

WHY ARE WE STILL AT WAR?

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Why are we still at war?  
WHY ARE WE STILL AT WAR?

OR THE

# American Question

CONSIDERED;

IN A SERIES OF ESSAYS REJECTED BY THE  
JOURNALISTS AS UNPOPULAR;

*RECOMMENDED TO A CANDID PERUSAL,*

BY CONCILIATOR.

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Illud quod medium est, atque inter utrumque, probamus.

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ORIGINAL.

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1814.

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## P R E F A C E .

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THE following Essays were offered to a number of the Daily Newspapers, late in July, and early in August last; and to that first in course which has always been held by the writer in the highest estimation, to the Editor of which the first lines do literally apply. To him a number of them were sent for perusal; but though the former objection was removed, another not less formidable had sprung up. The great events, by which every thing relating to the American War was eclipsed, had passed by; but now the popular prejudice was so strong, that nobody would look but at one side of the question. He agreed in the sentiments; particularly in that which deprecated the seeking through an expense of blood and treasure what might be obtained without it; and if they should be thrown into a Pamphlet, or the Pamphleteer, which he recommended as a work that was read; he would willingly give extracts and commendations.

A second Editor commended the energy, and good temper at the same time, with which he thought the letters were written; but observed that the author was not perhaps aware that every Journal had its particular class of readers; and it was necessary to consult their taste, both with respect to the matter, and the time when it would be acceptable.

A third saw nothing in them, that either he or his customers would dislike if they could be brought to attend to them; but they would embroil him in long discussions and argumentations, which would be more plague than profit.—Any information of what was actually going on in respect to the war, or the negotiations for peace, he would be very thankful for:—little attention was paid to causes; effects alone were inquired after. The author was now advised to offer them to a Journal, which he had known in its less degenerate days; but whose Editor after having requested from him any advices that might fall in his way, had latterly declined, (certainly in a very civil way) a piece of information, whose truth he did not doubt, as contrary to its spirit.—On an intimation from a



friend of the Editor that they would now be received with thanks, he suffered the manuscripts to be submitted to his perusal the more readily; as he thought the truth and candor, with which he had endeavoured to state the case, would form a pleasing contrast to the general scope of the paper; and he preferred enlightening those in the greatest darkness; upon the ground that those that be whole need no Physician.—The objection here however was, that they challenged contradiction, and would invite more answers than his Journal had room for. These are the principal reasons assigned for their rejection; and which are thought to warrant the title of Essays rejected by the Journalists as unpopular. Most of them however added, that from their length they were a better subject for a Pamphlet; and accordingly here they are.

A few reflections necessarily grow out of these rejections. That the freedom of the press is the Palladium of liberty, no Junius was ever better persuaded than the author of these letters:—that it is prostituted to the vilest purposes is equally true:—that in the present state of it there is a want of means of getting fairly before the public the most important truths, is not less certain:—but where the blame of all this is to attach, is a question not so easily decided.—Editors can hardly be blamed for not printing what nobody will read.

It is said that individuals sometimes escape punishment in this world;—Nations never.—The Sceptic must be rather fastidious that sees any thing to object to, in this order of providence:—He ought rather to see in it one of the evidences of future retribution; since as individuals we have not that sort of legal immortality here, which we enjoy in our National or Corporate capacity. A tremendous responsibility rests on those who wilfully mislead the public mind; but a British public cannot be held blameless, who having the right, and even boasting of it, to think for itself, is led, with a hook in its nose, and a bridle in its mouth, by the artifice of a few individuals in power; still less can we expect to be exempt from those national visitations, which result from the indulgence of a malignant spirit, founded on prejudices which we have, better than any other nation under Heaven, the power to remove.—First cast the beam from thine own eye; and then shalt thou see clearly to remove the mote that is in thy brother's eye.

# AMERICAN QUESTION.

NO. 1.

SOME months are elapsed since it was said and said truly, that no one would give the requisite attention to any thing that might be written on the subject of the American contest. The anxiety of that moment has yielded to a state of things that ought to have been contemplated from the steady and magnanimous conduct of the allies, uninfluenced by the heedlessness that often carries success beyond the point of prudence, and despising the gnat-stings of impertinent newsmen that would stimulate Princes and Emperors to their duty, by holding forth suspicions of defalcation and even of treachery. And if the tumult of joy that has succeeded, have so far subsided as to allow us to reflect on the terrible profusion of blood and treasure that has been bartered for a state of things, that might have been had without it; such reflection may be improved into a means of caution against a renewal of the like prodigality.

I mean not to enumerate the evils that have devastated and deluged Europe in blood; but I do mean to call the attention of your readers to a retrospect on this wreck of matter; to reconsider the pangs of this new birth; and to draw from the past the only possible advantage now left, in a practical lesson for the future.

Nothing can be more shocking than the ravages of war, save the facility with which we forget them; whereby the salutary caution they should inculcate on future generations, and even on

our own, is lost. Neither are we to consider the war in America of minor importance on account of the smaller numbers that we think may be engaged in it. Individual distress is not the less for not being shared by all the world; and were it so, when we consider "how great a matter a little fire kindleth," we are by no means warranted in the belief that the present contest, if persevered in, will be confined to a narrow circle. Do we forget that the American revolutionary war brought us into hostilities with the most powerful states of Europe, and raised a question of litigation in the North that is not yet put to rest?

