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Title: Letter from Roger B. Taney to Samuel Nelson

Date: March 9, 1863

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My Dear fir lohat do you think of moenting the following barrgraph in the dipenting opinion.

The acts of 1795 and 1809 did not I could not under the constitution confer on the Chrowns the power of declaring was against a otate of this union or of deciding that was existed, and whom that granned anthorning the Capture & indende Som confiscation of the property of every citizen of the state whenever it loss found whom the loster - The laws of loar whether living or inter genter, converti the every citizene of the hostile Itale mor a public every

treats him accordingly whotever may have been his privious tondent. This great power our the lensings of property of the Citizen is reserved to the degistative for mint by the arghres words of the constitution Is connas le delegation en surriales to the executive, tangues alone can determine whether war upists or war should be delario. and until they have all nochizer of a state Can be punished on his person or property, unles, he has committed some office against a love of lowgrop paper before the act was ammitted, which made that a crime & defines the premishment. The penalty of confiscation for me acts of others with whom he has no concern, connor lawfully her inflished - for can the lour receives evidona of whopwas Low on done by a state The right to determine whether was existed as not

Town longues must dicide ligore the sout linacious of this paragraph - I submit it to your judgment I do not indeed know that it con tain any thing more thou you have soid - except that it more distinctly apends the principle that congres cannot delegate on surchon to the Execution the Degistation power which the constitution requires it to exercea - and this point is of great infrontince at the fre cent time a in the present timper of the man in prower you will however Jeal with this make as you think less- and rich aprimo mor Lohall be in truly contines whative you may do with itpery truly Dini W. Justie relson your pien B. B. Janey

Monday, March 9, 1863

Dear Sir,

What do you think of inserting the following paragraph in the dissenting opinion.

The acts of 1795 and 1807 did not and could not under the Constitution confer on the President the power of declaring war against a state of this union, or of deciding that war existed, and upon that ground authorize the capture and confiscation of the property of every citizen of the state when ever it was found upon the waters. The laws of war whether the war be civil or inter gentes, converts every citizen of the hostile state into a public enemy,

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treats him accordingly whatever may have been his previous conduct. This great power over the business and property of the citizen is reserved to the Legislative Department by the express words of the Constitution. It cannot be delegated or surrendered to the executive. Congress alone can determine whether war exists or war should be declared. And until they have acted no citizen of a state can be punished in his person or property, unless he has committed some offence against a law of Congress passed before the act was committed, which made it a crime and defined the punishment. The penalty of confiscation for the acts of other with whom he had no concern, cannot lawfully be inflicted. Nor can the Court receive evidence of what was said or done by a state. The right to determine whether war existed or not

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is a legislative and not a judicial power. Congress must decide before the Court can act.

You will understand I am not tenacious of this paragraph. I submit it to your judgment. I do not indeed know that it contains anything more than you have said – except that it more distinctly asserts the principle that Congress cannot delegate or surrender to the Executive the legislative power which the Constitution requires it to exercise. And this point is of great importance at the present time and in the present temper of the main in power. You will however deal with this matter as you think best, and rest assured that I shall be entirely content whatever you may do with it.

Very truly [illegible] your friend R. B. Taney

Mr. Justice Nelson