

THE *AMISTAD* CLAIMS: INCONSISTENCIES OF POLICY

IT may be expected that the recent agreement effected by the United States and Spain, to arrange for a consideration of reciprocal claims pending between the two governments,¹ will result in a reëxamination of two particular sets of such unadjusted claims now almost a century old. The *Amistad* claims, held by Spain against the United States, arose as the result of a series of events beginning in 1839. Six years later the United States had occasion to charge the government of Spain with the responsibility of settling for alleged damages which later were known as the "Cuban claims". From the date of its origin until the outbreak of the American Civil War each of these questions was the subject of continual diplomatic negotiations. In the end, as will be shown, the failure to settle the first was largely responsible for the defeat of the second. It is with the repeated efforts that were made to adjust the *Amistad* affair, however, that this paper is primarily concerned.

It seems unnecessary to relate in any detail here the circumstances which gave rise to the Spanish claims in question. These have been told in a number of places.² Briefly stated, the facts are as follows.

On or about June 28, 1839 the Spanish schooner *L'Amistad* sailed from Havana for the port of Puerto Principe, Cuba, under the command of the owner and captain Don Ramon Ferrer. On board the vessel besides sundry articles of

¹ *Executive Agreement Series* (Washington, 1931), No. 18.

² See, for example, Henry Wilson, *History of the Rise and Fall of the Slave Power in America* (3 vols., Boston, 1874-1877), vol. I, pp. 456-466; J. A. Howland, "The *Amistad* Captives", in *Proceedings of the Worcester Society of Antiquity for 1886* (Worcester, 1887), pp. 61-74; W. H. Smith, *A Political History of Slavery* (2 vols., New York and London, 1903), vol. I, pp. 53-60. Contemporary accounts are found in *A History of the Amistad Captives*, comp. by J. W. Barber (New Haven, 1840); *Book of Pirates*, comp. by H. K. Brooke (Philadelphia, 1841), pp. 184-196. Official correspondence on the question is printed in 26th Cong., 1st Sess., *House Doc.* 185; 26th Cong., 2d Sess., *Sen. Doc.* 179.

merchandise were two other Spanish subjects, Don Jose Ruiz and Don Pedro Montes, with fifty-odd negroes whom they claimed as slaves and for whom they had procured passports as such from the governmental authorities at Havana. After a few days at sea the negroes rose in revolt, killed the captain and cook of the vessel, put the small crew adrift, and ordered Ruiz and Montes to sail for Africa. In their ignorance, however, the negroes were deceived, and the vessel was steered into American waters. On August 26 following, it was discovered off Montauk Point, Long Island Sound, by Lieutenant Thomas Gedney, commanding the United States brig *Washington*, who took the negroes to New London, Connecticut, where, charged with murder, they were committed to jail on a warrant issued by the United States district judge. The Spanish minister at Washington, A. Calderon de la Barca, immediately demanded that the vessel and cargo be surrendered in accordance with the treaty of 1795 between the United States and Spain,³ and that the blacks be sent to Cuba that they might be tried under the laws they had violated.

This, however, was not to be the case. Before the executive branch of the government had taken any definite action the whole question had become somewhat complicated because of

³ Reference was made particularly to the 8th, 9th, and 10th articles of this well-known treaty. They are here summarized as follows:

8th. Should the subjects or inhabitants of either party with their public or private shipping be forced, whether by stress of weather or by pursuit of pirates or enemies, to seek shelter in any of the ports, bays or rivers of the other party, they shall be received and treated with all humanity, enjoying "all favor, protection, and help"; and they shall be allowed to provide themselves with the provisions necessary to continue their voyage, departing "when and whither they please" with no interference.

9th. All ships and merchandise of whatever nature which may be rescued from pirates shall be brought into the ports of either state, cared for, and restored entire to the true owner, "as soon as due and sufficient proof shall be made concerning the property thereof".

10th. When any vessel of either party shall be wrecked, foundered or damaged on the coasts of the other, the unfortunate citizens or subjects shall receive the same assistance due to the "inhabitants of the country where the damage happens", and shall pay the same charges and dues.

See *Treaties, Conventions, International Acts, Protocols and Agreements*, comp. by W. M. Malloy (2 vols., Washington, 1910), vol. II, pp. 1643-1644.

the various suits that were filed with the judicial. In the Federal district court of Connecticut Gedney and associates libeled the vessel, cargo and the negroes for salvage. Ruiz and Montes filed libels for the restitution of their part of the merchandise and the negroes; while certain interested Cuban merchants filed claims for their portion of the cargo. For the United States, District Attorney W. S. Holabird, setting forth the Spanish demands, filed suit for the restoration of the vessel, cargo and the negroes unless it was determined that the latter had been unlawfully held as slaves. In that case they should be removed to Africa. Meanwhile certain northern abolitionists whose sympathy had been aroused by the plight of these blacks appointed a committee consisting of S. S. Jocelyn, Joshua Leavitt and Lewis Tappan to raise funds and conduct their defense. Acting then through their counsel, S. P. Staples and Theodore Sedgwick, Jr., the negroes filed answer alleging that, having been kidnaped in Africa and taken to Cuba in violation of Spanish law, they had never been held in legal bondage. Friends of the *Amistad* captives, moreover, caused the arrest of Ruiz and Montes in New York on a charge of enslaving free Africans, for which they were held for trial in that state.

Felix Grundy, the attorney-general, held that the whole case fell within the provisions of the treaty of 1795, and advised the delivery of the *Amistad*, its cargo and the negroes to the Spanish government. It was his opinion that the United States would not be justified in investigating the papers of the vessel in order to determine the true status of the negroes. Should they be returned to their alleged owners, on the other hand, they would have no occasion to assert their claim to freedom. Moreover, if they had broken Spanish laws, he stated, they should be surrendered to the proper authorities so that they might not escape punishment.

The Van Buren administration accepted this general view of the matter; and the Spanish minister, repeatedly insisting that the courts of the United States did not have jurisdiction over crimes committed against Spanish law, on board a Spanish vessel, and in Spanish waters, considered that the questions

involved were for the executive alone to handle. Yet the proceedings which had been instituted in the district court were uninterrupted. A decision was rendered in January 1840. After hearing the evidence presented the court held that the negroes had been but recently imported into Cuba contrary to Spanish law, that the passports secured for their passage on the *Amistad* had been fraudulently obtained, and that they thus did not legally belong to Ruiz and Montes. It directed, therefore, that they should be transported back to Africa. The vessel and the cargo were awarded to their owners, subject to the claims of salvage to one-third of their value payable to Gedney and associates. On appeal this decree, reserving the question of salvage on the cargo, was approved *pro forma* by the circuit court. Eventually the case reached the Supreme Court of the United States, where the final trial began the following February. In addition to the regular counsel Representative John Quincy Adams, who both before and after this time exhibited considerable interest in the affair, prepared and delivered a four-hour speech in behalf of the *Amistad* captives. The decision handed down on March 9, 1841 affirmed that of the circuit court, except that it declared the negroes free and ordered that they be set at liberty within the United States.⁴ The Spanish government, of course, refused to accept this solution of the question; and, as will be noted, it immediately put in claims for indemnification.

