

EXAMINATION

OF THE

TREATY

OF

AMITY, COMMERCE, AND NAVIGATION

BETWEEN THE

UNITED STATES AND GREAT-BRITAIN

IN SEVERAL NUMBERS:

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EXAMINATION OF THE TREATY.

C A T O—No. I.

CITIZENS,

AS the embassy extraordinary to Great-Britain, from the appointment of the envoy to the conclusion of the treaty, is unequalled in the annals of negociation, it becomes *us, the people,* who are, as yet, the *constitutional sovereigns* of the country, to consider it with attention, that it may in future either serve as a friendly beacon to point out a secure harbour in political storms, or avoided as a light perfidiously hung out to lure our unsuspecting barks on rocks and quicksands.

It is essential to the due consideration of the advantages and disadvantages of a treaty, to examine the situation of the contracting parties, because the same treaty may be good under some, and bad under other circumstances; thus, when Carthage gave up her ships, wealth, and arms in the second Punic war, the treaty might have been considered as good in relation to her then situation, humbled as she was by the Roman arms, and compelled to rely for her existence, as a nation, *solely on the justice and humanity* of the Roman senate—and yet a treaty of this sort would have been considered as base and abject, if it had been made immediately after the battle of Cannæ, and their senate (venal as Carthage then was) would not have been so lost to every patriotic sentiment as to have sanctioned its ratification. Britain, on the day of the signature of the treaty, was involved in a war with the bravest people in Europe: in the whole course of this

war, she had experienced continued defeats and disgraces ; her treasures were wasted upon allies that either deserted or were too feeble to afford her effectual aid ; her debt had grown to the enormous sum of three hundred millions ; her navy could only be manned by the most destructive burthens upon her commerce ; her manufactures were languishing ; her fleets were unable to protect her trade, which had suffered unexampled losses. And while she was sinking under her burdens, her antagonist was consolidating her government, and growing so rapidly in strength, reputation, and vigour, as to threaten her existence as a nation. The United States were, on the other hand, in the highest prosperity ; their numbers had doubled since they had successfully measured swords with Britain ; they possessed men, arms, military stores, and an ally, who was alone too powerful for her enemies. Sweden and Denmark, who had received insults from Britain, were ready to make a common cause with her ; as the marine of England and France were nearly balanced, the weight of America, had she been forced into the war, would have turned the scale, and completed the ruin of the British commerce, without any other effort than that of granting letters of marque. Independent of which, without a violation of their neutrality by those acts of sovereignty which no one would dispute their right to exercise, they could involve the British trade in the utmost distress, by an additional duty on British tonnage, by granting advantages to rival manufactures, by retaining debts due to her merchants, until the injuries ours had sustained were compensated. By following her example, both in the present and in the late American war, and suffering no part of the public debt to be paid to her citizens until justice was done us, we could have forced her into any measure that it was just or proper for us to ask. And, indeed, so fully satisfied were the Americans, of every party, of the superiority of our situation, that no doubt was entertained of a favorable issue to Mr. Jay's negotiation, and all that his friends lamented, and his enemies rejoiced in, was, that the principal credit of them would be ascribed rather to the victories of France, than

to the address of our minister. Under these happy auspices the negotiation began ; we shall proceed to see how it concluded : the next point of enquiry is into the objects of the negotiation, for as every treaty is an abridgement of the natural freedom of nations, no wise state ever enters into one, but with a view to remove some evil, or acquire some advantage. It is upon this ground that many of our most distinguished patriots have been of opinion, that all commercial treaties were injurious trammels, and bargains in which we might probably be over-reached at the moment, or which circumstances might thereafter render inconvenient ; that America, having nothing to sell but articles necessary to the nations with which she deals, and affording a market to their manufactures, her own trade-laws are her best treaties, since she may alter and modify them at pleasure ; and indeed experience has justified their opinion : independent of the depredations we have suffered from the war, our trade enjoyed every advantage we could reasonably wish. A commercial treaty was not the object of Mr. Jay's mission ; the British nation, in direct violation of the treaty of Paris, refused to surrender the western posts ; extended the limits of their jurisdiction ; availed themselves of their situation to possess the Indian trade, and stimulated the savages to ravage our frontiers ; British officers even accompanying them in their incursions, it became the dignity of the nation to demand a *delivery of the posts—reparation for the loss of trade—a compensation for the expence of the war the British had excited with the Indians—a public punishment of the British subjects who had personally appeared in arms against us, with the removal from office of Lord Dorchester, who had, in his address to the Indians, encouraged them to violate the treaty of peace.* Mr. Jay was thought the properest person to make this demand. Let us see how far he has justified that sentiment, in fulfilling his duty with respect to this single point.

By the 2d article of the treaty, the British promise to evacuate the western posts by the 1st of June, 1796. By the treaty of Paris, in 1763, they promised to evacuate with all convenient speed ; which, if we may judge by

the speed with which they have found it convenient to evacuate all their posts in France, Flanders, Germany, Holland, and Brabant, one would have supposed must have meant a much shorter time than eighteen months, so that all that the treaty acquires with respect to the posts, is less than we were entitled to by the treaty of Paris. Surely we might expect better security than a mere promise, from a nation which has already shewn, in their violation of the past, the little reliance that can be placed on their future engagements. By June, 1796, it is not improbable that our situation, or that of Britain, may be changed; what security shall we then have for the performance of the treaty? It is said (by those shameless apologists who are determined to find every ministerial measure right) that every treaty is a promise, and that if we are not to rely upon a promise, there can be no treaties. I answer, that it is the practice of negotiators, where the character of the nation, or other circumstances, give reason to suspect a violation of their engagements, *not to rely* upon a naked promise, but to expect some guarantee or surety for the performance; that in the present case, as the promise was evidently extorted by the pressure of existing circumstances, we should see to the performance while those circumstances continue to exist. It is evident, before Mr. Jay left this country, that the British were so far from intending to evacuate the posts, that they had determined to extend their limits; this may not only be inferred from the encouragement they gave to the depredations of the Indians, but undeniably proved by Lord Dorchester's speech, which, though disavowed by Dundas, is now admitted to have been made in consequence of express instructions. The promise, then to evacuate, has been extorted by French victories, by the humiliation of the British nation, and by their apprehension that we might at last be provoked to do ourselves justice while they were embarrassed with France. Surely then the evacuation should have been insisted upon, while these circumstances operated with full force: What was there to impede an immediate evacuation of Oswego, which is only occupied by a lieutenant's command? What was

to prevent our troops being put in immediate possession of Niagara and the upper posts, under an engagement to protect, for a limited time, the British property that remained there? In one week this might have been effected, considering the situation of the posts, upon navigable waters, as well as in one year. May we not reasonably suppose, that the British still entertain a hope, that peace between them and France, dissensions between the United States and that Republic, the seeds of which are so plentifully sown by the treaty itself, may enable them to violate their second, with the same impunity that they have their first engagement. If the supposed non-performance of the treaty of Paris (which, however, has been so ably refuted by Mr. Jefferson, in his correspondence with Mr. Hammond on that subject) has hitherto served us as a pretext for retaining the posts, how many such pretences must the complexity and obscurity of the present treaty afford? But suppose the war with France to continue; suppose they have the magnanimity to forgive our predilection for the enemy; suppose the spirit of our own nation to get the better of that disgraceful stupor into which a venal system has lulled it; suppose the increasing imbecility of Britain shall forbid her to hope for impunity in a further breach of faith, will it still be a matter of little moment whether or not she retains garrisons in the midst of our territory for twelve months longer? Are we not at this moment at war with the savages? Is not this war attended with much expence to the nation, and much private distress? Is not the blood of our citizens daily shed? These evils must continue as long as the posts are in the hands of the British, or a peace, if practicable, must be purchased by the United States at very considerable expence. Were we to estimate the difference in this point of view, between an immediate evacuation, and one that is to take place in June 1796, it would certainly not fall short of one million of dollars, independent of the destruction of our fellow-citizens, whose lives are beyond all price. If to this we add the annual profits of the Indian trade, amounting to 800,000, it will appear, that the United States loose above a million of dollars by the retention of the posts, supposing (which is at least problematical) that they will be surrendered at the period proposed. Those who think with me, that decision on the part of our government, and

firmness in our minister, could not have failed to effect an immediate restitution of our territory, will know to what account to charge this heavy loss of blood and treasure.

But was the evacuation of the posts all we had a right to ask on that subject, if the retention of them occasioned those expensive Indian wars which have so often drained our treasury, and thinned our ranks? If for twelve years we have lost thereby a lucrative branch of commerce, are we entitled to no compensation for these losses? If the honor of the nation has been insulted, both by Lord Dorchester and the subjects of Great-Britain under his command, are we to expect no reparation for these insults? Have we reason, from what we have seen of Mr. Jay's correspondence with Lord Grenville, to presume that any has been asked? Are we not assured that none has been obtained? What then is the boasted article, about which so much has already been said, which was the only one communicated to the public, as the only one that it was imagined would bear the light? What is it but a declaration, on the part of Britain, that though she had already stripped us of millions, though she has occasioned the death of thousands of our fellow-citizens, yet she now *promises*, that if we will let her pocket another million, and pay as much more out of our own treasury for a peace with her Indian allies, she will consent, in case the war with France should continue, and she should be too weak to contend with us, to let us possess our own *territory*. And what is our submission to these terms, and the unrequited insults we have received, but the lowest political degradation? If it is said, that these were the best that could be obtained, I boldly deny the assertion; the state of Europe, the state of England itself, their submission to Denmark and Sweden, even to the little state of Genoa, warrant the denial. But should it even have been otherwise, it would have been infinitely better, both in point of honor and interest, to have waited, after having spoken with dignity of our rights, until circumstances should have enabled us to enforce them, than to have relinquished our well-founded claim to a compensation of millions; to have relinquished that satisfaction which our national honour demanded. Can we doubt, if we were ourselves too weak, which I am far from supposing, that the magnanimity of France would have permitted her

to conclude a peace with England, without procuring us the satisfaction which her guarantee of our territories entitled us to ask? I am warranted in asserting, from the best authority, that she would not.

C A T O.

C A T O—No. II.

CITIZENS,

THE next infraction of the treaty of Paris, for which we were entitled to compensation, is that by which they engage not to carry off negroes or other property. To enforce this stipulation, the Commander in Chief, by the order of Congress, sent Col. Smith and Mr. Benson to New-York, who, finding it impossible to prevent property to a considerable amount from being shipped, took an account of so much as came to their knowledge. What satisfaction has Mr. Jay procured to the United States for this loss? Are commissioners appointed by *choice*, or by *chance*, for the liquidation of these accounts? Has the British government rendered itself liable for them? When Mr. Jay was so solicitous to secure to the British merchants every item of their demands, with interest and *damages*, would it not have been proper to have reflected upon those his country might claim?

The third demand, and perhaps the best founded of any made by a free country, was that which related, not merely to the violation of our flag, not to a point of national honor only, nor to the infraction of treaties, or the withholding of our territories, but to what is infinitely dearer than either, to the personal liberty of our citizens. Before Mr. Jay left this country, it had been the common practice of the British to press American seamen, not only from our vessels at sea, but in the very harbor of London, and with such distinguished contempt did they treat us, that the government not only winked at it, but their judiciary, in defiance of their own laws, authorized it. A seaman having found means (a matter of no small difficulty when in the hands of a press-gang) to procure a Habeas Corpus, the captain of the ship of war returned on the writ, that he was a British subject, and though

the seaman had certificates and witnesses to prove that he was an American citizen, the judge refused to admit them, and declared, that the captain's return was conclusive evidence; from which time to the present moment, it has been the common practice of the British ships of war, even within sight of our own harbours, to tear that valuable class of citizens from their domestic enjoyments, from the bosom of their families, to subject them to military discipline and imprisonment. By a tame submission to these measures, we withhold that protection which is due to every citizen, and which, indeed, is the great end of government. We man the fleets of the enemy of our ally; disable our merchants from availing themselves of all the advantages we might derive from our neutrality, and justify our seamen in quitting a country in which they have no security, even for personal liberty. Of this resource, however, Mr. Jay has endeavored to deprive them; surely it would have been his duty, when he was consigning such as went into the service of our ally, to an infamous death, to have obtained some satisfaction for the wrongs they had suffered while under the protection of their national flag; yet upon this subject the treaty is wholly silent. Perhaps the Envoy Extraordinary believed, that any stipulation in their favour would have derogated from his assertion, that America relied *solely* on the justice and magnanimity of his Britannic Majesty.

If the British merchants are entitled to the payment of those stale demands which the tyranny of their own government disabled their ruined creditors from discharging, how much more justly may our injured seamen, forced from their native homes, subjected to a brutal tyranny they detested, and compelled to fight against a people they loved; how much more, I say, are they entitled to payment for their loss of time, with interest and damages for the injuries they have sustained? Yet no commissioners are appointed to hear their demands; no national security is pledged for their indemnification; no satisfaction is made to the insulted honor of the nation; no officer, that has outraged the laws of nature and nations, is punished, or even removed from the command which he has so unworthily exercised. On the contrary, Lord Grenville, fearful that the people might at length be wearied with repeated insults, and resent them upon such of

their authors as daily frequent our ports and harbours, and repay our mistaken hospitality with insults, hath expressly stipulated in the 23d article—"That the officers shall be treated with that *respect which is due to the commissions they bear*; and if any shall be insulted by any inhabitant, all offenders in this respect shall be punished as disturbers of the peace between the two countries." This article not only deserves consideration, as forming a striking contrast to our shameless indifference for the injuries and insults our own officers and men have actually received, but as laying the foundation for the future differences with Great-Britain, whenever she shall find it convenient to deny us some stipulated right, under pretence that the treaty has been violated. Though this article professes to be mutual, yet it is evidently without reciprocity, because we have few or no officers who could avail themselves of it, while our cities are crowded with persons who boast a royal commission: These have upon every occasion manifested a disposition to assume airs of superiority, and to insult our citizens; nor have they been restrained but by the fear of personal chastisement, from lording it over us in our own coffee-houses. This article, being totally undefined, will be construed by every officer according to his own sense of the respect that he thinks "due to the commission he bears," and every coffee-house broil must in future become the subject of national discussion.

As the treaty appoints no tribunal for ascertaining the *respect due to a British commission*, so it also leaves us in the dark as to the power that is to punish the unfortunate American who fails in the respect due to a swaggering captain of a cutter, or the fat purser of a frigate; as he is to be considered as a disturber of the peace of two nations (I suppose either nation may punish him) and he will probably be delivered up to Great-Britain to be treated as a pirate.

Let me ask Mr. Jay, what principle of justice or necessity dictated this article? Do not the existing laws of the country protect every man? Is it not enough that our constitution has organized courts for the special benefit of foreigners, to the injury of our own citizens? Did it become us, with daily examples before our eyes of the insolence and injustice of British officers, to bury in silence the wrongs we had received, to enter into special stipulations in their favor? CATO.

C A T O—No. III.

HAVING touched upon the demand which under the treaty, we are entitled to make for the loss of property carried off, I have since examined official documents, to wit, the letters of the commander in chief, and the report of our commissioners, from which it may be fairly estimated, at about one million of dollars. As this was the first infraction of the treaty, and made without the slightest pretence, there can be no doubt of the justice of our demand, as well for interest as principal, which would raise the aggregate amount to about one million seven hundred thousand pounds. Is it not very extraordinary that Mr. Jay should neglect an object of so much moment, while he was so sedulous in loading the United States with the private debts of British merchants. If (which there is the best founded reason to deny) there is really any thing due on that score, surely no better fund can be conceived for its discharge, than this well authenticated claim upon the British government. What makes this omission the more extraordinary is, that the President, while commander in chief, Congress in the year 1783, and at various periods since, and Mr. Jefferson very lately, have uniformly treated this article as very important, insisted upon its fulfilment, and procured such authentic documents of its amount, as to leave Britain without the smallest apology for its inexecution.