Neither again is the mode of warfare in America less a subject of deprecation to humanity. We have employed the savages whose known rule of barbarity is to spare neither age nor sex; and the event has proved, setting all suspicion of connivance, (in which I have no faith,) out of the question, that we can neither controul them on all occasions, nor prevent their taking sides with the enemy, whenever in retaliation for our employment of them he sees fit to accept a tender of their services.

These considerations will show the American Question in a sufficiently important point of light to occupy a column of your paper; which I propose occasionally to fill; asserting nothing that does not rest on authentic information; denying nothing that does; and even answering any thing contradictory that may be candidly urged under the like authority.

Mutual recrimination is the very stuff that war is made of: the indulgence of our own faults with a partial eye, while we paint those of our neighbour with a sun-beam. A more chastened inspection of the former, without neglecting the necessary attention to the latter, will enable us to make up for ourselves that true judgment on the merits of the case, which it is the duty of a free people to form. This duty does not preclude us from the right of examining any thing that may be said on either side of the question; but it requires us to examine according to the moral rules of evidence. We surrender our liberty, when we suffer others to think for us:—we are slaves of the worst species, shackled in intellect, if we suffer our understanding to be perverted by state impositions, or our passions to enlist blindly under the guidance of any master but our impartial reason.



In the course of these essays, therefore, the question of unprovoked aggression of the United States, asserted in the late speech from the throne, will be freely considered; and some notice will be taken of the particular period in which the American Government called for war.

In looking into the subject before us, I shall admit whatever may appear to be founded in fact, by whatever industry or stimulus it may be brought to light; but must beg to be excused from combating the mere hypotheses of jaundiced politicians or the ravings of disappointed statesmen on either side of the Atlantic.

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NO. 11.

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The list of provocations, as enumerated in the President's message, calling for war, (and which he therein considers as exhibiting a state of war on the side of Great Britain, against the United States, while the United States were observing a state of peace towards Great Britain,) may be classed as follows:

1. The impressment of seamen from American ships; and especially of natives of the United States.
2. The seizure of American ships under illegal, or pretended blockades, or orders in council.
3. The insult of charging the United States as accomplices with the late French Government, in the assertion of maritime doctrines, which they have always disowned.
4. The Henry Plot.
5. The stimulating the savages to make war on the United States.

And the catalogue of naval aggressions on our part, which is here abridged, may be seen extended in the letter of Mr. Madison to Mr. Rose, of the 5th March, 1808.

If these facts had ever been denied, or the inferences drawn from them successfully controverted, there might have been some difficulty in settling the question of provocation; but as this has never been the case, the process is very simple. In passing the

different items in review before us, we have only to ask ourselves the question, upon each, would England have submitted to this?—and if the answer of our hearts to each be *no*, and still more if the natural answer of every man in the kingdom must necessarily be that its whole force should be employed to repel such invasion of our rights; what must be the reply to the question on the aggregate sum of the evils thus inflicted?—*Bella, horrida Bella.*

You are now perhaps prepared to consider me as justifying, in every point of view, the declaration of war on the part of the United States: this, however, is not the case. I am only controverting the pretence that this measure was an *unprovoked aggression* on their part. What would you say, for example, if in a war between France and Spain, (England being neutral) a son or a brother of your own, or even a fellow subject, were taken out of an English ship by a scoundrel French captain, scourged at the gangway of a French man of war till he was compelled to do the duty of a French sailor, and join in the execution of murder upon the Spaniard, (for murder it must be to him, who is no enemy to the Spaniard) and finally to lose a limb or a life, in such a contest?—would you consider this no provocation? What would you say if you were ruined, and your family reduced to beggary, by the capture of your ship and cargo on an innocent and lawful voyage?—a voyage which could not be charged with fraud or immorality, much less with any crime calling for so heavy a punishment; lawful by the laws of your country; lawful by the law of nations; lawful by the construction of that law by the very nation committing the wrong, until the tortuous rapacity and temporary policy of that nation required a new construction; lawful by the indiscreet avowal of the very administration under whom the seizure was made; and lawful by the repeated and emphatic construction given by every member of the administration that issued the decree that was made the foundation of the seizure by their successors in office—Would you consider this no provocation?

On the 3d article, I fear we must enter a little more copiously. It is an effort of the President to repel an insult, *eo nomine*, which, if I have a right idea of the subject, is not less so to the people of England, than to the government of the United States; and I beg to call the particular attention of your readers to it, as a flagrant



instance of successful imposition on their credulity, and a prominent indication of the necessity of investigating for themselves the evidences of a fact on which the peace of nations may depend. Nothing is more prevalent than the notion that America has been the accomplice of France in the assertion of those maritime doctrines which we have contested; nothing more certain than the contrary.

The pretensions of France are three-fold.

1. That free ships make free goods.
2. That naval stores should not be considered contraband of war.
3. That an investment by land as well as by sea, is necessary to constitute a legal blockade.

I enter not at present on the question of the retaliation upon your friend, of the injustice of your enemy; that subject shall be considered anon: these are the questions of *Maritime Rights*, asserted by France, which the public has been led to believe, and which ninety-nine in the hundred do believe, to be equally asserted by the American Government.

