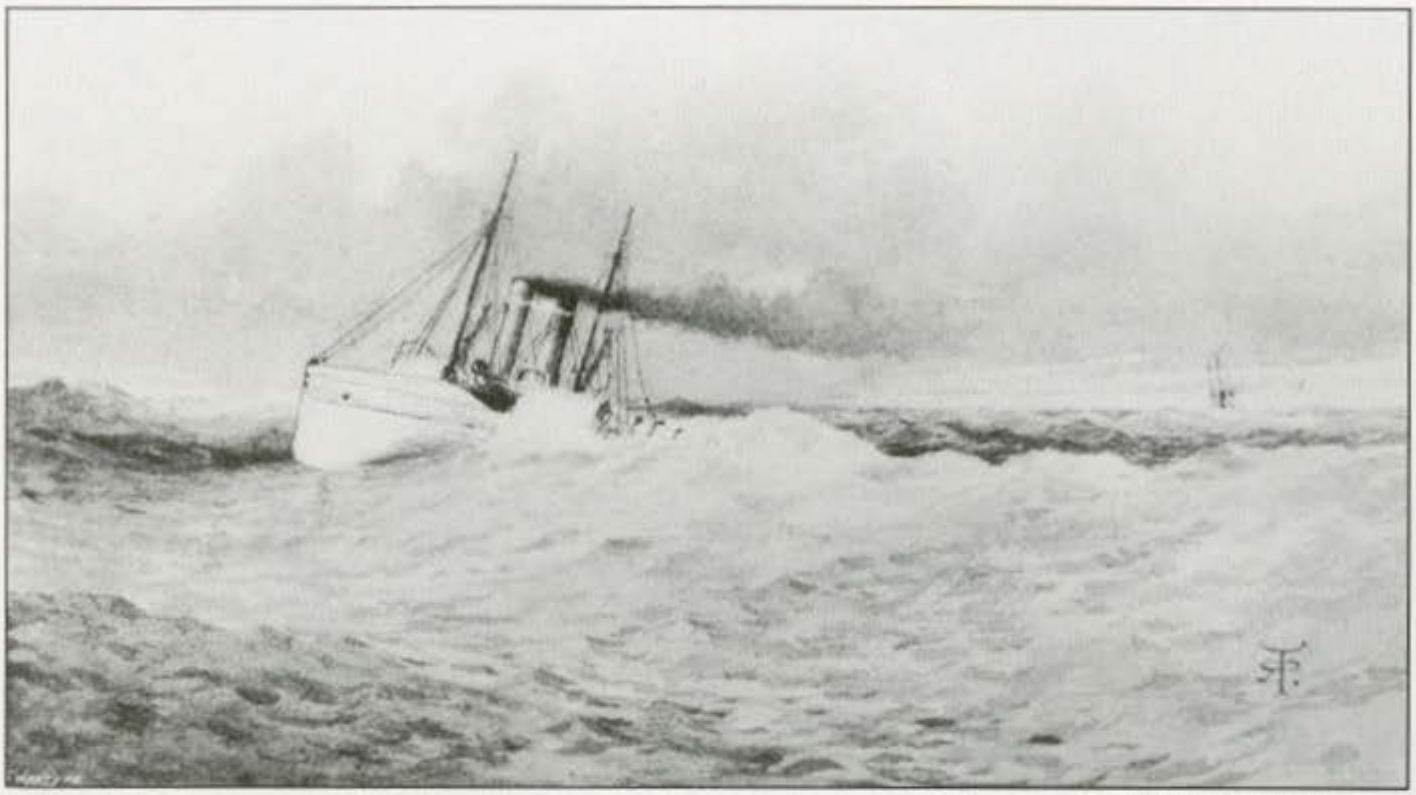

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FIGURE 5. The blockade runner *Banshee* from Thomas Taylor's *Running the Blockade.*

smaller, lighter, and faster vessels which ran the blockade into Confederate ports. The idea was that the goods were destined from the start for the Confederacy and, despite the fact that the goods travelled on more than one ship, the courts judged it to be one continuous voyage.

Ships captured while attempting to run the blockade were taken to prize courts for condemnation of ship and/or cargo (they were subsequently sold at auction, and the prize money raised thereby was distributed to the government and to the officers and men responsible for the capture). In the case of the British ship *Springbok* in 1863, the United States Supreme Court upheld the Navy's seizure despite its having been bound for a neutral port because the cargo was judged to have been bound ultimately for the Confederacy. In an even broader decision, a U.S. prize court held that the *Peterhoff*, also a British ship, was a prize even though she was bound for Mexico, where the goods would have been carried across land before reaching the Confederacy.

One might object to Owsley's interpretation on the grounds that the judges in the prize courts cannot be equated exactly with "Old Abe" himself. Nevertheless, Owsley (and other writers before him) made an important point in regard to the effect of Civil War precedents on the international law of blockade.

No one was more bitterly critical of those precedents than America's own experts on international law, among whom the foremost in Lincoln's era was Francis Wharton (1820-1889). In truth, Wharton had three careers, first as a writer on criminal law, second as a clergyman after the death of his first wife in 1854 and through the Civil War, and finally again as a legal writer and historian in the 1870s and 1880s. Under the Grover Cleveland administration, he worked in the State Department and was commissioned by Congress to compile *A Digest of the International Law of the United States*, published in three volumes in 1886. This was in effect the first codification or compilation of those international laws which governed United States conduct in its relations with other nations.

The section of Wharton's work dealing with the laws of blockade cited *The Prize Cases* for the legality of the sort of blockade imposed by President Lincoln:

> To create the right of blockade, and other belligerent rights, as of capture, as against neutrals, it is not necessary that the party claiming them should be at war with a separate and independent power; the parties to a civil war are in the same predicament as two nations who engage in a contest and have recourse to arms. A state of actual war may exist without any formal declaration of it by either party; and this is true of both a civil and a foreign war.

Wharton also cited the decision in the *Springbok* case, but in a perfunctory manner, and later added a long critical note about the case.

> The ruling of the Supreme Court in the Springbok case, together with the opinions on it by foreign jurists, are given above at large, in consequence not merely of the extraordinary attention the decision of the court has attracted abroad, but of the vast importance of the issue to neutral rights. The decision in this case, so it was said by Bluntschli, at once one of the most liberal and most accurate of modern publicists, has inflicted a more serious blow on neutral rights than did all the orders in council put together. . . . the disapproval of this famous decision, so strongly expressed by Bluntschli, is shared with more or less intensity by all the eminent publicists of the continent of Europe whose attention has been called to it, while even in England, from whose precedents the decision was in part drawn, it is treated by high authorities as aiming an unjustifiable blow at neutral rights.

Wharton offered several criticisms of the decision. It lacked "logical precision." It was approved by a bare majority of the Supreme Court in a hurried manner without recording dissenting views or the arguments of counsel. Among the dissenters were the justices most expert in international law and maritime cases: Nathan Clifford and Samuel Nelson. "The decision," Wharton said, "cannot be accepted without discarding those rules as to neutral rights for which the United States made war in 1812, and which, except in the Springbok and cognate cases, the executive department of the United States Government, when stating the law, has since then consistently vindicated." Thus the decision was "in conflict with the views generally expressed by the executive department of the Government of the United States, a department which has not merely co-ordinate authority in this respect with the judiciary, but is especially charged with the determination of the law of blockade, so far as concerns our relations to foreign states."

(To be Continued)