The next object of Mr. Jay's negotiation was to obtain satisfaction for the insults our national flag had sustained, and redress for the injuries done our trade in violation of the laws of nations. These may be divided into two classes; 1. Acts authorized and ordered by the court of St. James. 2. Acts done by individuals *under colour of*, but in abuse of those orders. The first class must necessarily govern the decisions of their maritime courts, which, though professing to be ruled by the laws of nations, always take the direction of the Sovereign as the exposition of those laws. Thus, when Mr. Pitt seized in time of profound peace, all French vessels, and thereby outraged every principle of natural law, the British courts of admiralty found no difficulty in condemning them. When, in the same war, to prevent the Dutch from availing themselves of their neutrality, to acquire the carrying trade, he

made prize of every ship loaded with French produce, the courts of admiralty condemned them without hesitation, and justified their conduct by the orders they had received. Indeed it would be a sollicitism to say, that the king can frame instructions, and give orders for making prizes, and that his courts have a power to overrule those orders, and punish the subject that obeys them, since it must often happen, that the interest of the state may justify a breach of the code of nations, without its being proper to communicate to the ordinary courts the principles upon which this justification is formed. Accordingly we find it the constant practice when a new edict is issued, to send it to the maritime courts as a rule for their conduct in determining of prize or no prize. And the courts of appeal in prize causes consist of commissioners of appeal, of whom a majority must be privy counsellors (22 Geo. II. chap. 3) the reason for which is, that their decisions as judges may conform to the instructions they give as privy counsellors. The second class of injuries, arising from the abuses committed by individuals under colour of such orders and instructions, are always corrected (not however without great expence and delay) by the inferior courts of vice admiralty in the first instance, or by appeal if their decisions are erroneous. This distinction will be important in discussing the 7th article of the treaty. Let us now examine the causes of complaint on the subject of the detention or capture of vessels and cargoes as arising under both these.

1st, Orders were issued for detaining our vessels going to France loaded with provisions even before the war broke out, and we were compelled to part with our property at such price as the British market afforded, though a better one was open to us in France.

2d. They issued orders to take all our vessels going to France with provisions, and shortly after in the most perfidious manner without any notice, without even publishing their intention in England, lest we should learn it from thence; instructed their armed ships in the West-Indies to make prizes of all neutral vessels, sailing either to or from the French Islands. These several cruel and unprovoked attacks upon our commerce, cannot be palliated by any law of nations, however obsolete, and were attended with the following

serious evils to this country, for which we are entitled to a *national* compensation :

1. It dishonored our flag, which is a serious evil to us as a commercial nation, since it is the firmness we manifest in maintaining the respect due to that, which must make the basis of our carrying trade, for who will trust their merchandize to ships which may be violated with impunity? who employ vessels from which his property may be ravaged, without the most distant hope, that the sovereign under whose protection he has placed them will vindicate his rights?

2. The loss of that property which the country would have acquired, had not many been deterred by these measures from entering into this branch of commerce. As this cannot be stated as the loss of an individual, it must be considered as a general loss, by which the whole community is affected, and for which therefore the whole community were entitled to a recompence in damages.

3. The actual loss of property, first by the detention and limitation of the price of the articles taken, and the still greater loss by condemnation of ships and cargoes, for which nothing was paid.

4. The individual loss of seamen who were discharged from their ships, compelled by force, reduced by absolute want to enter into the British service in the West-Indies, where great numbers of them died of the diseases of the climate, and the ill usage of their oppressors. I have already observed, that the treaty makes no kind of provision for these worthy and unhappy citizens, or for the families of those that have perished—disgraceful and unfeeling omission! Besides this loss, for which the individual was entitled to a compensation, the nation might demand exemplary damages for the indignities and actual loss of strength in the death or removal of many valuable citizens, the loss of many vessels, at a time, when by their employment, so great a profit would have resulted to the community.

The above enumerated evils were the effect of the express act, and emanated from the special authority of the British government. In addition to this, we suffered losses under the *unauthorized acts* of individuals who, in some instances, plundered and procured the condemnation of vessels that were not liable to capture by the special instructions to which I have

alluded. But the number of these were comparatively small, and for these courts of adjudication were always open; and yet, by a most extraordinary fatality, Mr. Jay overlooks all these flagrant injuries, committed by the British king against the United States *as a nation*, and for which there are without remedy, but by a national compensation, and neither asks nor procures any redress.

The nature of Mr. Jay's application is explained in his courtly note to Lord Grenville. This contains no complaint of any of the instructions I have alluded to, or any other, expressive of the injury that one *nation* had done to the other, but merely in the case of *individuals*. His words are, that great and excessive injuries have, under colour of his majesty's commission and authority, been done to a numerous class of American merchants (not to the American nation) the United States can, for reparation, have recourse "only to the justice, authority, and interposition of his majesty." Through the whole of this note, he speaks of nothing further than individual compensation for individual injury, leaving the two nations entirely out of sight as nations; and indeed, if he had intended any thing more, if he had had the instructions I have mentioned in view, it would have been impossible for him to have made use of so many panegyrics on the *justice and humanity* of his Britannic majesty. In speaking of our seamen (which he does with such pathos as to lead us to hope for some spirited demand in their favor) he contents himself with only requesting, that they may be liberated, and unmoletted in *future*, without a word of compensation for the past.—The reply of Lord Grenville is in the same stile—not a word of the instructions, not a word of apology to the American nation, not a word of compensation, except for the *irregularities* committed by individuals, &c. The British *nation* is supposed, in all these proceedings, to be immaculate. Now let us examine the article, and see how completely Mr. Jay forgot that he was envoy of a great nation, and sunk into the suppliant solicitor of some merchants, whose cause he has managed so ill, as to leave them in a much worse state than he found them, since he took from them the protection of their own government, to leave them to the chicanery of courts in which the very instructions that occasioned their losses must be admitted as laws sufficiently valid to justify them.

The VIIth article exactly pursues the principles established in the note, to wit, that the United States are entitled to no recompence ; that the government of Great Britain has done us no injury, and that " divers merchants and others" only have to complain of the irregularity of some captures and condemnations, which it supposes the courts of admiralty are, for the most part, competent to decide upon. But that if it should happen, that there are any losses for which adequate compensation cannot be obtained, provided that the party claiming has been guilty of no neglect or delay, such compensation shall be ascertained by commissioners, and his Britannic majesty engages to pay them. As this article says nothing about opening the courts, it must have been understood by both parties, that they were necessarily open independent of the treaty ; so that all the advantage, if any, that may result from appeals, were rights that individuals in every civilized nation may claim, and which many had exercised before Mr. Jay's mission. In this respect, then, nothing was effected by his negotiation, unless it was, that the time for bringing appeals is said to have been enlarged ; but of this, the treaty says nothing ; this too, must therefore, depend upon the will of the king of Great Britain, or on the rules his court choose to establish. All that Mr. Jay has then done in this important business, that involved the honor of his country, the great interests of its commerce, the rights and liberties of its citizens, and the property of individuals, many of whom have been ruined by the loss of their capital, is to obtain a *promise* of compensation in such cases as are so singularly circumstanced, as not to be within the reach of legal redress. When we come to view this article stripped of its unnecessary verbiage, it will appear to mock with delusive hopes the men that it affects to relieve. Let us enquire what is to be the business of the commissioners, and of what nature and kind the causes that are to come before them.

They are not to relieve against captures under the order of April, November or January. 1st. Because neither of these are complained of, and the preamble of the article expressly relates to the injuries " divers merchants and others" have sustained by *irregular* captures or condemnations of their vessels and other property under colour of *authority and commission, &c.* Now it would be absurd to suppose, that this

can have any reference to what is done by the *express* order of the sovereign, or to any act but such as is an abuse of that order and authority ; but these abuses make but a small part of our cause of complaint (which goes to the order itself) and are besides necessarily relievable in a court of appeals without the intervention of a minister extraordinary ; and were so before the treaty. The great cause of complaint, *the instructions*, which are, the laws of the court of admiralty not being complained of, all condemnations fairly made under them, must be confirmed by the treaty. What then are the commissioners to do ? They are not to revise the decisions of the courts ; they are not to interfere where the injured party has neglected to appeal. The decrees of the courts are to be absolute with respect to them, nor can they as far as their powers may be collected from the treaty, bind the crown of Great Britain in any case whatever, in which the party claiming the benefit of their decision does not first shew that he has commenced and carried through his suit, in the British court of appeals, that their decree was in his favor (for without doubt their judgment is meant to be conclusive, or else the commissioners would only be a second court of appeals, which would be a solicism not even hinted at in the treaty or preceding negotiations) that the captor is insolvent ; that his securities have been prosecuted to judgment, and that they are also insolvent, in this case ; and this appears to me the only possible case the commissioners may bind the crown to pay what has been recovered in his courts.

Now I would ask any man who reflects a moment on the delays of the British courts, and on the maze of law, which must be trod before a single cause can be brought before the commissioners, whether the whole article is not a mockery of justice, whether any cause can be ready for this tribunal in two years, though by the limitation expressed, the claims must be entered within eighteen months, and whether it would not be much cheaper for the United States to pay the few persons that may possibly be relieved by this mode the amount of their losses, than load themselves with the expence of so useless a commission ?

C A T O.

HAVING stated in the preceding papers, the leading national points, which were supposed to make the objects of Mr. Jay's negotiation; having shewn that the treaty leaves the greatest part of them untouched, and seals a release of indisputed rights, in order to procure in return a *promise* for the surrender of our own territory at a distant day, and a nugatory engagement for compensation to a few sufferers, whose cases may be peculiarly situated; while the rights of the nation, the great mass of the merchants, and the whole body of seamen are shamefully abandoned—I proceed now to consider the treaty in a commercial point of view, in which I am sorry to say, we shall seek in vain for some advantages to compensate these disgraces; some proof to testify the assertion of our envoy, that “the United States confide in his majesty's justice and humanity.” The same gloomy fetters distinguish every part of it, whether it is seen in a commercial or political view: our merchants, our seamen, our manufacturers, our citizens, our allies, our government and our honor, all are treated with equal contempt. But one interest seems to have been attended to, throughout the whole negotiation—*the interest of the British nation*. Such fetters are put upon our own, that our envoy certainly intended that our ministers should hereafter say, with truth, what he had only spoken as a proof of his polite address, “that the United States can, for reparation, have recourse *only* to the justice, authority and interposition of his majesty.” Little means, alas! will be left them for the exercise of their own authority, if this treaty should ever become the law of the land.

In considering the commercial articles, I shall begin with the Indian trade, after having submitted a few rules, the force of which, every commercial man will readily acknowledge—

1st. That all things else being equal, that trader who has the greatest capital, most knowledge of trade, an established set of customers, and the most extensive acquaintance with the dealers in the commodities he buys and sells, will be able to maintain himself against any rival merchant that does not enjoy these advantages.

2d. That if in addition to this he has advantages in the transportation of his goods ; in the sale of the commodities he purchases ; and in the establishment of factories, he must ruin all competitors. By the treaty of peace, our boundaries are fixed, and the British are to evacuate our territory without any stipulation whatever, in favor of British merchants or traders. By this treaty therefore, so much of the fur and peltry trade, at least as lay within our own territory, was necessarily and exclusively ours, as we possessed all the posts at which the trade had been carried on for a century past, and most of the portages. As our communication from the sea was much easier than that by St. Lawrence, we could furnish English goods cheaper, and of course would have still continued the Indian trade in its usual channel, even from the British sides of the lakes, nor could they by any means have prevented it without giving such disgust to the Indians as would have made them dangerous neighbours. Lord Grenville's treaty with Mr. Jay stipulates, that the British traders may continue to live at our posts, and to hold the property they possess ; to trade in every part of our territory as freely as our own citizens ; to navigate our rivers *from the sea as high as our own citizens may*, that is, to the highest port of entry, and from thence to navigate our inland waters. It must follow then, that under these circumstances, they stand exactly upon the same footing with our own citizens. It will also be admitted, that having been for twelve years in the exclusive possession of the Indian trade, having in general, much larger capitals ; having an extensive acquaintance among the Indian nations, and with the Canadians, who are the general carriers in that country, that American traders will not be able to maintain a competition with them, even if they had no other advantages than those I have enumerated. But this, unhappily, is far from being the case ; first, They have of course a right to settle factories in every part of their own territory ; their factors being always upon the spot, and cultivating an acquaintance with the natives, will certainly be able to command the trade of their country, and thus render absolutely useless the stipulation which admits American traders *to travel into* that territory ; for it is observable that the navigation act, 12 Geo. 2d, 18, which is preserved in full force, by the 14th article of the treaty, pre-

vents our establishing any factory or trading house, or residing as merchant-factors within the British territories, *out of Europe*, while the treaty permits the British to *reside* in any part of the United States; to hire and possess houses for the purposes of commerce, &c. so that while by this means they have an exclusive trade in their own territory, notwithstanding the apparent grant of a right to us, they have all the advantages our citizens enjoy in ours, with those they have acquired from large capitals, knowledge of the trade, &c. Our trader may indeed travel, like a pedler, through their country with his shop upon his back, but cannot have any fixed residence at which to open a store.—Were not Mr Jay a chief justice, I should be tempted to believe that he did not know of the provisions of the act of 12th Ca. 2d Ch. 18, which he has kept in full force by the 14th article of the treaty. This exclusive trade in their own country by means of the factories they may establish, gives them another considerable advantage; it is well known to merchants that the more extensive any branch of commerce is, the less liable to interruptions, the more profitable it must be, and of course, the better it enables the trader to undersell his competitors. If then our merchants can only trade in our territories, and there with no advantage over the British, and if the British merchant can trade with equal advantage in our territory and superior in the British territory, the last can employ a greater capital in his commerce; and as the Indian trade is liable to frequent interruptions by wars and bad seasons, which may prevail in our country, while that of the British is unmolested, the whole capital of our trader remains inactive, while a considerable part of that of the British trader is employed. This again must render the competition very unequal. A writer who has shewn much more anxiety to maintain, than candour in defence of the treaty, has overlooked all these circumstances which will effectually prevent our traders from contending with the British, and which in fact, amounts to an absolute surrender of this important branch of commerce, and consoles us with the hope of being able to find a market for East-India goods, through the intervention of this treaty. I must confess, that I have yet to learn, that any East-India articles are consumed by the Indians, on the north of the lakes, will exceed one hundred dollars a year, perhaps the writer means

that the inhabitants of Canada will receive them through this channel ; if we should ever admit this, which however we shall be able to shew is highly improbable, yet it would appear a very insignificant advantage, when we reflect that the whole number of inhabitants in Canada, and Labrador, as appears by a census, taken by General Haldiman, only amounted in 1784, including upper Canada, to 123,082 souls ; but few of these are in the habit of drinking any tea, and all are too poor to consume any but the coarsest articles ; so that the whole consumption of Canada, in India goods, if we had the monopoly of that trade, would fall far short of what is consumed in the little state of New-Jersey ; and we should certainly make a miserable exchange, if for this we sacrifice a branch of commerce of such immense importance as the Indian trade.

But what can be more absurd than to suppose, that articles which come duty free from Britain (a drawback being allowed on exportation) and are carried into the heart of the settled parts of Canada in the same vessels that bring them from Europe, cannot be sold cheaper than the same articles subject to a heavy duty, and carried an immense distance by an expensive inland navigation. This indeed may not apply to the upper posts, but who are the consumers of East-India articles in those cold, poor, and barren regions ?

In short, the more any one considers this article, the more fully he will be convinced, that it contains a complete and absolute surrender of the fur trade, the greater part of which we might have exclusively possessed under the treaty of peace, had not Lord Grenville prevailed on Mr. Jay, to introduce a rival who will always be too powerful for us. And what renders this circumstance the more peculiarly oppressive, is, that this article is to be permanent—Lord Grenville was too sensible of its importance to permit any time or circumstances to unloose these galling fetters.

In a political, this article is not less exceptionable than in a commercial view. We know from sad experience, the cost and danger of Indian wars ; we know too from the same experience, that they can be and have been fomented by Britain, whenever her interest or her malevolence urged her to distress us. By permitting British traders to remain among

the Indians, and to extend themselves to every village, we add to their influence, and by the terms of the XXVI articles are prohibited from expelling them *even in case of war with Britain*, herself, unless their conduct should render them suspected, and not even then in less than twelve months from the publication of the order.—What but the blindest infatuation could induce our minister to stipulate, that a secret, nay even an open enemy should remain without restraint among savages that the slightest circumstance stimulates to war? Did we not know what we formerly suffered from the residence of a few Canadian priests and traders among the Indians, and how many endeavors were used by the government to get the Six Nations to expel them? It will be said, this article is reciprocal, and that if their agents remain within our lines, ours remain also within theirs: this however is not the fact, for if at any time, a war should break out, our traders (if we should have any, which I much doubt) will for their own safety retire from places so remote as the British territories; besides that they not having any right, as I have before shewn, to reside within the British territories *out of Europe*, which is expressly prohibited by the navigation act, and no such right being given by the treaty, it must follow, that no American merchant or trader, not settled in Europe, can have the least benefit by this provision, while hundreds of British emissaries may, under the pretence of trade, maintain the most dangerous stations in the heart of our country. What Sir? is it not sufficient to have abandoned our seamen without having a compensation for their injuries? Must the unhappy farmer, whom the care and attention due to a growing family compels to relinquish the charms of society, and retire to labor and solitude in distant forests, must his pains too be aggravated by your treaty? must artful emissaries, even of an open enemy, be permitted to stimulate savages too ready of themselves to bloody deeds? Must every land as well as every sea, witness the apathy with which the liberty and lives of our best and bravest citizens are abandoned?