The situation was intensified further by two less well known occurrences that grew out of the controversy. One was the

⁴ The *Amistad* case had aroused considerable interest throughout the nation. Besides having undertaken their defense and providing educational and religious training for them, ardent friends of the cause of the negroes now made it possible for them to return to Africa. Accompanied by teachers and missionaries, they arrived at Sierra Leone in January 1842, on their way to the Mendi country. See *Niles Register*, October 30, December 4, 1841; March 5, April 23, 1842. Sympathy for these Africans had also been aroused in England. See sundry letters to and from Lewis Tappan, in *A Side-Light on Anglo-American Relations, 1839-1859, Furnished by the Correspondence of Lewis Tappan and Others with the British and Foreign Anti-Slavery Society*, ed. by A. H. Abel and F. J. Klingberg (Lancaster, Pa., 1927), pp. 60-63, 69-70, 79-80, 83-88. For an official expression of the attitude of the British government in opposition to the Spanish demands incident to the case, see H. S. Fox to John Forsyth, January 20, 1841, in 26th Cong., 2d Sess., *Sen. Doc.* 179, pp. 27-28.

final disposal made of the vessel and the cargo. In October 1840, while the appeal was still pending, pursuant to the order of the district court the *Amistad* was sold in order to satisfy the claim of the salvors. The proceeds were withheld from them until after the decree had been confirmed by the Supreme Court; but the cargo was sold at the same time as the vessel. The second event had to do with the slave Antonio who was captured and held along with the other negroes on the schooner. The district court ordered that he, the *bona fide* property of the murdered captain, be restored to the Spanish authorities. No appeal was taken on this point, but Antonio was held as a witness until the final decision was rendered in connection with the other blacks. Then he was induced by his abolitionist friends to go to New York where he was secreted from the marshal who followed in pursuit.⁵ Apparently no later serious efforts were made by the United States to recapture and deliver this slave to the Spanish minister.

Enough has been said to show that the Van Buren administration had favored compliance with the Spanish demands with respect to the *Amistad*. In order to understand the events which followed, however, as well as to get a complete picture of the whole series of negotiations related to the case, it is necessary now to note specifically the attitude of the executive department before the matter was reviewed by the courts. A few points will suffice for this purpose.

There is no doubt but that Secretary of State John Forsyth, believing that the case did come within the provisions of the treaty of 1795, expected at first that it would be settled exclusively through the ordinary diplomatic channels. After receiving the protest of the Spanish minister and being advised of the court proceedings that were being instituted, he informed Attorney Holabird that the president would soon make a decision on the question; and he instructed the attorney at

⁵ See *Hartford Times*, October 31, 1840; H. D. Gilpin, attorney-general, to the secretary of the treasury, December 14, 1840, in 31st Cong., 2d Sess., *House Doc.* 55, pp. 1371-1372; Daniel Webster to P. A. Argaiiz, April 3, 1841, MSS., Department of State, Notes to the Spanish Legation, VI; Argaiiz to Webster, April 5, April 11, September 24, 1841, in 27th Cong., 3d Sess., *House Doc.* 191, pp. 2, 3, 7-11.

the same time to take care to see that no action of any "judicial tribunal places the vessel, cargo, or slaves beyond the control of the Federal Executive." On November 19, 1839 Forsyth sent to Pedro Alcantara Argaiz, the successor of Calderon at Washington, a copy of Attorney-General Grundy's opinion which, he assured the minister, had been approved by the president and his cabinet. In a regular despatch, dated December 12 following, Forsyth explained that conditions "beyond the control" of his department had operated to delay the disposal of the matter, but expressed the opinion that they would not affect the ultimate course which the government should see fit to adopt. The final settlement of the case, he wrote, would emanate from "no other source than the Government of the United States." If the judicial authorities had been employed in conducting an investigation it was because the judiciary was a "portion, though an independent one, of that Government." In this same note Forsyth, replying to a protest on the subject, denied that under the treaty of 1795 Spain could make a valid complaint against the Federal government for the arrest of Ruiz and Montes on a civil suit in New York. Yet he added, significantly enough, that with the exception of this "vexatious detention" of these men (who he had said were the victims of intrigue) everything that had been done by the United States in the *Amistad* affair had been based on the assumption that they "alone were the parties aggrieved; and that their claim . . . was founded in fact and in justice."⁶

The secretary thus confidently expected that the policy of the Department of State would be upheld by the district court. Acting upon that assumption, and in accordance with the request of the Spanish minister, he ordered that a vessel of the United States be stationed off the port of New Haven for the purpose of transporting the negroes to Cuba, providing the decision of the court met his expectations. In such an event the marshal of the district was directed to deliver the prisoners

⁶ John Forsyth to W. S. Holabird, September 11, 1839, in 26th Cong., 1st Sess., *House Doc.* 185, pp. 39-40; Forsyth to Argaiz, December 12, 1839, *ibid.*, pp. 26-30; Argaiz to Webster, June 27, 1842, in 28th Cong., 1st Sess., *House Doc.* 83, pp. 2-21.

to the commander of the vessel, unless an appeal shall "actually have been interposed." Arrangements were made to forward the records of the court to the Cuban authorities to be used at their discretion in any judicial proceedings that might be adopted to determine the true status of the captives. Lieutenant Gedney and one of his subordinates, R. W. Meade, were also directed to prepare to make the voyage in order to give the officials of the island the benefit of their general knowledge of the whole affair.⁷

When these plans were suddenly interrupted by the decision of the district court Forsyth immediately instructed Holabird to make an appeal to the next higher tribunal.⁸ It was also by his direction naturally that an appeal was later taken to the Supreme Court. His department refused, however, to take any steps contrary to the verdict of the lower courts while the case was still pending.⁹ What would have been his official attitude following the final judicial decision is, of course, unknown, for when that was rendered Forsyth, with the current change of administrations, had just been supplanted at the Department of State by Daniel Webster.