It is in vain to oppose mere assertion to an opinion so inveterate, or even to challenge authority in support of it: the reply would be like that I have received this day from a very respectable man, who conceived that he had given all necessary attention to the subject, "that tho' documents were not at his fingers' ends, he was sure they existed, and it was only on the best authority that he had ascertained the fact." Let us, however, have recourse to the *litera scripta*.

In the 17th Article of our treaty with America, in 1794, the right to enemy's property in a neutral ship is expressly recognized: "If any property of an enemy should be found on board such vessel, *that part only which belongs to the enemy shall be made prize*, and the vessel shall be allowed to proceed with the remainder without any impediment."

Has America since contested this right of the Belligerent?—so far from it, in the instructions of Mr. Madison for forming the treaty of 1806, we find these words: "She (Great Britain) will find in both, (received authorities and usage,) that a neutral vessel does not protect certain objects denominated contraband of war, including enemies serving in the war, nor articles going into a

blockaded port; nor as she has maintained, and *as we have not contested*, enemy's property of any kind." In the 8th article of the above treaty this instruction was carried into effect. The 9th conforms with the British doctrine relating to naval stores. The treaty was not ratified indeed, because it made no definitive provision for the protection of American seamen from impressment: a motive for suspending the ratification, totally unconnected with either of these objects.

On the question of the necessity of an investment by land as well as by sea to constitute the legality of a blockade, the American government has always acquiesced in the British doctrine, that such investment was not necessary. In a letter of the 30th September, 1800, from Chief Justice Marshall, then Secretary of State, of the United States, to Mr. King, then their minister at this court, the necessity of such an investment is given up, on the ground (certainly not a ground that an obstinate litigant would admit) of "a departure from principle that had received some sanction from practice;" and all that the American government has ever required, to legalise a blockade, is in the very words of our treaty with Russia in June, 1801, that there should be ships stationed sufficiently near the port to create a manifest danger of entering. And accordingly when the question was called up, in the correspondence between Marquis Wellesley, British Secretary of State, and Mr. Pinkney, American minister here, we find the latter, in a letter of the 14th January, 1811, repelling the insinuation of French influence in the councils of the United States, in a style of fervid eloquence which his great opponent could never rebut. "It is by no means clear that it may not fairly be contended, on principle and early usage, that a maritime blockade is incomplete, with regard to states at peace, unless the place, which it would affect, be invested by land as well as by sea. *The United States have called for the recognition of no such rule.*" "What I have to request of your Lordship therefore is, that you will take our views and principles from our own mouths; and that neither the Berlin decree, nor any other act of any foreign state, may be made to speak for us what we have not spoken for ourselves." There is a redundancy of evidence to the same effect, which has been printed for parliament, and for the public, but which nobody

reads. I shall not however trouble you at present with any more of it; but just observe that I have sought in vain through the whole correspondence, and in every act and deed of the American government that has come to my knowledge, for any thing at all contradictory of what is here asserted. I will remark too, by way of episode, that, in this acquiescence in our doctrines, America has gone farther than any of our high and mighty friends in Europe have done, or *will* do—mind the future. The manner in which this plain state of facts has been so perverted as to make the direct contrary pass upon the public, and thereby excite that hostile spirit, which nothing but a presumed combination with France could provoke, will be next considered.

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NO. III.

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We are now to advert to the manner in which the truth has been so perverted as to imbue the public mind with a notion, (directly contrary to the fact,) of American hostility to our maritime rights. And, in respect to free ships making free goods, it must be admitted that if the desire of the American government were equivalent to a demand, this privilege has been demanded.

As we had treaties with every state in Europe, save Sweden and Russia, and even with the states of Barbary, in which this freedom was allowed; it is no matter of wonder that it should have been a subject of discussion at the time when the beforementioned treaty was made. General Washington considered it a part of the modern Law of Nations: to compare small with great, so did I. The convenience resulting from such a general rule, and the great number of stipulations whereby it was adopted in practice, led easily to the conclusion, that it might be considered as having glided into the code through the avenue of conventional law; and this opinion prevails even now in every state in Europe but our own.

On the other hand, it cannot be denied that a special stipulation, far from establishing its own object as a general rule, is in the nature of an exception that establishes the contrary; and in this



view of the case, the greater the number of stipulations, the more multiplied was the evidence, that in the law, as it stood, neutral ships had not the right to protect enemy's property.

Still with so many treaties favoring the measure; and *notamment* that with France as late as the year 1787; it would have been rather unneighbourly, and *contra verecundiam*, to have refused it to the United States. But here lay the difficulty. At the time of those compacts, both the parties were at peace, or in contemplation of it; but at the time of Lord Grenville's treaty with Mr. Jay, America was at peace, but England at war. Now it will be seen at once that the reciprocity, which, when both parties were at peace or both at war, gave an equal chance of benefit, depending on the contingency of which party should be first at peace while the other was at war, would be all on one side, to use an expression of Mr. Pitt, where America could immediately enter on the freighting of enemy's goods. The American government was too candid to turn a deaf ear to such an argument as this; and it will be found in the 12th Article of the treaty before cited, that the parties agreed to resume the discussion, after a peace should have placed them on an equal footing.