C A T O.

I AM at some loss to understand what is intended by the following words in the 3d article—“ And in like manner all goods and merchandize, whose importation *into the United States* shall not be wholly prohibited, may freely, for the purposes of commerce, be carried *into the same in the manner aforesaid, by his majesty's subjects*; and the same shall be subject to no *higher, or other duties* than would be payable by the citizens of the United States on the importation of the same in American vessels into the atlantic ports of the said states.” The *manner aforesaid* alludes to the former part of the article, which gives the British a right to navigate our rivers from the sea to the highest ports of entry for foreigners, and from thence by land into the Indian country. The only natural construction of these words is, that the British shall have a right to import into the United States upon the same terms as Americans, and yet I can hardly conceive that Mr. Jay could intend, in the face of a law of the United States (act making further provision for the payment of the debts of the United States, chap. 39, sec. 2) which imposes an additional duty of ten per cent on articles imported in vessels not of the United States. I say I should hardly conceive that he would presume to enter into such stipulation directly in the face of a law of the United States, and that too in favor of a nation whose navigation act is at war with our commerce; did it not breathe the same spirit with the 12th, 14th and 15th articles, all of which strike directly at the navigation of these states. Nor do I know any other construction that can possibly be put on the words which I have stated at large, that every reader may judge for himself. It is however, possible, that Mr. Jay may have *intended* (for never was a public instrument drawn with less precision than the one before us) that this provision should only extend to goods brought in for the purposes of the Indian trade, yet how the words can be made to bear this construction I am at a loss to conceive. But should even this be admitted to be the true meaning, it will again prove the extreme sollicitude of the framers of the treaty to secure to the British the whole benefit of the Indian trade; without this article, goods, might be purchased of our merchants for the purpose of this commerce,

which would on account of the ten per cent. difference, have been imported in American vessels ; but this slight advantage it seems was deemed too much for the sacrifice of the whole profits of the Indian trade. It is therefore stipulated, that the British shall navigate our rivers to the highest port of entry for foreign vessels, and that upon this construction they shall pay *no foreign duty* for the articles they import, so that all that the British merchants will have to do, will be to establish factories at the ports of entry, and under pretence of the Indian trade (if it should be thought that the words should be confined to that) import in British bottoms upon the same terms as we do in our own ships : and as by the 15th article our vessels are to pay a duty, which is to countervail the duty paid here by the British, that is, ten per cent. every article imported this way, as Indian goods will yield ten per cent. more profit to the British merchant, taking the outward and homeward voyage into consideration, than it will to the American, and the navigation and revenue law be eluded. But supposing it possible to prevent these goods so imported into New-York, for instance, and there put on board river vessels, and from thence carried by land and by inland navigation for a considerable distance, from being sold before they get into the western territory ; yet even then this provision must operate as a bounty on British vessels, in preference to all other foreigners, and as an encouragement in favor of the British merchant who carries on the Indian trade, to the prejudice of our own commerce and our own revenues.—Thus, to make myself the more fully understood, a British merchant sends in his *own* ship articles intended for the Indian trade, or indeed any other under that pretence, he has a right to enter them without paying any other duty than the American does, his return cargo pays no duty in England. The American merchant ships in his own vessel the same articles, on the same terms, but by the general operation of the 15th article, Britain has a right to lay on the return cargo a duty of ten per cent. The words of the article are, “ but the British government reserves to herself the right of imposing on American vessels entering into the British ports in Europe, a tonnage duty equal to that which shall be payable by British vessels in the ports of America, and also such duty as may be adequate to countervail the difference of *duty now payable*

on the importation of European and Asiatic goods when imported into the United States in British or in American vessels." If, then, against all obstacles, the American merchant should carry on the Indian trade, will he not by this circumstance be compelled to import and export in British vessels? By the 12th article, British vessels may import into the United States from their islands, without paying greater duties than the Americans; this again is in direct opposition to a law of the United States above recited. By the same article *his majesty consents*, that our boats of 70 tons, (for it seems this article is a gift and bounty of his majesty, and not like the rest, matter of agreement) are also to pay an equal tonnage duty in the islands with that the British pay here. Now I would ask if it is possible to devise a more effectual way to put the whole West-India trade into hands of the British.

1st, They pay only American duties. 2d. As the American must pay in the Islands what tonnage the British pay here, the tonnage would be exactly even, but as the American vessel also pays a tonnage duty in their own ports of six cents, which the British do not pay in their own islands, it must follow that the British carrying on the West-India trade, will pay six cents less tonnage upon the whole out and return voyage, than the American, and as four voyages may be made in a year, the American will pay in the course of the year, twenty-four cents per ton more than the British ship, though that ship is unlimited as to size which we know to be an important circumstance in the cheapness of navigation. That our minister should not be content to put the British upon a par with the American in the face of existing laws, and laws too that cannot be altered, because they are pledged for the discharge of the funded debt, seems so monstrous a misdemeanor that it will hardly be believed even by those who have read the treaty over with attention. I therefore transcribe the very words, "and the said American vessels shall be subject there to no higher tonnage duties, or charges, than shall be payable by British vessels in the ports of the United States." Now British vessels pay a tonnage in our ports of fifty cents, which according to the express words of the treaty we must pay in their ports, in addition to which by our own laws, our vessels are subject to a tonnage of six cents; so that when the British

pays fifty, the American will pay fifty-six cents per ton upon his outward and homeward voyage ; that is, fifty under the British law, and six under our own. If in addition to this, it is considered that the British are empowered to settle as factors or merchants in *all* our ports, and not even to be molested in case of a war, and on the other hand it is expressly prohibited by the British navigation act, for any American to settle or establish a trading house—If it is also considered that the British ship having carried out her cargo, may be governed by circumstances, and go where she chooses for a better market, while the American must necessarily return to our ports, it will follow, that the whole trade of the British West-Indies must be carried on in British bottoms, and our merchants either be precluded from this trade, or consent to act the humble part of factors to British merchants : the vessels formerly employed in this trade, must necessarily rot at our wharves, and our seamen must be turned over to Great Britain to support her commerce, and whenever she thinks proper to plunder and distress our own. It may be said, that we have at present, no West-India trade but by permission ; but it should be recollected, that that permission grows out of the necessities of the Islands ; that it always existed in some shape ; that during the war their ports must be open to us, and probably for two years after, until the want, occasioned by the war, are supplied, so that this article extends only to the very period in which we may presume with certainty upon this commerce on fair and equal terms.—Were it even otherwise, as it is now notorious that the Islands cannot subsist without us, by prohibiting their ships from carrying articles that they cannot do without ; it would necessarily follow, that they would be compelled to open their ports to us upon our own terms. But at all events, we must be very considerable losers by this treaty ; for supposing that trade, would, independent of the treaty, have been carried on in British bottoms, we then gained, at least, the foreign duty on their imports, which duty would operate as a bounty upon our trade with other West-India Islands, as well as upon similar articles imported from the East-Indies, and thus contribute to extend our navigation and commerce in one quarter, while it restrained it in another ; we should indeed, by this means, have less of the produce of the British Islands, but more of the produce of

other countries ; our exports to the British Islands would continue as they were, because they could not do without them ; our imports from them would diminish, and the foreign markets from which we supplied the deficiency of British sugars, &c. would afford an additional market for our exports. But alas ! the evils of this article do not even stop at the point I have mentioned. By this treaty we are not only to lose the benefits of the trade with the British, but also with the French Islands, who now kindly open their ports to us. By the second article of our treaty with France, we mutually agree, that neither will “ grant any particular favor to other nations, in respect to commerce or navigation, which shall not immediately become common to the other party, who shall enjoy the same favor freely, if the concession was freely made, or on allowing the same compensation if the concessions were conditional.” The French then, the moment this treaty is ratified, have a right, in case they admit us to visit their Islands with vessels of seventy tons, to come to our ports, free of foreign duty upon the articles they import, and may also impose a tonnage duty of fifty cents on our vessels, and of course to navigate to and from our ports, six cents cheaper than our own vessels, and can we doubt, after the causes of disgust which this treaty will give them, that they will delay a moment to exchange our free trade with their Islands, into that same limited commerce which we meanly accept as a *bounty* from Britain ? Lord Grenville, however, conceiving that the transfer of our *whole West-India* trade, and navigation was not sufficiently ruinous to our commerce, asks and obtains from our polite envoy, in return for his majesty’s condescension in accepting so great a part of our trade, that we would also prohibit the exportation of molasses, sugar, coffee, cocoa and cotton, in American vessels, either from his majesty’s Islands, or from the *United States* to any part of the world, reasonable sea stores excepted. The few apologists that the treaty has yet found, affect to believe, that the restriction is to be confined to such of the above articles as are imported only from the British islands; but the words are express, “ that the *United States* will prohibit and restrain the carrying *any* (not any such) molasses, &c.” and the reason they will alledge in defence of the only true and obvious construction would be, that as one cask of coffee cannot be distinguished from ano-

ther, if *any* was exported, that which came from their islands would also be exported, and thus we would by this circuitous route acquire a certain proportion of the carrying trade.— That this is part of a general system for the ruin of our navigation (Britain having always dreaded us as a rival) will appear from the instructions to armed ships of the 8th January, 1795, which remain unrevoked, and, as far as we have yet learned, uncensured by Mr. Jay. By that their armed vessels are instructed “to bring in for *lawful adjudication* all ships with their cargoes that are laden with goods, the produce of the French West-India Islands, for any port of Europe.” How then stands our trade, as to the exportation of these important articles. 1st. We are not to ship them from the French Islands. 2d. We are not to ship them from the British Islands. 3d. We are not to ship them from the United States. From the East-Indies we cannot ship them, because the East-India cargoes being allotted for our markets, must first land here, after which, by the tenor of the treaty, we are not to re-ship them, nor can we even ship the cotton which is the produce of our country; the prohibition being express that we shall not export *any*. Now let us see the amount of the exports, and determine how far it is wise to lay ourselves under these humiliating restrictions.

From the 1st of October, 1791, to the 30th of September 1792.

Cotton exported	138,328 lb.
Coffee	2,136,742
Cocoa	6,000
Brown Sugar	1,122,156
Loaf do.	21,760
Molasses	12,340 Galls.

Humiliating as this article is, when I come to consider the 14th and 15th articles, it will appear, that neither this nor the loss of the Indian trade, are the severest blows, aimed by this treaty, at the commerce and navigation of the United States.

C A T O.

HAVING had occasion to shew, in considering the treaty in a mere commercial view, that it contained an express relinquishment of the Indian trade ; that it placed the West-India commerce in so disadvantageous a footing, as to render foreign nations our carriers, not only in that trade, but in the exportation of many articles (as sugar, cotton, coffee, cocoa) that we might import from the East-Indies, or raise among ourselves—I proceed now to shew, that our vessels will become equally useless in the European trade, if the treaty goes into effect. By the operation of her navigation laws, Britain had possessed herself of almost the whole of the carrying trade between the United States and her dominions. From October 1789 to September 1790, both inclusive, the amount of our exports to Britain and her dominions were of the value of nine millions three hundred and sixty-three dollars, and our imports from thence, upwards of fifteen millions two hundred thousand dollars, making together, upwards of twenty-four millions five hundred thousand dollars, on which commerce we paid Britain a balance of near six millions, while we gained from France a balance of more than two millions and one half ; yet this immense trade with Britain only employed 43,580 tons of American vessels, while the trade to France employed 116,410 tons, though our trade with her was less than one fifth of our trade with Britain.—The extreme injury the United States sustained by thus suffering a foreign nation to run away with their carrying trade, and cutting the sinews of their commerce and maritime strength, was urged as the best argument for the formation of the federal government, as by that means we should acquire the means of making restrictive laws upon the commerce of nations that oppressed ours. We accordingly find, that very early after the formation of our government, tonnage duties were imposed upon foreign vessels, and the immediate effect of them was to add new vigour to our own navigation ; it will appear by the present state of our tonnage, compared with that I have given, that under the operation of this law, we were progressing so fast to a considerable degree of rank among maritime nations, as to incur the jealousy of that umbrageous and selfish people, who fancy themselves the

lords of the ocean, and consider every other that attempts to navigate it, as intruders upon their rights. To this cause we must attribute, in part, the various attacks that they have from time to time made on our commerce; it remained, however, to give it a fatal and final blow, which should put it out of our power to carry for ourselves or others; and the honor of effecting this was reserved for our envoy extraordinary, and a majority of that body to whom the states had confided our dearest rights. I have already observed, that the 12th article, taken together with the instructions of the 8th of January (at this moment in force) effectually precludes us, not only from the carrying trade of British or French Islands, even though France has generously permitted us to carry from hers on the most favorable terms, but has actually cut off the carriage of our own commodities; and certain others of foreign and domestic growth, from our own states; that the trade of Indian goods is so managed also, as necessarily to fall to the share of Britain, to the exclusion of ourselves.—Let us now see on what footing our European trade will stand: 1st. In time of peace, and next, when Britain shall be at war. By our tonnage and revenue laws, our ships had an advantage in the trade to Britain of 44 cents the ton, and the discriminating duty of one-tenth per cent. operated also as a premium upon our own shipping; yet even this by no means countervailed the effect of the navigation law, and other restraints upon our commerce. But still, under the operation of these statutes of the United States, our trade and navigation flourished, and was increasing; and as we reserved a right in our own hands, in case of new burdens, to impose further duties upon those that injured us, we had the most perfect security against any further attacks upon our commerce. Because such was the nature of our commodities, as to be essential to the nation with whom we dealt, while a variety of markets could furnish, upon nearly equal terms, those that we wanted. To Britain we paid an annual balance of near six millions of dollars, which she must necessarily, and perhaps forever, have lost, if, by a commercial warfare, she diverted it into any other channel.—What, however, she did not dare to attempt openly by her laws, she has fully effected by her treaty.

By the 14th and 15th articles, we agree that she shall impose upon American vessels a tonnage duty, *equal* to what her ships pay here; that she shall also impose a duty which shall *counterveil* the foreign duty in American vessels. At first view this appears to be just, for why, say the apologists of the treaty, should she not impose upon your trade the restrictions you impose on hers? Does not France reserve a right to do the same? Undoubtedly: Had the article stopt at this point, it would have been perfectly just, and the navigation of each nation would have then depended upon the means they respectively had of building, victualling, and sailing their ships, which is exactly the case between us and France. But unfortunately the articles referred to, while they affect to be reciprocal, leave in full force the British navigation act, and all their other restrictive laws, by this artful appendix to the 14th article, to wit, "But subject always, to what respects this article, as to the laws and statutes of the two countries respectively." Had the matter even rested here, it might again have been reciprocal (though extremely unwise on our part) since while it left the British trade laws in force, it also left ours in equal force. But this was not the intention of the contracting parties. Words of reciprocity were very well to make a parade with; they would deceive the ignorant and superficial reader, but the greater point was, while it preserved to Britain the navigation and commercial acts by which they have raised their commerce at the expence of other nations, to beat down the barriers with which we fenced ours, and even to take from us the means, by any future arrangements, of preventing the ruin of our trade.

Mr. Jay, therefore, agrees in the 14th article, that all our laws, as well as those of Britain, shall remain in force; but in the 15th article he evades the provision so far as respects *us*, and expressly stipulates, that *we* shall lay no additional charge upon Britain to counterveil her navigation and other restrictive laws, but that *she* may, while she preserves them in full force, impose a tonnage and other duties to counterveil those *we* had imposed, in order to enable us to bear up against them. I ask then in what this article is reciprocal? Britain had already gone as far as she dare go in oppressing our trade, and *now* consents, that if we will permit her to

continue all the burdens she has imposed upon us, and at the same time agree to let her lay such others as *she thinks* equivalent for our having presumed to relieve ourselves, that she will agree with us that no *further* partial duties shall be imposed by either. Let us enquire into the effect of these articles upon our commerce and national character.