The new Whig administration accepted the verdict of the Supreme Court as a matter of course, and assumed that it would end the controversy once and for all. Spain's dissatisfaction, however, was expressed immediately upon the receipt by its representative at Washington of a copy of the decision. This original complaint was ignored. Whereupon, on May 27, 1841, Argaiz reminded Webster that the Spanish government had consistently protested against the intervention of the courts in the *Amistad* affair. This note indicated, too,

⁷ See Memorandum, the Department of State to the secretary of the navy, January 2, 1840, in 26th Cong., 1st Sess., *House Doc.* 185, pp. 67-68; Forsyth to Argaiz, January 6, 1840, *ibid.*, pp. 37-38; the secretary of state to the secretary of the navy, January 7, 1840, *ibid.*, pp. 68-69; Forsyth to Holabird, January 12, 1840, *ibid.*, p. 56.

⁸ January 17, 1840, in 26th Cong., 1st Sess., *House Doc.* 185, p. 57. The attorney previously had been given similar instructions, in case the verdict proved to be unfavorable. See Forsyth to Holabird, January 12, 1840, *ibid.*, p. 56.

⁹ See Forsyth to Argaiz, May 9, 1840, in 26th Cong., 2d Sess., *Sen. Doc.* 179, pp. 11-12.

that Argaiz had interpreted Forsyth's statement to the effect that the final disposition of the case would emanate from no other source than the "Government of the United States", to mean that it would be handled exclusively by the executive branch of it.¹⁰ A third dispatch two days later brought the formal demand for indemnity.

. . . Aware [Argaiz wrote] . . . of the embarrassed situation of the actual administration, and that a change of circumstances has rendered it impossible now to effect the fulfilment of the treaty, the undersigned believes he ought to demand, as he now does:

1. Indemnification for the vessel called 'Amistad'.
2. Indemnification for her cargo, including the negroes found on board.
3. Indemnification for the losses and injuries suffered by . . . Don Pedro Montes and Don Jose Ruiz, during their unjust imprisonment.
4. The assurance that the course given this affair shall never serve as a precedent in analogous cases which may occur.¹¹

More than three months had elapsed before Webster, at first evidently unfamiliar with the details of the whole affair, replied to these demands. His answer was a carefully worded argument of which only a bare summary need be given here. It had been supposed, he stated, that the Spanish minister realized that the president had no power to question, alter or review a decision of the Supreme Court, a tribunal wholly independent of the executive, whose decrees were conclusive and final. The courts, being guided by the treaty of 1795, the law of nations and the law of the United States, had passed upon the questions involved only after careful and deliberate investigation. He could not see, he said, how the treaty had been violated. Under the circumstances the justice of the matter of the salvage was indisputable, he felt, although he erroneously stated that the vessel and cargo had been returned to their owners. It had been proved, he asserted, that the

¹⁰ Argaiz to Webster, March 17, May 27, 1841, MSS., Dept. of State, Notes from the Spanish Legation, XI.

¹¹ Argaiz to Webster, May 29, 1841, in 27th Cong., 3d Sess., *House Doc.* 191, p. 4.

negroes found on the ship were at no time legal slaves. Even if they had been, he added, by their acts of murder and escape from bondage they would have become assassins and pirates for whose delivery to Spain the treaty in question did not provide. For any losses and injuries inflicted upon Ruiz and Montes within the United States, moreover, the government offered reparation through its courts which stood open to them. Finally, Webster declared that if the United States were conscious of having inflicted injury upon either a private individual or a powerful nation indemnification would be readily granted. Yet the question of the existence of such injury "must be determined by the Government itself".¹²

In view of the policy adopted by the previous administration Argaiz considered himself in a particularly favorable position to engage in the debate with regard to the jurisdiction of the courts in the *Amistad* affair. In his next note, dated September 24, he took the occasion again to remind Webster of Forsyth's statement on that point, and also cited Grundy's opinion to substantiate his argument. The Spanish government, he said, could not acquiesce in an open violation of the treaty, which in this case would result from an inability of the president to alter the decision of the Supreme Court. If such be the relation between these two branches of the government, he inferred, treaties "should be concluded with the judicial power."

Turning then to other phases of the controversy, Argaiz characterized the examination of the ship's papers by the courts as a recognition of the right of search, which, he said, had not been authorized by any government, and had been refuted by writers of public law, including "the distinguished jurist Mr. Grundy." He informed Webster that instead of having been restored to their owners the vessel and cargo were

¹² Webster to Argaiz, September 1, 1841, in 27th Cong., 3d Sess., *House Doc.* 191, pp. 4-7. Prior to writing this dispatch Webster had called upon John Quincy Adams for information pertaining to the *Amistad* episode. Adams sent him R. S. Baldwin's argument before the Supreme Court, and advised Webster "not on this occasion to truckle to Spain". See *Memoirs of John Quincy Adams*, ed. by C. F. Adams (12 vols., Philadelphia, 1874-1877), vol. X, pp. 469-470.

sold without their or his knowledge at the time. Finally, Argaiz admitted that the treaty of 1795 did not provide specifically for the extradition of assassins and pirates, but insisted that such was the evident intention of the framers in circumstances such as these.¹³

Webster's position remained wholly unchanged; and he saw no advantage in continuing the discussion. Thus it was after nine months, and then only upon the request of the Spanish representative, that he answered Argaiz's foregoing note which he considered in the light of a mere protest. His reply, an attempt to convince Spain that the United States had done nothing "not in strict accordance with the principles of public law and the practice of nations", and nothing that might be considered as an "encroachment upon Spanish territories, or visiting and searching Spanish vessels", was for the most part a résumé of the whole case in which few fresh arguments were presented. He did assert that in the letter of December 12, 1839 Forsyth had not meant to convey the impression that the "Executive" would decide the question. His predecessor had said the "Government" of the United States, which Webster stated, included the Supreme Court. He added that in the United States and other nations where the judiciary was an independent branch of the government it was a common practice to submit to judicial decision questions arising under treaty stipulations. He explained that the *Amistad* and its cargo had been sold simply to satisfy the claims of the salvors, as was the practice among courts of admiralty when the owners were not present to pay the amounts awarded as salvage. He insisted that in the absence of specific extradition agreements between them the United States was in no way obligated to deliver up to Spain criminals and fugitives from justice. In conclusion, Webster expressed the hope that Argaiz would "perceive that this Government has violated none of its obligations to Spain, or done injustice in any manner whatever, to any Spanish subject."¹⁴

¹³ Argaiz to Webster, September 24, 1841, in 27th Cong., 3d Sess., *House Doc.* 191, pp. 7-9.