But, Sir, is the inference to be drawn from this, that America supports France in her pretensions? On the contrary I do say that the more desirous she is of establishing the rule; the more numerous the instances in which the practice has been heretofore admitted; and the greater the number of states that maintain the doctrine as a principle; the less right have we to say that America is hostile to our pretensions, and the more reason to aver the contrary.

Now let us probe the depth of our gratitude to America for siding with us against all the world in this pretension, and against France at least in the others that we consider of such vital importance; or to get rid of the irony at once, let us review a few of the miserable state tricks, by which the public opinion has been forced into a direction so adverse to this palpable evidence. I think, Sir, you will agree with me that this self-denial of the American government is not to be construed into resistance to our pretensions; and that the expression of a desire, thus curbed, by the editor of a newspaper even favorite of the government, is not to

be viewed in that light. I know it is the fashion to consider whatever is announced in certain public prints as having the sanction of the government; but I know also that it is the case in America, (as Lord Whitworth told Buonaparte it was here,) that if certain papers are favored with an early communication of what the government sees fit to publish, the editors are not therefore restrained from inserting their own opinions, or any articles that may be sent them by others; and indeed I have seen instances in the *National Intelligencer*, or some extracts from it in our own papers, of regret, in the very question of hostility with us, that the government was not disposed to go the length the writers wished. Neither shall we confine ourselves to the efforts of the scribblers in our own government prints, to show how much the converse of the true case has been held up to view; though here we should find a miserable "if" of Buonaparte's converted into an alliance, and *his assertion* that America would meet on his side in a congress for peace (which on every other occasion would be taken for evidence of the contrary) set down for *gospel*.

Undoubtedly the more dignified course for both governments would be to discourage the holding out such false lights, where they can be supposed to emanate from themselves. But in the case before us, we shall show higher evidence of perverseness than in the vulgar lies of the *Times*.

Whoever will give himself the trouble to read the declaration of government of the twenty-first of April, 1812, will find that an official report of the French Minister for foreign affairs to the Conservative Senate of the tenth of March preceding, which has no reference whatever to America, but which relates "to Europe only and the Continent of Europe, and the Continental System, and the continental ports, which are mentioned thrice three times in the instrument, without a word of America, or a word that can be applied to her:" that this instrument, I say, is not only so tortuously twisted, as to lead the reader to believe that America is contemplated in it; but that, as it were to rivet the deception, a hope is expressed that when this act shall be made known in America, the United States will be thereby induced to change their measures.

I am confident, Sir, that nine people out of ten, I might per-



haps say ninety-nine out of a hundred, that have read this declaration which recapitulates the three pretensions of France that we have been considering, have from this alone believed that America was party with France in the assertion of them, and it is hard to tell whether it be the greater censure, on those that drew up the declaration, that they believed it themselves, or that they knew the contrary.

But, in order to be satisfied that America was not included in the denunciations of the French report, we may be told that it is not sufficient to show that in its general tenor the terms are applied to Europe only; for the Ruler of France denounces the penalty of the Berlin and Milan decrees against all nations who shall suffer their flag to be denationalized. It will be well therefore to show that America was exempt from this curse of denationalization. And thus it appears.

By a certain act of the government of the United States, of the first of May, 1810, a judgment was denounced in the shape of exclusion from their ports of the ships of that great belligerent of the two who should continue his hostile decrees for three months after the other should withdraw them as respected the said United States. France acceded to the proposition under the precise terms of the law; the alternatives of which she repeated in her act of revocation; viz. that either England should also revoke her hostile edicts, or that *according to the law just communicated, America should make her rights respected*. It will perhaps be new information to some of your readers that this condition, which was all that was required to prevent the denationalization of the American flag, is not only kept in the back ground in the paper before us; but absolutely castrated in five other public documents of the first importance; and in each of them an inference is drawn from the mutilated copy materially different from that which the words at length would give, viz. in the Letters of Marquis Wellesley to Mr. Pinkney, of Dec. 29, 1810, and Feb. 11, 1811, in the judgments of Sir William Scott on the Fox and on the Snipe; and in the declaration of government of the ninth of Jan. 1813, which we shall have occasion to notice again shortly. And it requires no common stretch of charity to believe that the omission of these important words in so many instances

could be accidental; especially when it is perceived that without them the condition of the French revocation was incomplete; since England did not revoke her Decrees; but whenever this alternative is restored to the eye, the delusion vanishes. Moreover a reference to this act of the government of the United States is a reference to one of the clearest evidences of the impartiality of the American government which it has been most wickedly attempted to conceal and deny in various instances; for by this act it is shown that the same measure was offered to us as to France; and it can be the less doubted that the same exclusion would have been adopted against her had we so revoked, as was adopted against us for not following her example; as the American government had on a former occasion admitted our intercourse, to the exclusion of that of France, with a promptitude and celerity rarely if ever witnessed in diplomacy.—The negotiation with Mr. Erskine was opened on the sevènteenth of April, 1809, and finished with the proclamation of the President, re-admitting British ships, and excluding French, on the nineteenth of the same month.