1st. As it is obvious that the present flourishing state of our navigation is, in a great measure, owing to the operation of the laws I have mentioned, it must follow, that whatever counterveils the effect of those laws, must bring it back to the state in which it was. Now, as the profits of every voyage is calculated on the outward and homeward voyage, if we pay in the British dominions exactly what they pay here, the charge upon the whole voyage is the same. If then, previous to the passing our tonnage laws, the British, by the operation of their navigation laws, had such advantage over us, in our own commerce, as to employ two hundred and thirty thousand tons of her shipping, as she did in 1789, while the whole of American Shipping employed in the trade with Britain and its dominions, amounted, in the same year, to only forty-three thousand five hundred and eighty tons, less than one-sixth part of the whole quantity engaged in the interchange of commodities between the two nations, it must follow, that we shall again be reduced, in consequence of the *treaty*, to our former humiliating situation; our seamen must go into the service of the nation that is again to navigate for us, and our ship-builders, and the numerous traders connected with them, must starve, or seek some other employment, since our merchants will no longer have occasion for ships, and the British merchants are not permitted to *use those* we build. It is observable too, that the tonnage duty which Britain is to lay, is not a counterveiling duty, like that on goods imported, but is to be, in the words of the article, "*equal to that which is payable by British vessels in the ports of America.*" Now foreign vessels pay 50 cents here, of course 50 cents may be imposed on our vessels in Britain, but our own vessels also pay six cents a ton at home, so that on every voyage to the British dominions, and home again, they will pay 56 cents, while the British pay only 50; and as the voyage may be performed three times a year, the American ship will pay, on the whole, 18 cents a ton more annually

than the British ; and it may be a question, whether we have any right to repeal the law laying the home duty, as it was imposed and enforced when the treaty was made and ratified : The repeal would put the British vessels in a less advantageous situation than they were at the time the treaty was made.— But the discouragement does not rest here, except so far as our trade may be confined to the city of *London*, for in every part we pay an *extra* light money of 1s. 9d. sterling a ton, which is about 39 cents ; so that an American vessel going to Bristol, Liverpool, &c. and returning, will pay (besides the fifty cents the British are to impose) six cents American tonnage, and thirty-nine cents extra light and trinity money, that is, forty-five cents more a ton than a British vessel performing the same voyage, and which in three voyages, or one year, will amount, on a vessel of four hundred tons, to four hundred and fifty dollars, extra charge on American vessels. Thus then we give an annual and no inconsiderable bounty to British vessels, to the prejudice of our own navigation. I believe this to be the first instance in the history of nations, in which a commercial one has given greater encouragement to foreign ships than to her own. But the evil does not stop here, *equalizing* duties are to be imposed. What those are to be is not ascertained by the treaty ; but as the power to impose them is reserved to the British parliament, what is to prevent their exceeding their just measure. But supposing they really are inclined not to go beyond the right reserved by the treaty, what is to be the rule of that right ? The duties we impose on their commodities, amount to twelve per cent. on the India, and to one tenth additional duty on other articles. Are they to lay a duty which will amount to a mean of the relative quantities of these duties ? if they are, how is it to be found, as the relative proportion between the importation of these articles is continually fluctuating ? or is the counter-vailing duty to amount to as much on the *whole* of the articles imported from the United States, as the *whole* duty paid on foreign articles imported in British ships pay the United States ? this seems to be the true construction of the article. If so then, as our imports from the British dominions, exceed our export to them by more than one third, and supposing the average of the duty they pay here to be ten per cent. the duty

upon our export, if carried to any part of the British dominions, in American vessels, must amount to fifteen per cent. otherwise the *whole* duty will not be equalized: The advantage that this will give to British ships over ours, particularly when they bring out cheap and bulky articles, or such as pay no duty, is too obvious to dwell upon. But this is not the only effect of this equalizing duty, as Britain has a right to choose the articles on which she may impose it, she has in some sort the regulation of our trade, so far as it may be carried on in American vessels; thus suppose she should put the greatest part of this equalizing duty upon the most bulky articles, it would necessarily follow, that those articles must either rot on our hands, seek another market, or go in British ships, which would pay no duty at home. Could a more effectual way be devised to exclude us absolutely from carrying our own commodities? It may be said that independent of the treaty, Britain might have imposed these duties; true, and independent of the treaty we might have met them with other duties.

2d. As the British must necessarily be the principal carriers between us and their dominions, so they will be in a great measure the carriers between us and foreign nations: because while by their navigation act they absolutely forbid us to enter their ports with any commodities not the growth and manufacture of our own country, they bring the commodities of other nations upon the same terms as those might by whom they were raised, and they can take back a return cargo to Britain, or its dominions, with greater advantage than we can carry our own produce by the whole difference of the tonnage, and the countervailing duties, with six cents supra added if they return to London, and forty-five cents if to any other port in the British dominions, and from thence again return with British commodities to the original port. It is evident that the benefits attending such privileged ships, must give their owners great advantages over others; and as they can only be held by British subjects, who are by the terms of the treaty to be in every respect upon a footing with our own merchants, while they enjoy all these additional advantages as British subjects, it requires no great foresight to discover, that the whole trade of America must be engrossed by them. Nor does it require much more to see that the leading object

of this treaty, is to establish the navigation and commerce of Britain upon the ruins of our own—to fill the Atlantic ports and the western territory with British merchants and British factors—to establish a certain degree of rank for British officers, whom the humiliated American is directed, under pain of being “considered as a disturber of the peace of both nations, to treat *with the respect due to his commission* ;” to put such fetters upon our legislature as would forever bind them to the will of that imperious nation—to disgust our republican allies, and leave us *only to the justice and humanity of the man* who has urged our slaves to cut our throats—savages to murder our women and children—barbarian pirates to enslave our mariners—and his own banditti to profane our churches—burn our dwellings, and rob, plunder, and massacre our citizens. If we compare this treaty with many speeches, made about the period of Mr. Jay’s appointment, with the support he has avowedly received from the British faction, with the warmth with which he engaged in the controversy between our government and the French minister ; if we add the readiness that ardent or vindictive men feel, to suppose every thing right which strengthen their party, we shall be less surpris’d at the treaty’s contravening the existing laws of the country where they bore hard upon the British, or at its giving them such additional encouragement as should induce them to pour in their myrmidons to support and strengthen the hands of government against *native* Americans, and the friends and well wishers of foreign and domestic republics—whom the courtiers have dared to calumniate with the names of antifederal and jacobin.

Mr. Pinckney informs us in his letter to Mr. Jefferson, that Lord Grenville, in stating the principles on which they had issued the instruction of 8th January, 1794, made use of these terms, “the second was what he, Lord Grenville, could not mention to me officially, but that he still thought it right I should be apprised of, that no misconception of their motives might be entertained ; that he was aware of the delicacy of speaking to a foreign minister concerning the internal state of his country, neither could he expect an answer from me on the subject—but that the second reason was to take away every pretext from evil disposed persons among us [the citizens of the United States] who *according to the intelligence*

he had received were endeavouring to irritate our people against Great Britain, as well as to oppose the measures of our own government; and in short, to reduce us to the present situation of France." It is evident from this communication, that Lord Grenville supposed, that all those persons in America, who felt for the honor of their country—who were irritated at the piracies of the British, and the insults and injuries we had suffered, which I believe included every native American, not holding an office, a seat in Congress, or money in the funds, were *the opposers of our own government*.

As the instructions alluded to, directed the taking our vessels, going from the French West-Indies to any port in Europe, Lord Grenville must have conceived, that the way to strengthen the hands of our government, was to destroy our commerce, imprison our seamen in unhealthy climates, and lessen our connection with France; the whole was evidently thrown out to Mr. Pinckney to induce him to enter into conversation with him on the subject of such a convention between the two governments as should engage America in a war with France, permit Britain to plunder our trade, and in return lend her aid for *the support of our government*. The whole speaks this plain language, "the friends of Britain in America, are the friends of your government; the enemies to British depredations, are the enemies of your government, and Jacobins who love the French; let us make a common cause of it, we can mutually assist each other." Mr. Pinckney was too prudent to enter into any discussion with Lord Grenville on this delicate subject; I hope Mr. Jay has been equally so.

That the cause of the treaty, and the cause of Britain, have gone hand in hand in this country, will not, however, be disputed, by those who know the birth, parentage, and affections of its advocates; and as this dangerous instrument has a tendency to destroy our connection with France, to cut the sinews of the national strength, to compel us to rely *solely* on Great Britain, and to import *supporters of our government* from thence, we cannot doubt its being the offspring of a pre-conceived system.

C A T O.

C A T O—No. VII.

“**T**HERE shall be (says the 14th article) between all the dominions of his majesty in Europe, and the territories of the United States, a *reciprocal* and perfect liberty of commerce and navigation, &c. I am a little surpris'd that the word *reciprocal* had not smote Mr. Jay's conscience, when the very sentence, in which he uses it, holds forth partial advantages to Britain, and none to America. Why must all the territories of the United States be laid open to British merchants, while ours are confined only to the spot precisely, on which they find no interest in settling? Were we permitted to settle and carry on trade in the West or East-Indies on the footing of natives, many would find an interest in availing themselves of it. But what American merchant will think of establishing a mercantile house in England, unless in partnership with a native of that country; in which case the article is useless to him. Is it not evident that this is part of the system I hinted at in my last; it will be still more so, when we reflect that several modes of retaliation were propos'd by Mr. Jefferson as a means of compelling Britain to treat us as we merited in return for the great benefit we permit her to derive from our commerce. Among others he suggests “that where a nation refuses permission to our merchants and factors to reside within certain parts of their dominions, we may, if it should be thought expedient, refuse residence to theirs, in any or every part of ours, or modify their transactions.”

The framers of the treaty apprehended, that in the course either of commercial or political events, such prohibition or some partial restraint might become necessary; they, therefore, without any equivalent, bound the hands of this country, while the only restraints which Britain would ever find it expedient to impose, were left in full force. It is remarkable that every means that have ever been propos'd for counteracting the restrictive laws of Britain, either by individuals, by states, and by congress itself, have not been carefully examined by our negociator, so as to advance them by his treaty, but precisely to take from his country the means of carrying them into effect. That several important states, prior to the organ-

ization of the Federal Government, thought it necessary by partial laws on the British trade, to force her to put ours upon a better footing ; in this opinion the popular branch of congress twice agreed. It was determined by this treaty to put it in future out of our power, and we bind ourselves to let the British continue their restrictions, but to impose none. Congress agreed to a tonnage and duty which is to give the navigation of the United States, some advantage over that of foreigners. Mr. Jay agrees, that though these regulations shall affect others, they shall be of no avail against Britain. It has been proposed to make the British debts answerable for British depredations. Mr. Jay, again binds our hands, and all this without any kind of equivalent. Can any body suppose, that these extraordinary stipulations were accidental ? Is any man so blind, as not to see in them the acts of a party determined to strengthen themselves by a foreign alliance, and to wrest from the hands of their antagonists, the weapons by which their ally might be annoyed ? In a royal government, and where the population amounts to ten or twelve millions, a few scattered merchants with very limited capitals, are of no moment, and cannot have the slightest influence upon the government.

But is this the case in a republic, where the population is thin, where wealth creates almost the only distinction, where the seaports give the tone to the politics of the country ? Will any man say that circumstances may not arise in such a country in which it would be extremely imprudent to permit the whole commerce to be carried on by foreign merchants, whose capitals will probably be infinitely larger than our own, and even suffer them to remain with us (as the treaty does) when we are at war with their native country ? I would not be understood to advocate the removal of any class of men, while no danger is to be apprehended from them ; but it would be certainly unwise to deprive ourselves of a right to do it, and to prevent the admission of too numerous a band of them, if political or commercial circumstances should render it proper. Why with so much greater cause of apprehension than Britain, should we be more fearless ? She does not permit the citizens of the United States to reside for the purposes of trade in any of her dominions *out of Europe* ; she certainly does this either because she supposes that they

may be dangerous, or because she wishes to secure the trade to her own subjects ; and should either of these motives operate with less force on us ?

This article concludes with the following words, “ But subject always as to what respects this article to the laws and statutes of the two countries respectively.” This must mean subject to the laws which existed at the time of the signature or ratification of the treaty ; for otherwise, either party might at will, defeat the provisions it contained, and render the whole a dead letter, which is too absurd to suppose. In order to see then, how far this provision is reciprocal, we will examine what laws relative to the commerce of the two countries were in force at that, or at this time.

First, we impose upon British vessels in common with other foreigners, a tonnage duty of fifty cents, that is, forty-four beyond what our own citizens pay ; this however, is more than countervailed in a clause of the 15th article, which permits them to lay an *equal* tonnage upon our ships.

Second, We impose extra duties which may average ten per cent. in the cargoes of foreign ships ; this however is countervailed by the right the British reserve to impose an equivalent duty.—It must follow then that their commerce with us is absolutely free, and stands upon the same ground, as that of our own citizens. If then our commerce with Britain is equally free, the article is reciprocal ; if on the other hand, our trade is shackled by the laws which are left in force, then the article is not reciprocal.

1st. Then ; Britain prohibits our trade with several parts of her dominions, except in British vessels.

2d. She imposes near forty cents extra light money, a ton, upon our vessels, except in the port of London ; this, with the fifty cents tonnage we have given her a right to lay, and the six cents our own vessels pay at home, make a premium on her vessels, or a duty on ours equal to forty-six cents a ton to the disadvantage of our own navigation.

3d. She compels us in our trade with her, to navigate only with American seamen, which is a peculiar disadvantage to a nation which like ours is always receiving useful hands from other nations.

4th. She does not permit her citizens to make use of American built vessels ; that is, she discourages our ship building, while by the treaty we encourage hers.

5th. She does not permit American vessels to bring her any commodities, except such as are the growth and manufacture of our own country, while we permit her to bring us the commodities of every country.

6th. She prohibits our carrying articles from one of her ports to another, while she may carry from one of our ports to another, subject to an extra tonnage duty of forty-four cents.

7th. She prohibits the exportation of many articles to this country from her European dominions.

8th. She prohibits the importation of salted fish, bacon, salt provisions, whale oil, &c. and even grain for home consumption, except when the price of wheat, is above fifty shillings sterling the quarter.

9th. She lays a very heavy duty upon a variety of the articles of this country, tobacco and rice particularly, while we lay none upon her but such as by the treaty we have allowed her to equalize.

10th. She does not permit our citizens to settle for the purpose of commerce in any part of her dominions out of Europe.

All these restrictions, and some slighter ones that might be mentioned, are imposed on us by laws, which by the 14th article we have preserved in full force, at the same time that we have agreed, that the only two checks we had placed on her commerce and navigation shall be done away, for a countervailing duty, or a repeal of the duty amounts exactly to the same thing (except so far as the repeal would affect the revenue) that no new ones shall be imposed. Would not any body have imagined, that this long list of burthens would have made Lord Grenville blush to ask, or Mr. Jay to grant countervailing duties, when all we had done, was already countervailed, at least ten fold? Where is the reciprocity of this article? What could be our envoy's inducement to enter into it? Were we afraid that our merchants would not be suffered to settle in Britain without it; was it an object of any moment if they did not? Was he fearful that they would lay new burdens upon us? Was not the catalogue of oppression as full as it could be? Had not Britain herself already acquiesced near six years in the justice of our imposing a duty upon her shipping and merchandize? has she stipulated for

equalizing duties with other nations on whom she had imposed similar burdens, and who in return have taxed her trade? Is there a nation from whom she derives so many advantages as from us, or who burthens her trade so little? and have we no right to any return for all this? Could the British court have objected, if we were to treat on the footing of reciprocal advantages, if Mr. Jay had stated each of these restrictions, and demanded an equivalent for it, if it would break in too much on their system to remove them? Lord Grenville knew, Mr. Jay knew, the nation knew, that it was in our power to meet them by similar laws; and that if we forebore to do so, it was from a spirit of conciliation, and because that we believed that the equivalent might be settled by the treaty to mutual advantage. But to submit to all, to ask no equivalent, to relinquish the right of doing ourselves justice, was a most unheard of desertion of the interests of our country. It was one which no other nation in the world would suffer to pass with impunity, and which I grieve to think a single native American can be found to justify.

It is true, that this article proposes that two years after the present war, the contracting parties may treat for the equalization of the duties, &c. But, in the mean time, it is to remain on the footing the treaty places it. Upon what ground was this discussion postponed? If Mr. Jay was sent to make a treaty, why did he not make it, but leave it open to future discussion? Is it probable, that at the end of the war (which may last seven years) and two years after, that is, when Britain has had time to recruit her strength and her finances, she will be more moderate in her views than at this moment, when she is overwhelmed with calamities? Is it probable that at that period our trade will be of more consequence to her than now, that she has lost two important branches of it, Holland and France! It should be recollected, that the exportations from the British dominions to the United States, taken on the medium of two years, 1784 and 1785, exceed one third of all their manufactures exported to *all the rest of the world*.