¹⁴ Webster to Argaiz, June 21, 1842, in 27th Cong., 3d Sess., *House Doc.* 191, pp. 11-15.

Webster's communication brought an immediate reply from Argaiz. Yielding, as he said, to the voice of duty which compelled him to "pursue this correspondence notwithstanding the decision of the Supreme Court", the Spanish minister on June 27, 1842 addressed the secretary of state a long and elaborately written note. In it he also gave a résumé of the whole case, repeated former protests and arguments, quoted various concessions and admissions to the Spanish point of view during the preceding administration, and, finally, insisted upon a prompt answer to the demands for indemnity. In addition, Argaiz drew a striking parallel between his protests to the United States in regard to the *Amistad* episode and those of Webster to Great Britain in connection with the then recent *Creole* affair. Disregarding the fact that the courts had decreed that the *Amistad* negroes had never been in legal bondage, while those of the *Creole* were *bona fide* slaves, Argaiz declared that he and Webster agreed on the principles; that Webster dissented only in their application to the case of the *Amistad*. On this same subject, he added:

Before the occurrence [of the *Creole* case], the Government of Her Majesty might have entertained the illusion that the . . . United States, in delaying to accede to its just claims, had been actuated, perhaps, either by reasons of a political character, and peculiar to the country, or from an erroneous method of considering the question. At the present day, however since the doctrines maintained through the medium of Mr. Webster, are known, there does not and cannot exist the smallest doubt upon this matter. Both Governments profess the same doctrines; both are altogether agreed upon principles.

Argaiz said that he had been instructed by his government to ask again specifically and distinctly for the admission or denial of the four points listed in his note of May 24, 1841. Apparently, too, he was quite confident of the outcome; for in order to facilitate the United States, he said, "in ascertaining the total of the sum claimed", he sent with this note various documents listing the value of the vessel, the cargo owned by Ruiz and Montes, the worth of the "*negroes when purchased in*

Havana", and the value of the slave Antonio. The total amounted to \$47,405.62½.¹⁵

Webster declined to answer this quasi-ultimatum, and with good reason. It appears that in the summer of 1842 the Spanish government instructed its representative in Washington and the Cuban Intendant that pending a settlement of the *Amistad* claims the semi-annual payment due from Spain to the United States under the convention of 1834 should be withheld. At least Webster received from the Cuban official word which led him to believe that such was the case; and he at once inquired of Argaiz if it were true. Receiving only a vague and elusive reply from that source, Webster on August 29, 1852 directed Washington Irving, the American minister at Madrid, to sound out the Spanish secretary of state and foreign affairs on the subject. At the same time he informed Argaiz that the United States would not consent to connect the acknowledged treaty debt with the unacknowledged *Amistad* claims; and that until he learned if this had been attempted he would not continue further discussion of the latter question. The dispatch to Irving was three months in transit. By the time Webster received a reply stating that the American minister had been assured that Spain had never considered allowing the matter of the pending claims to interfere with the payments on her just treaty debt,¹⁶ the attempts to settle the *Amistad* controversy had begun to assume a different aspect.

Although formally unanswered, Argaiz's note of June 27, 1842 was not ignored. Webster told him, according to the

¹⁵ Argaiz to Webster, June 27, 1842, in 28th Cong., 1st Sess., *House Doc.* 83, pp. 2-21.

¹⁶ Webster to Argaiz, August 16, 29, 1842, MSS., Dept. of State, Notes to the Spanish Legation, VI; Webster to Washington Irving, August 29, 1842, MSS., Department of State, Instructions, Spain, XIV; Irving to Webster, December 5, 1842, MSS., Dept. of State, Dispatches, Spain, XXXIV. T. C. Reynolds, secretary of the American legation at Madrid, had occasion in 1847 to study carefully various items of correspondence on the *Amistad* negotiations for the period in question. He came to the conclusion that there was some basis for the report that Spain did consider withholding payment on the treaty debt until a settlement was reached on the *Amistad* claims. See Reynolds to James Buchanan, July 8, 1847, MSS., Dept. of State, Dispatches, Spain, XXXV.

latter's statement, that the president was impressed with the arguments that had been presented and had decided to submit the whole affair to the consideration of Congress.¹⁷ Tyler, however, did something less than that. On February 27, 1843 he submitted to the House of Representatives "sundry" correspondence that had passed on the question since February 1841. In an accompanying message the president called attention to the fact that although, according to the Supreme Court, the case was not one of piracy and thus did not come within the terms of the treaty of 1795, the authority of the *Amistad* had been divested by force, and it was brought into a port of the United States. The salvors, too, were officers and seamen of a public ship. Then he added:

It is left to Congress to consider, under these circumstances, whether although in strictness salvage may have been lawfully due, it might not yet be wise to make provision to refund it, as a proof of the entire good faith of the Government, and of its disposition to fulfill all its treaty stipulations, to their full extent, under a fair and liberal interpretation.¹⁸

It should be noted here that when he made up the list of documents which President Tyler submitted to the House on this occasion, in addition to some less important communications Webster failed to include Argaiz's note of June 27, 1842. That minister complained of the omission on the ground that if the question were submitted to Congress that body should have the benefit of all the relevant correspondence. Webster replied that the letter was not considered important to the purpose for which the correspondence was submitted, "as it seems only intended as further argument, on the same question." He assured Argaiz, however, that if it was desired the document would be submitted to the next Congress.¹⁹ This

¹⁷ See Argaiz to Webster, April 9, 1843, MSS., Dept. of State, Notes from the Spanish Legation, XI.

¹⁸ This correspondence with the accompanying letter was printed as 27th Cong., 3d Sess., *House Doc.* 191.

¹⁹ Argaiz to Webster, April 9, 1843, MSS., Dept. of State, Notes from the Spanish Legation, XI; Webster to Argaiz, April 26, 1843, MSS., Dept. of State, Notes to the Spanish Legation, VI.

promise was fulfilled through the agency of his successor A. P. Upshur on January 24, 1844.²⁰ Meanwhile the Spanish representative refrained from continuing correspondence on a subject which he believed had been submitted by the executive entirely to the decision of Congress. Indeed the scene did shift to that body for the time being.