Another mode in which the public has been led into error is to be found in the efforts of men whose tongues and pens have been employed successfully for themselves at least, in controverting the American pretensions; and who from the peculiar occupation of their time and talents on the subject are suffered to pass their base coin upon those who have not looked so deeply into it. An instance of this is to be found in the debate of Dec. 1, 1812, in which an honorable and learned gentleman, who made another mistake at the time, tells a Noble Lord that “he must have a short memory, if he don’t recollect that the government of America had declared that they expected the treaty of Utrecht should be considered the maritime law of nations.” This was war in disguise, entrenched behind papers and parchments, which the Noble Lord had not thought fit to penetrate; but if he had, he would have searched them in vain for any evidence of the fact insinuated by the honorable and learned gentleman. He might indeed have found an intimation of the kind from some benighted wanderer over the fields of a newspaper; he might have found an expression of the *Hope* of Buonaparte to this effect; (not quite so strong evidence

to the contrary as his *assertion* would be; but still evidence to the contrary.) But the Noble Lord would seek in vain for any declaration of the American Government to that effect;

“For optics sharp it needs, I ween,  
To see what never can be seen.”

Now, Sir, we shall advance in our apology for our sovereign lord the people by showing that they might possibly have misapprehended the higher sources of authority, and you will think it extraordinary, and it would be so, but for what precedes, and what follows, that the first document, I shall refer to, is one, in which the *disavowal* of Buonaparte's principles of maritime law by the American government is *directly acknowledged by our own*. In the 11th paragraph of our declaration of war, (9th January, 1813) after enumerating the maritime pretensions of Buonaparte, the declaration goes on to state that “one of them is not founded in fact, whilst the others, *even by the admission of the American government*, are utterly groundless in point of law.” Certainly, Sir, in this naked form it would be hard to charge this extract with obfuscation or sophistry. But there is a mist and confusion about the whole paragraph, which begins by charging, not the United States, but France, with pretexts that the property of private persons and goods were not the object of legitimate hostility; and herein the question of free ships, free goods, is enveloped in the more extended protection that Buonaparte is pretended to have claimed for private property of every kind. And then the expression “*even by the admission of the American government*,” as though it were an admission reluctantly wrung from them, who were otherwise desirous of defending Buonaparte's pretensions, *the contrary of which had so palpably appeared*. In short when it is considered that all the parade of enumerating Buonaparte's innovations, with which America had nothing to do in fact, would appear from this clear acknowledgment, to be no concern of the United States, by ministers' own showing; it is difficult to imagine that they made the acknowledgment with any other view than that of a retreat from the charge of misrepresentation, if it should happen to be made; while the public were left under the false impression of a combination between France and the United States in order to keep alive the hostile spirit which was necessary to enable them to



carry on the war. And the plan has so far succeeded that you may travel from Dan to Beersheba without finding a man that knows or believes that Government have made this acknowledgment. I do assure you, Sir, that among numbers that I have mentioned it to, I have never met the man that knew any thing about it:—many would not believe it till I showed it to them in the gazette; and I have met with some of respectable standing in society who would save me the trouble of going into the next room for the gazette, by observing that they would not believe it, if they saw it there.

Whether it have confounded war in disguise or not, I cannot tell; but certainly if he be right, Government is wrong; for I may challenge his pen, or even his tongue, if the house will pardon me, to show that the admission here spoken of is any new admission since the 1st of December, 1812.

It remains to subjoin the concatenation of authoritative documents which have protracted the erroneous notions of the public, subsequently to this confused acknowledgment; and here we shall only refer to the speeches of the Speaker and the Prince on the 23rd of July, 1813, and of the former on the 30th of July, 1814, when it was ascertained that the veil drawn over this confession had screened it from the public eye.—The terms “maritime rights,” “maritime rights of the British Empire,” “the maxims of public law, and the maritime rights of this empire” &c. &c. which we are to maintain against the United States, have been undoubtedly understood to refer to those maritime rights in which they have been considered as having joined France in opposing us: not to the question of allegiance which is ubicumquous—not confined to the sea, and therefore not maritime.

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NO. IV.

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It is deplorable that between nations so relatively situated as Great Britain and the United States, there should be any serious cause of litigation and war; but in the proud notion of independent rights which one inherits from the other, the next best relative position to both being right, is that both should be wrong—  
forlorn is the hope of Conciliation, where the fault is all on one side.

In the sedulous investigation of the question we have now to consider, I am greatly mistaking if we shall not find both parties in error; and if the fault be imputable to America only, the impressment of a single American seaman, knowing him to be such, or even not knowing him to be a British subject, is sufficient to deprive us of the right of throwing the first stone.

In retracing the state of man to a state of nature, we find him a wanderer over the wide world; and confinement within narrow limits is so repugnant to our feelings, that millions now in England who never have been and never will be out of it, would be miserable to be restrained by force from going to the Deserts of Arabia—Paradise and old Madeira are imprisonment and physic to the man who is confined to the one, while the other is poured down his throat.—And if the rigor of political institution lay some restraints upon our vagabond propensities; they should be such only as are required by special obligation or the necessity of the case. And if every man have a right to better his situation; he is least of all to be restrained who finds it difficult to procure subsistence at home.