At this time Holland, which, next to America, are their best customers, had not declined their market. At present it will not be extravagant to alledge, that the United States consume two-fifths of all the British manufactures that are

exported to foreign nations. The distress that a rupture with us, or any interruption of our commerce, would occasion in England, is beyond calculation. This, then, was the moment to treat upon the most advantageous terms, or to exert our inherent right to do ourselves justice *by our own laws*. It is in knowing how to take advantage of such circumstances, that true policy consists. Every one remembers how much the President's foresight was commended in having seized upon this moment to send a special envoy. But this envoy, it seems, thought differently from the President, and agrees formally that we shall take no advantage of the ground on which we stand, but that when Britain may have recovered what she has lost, then we will treat.

Is there any kind of connection between the present war and our commercial regulations with Britain? If not, why have any reference to the war, in settling the time for making our arrangement? Why but to give Britain still greater advantages than she dare to ask now? If the present arrangements will, as I have shewn, oppress our commerce, and destroy our navigation; if it banishes our seamen, and starves our ship-carpenters; if it puts our whole trade into the hands of foreigners, even for a time, how many years will it take, under the wisest and best arrangement, to recover the ground we had lost? Every thing must be recreated, and the discouragement we must then give to foreign navigation, after having lost our own, must create a temporary distress, which will be felt by every order of society. This distress will again be the argument for new humiliations, and our subjugation to Britain be rendered perpetual. If the present moment was (contrary to the general sentiment) that in which we could not treat to advantage, why treat at all? Why relinquish every thing to gain nothing? C A T O.

C. A T O—No. VIII.

THE article relative to the trade of India, is in itself of too little moment to require much of our attention.—The fact with respect to that trade is, that as the merchandizes carried to India consist of commodities which the Eu-

European nations cannot conveniently supply, together with money and necessaries for refitting their ships—as the proceeds of their cargoes are employed in purchasing India goods from the factors of the European nation at whose port we trade, there is a clear profit in admitting us freely to their ports, and thereby rendering them the entre ports between the United States and India. Should one nation only do this, and all others exclude us, the one that admitted our vessels, would thereby acquire a double profit. 1st, Upon the India goods sold to us. 2d, Upon the sale of the commodities we brought them. This is so well understood by all the European nations that have establishments in India, that our vessels are freely admitted into their ports (a very few excepted, that have a monopoly of a particular commodity) and France has put our trade with hers upon the most favorable footing. The restrictions in the treaty have thus *narrowed*, instead of *enlarged* our advantages in trading to the British factories; but as all the others are open to us, she will be compelled to receive us or lose our commerce; and as her ports afford no peculiar advantage, neither the one nor the other merits our attention: the article, as far as it goes, is not good, but one can hardly call it bad, when connected with the rest of the treaty: the deficiency of grace in a single feature does not attract our notice when the whole face is strikingly deformed.

I proceed now to examine the effect of the treaty upon the commerce of this country when Britain shall be at war. It will be admitted that the nature of our government and our situation, remote from the politics and interests of ambitious powers of Europe, will enable us for the most part to live in peace. It will also be admitted, that a maritime nation that cultivates peace, may add greatly to her commerce and navigation, if she can carry on her trade with the belligerent powers while theirs is diminished by the conflict. In order to do this, it is essentially necessary that she should be able to make the powers at war respect her flag, and the rights of neutrality.

With this view, therefore, commercial nations have always endeavoured by treaty to protect their commerce from the interruptions which the principles of the old law of nations (now indeed sufficiently exploded) afforded either of the bel-

ligerent powers, a pretence to interpose. In looking back through the treaties which the nations of Europe have, for one hundred and fifty years past, formed with a view of this object, we find principles laid down and established by them in these respects totally different from the rules which the writers on the-law of nations, borrowing their maxims from barbarous ages, have recorded. For it should be remembered, that the law of nations is no written code, but a collection of those principles which govern the conduct of civilized nations, with respect to each other ; which principles can only be collected from their practice, and the theory established by their treaties ; and as the laws of a community, are repealed or go into disuse when they are found not to answer this purpose, so the laws of nations also change with their refinements and civilization. If, therefore, a man was to look into the laws of any ancient state, he would find many things that would appear to him absurd, and contrary to humanity, which still maintained their place in the statute book. Thus in England he would find the trial by battle-laws against Witchcraft, and a variety of ridiculous local customs, which would greatly shock his feelings, until he was told that all this trash had gone into disuse, though the laws were never formally repealed.

So in looking into the writers upon the laws of nations, he would find attempts upon the common rights of humanity, upon the independence of neutral nations, justified by the maxims of authors, who for the most part are pedants that reverence antiquity, and make no allowance for the change that the increased commerce and intercourse of nations have occasioned. Thus Vattel, to justify the capture of vessels going to a blocked port, tells us, that Demetrius, about two thousand years ago, hung the pilot and mariners of a vessel that carried provisions to Athens, which he had blockaded. The writers on the laws of nations in Algiers, could justify their practice by more recent and valid precedents. But when we look into the practice of nations, we find that their sentiments, expressed in all their treaties for a series of years, have refuted these opinions, and established a code more consonant to reason and humanity. To strengthen those laws is peculiarly the duty and interest of a nation that will probably be seldom engaged in a war, and always deeply interested in

the freedom of commerce and navigation. As far back therefore as the year 1650 and ever since, I find the commercial nations declaring by treaty, what shall be considered as contraband, and limiting this strictly to arms and ammunition, and instruments of war, actually made up for that purpose—stipulating that free ships shall make free goods—declaring that full credit shall be given to ships papers—that armed vessels shall not come within cannon shot of a neutral ship, but send their boat on board, with only three men at most, to examine papers but not search: in short, the treaties for one hundred and forty years back, relative to this object, are drawn in the *very words* of the treaty between the United States and France; as they are again repeated in the late treaty between England and France. For this striking similarity I refer to the treaty between Spain and the United Provinces, in 1650, and to a long series of conventions between various nations since; in which I can safely declare I have not yet, after the most diligent search, found a single treaty, in which the same latitude is given to the word *contraband*, as Mr. Jay has given it in his treaty with Lord Grenville; nor have I met with one, though such possibly may exist, in which no provision is made to guard the neutral vessel from search and spoliation.

The twenty-second article of the treaty between Great-Britain and France, confines the word contraband to arms, ammunition, and military stores; and the twenty-third article excludes cordage, sails, tar, rosin, pitch, masts for ships, plank, timber of all kinds, and all other things proper for either building or repairing ships.

The same principles are followed in our treaty with France, Holland and Sweden, and the same as I have stated are to be found in treaties nearly one hundred and fifty years back; so that notwithstanding a loose expression in Vattel, relative to naval stores, we may consider it as now settled by the uniform acknowledgement of nations, as expressed in their treaties, that contraband, must in its nature, be confined to military stores. But were it otherwise, as the object of every treaty is to gain some advantage which you did not before enjoy by the laws of nations, or to remove some doubt which might be entertained on those laws, no nation ever enters into a

treaty in order to enforce an established law, unless that law is beneficial to it. What then could Mr. Jay's inducement be, after we had obtained from France, Holland and Sweden, express stipulations exempting naval stores, timber, &c. from the list of contraband? After the great nations of Europe had, by their treaties, and by their formal accession to the principles of the armed neutrality, declared that these articles were *not* contraband; after Britain had at length made the same recognition by her treaty with France; after the President of the United States had expressly, in his proclamation, referred to the *modern law* of nations—for the meaning of the word *contraband* had excepted all those articles that are excepted in our treaty with France; I say, what could be Mr. Jay's inducement to declare, in the 18th article of his treaty, the following staple commodities of this country contraband—"Also timber for ship building; tar or rosin, copper in sheets, sails, hemp and cordage, and generally whatever may serve directly for the equipment of vessels, unwrought iron and fir plank only excepted?" Is there any reciprocity in this stipulation? Was it probable that the United States would soon be at war with any nation to whom Britain would carry these commodities? Was not Britain already at war with a nation who furnishes a good market for them? Are they not staples of our country which we have a very considerable interest in shipping? What equivalent does the treaty hold out to us for relinquishing this important branch of commerce? Is it usual for nations to compliment away their commerce without any equivalent? Will Mr. Jay assert that these were contraband by the *modern law* of nations? Will he give the lie to the President's declaration that they were not? Or is common politeness too much for our own executive, while the most servile adulation is lavished on the monarch of Britain? But supposing that they were actually contraband; had we not a right to expect that Britain would agree to their exemption from that character in her treaty with us, as she had done with her natural enemy? and as France, and every other nation with whom we have treated, had done with us when we were a much less important state than we are at present. Do not the common principles of humanity and the interests of all commercial nations, combine in striving to narrow the evils of war, and lessen the

effects on neutral nations? The venerable Franklin, with this view, in his treaty with Sweden, inserted a stipulation, for an uninterrupted commerce in private ships, even if the contracting parties were at war with each other; but the chief justice of the United States thinks it his duty to stop the progress of civilization, and to recal the barbarism of past ages, even at the expence of the dearest interest of his country, What answer, sir, would you make to this venerable sage, if he were to rise from his grave and charge you with sacrificing the interests, with tarnishing the honor of your country? If he was to alledge that you had, in the article, violated the rights of nations, and done all in your power to replunge us into that state of barbarism from which we had so happily emerged—what answer, sir, would you make? Would you borrow the words of Macbeth? “Thou canst not say I did it, why dost thou shake thy hoary locks at me!” True sir, you did it not; but Pitt did it! Grenville did it! — did it, and twenty others did it.

C A T O.

N.B. An inaccuracy of expression in some of my former numbers may induce a belief, that the discriminating duty on foreign bottoms is ten per cent. on the amount of the duty, or on the *value of the cargo*; when in fact, it is only ten per cent. on the amount of the duty; or, in other words, one tenth additional duty.

C A T O—No. IX.

IT has been usual in treaties to confine every distinct matter to a separate article; thus the 22d article of the treaty between France and Britain declares what is contraband; the 23d article expressly specifies the exceptions. But Lord Grenville's treaty, as if with a view to render the subject as obscure as possible, crowds a variety of distinct matters into the same article, which makes it much more difficult to reason on the subject, unless the reader will be at the trouble of turning to the article at the time that he hears the commentary upon it. The article before us contains three dis-

tinct matters; first it enumerates contraband without excepting any one article shipped from the United States, other than unwrought iron and *fir* plank, as is usually done in similar cases; and which would have been peculiarly proper in the present case, because of the sweeping words, “and generally whatever may serve directly to the equipment of vessels.” Words of such extent as to include a very considerable portion of our exports, which, by this article, are to be forfeited.

The second member of this article is extremely difficult to define; I shall, therefore, give the very words of the treaty, that every reader may judge for himself, and if he can peruse them without the most lively emotion, I shall not hesitate to declare, that he is no *native* American. “And whereas the difficulty of agreeing on the precise cases in which alone *provisions and other articles*, not generally contraband, may be regarded as such, renders it expedient to provide against the inconveniences and misunderstandings which might thence arise, it is further agreed, that whenever such article, so becoming contraband, according to the existing laws of nations, shall, for that reason, be seized, the same shall not be considered confiscated, but the owners thereof shall be speedily and completely indemnified, &c.”

The third member provides, that in case of a vessel's going to a blockaded port, she shall not be *confiscated* until after *notice* of such blockade.

The second, then, does not refer to the case of a port which is blockaded, but must refer to some other cases in which Mr. Jay admits, that *provisions and other articles* not usually contraband may be rendered such. Now I know of no case in which provisions, and more especially *other articles not usually contraband*, can be considered as such. It is true Vattel has this loose expression in the enumeration of contraband; “*Les vivres même en certaines occasions ou l'on espere de reduire l'ennemi par la famine.*” “Provisions even where they hope to reduce the enemy by famine.” I have shewn that great changes have taken place in modern times with respect to the laws of nations; that every nation has in its treaties expressly excepted provisions, that England has herself done so in her late treaty, even with France. But admitting Vattel's words in their utmost latitude, they can only refer to

the case of a place blockaded; and this is referred to in another part of the article, and therefore not intended by this which alludes to some *undefined cases*.

If there are really cases to which it can properly apply, independent of a blockaded place, as the object related to the whole remaining trade of America (that in lumber and naval stores having been before ceded) surely it was the duty of our minister, particularly as he was a lawyer, and must be supposed competent to the object, to have specified those cases as accurately as possible, to have confined them to the narrowest possible limits where any doubts could have been entertained on the subject; this was necessary not only to put his countrymen upon their guard, to enable them to make some estimate of their risk and loss; but to point out to them the cases in which they might appeal with success. But, says the treaty, "it is difficult precisely to determine the cases." Why so sir? Are the cases so very numerous, or are they so doubtful? If both, or either, they called for the more care and accuracy in the enumeration and definition. Are they not ultimately to be decided somewhere? Or is the difficulty of deciding to justify the capture of every American vessel loaded with provisions, or any *other article*; for the articles which are to become contraband are as undefined as the occasion that makes them such? I again ask, sir, by what rule is this question, so important to our commerce, to be decided? You say, by the law of nations! but where is this law to be found? The writers on the law of nations, like the writers on every other law, differ from each other, but if the cases are precisely laid down, why not state them. Was the chief justice of the United States less capable of doing this than the captain of a Providence privateer? These cases could either be defined with precision, or they could not; in the first case they should have been stated, in the last they should not have been affirmed by the signature of our envoy. But when an American vessel is brought into a British port, the maritime judge must do what the chief justice of the United States and Lord Grenville could not do; he must determine whether her cargo, consisting of provisions and *other articles*, is or is not, within the case in which they may become contraband. Now let me ask sir, whether, after what we have

seen of their decisions, it was prudent to leave the whole commerce of the United States to their mercy, by giving them an unlimited power to judge in cases of so much intricacy that you yourself could not agree upon them? Do you reflect, sir, that you have, by this very article, authorised them, even if contrary to their usual practice they conform to the laws of nations, to condemn every vessel going to any port of France, or their colonies, with provisions, or returning from their islands to any port in Europe, loaded with the produce of those islands, and that they derive this right from the very words of your treaty? The rule of the law of nations as laid down by Vattel, and which is also a rule of the civil law, is thus, "that if he who can, and should explain himself clearly and fully, neglects to do it, *so much the worse for himself*; he shall not be admitted afterwards to make restrictions which he has not expressed." Now the court of Great Britain have officially told us, that they have a right, by *the law of nations*, under the peculiar circumstances of France, to interdict all trade in provisions with her or her islands, as also to prevent any part of the produce of her colonies from being carried in neutral vessels to any port in Europe; the clamours excited by the neutral powers, and the apprehension of drawing upon herself new enemies, made her suspend *some* of these constructions; but with respect to us, as appears from Mr. Pinckney's and Mr. Hammond's letters, she still keeps up the right, as she says, under the law of nations. Her courts, conforming to this sentiment, have uniformly condemned a great number of cargoes agreeably to the law of nations, say they, as expressed in those instructions. During the whole of Mr. Jay's negotiation there is no formal revocation of them, but their admiralty courts proceed to condemn. Under these circumstances Mr. Jay agrees, 1st. That *there are* cases (other than those of blockaded ports) in which provisions and other articles are contraband, and he agrees too in effect, that the British courts of admiralty shall determine what those cases are; does not this amount to an explicit relinquishment of *our* construction of the law of nations? Are we not the party whose interest it is (agreeably to the doctrine laid down by Vattel) to explain ourselves clearly and fully, and does not our neglect to do it (agreeably to the same authority) justify the British construction of the

law of nations? Does it not relinquish our claim for every injury we have suffered under the very instructions which Mr. Jay was sent to remonstrate against? and thus fully prove what I before asserted; that Mr. Jay's commissioners could give no redress to our citizens for the loss of their property under those instructions; that the British have viewed the treaty in this light, is evident from the orders that they have lately renewed for the capture of our vessels going to France or Holland; dating their order about the time in which they might reasonably suppose the treaty would have been ratified here. These observations apply with equal force to the third member of this article—for as the British claimed a right to declare a whole nation at a time; in a state of siege, even when that nation had beat them out of the field, to capture and condemn all vessels going to any port of such nation, and as at this moment we agree, that our vessels shall be so captured and condemned, without defining, or in any part admitting the word *blockade* and *siege*, do we not tacitly agree to their construction of the terms? Repugnant as the definition is to the established and known laws of nations, it is very remarkable that where the most rigid construction of the laws of nations can be made to operate *against us*, in order to preserve them in full force, and in contradiction to the settled practice of modern times, Mr. Jay has added to those laws, the weight of a national stipulation *against* his constituents—but where the writer of a natural law advances a principle; *beneficial to us* Mr. Grenville's treaty cautiously avoids putting it out of doubt, or giving it any additional force. Thus Vattel declares, "That it is now received, that full faith and credit should be given to certificates and sea letters, &c. that the master of the ship presents, unless a fraud appears or there be good reason of suspicion." Lib. III. Chap. vii. (114)—and in every treaty of commerce and navigation, that has been made for upwards of one hundred years back, this principle is enlarged upon, and violence in boarding a ship to examine her papers, guarded against by fixing that the armed ship shall remain at a distance, that the neutral vessel shall be boarded by two or three men only, that full faith shall be given to papers, &c. yet not one word of all this is to be found in Mr. Jay's treaty, except a mere vague agreement, that neither party shall injure the other in their persons or

state, and shall make good all damages and be punished for outrages without defining what these outrages are, or fixing a line which it should always be an outrage to pass. That the British idea of *outrage* differed from ours we knew; for Mr. Jay himself possessed the fullest evidence of outrages committed by captains of men of war and privateers, in plundering our vessels and pressing and ill treating our seamen, yet we hear of no officer that has lost his ship or commission on that account, and as to private suits, every man knows that the expence and distance will prevent their being brought. With all the treaties hitherto entered into by the United States before him, as well as all other treaties made for a series of years past, which are accurate on this point, could Mr. Jay be ignorant of the common practice of nations? Was he ignorant that the abuses we daily suffered at sea in the boarding our ships, with numerous bodies of armed men, in the contempt manifested for our papers, in breaking up the hatches, and endangering the ship, were among the causes of complaint that the president sent him to prefer? If he was not, why are not these evils guarded against by an express stipulation, that faith shall be given to papers, that no ship shall be searched or detained, where her papers are fair, and she does not refuse to shew them? Why are not privateers ordered to remain without gun shot (as in our treaty with France) and the treaty of France with Britain, &c.) while no more than two, or at most three hands are admitted on board the neutral ship? Why are vague and general terms substituted for these wholesome provisions unless it be with design to subject our commerce to unceasing insults.