On April 10, 1844, C. J. Ingersoll of Pennsylvania, chairman of the Committee on Foreign Affairs, introduced in the House of Representatives a bill providing for an appropriation of \$70,000 to satisfy the *Amistad* claims, and submitted for the committee a report in support of the recommendation. The details of this long and elaborate report are not pertinent to this discussion. In substance, it consisted of a complete, if not strictly accurate, history of the *Amistad* case; a denunciation of the interposition of the courts in the affair; a bitter arraignment of the judicial decisions handed down; and, as might have been expected at this time, a defense of the institution of slavery in the United States. The committee took the attitude that since the damage had been done to Spain it was up to Congress, particularly "that grand inquest of the nation, the House of Representatives", to make amends.

When the Federal courts of justice err [the report concluded] Congress alone can rectify it. It is by act of Congress alone that this debt of national honor to Spain can be paid, as it ought to be, by signal proof to the world that none shall be wronged—not even by judicial authority—without redress, in the United States.²¹

The proposal of the committee met with strong dissent. Opposing Ingersoll's motion to have 10,000 copies of the report printed, J. R. Giddings of Ohio, an ardent opponent of slavery, spoke for an hour against the bill which it supported. Naturally, he took views opposite to those stated in the report; and he expressed the opinion that when captured off the coast of the United States the *Amistad* in reality belonged to the negroes on board. He believed, or affected to believe, that

²⁰ This dispatch was printed as 28th Cong., 1st Sess., *House Doc.* 83, as has been cited.

²¹ 28th Cong., 1st Sess., *House Report* 426.

the United States should compensate them for this property and the time they were forced to spend in prison.²² John Quincy Adams prepared and, had it ever been reported from the Committee of the Whole, proposed to deliver a speech against the bill, than which, he said, "a baser and more profligate misappropriation of public money" was never made. While "seven years in a penitentiary cell", he wrote in his Diary, "would be a . . . just retribution" for the report accompanying the bill.²³

The Spanish minister, now again in the person of A. Calderon de la Barca, was gratified with the Ingersoll report, and the following December once more brought the question of claims to the attention of the secretary of state (then John C. Calhoun) and repeated the process in January 1846 with Calhoun's successor, James Buchanan. The latter, on March 19 following, sent copies of these two letters to Ingersoll with the veiled recommendation that Congress should appropriate the money to pay the claims. Buchanan felt that it "might not be becoming" in him to express an opinion with regard to the validity of the question; but he did say: "So long as it shall remain unsettled, it cannot fail to prove a source of irritation and discord between the two countries, highly prejudicial in many respects, to the interests of the United States". When Buchanan's action was reported in Madrid the Spanish government naturally expected that the settlement of the claims would be effected as a matter of course. For, wrote the secretary of state for Spain, "the executive power not only does not deny it [the justice of the claims], but appears desirous . . . to be furnished with the means of making payment."²⁴ Congress' only reaction to Buchanan's recommendation at this time, how-

²² For Giddings' speech, see 28th Cong., 1st Sess., *Congressional Globe*, Appendix, pp. 500-504.

²³ Adams, *Memoirs of John Quincy Adams*, vol. XII, p. 186. Adams' proposed speech and an explanatory letter to his constituents were published in the *National Intelligencer*, April 3, 1845.

²⁴ Buchanan to C. J. Ingersoll, March 19, 1846, in 29th Cong., 1st Sess., *House Report* 753, p. 1; secretary of state for Spain to Calderon, June 18, 1846, enclosure in Calderon to Buchanan, September 20, 1846, in 31st Cong., 2d Sess., *Sen. Doc.* 29, pp. 7-8.

ever, was another report, dated June 24, 1846, a duplicate of that of April 10, 1844, from the Committee on Foreign Affairs of the House of Representatives.²⁵ The next step was taken by the upper body of the legislature.

Late in the following session of Congress the Senate added to the House civil and diplomatic bill an amendment proposing an appropriation of \$50,000 to be paid to Spain for distribution among the *Amistad* claimants.²⁶ Then the Department of State, for its own part, unreservedly admitted the justice of the claims. Advocating an approval of the Senate amendment in a letter to the chairman of the House Ways and Means Committee, Buchanan said, in part: "I have given the question a thorough and deliberate consideration, and cannot avoid the conclusion that the claim is well founded under the 8th, 9th, and 10th articles of our treaty with Spain of the 20th October, 1795." He then sent a copy of this letter to Calderon with the assurance that this acknowledgment of the justice of the claims had met with the approval of President Polk.²⁷

The House of Representatives, however, proved adamant. Adams led the opposition. Pale, trembling, and with a weak voice, as described by listeners, it was on this occasion that he delivered his only regular speech of the session. Adams asserted that there was no basis whatever for the indemnity claims; that their payment would be a perfect "robbery of the people of the United States." Withal, if the decision of the Supreme Court were to be discarded, it was a matter for Congress to decide, and not the secretary of state. On March 2, 1847 the House in a vote that showed distinct aspects of sectionalism on the slavery question, defeated the Senate amendment by the count of yeas 40, nays 113.²⁸

Up until this time, as has been noted, the negotiations on the *Amistad* question had been conducted exclusively in Wash-

²⁵ 29th Cong., 1st Sess., *House Report* 753. The report proper covers pp. 4-17.

²⁶ 29th Cong., 2d Sess., *Cong. Globe*, February 25, 1847, p. 506. This amendment was accepted without a count of votes.

²⁷ March 19, 1847, in 31st Cong., 2d Sess., *Sen. Doc.* 29, pp. 10-11.

²⁸ 29th Cong., 2d Sess., *Cong. Globe*, Appendix, pp. 437-438; *ibid.*, House of Rep. *Journal*, March 2, 1847, pp. 483-484.

ington. Following this failure of Congress to vote the appropriation recommended by the executive, however, the Spanish government registered an official complaint at the American legation in Madrid. This carried with it the intimation that if the claimants, contrary to the wishes of the ministry, should succeed in bringing the question before the Cortes the government might not be able to resist demands to suspend the payments on the treaty debt of 1834 until the United States had paid the *Amistad* awards. In the temporary absence of the minister T. C. Reynolds, secretary of the legation, somewhat indiscreetly offered a lengthy reply. He set forth an argument against the validity of the claims and the obligation of the United States to pay the awards that would have done credit to Adams or Webster. Recommendations that they be paid, he maintained, had been made in the nature of a concession. Failing to do so, the United States would occupy the position, he said, of "declining to do a gratuitous favor, not . . . refusing to liquidate a debt". Yet he attempted at some length to explain away the failure of the House of Representatives to vote the appropriation, mentioning the pressure of business near the end of a session, the connection of this question with the slavery issue in the United States, overconfidence on the part of friends of the measure, etc. Besides, he stated, this action was not final; the president undoubtedly would press the matter again, at which time the necessary funds would likely be secured.