But however diverse may be the opinions of the writers on the law of nations in respect to the right of emigration; I find nothing, off our own statute book, to justify that species of expatriation for which the American Government has contended:†

† It would not be quite right here to withhold from the reader a Dictum of Wicquefort, especially as it is introduced in the discussion of a subject where it might not be looked for. In the 13th parag. of his 11th chapter he says, the emigrant having become the subject of a new sovereign, is obliged to obey him, and to serve him, even against the person of him who was his sovereign; but being so no longer, cannot *desire* of him any duties to the prejudice of the last. These are strong words; but I cannot consider them of sufficient authority on the grave question of battle and murder: nor am I satisfied that Wicquefort would have used them if that had been the question immediately before him, although in another part of his work (c. 9. parag. 8) he ridicules the ignorance of those who assert that nothing can free a subject from the jurisdiction of the sovereign of the country where he was born. The object of Wicquefort was, to show that a subject might be naturalized, and be appointed ambassador from his new to his former sovereign. To assert the interests of his employer in this case against the pretensions of his former sovereign, does not appear to me of that serious complexion that drawing the sword would exhibit.



that a man should be allowed to lift his parricidal hands against the country that gave him birth, and has done him no wrong, appears to me, at least, as repugnant to natural law, as that he should be restrained from the legitimate pursuit of subsistence within bounds that nature never proscribed.

I have seen a pamphlet, which from the source it comes from, and the countenance given to it, may be supposed to contain the whole pretensions of the American Government on this subject: perhaps something more than the chief magistrate of that country would advocate. The work is entitled "Expatriation;" and I have no hesitation in saying that the author appears to me very far from having made out his case. It is due, however, to the candor expressed in the work itself to observe, that it invites discussion, with the diffidence becoming a man who admits that he is exploring a sort of *terra incognita*, and is willing to be availed of the lights of any fellow traveller in the same region. But it is the less necessary to occupy your columns with a controversy on the general question, as I am afraid it will appear that whatever right other nations may have to repel its pretensions, we have none.

In the Statute of 6. Anne, C. 37, S. 20, I find the following strong invitation of foreign seamen into our service :

"And for the better encouraging foreign mariners and seamen to come and serve on board ships belonging to the kingdom of Great Britain; be it further enacted, by the authority aforesaid, that every such foreign mariner or seaman, who shall, from and after the said 25th day of April, have faithfully served on board any of her Majesty's ships of war, or any privateer, or merchant, or trading ship or ships, vessel or vessels, which, at the time of such service, shall belong to any of her Majesty's subjects of Great Britain, for the space of two years, shall, to all intents and purposes, be deemed and taken to be a natural born subject of his Majesty's kingdom of Great Britain, and have and enjoy all the privileges, powers, rights, and capacities, which such foreign mariner, or seaman could, should, or ought to have had and enjoyed in case he had been a natural born subject of her Majesty, and actually a native within the kingdom of Great Britain."

The same privilege is re-enacted, 13. Geo. II. C. 3. with the

exception required by the intermediary statute of 1 Geo. I. C. 4. of all naturalized subjects from becoming members of parliament, or of the privy council. It is twice mentioned by Blackstone, who asserts such foreign seamen to be *ipso facto* naturalized; and is stated by some of our latest authorities to be the law of the land at this day.

Now, I beg you to read a second and third time this letter of the law. I wish your readers would give themselves the trouble to place a blank sheet of paper before them, and write down their ideas of the nature of the invitation, and the extent of the pledge here proffered to the foreign seaman, before they look to any comment upon it from my pen, or from any other source: and if they do not find the nation pledged to protect the men so invited—if they do not find “the rights of a natural born subject actually a native within the kingdom of Great Britain” to include the protection due to such in the very act to which the adopted seaman is invited, I shall only say they see with other eyes than mine.—Words cannot be stronger; no sophistry can change them: and if it were possible, by any distorted construction of them, to pervert their logical meaning, it would only follow that a trap has been laid for these poor fellows for above a century, in which they have been led to believe themselves under the protection of the mighty arm of Britain, against that forfeiture of their lives to their former governments, which they must have incurred in any other character than that of British subjects.

We have accused the Americans of enticing our seamen into their service; but we look in vain in the statute book of the United States for any such enticement as this.\* And while our navigation act has been so relaxed as to admit a large majority of foreign seamen into our mercantile marine, and our navy has been half manned with foreigners—foreigners, with whose parent states we were actually at war, we have been issuing proclamations, threatening our

\* The sailor there, indeed, has less inducement to naturalization than any other subject; since from the itinerant nature of his profession he cannot, without great inconvenience, perform the five years' previous residence that the law requires. They have not amounted to an average of sixty in the year.

own seamen with punishment for the very act which we have thus so strongly, and for so great a length of time, encouraged in others. And now that we are at peace with all Europe, and have turned the impressed American seamen into prison-ships, we have found it convenient to discover that by “the ancient law of this realm, *founded on the principles of general law*, the natural-born subjects of his Majesty cannot discharge themselves from the allegiance which from their birth they owe to his Majesty.”