The same abandonment of our navigation runs through every commercial article.—By the seventeenth, the British are empowered (contrary to the principles of the armed neutrality, which have evidently changed the law of nations, by the general consent of the great community of civilized nations, and to which Britain herself has in effect acceded, in this particular, by her late treaty with France) to take enemy's property from on board our vessels:—one would have imagined, even if the law of nations had been clearly against us, that mere delicacy with respect to the nations with whom we have treaties, by which we can protect the property of their enemies from them, would have induced us to refrain

from a stipulation, by which we voluntarily sacrificed their property under the protection of our flag, to their enemies. But that Mr. Jay did not think the law of nations on this point settled, appears from the last part of the twelfth article, in which he leaves the question open to be discussed two years after the war ; but one would certainly have expected, that as this article rendered every vessel we have, liable to search and detention, that two points would at least have been settled— 1st. That such papers would have been agreed upon, as would have saved the risk and danger of a search at sea. 2d. That when a vessel brought into the port on suspicion of having enemy's property on board was dismissed, she should have her freight and demurrage, &c. paid *immediately* ; that none of her hands should be taken out of her ; that she should be from the time she was taken till she left the port, at the risk of the captors.—Yet we do not find a single stipulation of this kind in the article, none even for port charges or law expences, if she was wrongfully brought in. But it is left wholly to the discretion of the courts of admiralty, whether they will give any or what damages, &c.—That they will give none in most cases, past experience has fully confirmed. If it is said the law of nations intitles neutral ships to damages, &c. I ask whether the laws of nations have hitherto been the laws of the British courts of admiralty ? And, whether an express stipulation would have given us too great a security against West India and Bermuda judges ? I ask, whether the neglect to make any precise stipulation in this case, is not a new proof of what I have before observed, that where the law of nations was *favourable to us*, no stipulation is made to enforce it, where it is *unfavourable*, there it is strengthened by an express provision ; an instance of both occurring in this very article?—Doubts might be entertained, whether neutral ships should not protect enemies property ; these doubts are determined *against us* by the express words of the article, while our right to freight, &c. is left to judge Green's construction of the law of nations.

C A T O.

C A T O—No. X.

IT may not be improper now to review our commerce ; it will stand if the treaty is carried into effect. The Indian trade from Canada alone, produced at public sales in

London, 1784, £. 230,000 sterling. The duties thereon were in round numbers £. 17,000. The tonnage of furs and peltry, about 1000 tons. The export from Canada in furs, exceeded in 1785; that of the preceding year, 70,000 sterling; and has, I believe, continued to increase; so that this branch of trade may be fairly estimated at 1,000,000 of dollars yearly. As nine tenths of the Indian nations, who carry on this trade (if the territories of the Hudson-bay company are excepted) live within the boundaries of the United States, or on the west side of the Mississippi, as we enjoy every advantage in the right of the posts and postages, the greatest part of this valuable trade must have been ours, had not Mr. Jay thought proper to transfer it, in effect to the British, as I have before stated. The Indian trade in the southern part of our territories, is principally in peltries, which are too bulky to be transported in any other way than upon large rivers; the Mississippi will be the out-let for a very great proportion of them. This commerce must have been exclusively ours, for though by the treaty of Paris, the British might navigate the Mississippi, yet as they did not own a foot of land upon either of its banks, it became impossible for them to avail themselves of this advantage; whereas the United States, possessing all the Indian country in the vicinity of that river and the east bank for many hundred miles, could, when they pleased, establish factories, and monopolize that commerce; since it could only reach the British posts by passing ours, or by a circuitous route to the north of the Lake of the Woods; and, in addition to this, carry on a very important (though illicit) trade with the Spaniards, who own the opposite bank. This our minister extraordinary was too munificent to allow us to avail ourselves of. He therefore provides, in the third article, "that all the ports and places on its opposite side, to which favour of the parties belonging, be freely resorted to and used by both parties in as ample a manner as any of the Atlantic ports or places, &c." then comes a clause declaring, "that all goods and merchandizes, whose importations into the United States are not wholly prohibited, may freely, for the purposes of commerce, be carried into the same, in the manner aforesaid, by his majesty's subjects; and such goods and merchandizes shall be subject to no other or higher duties than would be payable by the citizens of the

United States on the importation of the same in *American vessels* in the Atlantic ports of the said States." I have already shewn, that the effect of this last provision is to give British ships a *bounty* proportioned to the amount of the equalizing duty on the out and home voyage, taken together, to the prejudice of American vessels, which, with the perfect equality of rights, that they hold in common with our own citizens, and an addition of forty-six cents extra tonnage, and light money, with which, as I have before shewn, our vessels will be charged, must put this important commerce into the hands of the British. This, I presume, must have been the intention of our minister, when he speaks of the ports on the *eastern bank of the Mississippi, to which soever of the parties belonging*; for, as the British have no ports on the eastern side, Mr. Jay must have looked forward to a time when these extraordinary bounties to their commerce, and perfect security for their establishment, should have enabled them to possess themselves of that country; And that, though the article is not reciprocal *at present*, by the prudence and good management of our envoy, it may, in time, be rendered so. This article is *perpetual*, so that bidding an eternal farewell to all commerce with our own country, we turn our anxious eyes to some other to supply its place. The terms on which our good friends, the British, propose to open their islands to us, are such, it seems, as *even our senate* cannot approve; are such as Camillus himself abandons: It may however be some consolation to us to know, that these islands, whose trade we were to purchase with the dereliction of several very important branches of commerce, are not of so much importance as the advocates of Britain would have us suppose, and for that reason I insert the following tables:

Sugar imported into the United States in 1790.

From the French Islands, 9,321,829 lb.

Dutch do. 2,707,131

Danish do. 2,833,016

14,862,076

British do. 2,280,647

17,142,723

So that, after all, were our *other* branches of commerce left unfettered, we should be able to do without that of the British islands, which only amount to about one eighth of the whole of the West-India trade. And such is the dependence of those islands upon us, that they must either starve or be supplied by us on our terms. As this was too obvious to escape the attention of Lord Grenville and our minister, they have provided, 1st. That we shall impose no new duties on tonnage; that is, in other words, that, treat us as she will, Britain shall still have the right to carry *our produce* to her islands in her own vessels, to the exclusion of ours. 2d. That she shall also, if she pleases, prevent our carrying our produce to the French or Dutch islands, or their produce to Europe, at least during a war, which has been, for one hundred years back, thirty years out of seventy, since she has nothing to do but to declare them in a state of siege, or to alledge, that the articles are contraband, or that this is one of the cases in which they may *become* contraband, though *not generally so*; and she will then be justified by the treaty, in carrying them into her own ports, where the seamen may be pressed on board their ships of war, seduced to swear that the cargo is enemies property, and thus the whole be confiscated; or, if this greater evil should be avoided, compel the owner to pay his own expences, and to take whatever the captor shall deem a reasonable profit, without any regard to the loss he sustains in the breaking up his voyage, &c.

In peace France will, with justice, avail herself of the article which entitles her to put her trade upon the same footing as that of the most favoured nation, become her own carrier, and banish our vessels from her islands, as we have permitted the British to exclude us from their's. Europe, perhaps, will be more favorable to us. But here again we have, by the equalizing duty, and the extra tonnage and light money, rendered it impossible to carry our commodities to Britain in our *own vessels*, while we at the same time bind ourselves not to give such advantages to other nations as would open new markets for them. Britain, then, must continue to navigate for us, their merchants must monopolize our commerce, her officers must intrude upon our exchanges with all the "dignity due to their commissions;" her high commissioned courts may drag us from one end of the continent to the other; may est-

tablish new rules of jurisprudence ; and you, my unhappy fellow citizens, must be content with the humble offices of *hewers of wood and drawers of water*, to these insolent islanders.

During the war, the concessions relative to contraband amount to an absolute prohibition of any trade in naval stores, timber, provisions, and any other article which the British please to call contraband under *existing circumstances*, either with France or Holland.

The new treaty with the Algerines will exclude you from Portugal, and render your voyages to Spain dangerous.

With the Baltic we have little commerce that will bear a war freight, other than in West-India produce, which Britain has said we shall not carry to Europe. And Mr. Jay has acceded, expressly in the 12th, and implicitly in the 17th article, to this prohibition, so that the commerce of the world (the East-Indies and Great Britain alone excepted ; and this latter, as I have said, can only be carried on, in peace at least, in British bottoms) is interdicted to us. During the war, indeed, we may continue to carry, while the insurance is less on our ships than on those of Britain, provided that our seamen will choose to continue in a service in which they are liable to repeated insults ; provided that the wants of the British navy shall permit them to leave us any, of which there may be some doubts, as we just learn, that a single frigate (since the treaty was advised to be ratified) pressed thirty five of our seamen upon our own coast, and another, the *Hermoine*, not less than seventy in the West-Indies : A ship too, we are informed, loaded with provision, has been carried into England, agreeably to an express stipulation in Mr. Jay's treaty, either under pretence that the provision is contraband, or that it is enemies property ; and, before any investigation into the merits of the capture, every seaman is taken out and put on board of a frigate. How long our stock of seamen will last, with such deduction, and the infinite loss of those of our seafaring citizens who are carried into the islands, and compelled to serve on board ships of war in that unhealthy station, I am unable to say. Now let me ask, if our commerce is not upon a much worse footing than it was before Mr. Jay went to England ? Whether every injury for which he was sent to

seek redress, has not been renewed with double rigour? Whether by yielding that the British may of *right*, search our ships, and confiscate the property of our allies, which they before did *by force*, we have not ceded to those allies a *right* to declare that our ships shall no longer protect the property of their enemy? Can we expect that they will suffer their treaties to entangle them, and extend protections to their enemies? It is not to be expected they will be compelled, by necessity, to treat us as we have *agreed* that the British shall treat us; in which case, as Britain will not let us trade with France or Holland, France and Holland will ruin our commerce with Britain, Spain and Portugal; and thus the trade and navigation of this country be finally destroyed, by the means that were intended for their protection. How different has Mr. Jay's conduct been from Mr. Pinckney's? Read his letters to Lord Grenville. He maintained our right to protect neutral property; he protested with firmness against the absurd idea of naval stores and provisions being contraband; he saw the wide difference between admitting a thing to be *right*, and yielding to the *necessities* of the moment; which circumstances might hereafter enable us to contend against with success. Indeed it may be doubted whether the *right given by treaty* to take enemies property out of our vessels, is not a "privilege or immunity" granted to the commerce and navigation of Great Britain; in which case, by the third article of our treaty with France, they have also *a right* to claim it. Which establishes an important distinction between *suffering* this from necessity, and *granting* it by treaty.

The ill effect which this treaty must have upon our national character exceeds all calculation. A young nation, like a young man, is bound to be particularly solicitous on this head, nor can any thing be more repugnant to the interest and honor of the country than the shocking indifference that our ministerial writers, and their newspapers endeavour to circulate on this head. Thus they say, "we are growing rich in spite of all these injuries, let us mind our business, let us submit. We shall hereafter be strong, when we may bluster at our leisure." What should we think of the tutor that should inculcate on a young man the same maxims?—"Suffer yourself to be kicked and cuffed now while you are young, let your sister be ravished, and your wife be debauch-

ed by the lecher who permits you to get money. What, though he insists upon sharing a *part of* it with you, and now and then lays his cudgel over your head, submit now to smile upon him ; by and by you will be as strong as he is, and then you may bully him in turn." What, I say, should we think of such a tutor, but that he was a villain and a scoundrel, who was leading his pupil from the dread of present evil to debase his character, and to invite infinitely greater evils in future, than those he feared to meet at present. What first raised the American character, and acquired for it the admiration of the world ? Was it tame submission to the injuries of Britain ? Was it a scrupulous calculation of what we might gain or what we might lose by the controversy ? No, my fellow citizens, it was a bold resistance ; it was an ardent passion for *honour and freedom*, that left all calculation for personal interests out of sight, and counted every thing lost if *these* were not *won*.

C A T O.

N.B. It should be observed here, that the British neither have nor claim a right to land on the west of the Mississippi ; that it is now well known that this river does not run north of the Lake of the Woods ; that even if any post should extend so high it can have no ports above the falls of St. Anthony of the least importance, so that this article is a gratuity on our part.

C A T O—No. XI.

IN my former numbers I endeavoured, I st, to shew that the object of Mr. Jay's mission, so far as it related to a compensation for injuries received, and security against future aggression, was not accomplished. While I was yet writing the renewal of them proved, beyond contradiction, that my remarks were well founded, and that the British construction of the treaty was unhappily too similar to my own, since they only waited to give sufficient time for its ratification, to recommence, with added violence, their depredations on our trade, and their outrages against our citizen seamen. I then

examined the treaty in a mere commercial light, without indulging myself in those general reflections which arose naturally from the articles under consideration. I proceed now to consider it in a political point of view.—Would to God, my fellow citizens, I could here find some source of consolation, some ray of light, to eradicate the sullen gloom!—But alas! every step we take plunges us into thicker darkness. We might, perhaps, have submitted to past losses; have seen our commerce given away without an equivalent; our navigation ruined; our seamen (I blush with shame and indignation while I say it) our citizen seamen delivered over to the insolence of brutal tyrants, could our national honour have been preserved in future—could alliances, formed by interest and gratitude, have been left unimpaired—could peace have been established upon firm and honorable terms; could the private rights of our citizens, the public ones of our government, have remained unviolated—but, the indiscriminate ruin of all these is too much to be borne in silence. Even the coward advocates for peace, feel their spirits rise at the unexampled indignities which this treaty imposes. And for what? Are we nearer peace (if by peace is meant the security of our persons and property, from foreign depredations) than when Mr. Jay left this country? Is there a single outrage which we suffered before which is not continued to this moment? And yet the advocates for the treaty are continually ringing in our ears, the blessings of peace, the horrors of war; and they have the effrontery to assure us, that we enjoy the first and have escaped the last, merely (to borrow a ministerial term) through the instrumentality of the treaty. Does any body believe, that if we had continued to suffer the British to plunder our trade, to man their ships with our seamen, to possess our frontiers in quiet, that they would have declared war upon us, at least till they had conquered France? And can any man deny, that it would have been better to have preserved this daring, but base born bantling, which excites our blushes while we fondle it, by mere submission, than to legitimate the bastard and compel ourselves forever to maintain it upon the same disgraceful terms, by marrying its lewd mother? In a political view, the treaty is bad, as it detaches us from engagements which our interest and honour equally invite us to maintain; as it sacrifices our friends to our

enemies; and holds forth to the world, that those nations who treat us worst, will share the greatest portion of our attachment, and that, like fawning spaniels, we can be beaten into love and submission, notwithstanding the corrupt maxims that were circulated under the signature of Pacificus, with a view to promote the league of despots against France.