Reynolds sent copies of the note he had received and his reply to Buchanan. The secretary of state was displeased at this turn of affairs; he had preferred, he said, to handle the matter, chiefly in conversation, with the Spanish minister in Washington. Yet since it had been broached in Madrid he instructed the American minister there to tell the Spanish minister of foreign affairs that the United States would brook no interruption in the payments due from the treaty of 1834, but that all proper means would be used to obtain the *Amistad* appropriation from Congress.²⁹

²⁹ Reynolds to Buchanan, July 8, 1847, MSS., Dept. of State, Dispatches, Spain, XXXV; Buchanan to R. M. Saunders, September 29, 1847, MSS., Dept. of State, Instructions, Spain, XIV.

President Polk made such a recommendation in his next annual message. Entertaining the conviction that the claims were just, he said: Good "policy, no less than a faithful compliance with our treaty-obligations" requires that the small sum demanded should be paid.³⁰ This produced in the House of Representatives nothing more than another bitter attack by Giddings on the policy suggested. The following August, however, by the non-sectional vote of yeas 24, nays 21, the Senate once more amended the civil and diplomatic bill by proposing an appropriation of \$50,000 to pay the *Amistad* claims. Yet in the closing days of another session this amendment, like the similar one in the preceding Congress, was defeated in the lower body.³¹ Inasmuch as the president and the Senate, "the two powers, to which the direction of diplomatic relations is confided", had admitted the justice of the claims, Spain professed to see no reason why the House of Representatives should refuse the money.³² Thenceforward, however, its attitude remained the same; in fact, such a proposal was not considered seriously again in the lower branch of Congress.

Thwarted as it was, the Polk administration made no further active attempts to secure the desired appropriation. Nor did the succeeding one. Continued demands on the part of the Spanish government, however, caused President Fillmore to make the question the subject of a special message on January 17, 1853, when he submitted copies of this correspondence to Congress and urged in a non-committal manner that some final action be taken. In his first annual message Franklin Pierce definitely recommitted the executive to the policy of acknowledging the equity and justice of the claims, but he made no further reference to the subject. Throughout his administration, however, President Buchanan was tireless in

³⁰ *A Compilation of the Messages and Papers of the Presidents*, ed. by J. D. Richardson (10 vols., Washington, 1896-1899), vol. IV, p. 551. Obvious references as this will be omitted hereafter.

³¹ 30th Cong., 1st Sess., *Cong. Globe*, January 4, 1848, pp. 101-102, August 9, 1848, p. 1055; *ibid.*, *Senate Journal*, August 3, 1848, p. 529.

³² Calderon to Buchanan, August 22, 1848, in 31st Cong., 2d Sess., *Sen. Doc.* 29, pp. 13-14.

urging Congress to vote the appropriation he had so earnestly advocated as secretary of state.

During this fourteen-year period numerous attempts were made in the Senate to settle the controversy in Spain's favor. On February 19, 1851 Senator J. M. Mason, for the Committee on Foreign Relations, introduced a bill proposing that the sum of \$50,000 be appropriated in satisfaction of the *Amistad* claims, which was accompanied by the usual report. In giving a complete history of the affair to that date the committee argued at some length that according to the treaty of 1795 the United States was obligated to comply with the Spanish demands at the time of the detention of the vessel. The main point made, however, was the assertion that the judiciary was not the proper agency to determine finally the obligations of the United States under the treaty. In such instances, it said, nations look only to the contracting power. In this connection the report continued:

And it is no answer to Spain, neither can the government exonerate itself toward her. . . . by saying that the judiciary . . . assumed jurisdiction of the subject, and thus withdrew it from the control of the government which made the treaty, and which became responsible for its observance. . . . It is no answer to Spain, to say that this subject has been determined by the judiciary . . . adversely to this claim of Spain; and it becomes necessary in consequence, for the executive and legislative departments of the government, in replying to the demands of Spain, to construe the treaty originally, and to decide the obligations that may arise under it.⁸⁸

The bill was passed to a second reading, but the Senate took no further action upon it. In March 1852, and again in February 1858, identical bills accompanied by duplicate reports from the Committee on Foreign Relations were likewise blocked. On the last-mentioned date, however, the committee was divided in opinion. Senators Solomon Foot and William H. Seward submitted a minority report which presented, in general, the same views heretofore noted in the speeches and correspondence of those opposed to making payment of the

⁸⁸ 31st Cong., 2d Sess., *Sen. Report* 301.

claims. These were not supported, the two senators said, by the facts nor the law. The United States, the minority report continued, "are in no manner compromised or obliged to satisfy [these claims] by the executive recommendations, made in the face of an adjudication of our highest court, and without any new facts on which to base them."⁸⁴

Mason made two more unsuccessful attempts to have the Senate consider his bill. Yet these resulted in little more than statements from the opponents of the measure that it was "entirely unfounded"; and that it was an "utter rascality", with an absence of "any merit or of any honor of any kind or description."⁸⁵

Meanwhile other claims had arisen between the two governments; and the negotiations on the "Cuban claims" had reached a critical stage. These had grown out of events which, as their name implies, occurred in Cuba. On October 8, 1844, following a hurricane in the island, the provincial authorities had issued, subject to the approval of the home government, a decree permitting for a period of six months the importation of certain foodstuffs and building materials into Cuba free of duty. Numerous American merchants and some in other countries immediately took advantage of the opportunity thus afforded. Having failed to receive the sanction of the Spanish government, however, the ordinance was suddenly annulled on February 20, 1845. This naturally resulted in unexpected losses upon many shipments that were on the high seas at the time. Nearly one hundred American individuals and firms were affected, while the damages as eventually determined amounted to \$128,635.54.⁸⁶

⁸⁴ The report of March 1852 is 32d Cong., 1st Sess., *Sen. Report* 158; while both the majority and minority reports of February 1858 are printed as 35th Cong., 1st Sess., *Sen. Report* 36.

⁸⁵ 35th Cong., 2d Sess., *Senate Journal*, December 6, 1858, p. 7; *ibid.*, *Cong. Globe*, February 9, 1859, pp. 904-905.

⁸⁶ See Treaty with Spain, March 5, 1860, MSS., Dept. of State; Buchanan to Irving, May 9, 1845, MSS., Dept. of State, Instructions, Spain, IV; A. C. Dodge to Lewis Cass, October 20, 1858, MSS., Dept. of State, Dispatches, Spain, XLI. A complete list of the claimants is given in 35th Cong., 2d Sess., *Sen. Doc.* 18, pp. 26-28.