There was another act of Anne, passed the year following that we have quoted; by which, because “the increase of people is a means of advancing the wealth and strength of a nation, it is found very lawful by the ancient law of this realm (it is not said, founded upon the principles of general law) to invite all Protestants to transport themselves and their estates into this kingdom.” It is true that this act was repealed at the end of three years, on account of “divers mischiefs and inconveniences having been found to follow from it.” But the mischiefs and inconveniences of the act did not end with the repeal of it; it has the mischievous tendency to demonstrate to the world that we can pass laws against “the principles of general law,” when they can be made “a means of advancing the wealth and strength of the nation;” and repeal them when they are found mischievous and inconvenient—“to the detriment of the trade and wealth thereof.” There is another mischief yet unrepealed. By the necessity we found ourselves under of repealing this act, which made subjects of foreigners abroad, while we maintained the former; we let in a strong collateral argument to the American doctrine of the jurisdiction of the flag; not over enemy’s goods, or military serving in the war, (for to these, as we have shown, they pretend not,) but over sailors embarked under a lawful contract, and receiving victuals and wages from them, to whatever nation they may belong. The protection which we found we had no right to extend, and could not extend to the foreigner abroad “who took the oaths and the sacrament, and was deemed and adjudged a natural-born subject,” we have thus virtually declared our right to extend, after mature deliberation, and have continued to extend to the seamen *under our flag*, military or mercantile, to which we have invited him.



But I am afraid that the Americans are not the only people that will mark the contradiction between our law and our proclamation; other foreigners will find in this last a plea for recalling their seamen from our service by a general order, in spite of any engagements they may have contracted with us; and this will be found very different from the little nibbling by which an individual sailor is redeemed in the rare instances when a number of accidents combine to give his consul notice of his situation and desire of relief; and which is perhaps done once a year, to give the secretary of the admiralty an opportunity of saying it is the practice.

I know there is a sophistical mode of argument by which we are persuaded (I say we *are* persuaded, though we ought not to be) that no other nation has a right to draw inferences from the laws that we make for ourselves. But the child who has learned the doctrine inculcated by the *sage* proverb that sauce for goose is sauce for gander, can be at no loss to detect its sophistry.—If it be said that no nation is bound to adopt the laws of another, I am ready to subscribe to the doctrine in the fullest extent. I will go farther and say that our invasion of the rights of a third party is very far from authorising a similar invasion on the part of our enemy. You will perhaps be surprised when I tell you that with all Europe against us on the question of free ships free goods, I think we have a right to maintain our doctrine on that subject as long as we find it for our advantage, (albeit I wish the ocean as free as the air.) I am an advocate too for the rule 1756 with such temperate modification as will leave the neutral the full enjoyment of his accustomed trade and the natural increase in which it was progressing, and to which it might reasonably be expected to have attained, if the war had not occurred; but what I insist upon is, that that which we decree to be law between us and all other nations, is law, if they choose to adopt it, between all other nations and us or between any other nation and us. I don't mean to say that the United States could cite our law against France or Russia, but they may surely cite it against ourselves; and that, as the ne plus ultra of conviction in the shape of self-condemnation.—If I were called on to decide between the statutes of Anne, and the proclamation of the 23rd of July, which it is impossible to reconcile, I should pronounce for the proclamation; not so much for its conformity with “the ancient law of this realm,” as for its foundation “upon the princi-

ples of general law ;"—for I do think that in the allurements held out to the Protestants the good Queen Anne was righteous over much ; and in the special enticement of foreign seamen she displayed an evident breach of the ninth commandment ; but when it is considered that the United States derive their principles of jurisprudence from us ; when it is known that in the profusion of commendation that the chief magistrate of that country has at all times of his life bestowed upon our institutions until we flew in the face of them, this branch of our economy has stood prominent : it is surely not a subject of censure on our part that he has had the comity to adopt our notions on a moot point, though since discovered to be erroneous. If we suffer by such adoption, the fault is our own. The more severely we charge it upon him as a fault—the higher the degree of criminality we attach to him, the more deeply do we condemn ourselves.

—————nec lex est justior ulla  
 Quam necis Artifices arte perire suâ.

And having invaded the principle, we have no right to come into court with our unclean hands and claim the general law in our favor. I know it is said that we only leave the way open for those men to join us ; and that they do it at their own hazard, and of their own choice. This is not only a false but a cruel pretension ; and if it were true we should only change the character of conspirators for that of receivers of stolen goods. For if these men, *as we say of our own*, had no right to become the subjects of another state—to “ transport themselves and their estates into other kingdoms,” they were robbing their masters of their services and supplies, and transferring them to us. We cannot however, with any propriety, lay even this flattering unction to our souls. We were accessories, before the fact, in the conspiracy, by the special encouragement we held out to them ; we invited them to *come* and join us ; and proffered as a lure to them that very bonus which we now say it was criminal in them to accept. Now there is no special encouragement held out to seamen or to any other particular class by the law of the United States. The naturalization law is uniform in respect to all persons desirous of becoming citizens : it combines the rights of hospitality with due caution ; and the candidates are all equally obliged to pass the ordeal of five years’



residence under record, with certificate of good character and the like :—a process much more tedious than we observe in any case. And for men so naturalized, the American government require nothing more than we have pledged ourselves to give, and have given, and do give every day, disguise it how we may, to scores of thousands of foreign seamen in our service.