Notwithstanding the indecent attempts that were made about the same time, by several members of Congress, to shew that we owed her no affection, the principles of gratitude have still maintained their ground in this country; they have been strengthened by the necessity which every American felt, of securing some ally against the design which Britain almost openly avowed, of again reducing this country, when her means, strengthened by the interest she had in our councils and in our commercial cities, should afford her a prospect of attempting it with success. It is singular to observe the extreme solicitude with which a party among us, have endeavoured to detach the affection of this country from the only nation with whom its true interest would prompt it to form a close and strict alliance, not only because its government is similar to our own, but because its commerce is more advantageous to us than that of any other nation in the world; while its manufactures are such as can supply the greatest part of our wants, its demands for our produce are so much larger than that of any other nation, that she actually pays us a considerable portion of that balance in money which we are compelled to remit to Great Britain on the losing commerce which we carry on with her. It will be remembered here, that near two millions of our former exports to England were consumed in France, and as much more in other countries. It will be remembered too, that she gives the highest encouragement to our navigation, while her insular rival uses every means to depress it. Yet whenever any attempt has been made to encourage this commerce or strengthen this alliance, the most violent clamours have been excited by the British faction, aided by our own royalists, and the slightest incidents have been seized with avidity to render her obnoxious. Thus the imprudent warmth of Mr. G——t, called forth all the zeal of the party; ministers, chief justices, senators, &c.

Joined in full cry, to run down the French nation, under the appearance of regard for the *honour* of their own, while they were so totally regardless of its *interests*, as to overlook the offers that he brought of such commercial advantages as might have made us see with contempt, the narrow policy of the British government in excluding us from their islands, which the liberality of France must have compelled her to open to us on our own terms.

And yet these very men have heard with the utmost indifference the insulting speech of Lord Dorchester—the insolent correspondence of H——d, which went both in matter and manner, far beyond any thing written by G——t ; and while they discourage a connection with France, founded upon mutual advantages, they meanly supplicate Britain to treat with us upon her own terms, and contrive that this treaty should serve the double purpose of connecting us with her and detaching us from France. At the same time they have the effrontery to assert, that the treaty contains no article which can reasonably give umbrage to France, or which in any way derogates from the friendship that should subsist between the two nations. I shall proceed briefly to consider the truth of this assertion.

In the enumeration of contraband, Mr. Jay has included articles which are essential to France, and which have not been considered, as far as I have been able to discover, as contraband in any treaty for one hundred and forty years past. In admitting provisions may be contraband in any case (except when going to a place blockaded) Mr. Jay has also admitted, what no treaty *ever* before did, though tyrants have sometimes claimed a right to stop them. The United States had evidently no interest in either of these articles ; of course they could not be reciprocal, nor is any equivalent offered for them. France and Britain were at war : these articles were protected in going to the latter by our treaty with France ; so that in admitting them to be contraband, we necessarily confine the sale of them to Great Britain, and exclude France from availing herself of our commerce in these articles, unless at the utmost risque and expence ; and, what is still more ungracious, we make their generosity in excepting them from the list of contraband (if they really were such by the law of nations) afford the means of furnishing them to their enemy ;

for if our treaty with France and Britain were similar in this respect, the risk and expence would have been equal in going to either country, and both would have obtained these commodities upon pretty much the same terms. It is evident then that these articles could only have been dictated by a spirit hostile to France, and as such they are a direct breach of our neutrality.

Vattel, in enumerating the cases in which a neutral nation may carry on a commerce with the belligerent powers, has these words, which directly apply to the case before us, " If they (the neutral nation) refuse to sell me any article, and take measures to supply my enemy with it in abundance, with a view to favour them, this partiality is a breach of the neutrality." Whatever has been said with respect to the above article, applies with equal force to the right that the treaty gives to Britain to confiscate the property of their enemy found on board our vessels, contrary to the *modern* law of nations, and their own admission of its principles in their treaty with France. But if any thing was wanting to shew the hostility of these articles, it could be found in the *time* we had pitched upon to enter into them, and that we had stipulated for their continuance. First, as I have said, France was actually at war. 2. By the 12th it is agreed, that these shall continue in force *during the present war*, and for two years after, when the parties " will renew their discussions, and endeavour to agree whether any, and what cases, neutral vessels shall protect enemies property ; and in what cases provisions, and other articles, not generally contraband, may become such."

From this it is evident, that these were questions of doubt in the minds of the contracting parties ; they were speculative questions, as capable of solution in the *present* moment, as at any future period ; the discussion of them could have no reference to a war between powers with whom we were at peace ; the declaring therefore, that this doubt should be construed as unfavourably as possible to France, and directly in favour of Britain, even to the partial injury of our own commerce, without any *apparent* equivalent, and that too *during the war*, how long soever it may last, is so unequivocal a proof of hostility, that it is impossible to mistake the intention of the contracting parties, which reduced to plain language is

this, "these articles may be inconvenient in future, but as the execution of them will be very injurious to France, whose reduction we both wish, we agree that his Britannic majesty shall have the full benefit of them *for the present*, and when by this operation, he shall have reduced France to submission, we will agree so to modify them, as to render them conformable to our interests." Injurious as these articles are to our commerce, the baseness and perfidy of them are so much more so to our national character, that the first of these considerations is almost lost in our resentment of the last. By the 24th article it is expressly stipulated, that no power at war with Britain shall sell their prizes in our harbours.

Now by the law of nations, independent of treaties, any nation may carry her prize to a neutral port and sell it, *Vat.* 3 lib. ch. vii. 132, and accordingly France has hitherto been permitted, without any express stipulation in her treaty, so to do. To withdraw this right *now* in the midst of a war, though not expressly against the law of nations, has certainly a most ungracious and unfriendly appearance; especially as it is done without our being able to apologise for it by any interest that we can have, at least during this war, in the stipulation. As it was foreseen at the time that the treaty was entered into, that Holland must be conquered, and that she would make an ally of France, the 25th article, which admits the British to bring their prizes into our ports, and forbids the armed vessels of any other nation (France excepted) to enter them, unless forced by stress of weather, &c. and which agrees that we shall not, in future, let any other nation share this favour, is certainly no evidence of a friendly attachment either to France or Holland; and yet these powers were our friends and allies, when Britain was our bitterest foe. I forbear to remark upon the stipulations we have made in favour of the navigation of Britain, as speaking the same unfriendly language, since this is a less aggression, and will undoubtedly be returned upon us by other nations; so that the whole loss will ultimately fall upon ourselves, and the crime carry with it its own punishment. The liberality which France manifested to us in our distress—the succour she afforded us, and the unexampled generosity she manifested in taking no advantage of our situation, to impose unjust or hard conditions upon us, certainly should have rendered us

cautious of favouring a nation, that has wantonly, and without the slightest provocation, declared herself her enemy, and used the most barbarous and unjustifiable means to distress her. We should have shuddered at being parties to a compact, to starve twenty six millions of our fellow creatures, at the thought of aiding Britain in her endeavours to repeat in Europe the horrid barbarities she had committed in India. We should, even if we had no obligations to France, and were blind to our own interest, we should still, for the sake of humanity, have resisted a treaty which admitted, that the necessaries of life could in any case be justly withheld from a famished nation. But if all these motives had no weight with us, we should have reflected on the forbearance, the delicate regard that France has shewn to our circumstances, even in the midst of her distress. By our treaty we have guaranteed her islands to her; these islands are attacked; she is entitled to the benefit of our guarantee: Yet she has forbore to ask it, as she believed it inconsistent with our interest to go into the war. Can we expect the same forbearance after the predilection we have manifested for her most inveterate enemy? if not, are we prepared to choose between a breach of faith with her, the relinquishment of her guarantee of our independence, or a war with Britain?

C A T O.

 C A T O—No. XII.

AS every neutral nation may, without forfeiting that character, suffer the belligerent powers to dispose of prizes in their harbours—as the United States will generally be at peace while Britain is engaged in wars, thirty years out of seventy, very considerable advantages would result from this circumstance.—During a general European war, the commodities of all nations would be sold (as prize goods generally are) at a low rate, would supply our own wants and be transported in our vessels to every part of the globe, and the demands for commodities and mechanics, necessary to the fitting of vessels, would add to our wealth and stimulate our industry.—To relinquish these advantages without an

equivalent; is certainly very unwise; particularly when it is considered that our situation in the neighbourhood of the colonies of all the maritime powers, must render the free admission of some and the exclusion of their enemies, extremely important to them. We have therefore been very tenacious of this privilege, and denied it even to Holland, who may be considered as one of our earliest allies. Yet the 24th article of Mr. Jay's treaty expressly stipulates; that no foreign nation, at war with Britain, shall sell her prizes in our harbours; and excludes their armed vessels, and stipulates that similar privileges shall be granted to no other nation; and all this without any equivalent—For though the provision is *mutual*, yet the advantage is entirely on one side—1st. Because Britain being our only natural enemy (by natural enemy is understood one whose interests clash, either because of the *contiguity of their territories*, or rivalry in their pursuits) it is highly improbable that we shall be engaged in any war in which she is not a party against us. 2d. Because our distance from Europe will prevent our being often engaged in those controversies which convulse that quarter of the globe. 3d. Because there is no naval war in which Britain is not a party; if we should happen to be engaged on the same side with her, we should mutually use each others ports without a treaty; if we should be opposed to her, the treaty will cease to operate; so that in every view, we have made a very important concession in this particular, without having acquired any thing in return. The article is extremely exceptionable in another point of view. The construction is so doubtful, that a similar article gave birth to all the controversy between our government and Mr. Genet. It would certainly have been prudent then to have varied the expression, and steered clear of this ambiguity, in treating with a nation who wrests every possible doubt to her own advantage, and who finds chief justices and senators, and ministers extraordinary, and advocates among ourselves, ready to support her construction, be it ever so absurd.

By the 15th article, we are prohibited from imposing any specific duty on British articles, which we do not extend to all other nations, from encreasing our tonnage duty or imposing any greater charge on the importation of goods in British bottoms than *now* subsists. I have already shewn the mis-

chievous effect of this article upon our *navigation*. I will now consider it as it regards our political relation with other nations.—Treaties are bargains in which something is given in return for some other received. Those then that put it out of their power to *give*, cannot hope to *receive*. Suppose, for instance, we should find it convenient, in order to procure a market for our fish and oil, to bargain with France for their free admission into her ports, and promise in return to receive her manufactures of silk at a less duty than we impose upon the same articles brought from elsewhere. This is the policy of Britain with respect to Portugal, whose wines she favours in preference to those of other nations, in return for advantages she derives from her commerce.—This article puts such a bargain entirely out of our power, yet suffers Britain to continue her restrictions upon a variety of our commodities. While it remains in force, no treaty whatever in favour of our manufactures, navigation, or commerce can be entered into with other nations; thus, without any equivalent from Britain in return for this article, any relaxation of her oppressive system of navigation, we bind our hands with respect to every other nation—and while she closes one door upon us, promises to leave our commerce and navigation imprisoned without making the smallest effort to open another.

The tenth article of the treaty partakes of the evils of the above in the want of reciprocity, and in depriving us of the means of doing ourselves justice, without recurring to arms, when the laws of nations with respect to us are violated. By this article, neither the debts due to individuals, nor money in the funds are to be *sequestered* or confiscated. First, this is not mutual, because it is well known that few Americans trust their money in British funds, since the establishment of our own, and that a balance of about ten millions (exclusive of stock) are due from our citizens on the general average to the subjects of Britain. By the law of nations, this property may be sequestered, though in general it has been *the practice* of late, since the commercial connections of nations have multiplied, not to *forfeit them*, and that principally because the balances being mutually due, little advantage would accrue to the nation.

As to the justice or injustice, it never has been made a question; the rule of nations is, “that the property either

private or public of an enemy may be taken," and I believe it would be difficult to shew, that it was more just to rob the merchant of his goods at sea, because his sovereign was at war, than to forfeit his debts, both being equally the property of an enemy, both tending equally to distress the individual, and neither being a violation of a private contract, because the nation who makes the forfeiture is no party to such contract. If the rights to humanity are considered, a capture at sea is a much greater breach of them, since it is frequently attended with the loss of life, and always with the loss of liberty. The stigma, therefore, that our minister was pleased to introduce into the treaty on this subject, could only have been intended as an illiberal reflection upon those virtuous men in our national legislature, who conceived this a proper fund out of which to compensate the losses committed by the unjust violences of Britain. That there are cases in which the sequestring and even the forfeiture of debts would be proper can hardly be disputed, as for instance, where it might prevent the aggressor from going into a war, by the fear of losing a considerable stake in the hands of his enemy: Where a war has actually broke out, and the sum due is so great as to disable the debtor nation from carrying it on with effect, if she suffered so large a balance to be remitted to her enemy, or where the enemy nation relies on that balance to support her military operations, surely it will not be disputed, that in either of these cases in which the safety of the nation so evidently required it, it would be highly imprudent and unjust to the people, to suffer such debts to be paid. So likewise, where the creditor nation had manifested the most hostile intentions, had stimulated barbarians to lead your people into captivity—had employed savages under their influence, to break up your frontiers, and to murder your wives and children—had without any pretence from justice, or the laws of nations, compelled your people to fight under their banners against your allies—and had given such interruptions to your commerce, as to distress and ruin your merchants—surely it would be but a slight retaliation for these wrongs, to say to such nation, we will detain in our hands the balance due to you, until you make ample compensation for the injury you have done us, and if you do not do us justice we will apply the money ourselves. Our situation is very peculiar, the bal-

ance we own to Britain, including stock in the funds, banks, &c. cannot be less than twenty-five millions of dollars, a much greater sum than the whole circulating specie of the United States. If it should be known in Britain that a war with us was intended, as much as possible of this capital would instantly be withdrawn from America; the consequence would be, if the government should not interpose to prevent the evil and retain the money, in the moment that we wanted credit most at the entrance into a war, the nation would be bankrupt, the banks and merchants to whom it would look for supplies, would be ruined and unable to afford them aid, while the credit of Britain, supported by our payments, would effect our destruction.

Again—By the laws of civilized nations, unnecessary and wanton destruction is prohibited; but all the seaport towns of America, are extremely exposed. Should Great Britain, in a war with us, or even without war, under some trifling pretence, think proper to burn our towns, and by this means ruin the merchants that were indebted to them, would it not be just in the government, to retaliate upon their merchants, by retaining these debts until compensation was made, or even to make compensation themselves out of this money? and where is the difference between making it answer one breach of the law of nations more than another? Why is it less proper to compensate the seamen who have lost their liberty, the family who has lost a father or a son, or a merchant who has lost his property by the most direct violence; than the citizen whose wharf and store are wantonly burned? The truth is, that this debt in our hands had a very considerable influence upon the politics of Britain, with respect to us. A great portion of the monied men, who generally go with administration, would be sensibly affected by the forfeiture, who are tremblingly alive to every operation of our government with respect to it; while we can work upon their fears, they will always be the advocates for peace with us, relieve their apprehensions and they will go with administration. There is great reason to believe that the propositions in Congress to sequester this debt, produced the relaxations in their predatory system that took place immediately after. Now, that Mr. Jay has convinced them that

they have nothing to fear in future, they have renewed them with equal violence. Can any thing be a better commentary upon the treaty than the present conduct of their marine; I know that much will be said in reply to this on the sanctity of public credit, &c. which may indeed prove what I shall readily admit, that so violent a remedy should not be recurred to on slight occasions; but nothing can be said to prove, that *no occasion* will justify such recurrence, or to convince a free people that their representatives are not the proper judges of the occasion.

The strict law of nations, as laid down both by Vattel and Bynkershooft, is, that such debts may be forfeited; the *usual* practice is, to stay the payment, but, not forfeit the debt, and the *constant* practice is, to pay the proceeds of real property, held by the subject of an enemy, into the public treasury; and yet this case is much stronger than that of debts, because the holder of real property derives his title from the state itself; but it is deemed absurd to let property pass from a state (when at war) to its rival, in order to feed the fire that is to consume itself.