Acting upon instructions from the Department of State, Irving in Madrid soon made reclamation to the effect that the government of Spain should indemnify these losses. The matter was not pressed insistently at the time; but a few years later Spain agreed to make the payments as soon as the amounts in question could be determined.³⁷ Then it was that the United States made earnest but futile efforts to bring about a final settlement. It is not the object of this discussion, however, to consider in any detail the negotiations with respect to the "Cuban claims" except as they were connected with those which Spain was then urging the United States to settle.

That the one was pitted against the other was clearly shown as early as August 1857 in a "warm, excited, and unpleasant" interview between A. C. Dodge, the American minister to Spain, and the Marquis of Pidal, Spanish minister for foreign affairs. Dodge complained at the delay incident to the settlement of the "Cuban claims". The reply was that the length of time which had elapsed since Spain promised to examine and consider them was as nothing compared to that which had elapsed since the solemn pledge of the "Government of the United States" to indemnify the claimants in the *Amistad* case. In reporting this interview Dodge said:

I trust for the honor of the United States, that Congress will, at its approaching session, appropriate the necessary funds to liquidate the 'Amistad case'. Few, at home, can imagine the mortification which my predecessor and myself have been made to suffer from the manner in which this case is forever thrown in our teeth when we are pressing just and long-delayed claims upon the Spanish Government.³⁸

President Buchanan briefly explained this situation in his first annual message when he insisted that Congress vote the money in settlement of the *Amistad* case. As was expected,

³⁷ Irving to Alexander Mon, August 8, 1845, enclosure in Irving to Buchanan, August 23, 1845, MSS., Dept. of State, Dispatches, Spain, XXXIV; Calderon to Pierre Soule, June 1, 1854, enclosure in Soule to W. L. Marcy, June 10, 1854, *ibid.*, XXXIX.

³⁸ Dodge to Cass, August 15, 1857, MSS., Dept. of State, Dispatches, Spain, XL.

the failure of Congress to do so continued to hamper the negotiations pertaining to the "Cuban" and other claims held by the United States against Spain. In the following August the American minister again wrote from Madrid:

Vain though it be, & is, I cannot refrain from the expression of regret that Congress did not appropriate the funds so urgently asked by the executive to pay the Amistad claim. . . . Could that honorable body realize, as I have so often done, the deep injury resulting to us from the non payment of this unquestionably just claim I am sure it would not continue to overlook or disregard the forcible & truthful recommendation made by Mr. Buchanan . . . in favor of its liquidation.

Two months later Dodge was forced to report that although the total of the "Cuban claims" had been determined at \$128,635.54, Spain had agreed to pay but one-third of that amount, and that without interest. The offer was accompanied, moreover, by a declaration that the proffered indemnification was not founded on reason or justice, but was being made as a special favor.³⁹

Regardless of the inability to redeem its acknowledgments to Spain in the *Amistad* affair, the executive continued to exert every effort to secure full payment of the "Cuban claims". During a conference between Saturnino Calderon Collantes, the Spanish secretary of state, and W. P. Preston, Dodge's successor in Madrid, held in November 1859, Spain yielded to the extent of promising to pay the principal *in toto*, but still withheld an offer of the interest. At the same time the two men agreed tentatively upon the terms of a convention to create a commission for the purpose of settling all outstanding private claims between the two governments. Preston was authorized to conclude such a convention, and to accept the offer made on the "Cuban claims".⁴⁰ That, however, was withdrawn in part. In December Buchanan issued another in his series of

³⁹ Dodge to Cass, August 25, October 20, 1858, MSS., Dispatches, Spain, XLI.

⁴⁰ W. P. Preston to Cass, November 27, 1859, MSS., Dept. of State, Dispatches, Spain, XLII; Cass to Preston, December 24, 1859, January 18, 1860, MSS., Dept. of State, Instructions, Spain, XV.

executive recognitions of the *Amistad* claims, and urged Congress to take a similar stand. His message was given full publicity in the Spanish press. Before final arrangements had been made to liquidate the "Cuban claims" Collantes told Preston the force of public opinion in Spain was such that he could not make this payment without holding in reserve a sufficient amount to satisfy the demands resulting from the capture of the *Amistad*. The American minister naturally refused this proposal. Generally sympathetic with the Spanish point of view, however, and realizing that without some concession in that respect no adjustment could be made for the claims held against Spain, he suggested the compromise which was incorporated in the convention signed on March 5, 1860.⁴¹ This is explained in the following brief analysis of that convention.

Spain agreed to assume responsibility of settling for the entire sum of \$128,635.54 in satisfaction of the "Cuban claims". Only \$100,000, however, would be paid immediately. The remainder was to be withheld pending the action taken by the United States with reference to the *Amistad* claims. They, together with all other claims which had arisen between the two governments since 1834, were to be submitted to a Board of Commissioners for examination and final decision. The personnel of this board, according to the treaty, was to consist of three members selected in the following manner: Each government agreed to appoint one. These two were to name the third, providing they could reach an agreement. If not, they would each nominate an individual; and from these two the third member would be chosen by lot in presence of the original commissioners.

This board, it was provided, should make its decisions on all claims that were submitted to it within nine months after it had been organized. The first meeting of the board was to take place in Washington; but it was to be permitted to adjourn later to New York or Havana, as was deemed expedient to conduct its business. Each nation agreed to furnish all

⁴¹ Preston to Cass, March 6, June 28, 1860, MSS., Dept. of State, Dispatches, Spain, XLII.

documents and evidence in its possession, which the board might consider necessary to render the awards. The vote of two of the three members, it was agreed, should be sufficient to determine the decision on any one claim. The decisions were to be in writing; and from them no appeals were allowed.