But I must say I see nothing in what we have done or in what the American government has done, to reconcile me to the practice. We have excluded ourselves from the right of finding fault with them ; but it is only by having previously adopted a practice that will not bear the test of first principles, to which we ought to resort ; and although certainly it would be very complaisant in any nation to allow us to retrace our steps at the particular moment when the rule we had laid down subserves her interest ; yet if we find the practice in the abstract repugnant to nature, as well as incompatible with those principles on which the harmony of society depends ; I should hope a prospective adjustment of the question might be so arranged as to remove the obstacle to peace. There is fortunately a sufficient anomaly in the relative situation of the two countries to do away the repugnance that might attend a compromise by either with any other nation. Some measures have been adopted by special compact in the question arising from certain natives of the one country being the natural heirs of those of the other. And in this question of citizenship I do think the American government ought to be contented with the doctrine of Lord Kenyon in the case of Collett, that a subject may become a citizen of another country for the purposes of commerce, but not for the purposes of war. That a foreign merchant should be admitted to citizenship is consonant with many regulations of “the ancient law of this realm :”—there is nothing repugnant to nature in this :—indeed it is in the very nature of commercial intercourse that such an interchange should occasionally take place :—it is a means of diffusing mutual benefits ; whereas the admission of a foreigner, who may on the first occasion turn his arms against his native land, is quite pestiferous. Suppose a man reeking with revenge for punishment justly inflicted on him by the laws of his country, or even for injuries that he has sustained, or thinks he has sustained, wrongfully, to nestle himself into the bosom of a country at peace

with his own ;—in which of these cases can it be desirable to adopt him as a citizen ?—that he was wronged as an individual, is not to be credited on his mere assertion. If he were persecuted for political offences, he must have had associates :—if his cause were just, he should stay at home and defend it ; and not sneak away and leave others to suffer ; while by withdrawing himself he diminished their powers of resistance. In no case should the nation he flies to, take any part in his quarrel, or suffer him to inflame any causes of complaint which she might have against his native country, and thereby add to the hazard of producing the flames of war, in a case in which a peaceable adjustment might otherwise be obtained.

If a line can be drawn that will reserve the point of honor, and so define the rights of naturalization, that each country will be left in the possession of a reasonable jurisdiction, I should hope the consideration that we have heretofore acted wrong in the case, would not be an impediment to such an adjustment. America cannot want our subjects ; at least such subjects as we send her : she may have thought with Queen Anne, that “the increase of people was a means of advancing the wealth and strength of a nation ;” but it is no compliment to say that such as she has received from us, constitute no improvement of her own race. I doubt if there is a man in the country that would not compound to give up the best of them upon the simple condition that we should take the rest into the bargain ; but they will not be debarred of the exercise of the rights of hospitality *ad libitum*. Merchants and ship-captains are glad to get sailors cheap ; and to be cheap, they must be plentiful : but foreign sailors are no object to the United States in a national point of view : they are not allowed to be on board their men of war, and we need not go out of our own to be satisfied that they can have none better than their own breed. Any navy officer will tell you, and would have told you before the war, that even those of them that were impressed, in defiance of the laws of God and man, were the best and most trustworthy of any seamen they had on board : and surely we can require no ghost to satisfy us that the ocean bears not braver men in battle ;—if we did, they have made ghosts enough, God knows. But we have living witnesses in abundance of the bravery and excellence of their conduct ; who, to do them justice, are not parsimonious of their commendations, but uniform and profuse ; (in spite of the fire-side warriors at home ;) as well

they may be, for not an instance has been recorded of their plucking out an eye from the head, or plunging a dagger into the heart, of any of the perpetrators of the double crime of robbery and murder by impressment, that have fallen into their power. And where they have sunk a cruiser, they have taken the tenderest care of the officers, as well as of the crew. We have done wisely indeed to turn them out of the men of war when we discovered that they were not invincible: but even those on board the *Guerriere*, that refused to fight, and sat with their arms folded on deck, while limbs and balls were flying about their heads, took no advantage of the event that brought their oppressors into their power. There is, indeed, a morality about the American seamen which is not to be found in that class of men in other countries, except a few of our own from the north, who have seen in the *Cotter's* saturday-night, a symptom of the same kind of education; still it is wonderful, with the opportunities they have had of avenging a wrong, which has its only parallel, if indeed it be a parallel, in the atrocious murder of the *Duc d' Enghien*, that no instance has been found of their stepping out of the line of discipline to do it; but that on every occasion their enmity has ceased with the lowering of our flag.

To return to the question of naturalization. It is important to observe that the best advocates for our rights over our own subjects are to be found in the Committee of Congress, appointed to report on the question; and the best hope for a disposition to accommodate on the part of the United States, in the law already passed, on the suggestion of Lord Castlereagh to Mr. Russell, (that the engagement of the executive government of the United States was not sufficient) whereby all the branches of that government have engaged to discontinue the naturalization of our seamen at the end of the present war.<sup>1</sup> I say it is important to make this observation; for though this law, passed the 3d of March, 1813, was duly promulgated in all the papers of the United States, and, I believe, tacked in small print into one of our own, it is as little known as our acknowledgment beforementioned, that the American Government had disavowed Buonaparte's principles of maritime law.

My next will take up the subject of the *Henry Plot*.

<sup>1</sup> They cannot be naturalized during the war; as alien enemies are excepted in the American law of naturalization.



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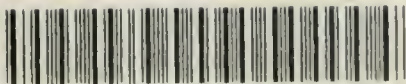












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