Finally, the following arrangement was made with reference to the balance of \$28,635.54 which Spain was to retain from the total due to the United States on account of the "Cuban claims":

If the award of the Board of Commissioners should be adverse to the "Amistad" claimants or, if the . . . United States, complying with it, should pay the sum that may . . . become due in virtue thereof; then the Government of Her Catholic Majesty, binds itself to pay the said residue . . . to the United States . . . but if the decision should be favorable to the "Amistad" claimants, and the American Government should refuse to fulfill the said award, or neglect its fulfillment for one year . . . then, Spain shall pay to the "Amistad" claimants, the sum retained; and, if the said sum retained, shall be more than sufficient to satisfy the award, then the Government of Her Catholic Majesty shall pay to the United States, the excess for distribution among the . . . Cuban claimants; but, if on the contrary, the sum reclaimed shall be insufficient, the Government of the United States binds itself to pay to the Government of Her Catholic Majesty, the difference, for the use of the "Amistad" claimants.⁴²

This treaty met with the approval of President Buchanan, who on May 3, 1860 submitted it to the Senate to secure the constitutional advice and consent of that body to its ratification. Thus it was left for the Senate to determine whether the United States would agree, not to recognize these claims, be it understood, but merely to submit them to a fair and impartial arbitration. The answer was in the negative. On June 27 the treaty was rejected by the close vote of yeas 26, nays 17. This action was immediately reconsidered, but the count on the second vote of advice and consent to ratification was almost identical with the first. The defeat of the treaty

⁴² Treaty with Spain, March 5, 1860, MSS., Dept. of State.

was almost purely a political party measure. Twenty-four Democrats, one Republican, and one southern Whig voted for it; while twelve Republicans, one Democrat, two northern Whigs, and two Free Soilers were in the opposition.⁴⁸ Accordingly, it is evident that the anti-slavery faction was responsible for the failure of this, the last serious effort to adjust the claims which had been pending for almost two decades.

The attempt is made in this discussion to point out the inconsistencies of policy, largely the result of the slavery controversy in the United States, between and (excepting the judicial) within the three branches of the government in dealing with the diplomatic problem arising with Spain as a result of the capture and detention of the schooner *Amistad* in 1839. As has been noted, the more numerous reversals of policy, and because of its position with regard to the control of foreign relations the more significant, occurred in connection with the executive branch. In the latter part of the period that has been covered, however, though in opposition to the will of the judiciary and the lower house of the legislature, and, for the most part, that of the Senate, it had maintained consistently for the greater part of four administrations the policy of complying with the Spanish demands. There remains, in conclusion, only to show how this position was reversed again by the one which came in with the outbreak of the Civil War.

Needless to state, the rejection of the treaty of March 5, 1860 was a source of regret, if not of surprise, to President Buchanan and the Spanish government. It effectively blocked for the time being all attempts on the part of the United States to secure the payment of the Cuban indemnities and to arrange for a general settlement of claims between the two govern-

⁴⁸ *Journal of the Executive Proceedings of the Senate of the United States of America, 1789-1901* (32 vols. in 34, Washington, 1828-1911), vol. XI, pp. 183, 227. The information with regard to the party affiliation of the senators who participated in these votes was gained largely from the biographical sketches in *The Biographical Directory of the American Congress, 1774-1927* (Washington, 1927). For a more complete statement regarding the Senate's action upon the treaty, see R. Earl McClendon, "The Two-Thirds Rule in Senate Action upon Treaties, 1789-1901", *American Journal of International Law*, vol. 26, pp. 37-56 (January 1932).

ments.⁴⁴ These were problems, however, which despite the disturbed state of the Union were taken up again soon after the Lincoln administration came into power. In July 1861 H. J. Perry, minister *ad interim* at Madrid, wrote Secretary Seward that he believed he could draw up a convention for the settlement of claims that would meet with the approval of the Senate. It would have to be free, he said, from special clauses referring to particular claims, but embrace all "without designation or exception of any." This brought from the secretary of state a significant reply which must be noted in some detail.

Seward stated that the United States would be willing to enter into a convention providing for the settlement of pending claims; in fact, it was deemed especially desirable that such should be done. Yet he added:

But this Government does not regard the so-called Amistad claim as having any valid obligation in law or conscience and can in no case consent to negotiate upon it. While, therefore, we shall not be critical as to the form of words to be used in describing the claims to be submitted to the proper joint commission, frankness requires that the exception of that supposed claim shall be expressed or at least distinctly understood.

I am well aware that this instruction differs radically from admissions and acknowledgments made by several of the predecessors of the President. Each of them has considered the subject for himself, and pronounced upon it according to his own convictions. The new President, under the same obligation, instructs me to make known to you his disallowance of the claim in question. It were indeed desired that there should be

⁴⁴ On October 25, 1860 Preston wrote Secretary Cass: "I feel, at present, that no steps can be taken to press the claims of our citizens further upon the government with success. We cannot demand a settlement of our claims, and their prompt payment, while we refuse to let theirs even be heard by arbiters. We cannot enforce the settlement of doubtful demands, by our people against Spain, and refuse to pay those which our previous Presidents have repeatedly admitted as just. The reclamations for the slaves of the Creole were included under the Convention with England, and were finally allowed and paid, and it is difficult to maintain that the Amistad claimants should not even have their demands heard." MSS., Dept. of State, Dispatches, Spain, XLII. See also Carl Schurz to W. H. Seward, September 5, 1860[1], *ibid.*; James Buchanan, *Mr. Buchanan's Administration* (New York, 1866), pp. 258-260.

consistency in the action of the Government throughout successive administrations, especially when foreign nations are concerned, but justice and reason cannot be safely compromised by any Government, even for the sake of preserving perfect consistency with itself through a series of years and in intercourse with foreign states.⁴⁵

Upon receipt of these instructions Carl Schurz, who had succeeded Perry at the American legation in Spain, told Collantes in conversation that for reasons connected with "its own internal politics" the United States would not consent to include the *Amistad* case in a general settlement of claims, because of its "bearing upon the slavery question now of such paramount interest in the U. S." Collantes replied that under such circumstances Spain would be willing to consider any proposition the United States might wish to offer in order to obviate this difficulty. Schurz concluded that it would be necessary for his government to make a liberal allowance on some other claim, making it possible for Spain to "satisfy in a private way" the *Amistad* claimants. So he informed Seward when reporting the interview. The idea was not acceptable to the secretary of state, who wrote Schurz as follows:

We should be glad to effect a measure for the adjustment of mutual commercial claims, but we cannot admit that the *Amistad* claim has any foundation in justice or moral right. It is for Spain to refuse to treat with us upon this ground, if she thinks it sufficient. We can only regret it, and wait for her to reconsider the subject.⁴⁶

In such a manner, as it proved, Seward put an end to the negotiations on the question.

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⁴⁵ H. J. Perry to Seward, July 12, 1861, MSS., Dept. of State, Dispatches, Spain, XLIII; Seward to Schurz, August 15, 1861, *ibid.*, Instructions, Spain, XV.

⁴⁶ Schurz to Seward, September 5, 1860[1], MSS., Dept. of State, Dispatches, Spain, XLIII; Seward to Schurz, November 5, 1861, *ibid.*, Instructions, Spain, XV.