Let me ask if a contract were made, during peace, by the merchants of one nation to deliver arms and ammunition to the merchants of another, and a war was to break out, or even to be rendered probable between these nations, would it be wrong to stop the delivery of those arms, though they should have been actually paid for? And is money less a necessary of war, in the present state of things, than arms? Should we be less weakened by paying all the current specie of the country, stopping our banks, and sinking the public funds, than by sending away a few tons of powder, or some hundred stand of arms? But if the law of nations on this subject is clear, to what purpose enter into new stipulations to give it a more binding force? A breach of the law of nations by an enemy, often renders that right which would otherwise have been wrong; *retaliation* is one of the laws of nations, but that law, so frequently essential to the support of our rights, is by this article entirely taken away, so far at least as relates to this object. And yet, this is the ground on which we might retaliate with the greatest prospect of success. But in any event, as we will always be the debtor nation, to what purpose are our hands bound? What equivalent do we receive

for this important concession? The having it in our power to hold this up in terrorem, if we never made any other use of it, might answer important purposes. Who can say, that it may not be sometimes proper to discourage the British from engrossing too great a share in our stocks and banks, or even giving too great a credit to our merchants; we already see the influence they have acquired over the *politics* of the country by means of these?

The fact is, that this article is dictated by the same principle that pervades so many others in the treaty; our trade and navigation are surrendered to the British—colonies of their merchants and factors are to be established on the north and on the west, on the sea coast and on the Mississippi—our banks are to be placed in their hands, and that the thralldom of the country may be complete, every encouragement is to be held out to their brethren in England, to extend their credit and fetter the country by the excess of their debt; at the same time, all the resources of the country are to be surrendered to them, even our last farthing is to be drawn away whenever it may be found necessary to bring us back to our former state of dependence upon their sovereign. Would it not have been wiser in America, to have submitted to the stamp act, with the advantages we enjoyed under the British government, than by yielding to this treaty to render ourselves equally dependant, without enjoying the rights of subjects. All that she would have drawn away in taxes, would not have equalled our present debt; our seamen would not have been treated so harshly as they now are, our commerce would have been less deranged, and the disgrace of slavery would have been less degrading if we never had been *free*.

C A T O.

C A T O—No. XIII.

THE few advocates that the treaty has yet met with, pretend to be zealously attached to the constitution of the United States, and endeavor to persuade weak minds that the opposition to it has originated in opposition to the federal government, and in party views and party principles; yet

unfortunately for them; it has so happened; that the states in which there is *least* of party spirit, manifested *most* warmth and most unanimity in their opposition. Thus South Carolina, and the city of Charleston particularly, Maryland, Delaware, Jersey and New-Hampshire, have contained no antifederal party; yet they are more decided in their disapprobation of the treaty than New-York, Philadelphia and Boston, where such parties have been supposed to exist. Is it not evident then, the *support* the treaty has received, has originated in party principles, aided by the British interest; while the principal opposition, originating with men who are distinguished for their attachment to the federal government, must be attributed to pure and disinterested patriotism, at whose shrine they have sacrificed their predilection for men and measures, when that predilection clashed with their country's interest.

It is remarkable too, that if we look over the list of names of the persons who were members of Congress in 1775 and '76, and subtract from them persons immediately connected with government, and who may be supposed to have influenced the treaty, we shall find them decided in their opposition to it, even though many of them have for years past retired from politics, and in no sort interfered in the parties of the day.

In Carolina, both the Rutledges and Gadsden. In Virginia, Jefferson, Madison, the grave and moderate chancellor Withe, who himself presided at the meeting that addressed the President on the subject of his proclamation, which was then deemed a test of violent federalism, together with every distinguished citizen of that important state, not holding an office. In Delaware, Cæsar Rodney, and the celebrated John Dickinson, the *Pennsylvania farmer*, whose enlightened pen was among the first, and certainly the most distinguished that has been marshalled on the side of American freedom. In Pennsylvania, Governour Mifflin, and chief justice Mac Kean. In New-Jersey I believe none of the old members of Congress are now living, but the uniform sentiment of that federal and patriotic state, may be urged as a proof of what their sentiments would have been, had they lived to blush at this blot on their country's honour. In New-York, the sentiments of Clinton, Floyd and Livingston, are known to be de-

decidedly opposed to the treaty. What are those of Schuyler and Duane, Lewis and Morris, the only surviving members, Jay excepted, I know not. That Mr. Jay, though he has *made* the treaty, does not *approve* of its principles (unless indeed Mr. Jay the negociator, is a different man from Mr. Jay the writer of an address to the citizens of New-York on the subject of the federal government) is obvious, for that address, if examined, will be found to urge our union *as a mean* to regulate our commerce, or to *compel* foreign nations to relax their impositions, and even to open their islands to us ; I speak from memory not having the address before me. Now if this sentiment was just then, when our numbers, wealth and resources were much less than at present ; and when Britain was at peace, and one hundred millions less in debt than at this day, Mr. Jay must necessarily now disapprove of a treaty which puts it out of our own power to regulate our commerce ; which confirms all the restrictions which we then considered as hostile to our trade and navigation, and an infinite number of new ones that did not then exist ; which instead of opening their islands, closes them upon us, unless we will consent to purchase an insignificant right to visit them in *boats*, by a disgraceful surrender of an important part of our commerce. So that we may, on the fullest proof, deduced from his own *unbiased* declaration, under his hand, number Mr. Jay among those who *in sentiment disapprove* of the treaty. The opinions of the ~~then~~ members of Connecticut, if any of them survive, or those of Mr. Samuel Adams or of Mr. Paine (who however holds an office) I am unacquainted with. Neither of the gentlemen who then held a place in Congress, from Rhode-Island, are now living. The only surviving member of that day from New-Hampshire (Mr. Langdon) has given his most decided opposition to the treaty ; though in so doing, he left his friends in the Senate, in whom he had most confidence, and the party with which he had generally voted. As far as I have yet learned, not *one native American*, who in those trying times directed the councils of America, unless he is or has been connected with the present administration, has manifested a sentiment favourable to this disgraceful treaty. How little credit then must those advocates for it deserve, who endeavour to prop their miserable edifice, by representing

its opponents as a factious few, and men ignorant of the great interests of their country

To this *positive* evidence of the sense of Americans, upon this subject, may be added very important negative testimony, deduced from the character of its most steadfast supporters. Without having a reference to men in office (whose views it may be improper to explain) we find every British subject, and every man who has been uniformly hostile to American independence, on the side of the treaty. That a few others who wish well to their country, have acquiesced in the measure, I am ready to acknowledge; attachment to party, personal friendship, a confidence in some on whom they are used to repose their political sentiments, family connection, will in every great question, have more or less influence. But as these all profess themselves decided friends to the constitution of the United States, I am persuaded that they will change their sentiments when they are convinced of the *unconstitutionality* of the treaty, of its being at war with every check, with every provision, by which it guards against the intrusion of one branch upon the rights of another, and which, if suffered, would terminate in despotism.

It will be found that no ratification by the President and Senate can carry this treaty into effect, without the concurrence of congress, nor in some points even with such concurrence, without the aid of the state legislatures.

No rule is better established than that in constructing any legal instrument, the whole must be taken together, that if two different parts appear to militate against each other, such a construction, if possible, is to be given them as to render each sensible without rejecting either; for it is absurd to suppose that contradictions can be intended, or that unmeaning provisions would be purposely inserted. The constitution of the United States has defined the powers of its different branches—to the executive, it has given a power to make treaties; to the judiciary, a right to judge of *all cases* arising under such treaties; to congress, a right to regulate commerce with foreign nations and with the Indians, to define piracy, to *establish offices*, and settle the salary of officers, to raise and appropriate money. These powers are perfectly distinct from each other, and may all be exercised without interference.—Thus the President and Senate may make treaties of

peace, of alliance, of neutrality, &c. but not such treaties as shall abridge the rights, either of congress or of the judiciary, as to those matters that are expressly reserved to them. On the other hand, congress shall not interfere, in any treaties as to those objects which are not expressly reserved to them, nor can they take from the judiciary the right to determine *all questions arising on treaties*, while such treaties remain in force. On any other construction, one breach of the constitution might possess itself of all the powers reserved to the others.—Thus, if the power to make treaties includes a right to regulate commerce—to raise money—to declare war—to appoint officers and settle their salaries—to establish new courts and new rules of jurisprudence—to place in other hands, rights reserved to the judiciary of the United States—to naturalize foreigners—to define and punish piracy and other offences against the United States, then the President and Senate, by combining with a foreign nation, can invest themselves with all power, and congress and the judiciary must become useless. If, for instance, the President and Senate can agree that three British and two American, or vice versa, may draw money at their discretion out of the public treasury, they must, as incident to their power, have a right to appropriate public money, to controul appropriations already made, and to fill the treasury, if empty, by taxes. For it would be absurd to say, that they have a right to give away public money, and yet that they have no money to give: a clear power always supposes every thing necessary to effectuate such power. If it is said, that they may *stipulate* for the payment of money, but that congress may or may not, at their discretion, raise and appropriate it to the use designated by such stipulation, then it will follow, that no treaty which comprises powers reserved to Congress can be binding, until they give it their sanction; in such case, any ratification by the President and Senate, until they have the assent of Congress must be nugatory—and as it may, also, involve us in disagreeable discussions with foreign powers, it must be intended that they have no right to such useless and perhaps dangerous ratifications. If, indeed, every article made a distinct treaty (which I believe will hardly be contended) then they might, without such assent, ratify those articles which did not interfere with the rights of Congress, but as to all others they have no power.

If on the other hand, after a treaty is entered into, Congress have no discretion, but *must* necessarily enact laws to carry it into effect, all the powers of government would be resolvable into the President and Senate, and Congress are a mere instrument in their hands; and to the millions Mr. Jay has already given away by the treaty, might be added, all the wealth of the United States. A treaty of commerce might tax even our exports in the face of the constitution; for surely if such a treaty can prohibit the exportation of certain commodities as the 12th article does, it might tax them, inasmuch as a prohibition involves greater power than taxation. If they can create new crimes by treaty, and define the punishment of them, the whole criminal code is subject to the will of the President and Senate. If they can exempt a favorite nation from the operation of *existing* laws, they may impose burdens upon others: for to repeal a law is not less a legislative act than to make one. Their being able to effectuate this by treaty *only*, and not in ordinary cases, instead of diminishing, adds to the evil and the danger the constitution would incur by this construction, since it would thereby enable them to call in a foreign power to aid in this usurpation; and as such treaties might be kept secret till every necessary measure was taken to enforce them, all resistance to oppression would be vain; nor could the President or Senate incur any risk by an attempt to seize all powers under pretence of a treaty, if we once admit that a right to make treaties includes every other power of government. There are so many absurdities involved in these positions, that it becomes our duty to shew that they do not exist *in the constitution*, but are to be avoided by an easy and natural construction. First, it appears from the powers given to Congress, that they are in every instance to retain their free agency and cannot be *compelled* by any other branch of the government to do any act—the words of the constitution are, *Congress shall have power*; then follows the enumeration of their powers.—They cannot then be *forced* to raise money in consequence of any treaty, nor to do any other act derogatory to the rights vested in them: the laws they have passed or shall pass, in pursuance of such powers, remain in full force, notwithstanding any treaty the executive may form, derogatory to them; nor is there a word in the constitution that sets treaties *above* the laws of the

United States; both, together with the constitution itself, are called supreme laws, and contradistinguished to the laws of *particular states only*. The words in Art. VI. of the constitution are, "this constitution and the laws of the United States, which shall be made in pursuance thereof, and all treaties made, or which shall be made under the authority of the United States, shall be the supreme laws of the land. And the judges in every state shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding." It will certainly not be pretended, that treaties are superior to the constitution, under which they are made; on the contrary, as it is held, that laws themselves have no force in opposition to the constitution, so it may be inferred from the order in which they are placed, as well as the reason of the thing, that treaties are *inferior* in force to laws. Were it otherwise, when a treaty was once ratified, however it might be abused, how destructive soever it might be to the United States in its operation, we never could get rid of it, because the judges who are sworn to observe the laws, would enforce it. And yet there are many cases enumerated by the writers on the law of nations, in which a treaty may be justifiably broke, and numberless reasons may exist with the sovereign of the country for violating it.

The only true and sound construction of the constitution is, 1st, that treaties are to have the force of laws, but like all other laws, are subject to the will of the sovereign, that is, to Congress. That the power of the President in making treaties can only extend to cases that are *not reserved* by the constitution to Congress—that whenever he negotiates as to other objects, his negotiations must be authorized by a prior or subsequent law. Though this construction may involve some *inconveniencies*, yet it avoids *absurdities*. It gives force to every part of the constitution; it rejects no provisions in it, nor makes one part clash with another. It is consistent with the practice in mixed governments—thus, in Britain, the king may make treaties, but when money is necessary to carry them into effect, when they clash with the laws of the nation, a legislative provision is necessary to give them effect. And the parliament can at any time make laws in face of a treaty; though, until such laws are made, the treaty is respected by the courts. Whatever has been said with respect

to the rights of the President and Senate, as opposed to the exclusive rights of Congress, applies with equal force to the rights of States; where the treaty is made relative to objects not surrendered by them, the treaty that is binding upon them must be constitutionally made, and consist with the powers yielded to the federal government, otherwise the President might barter away the independence of individual States, which makes a necessary part of the constitution of the United States, and which is expressly guaranteed.

Now, let us apply these principles to the treaty—and to begin with the sixth article. By this article commissioners are to be appointed, two by the British king, and two by the President and Senate; the fifth by the other four, or by lot. These commissioners are to sit *as a court*, to determine questions relative to the demands of the British merchants—they are to examine the parties on oath, to fix their *own* rules of evidence, and to decide *not by the laws of the country*, but according to their ideas of justice and equity. Their decision is to be both *arbitrary and final*.

The first inquiry is into the *right* of the President and Senate to appoint the commissioners contemplated by this article. If they have any such right, it must be derived from the constitution, for it will not be pretended that the king of Great Britain can give them new rights, or that they can enlarge their own power by entering into a treaty with a foreign nation. Yet the only powers the President and Senate have relative to this object, are, to “appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States, whose appointments are not herein provided for, *and which shall be established by law.*” Here the officers that the executive may appoint are *enumerated*, and so careful is the constitution to prevent their using any improper discretion in the creation of unnecessary officers, that it expressly limits his powers of appointment as to all others *to such as shall be established by law*. The only question then is, whether the commissioners contemplated by the treaty, are in the class of enumerated officers—*ist*. They are not ambassadors, consuls, judges of the supreme court, nor are they *established by law*. To say that the treaty is a law, and that therefore all officers established by treaty, are established by law, would only be to

argue in a circle, and to go back to the point we started from. It would be to assert that every thing might be done by treaty which could be done by law, and as I have before said that under the form of a treaty, the President and Senate might assume all powers, legislative, executive and judiciary. The only question then is, whether they are the *public ministers* contemplated by the constitution? It is evident from the words *public ministers* following the word *ambassadors*, and preceding the word *consuls*, that diplomatic ministers only could be intended, since it takes the highest and lowest of these, and uses general words, to "other public ministers," to designate the various intermediate grade. But surely, commissioners who are to hold their sessions in our own country, and to determine questions of private jurisprudence, cannot in this sense be denominated public ministers; as well might we call the auditor a public minister, because he settles the account of strangers and citizens; or the attorney-general, whose duty it is to see that the subjects of foreign princes are not mal-treated. In one sense indeed, not only they, but every other officer of the State, is a public minister; but that this is not the sense of the constitution, is evident, from its enumerating certain public officers, as for instance, judges of the supreme court (who in this extensive sense are also *public ministers*) and from its committing the right of appointment as to all others, to such as shall be *established by law*, it is evident that the constitution must have affixed some specific order to the words "other public ministers."

What that idea was, appears clearly from the context, and it would be the grossest abuse to extend it to a species of officers that never existed either in this, nor, as I believe, in any other country in the world. In the third section the same idea is still pursued—"He shall receive ambassadors and other public ministers." The constitution also preserves a right to vest the appointment of officers (other than those above-enumerated) either in the President *alone*, the *courts of law*, or the heads of departments. By what authority, then, can Mr. Jay and Lord Grenville, or the President and Senate, over-rule the constitution, and assume a power to controul the rights of Congress, to create the office, and to place it in such hands as they think proper, under the above limitations? But such are the powers of these commission-

ers, as even Congress itself cannot authorize without violating the constitution—They are to determine upon certain rights which British subjects claim under the treaty of Paris, which was an existing treaty at the time the constitution was acceded to; of course must have been in contemplation when the second section of the third article of the federal constitution declared, “that the judicial power shall extend to all cases in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority, and in all cases of admiralty and maritime jurisdiction, to controversies to which the United States shall be a party.”

Now let me ask, whether the cases that are to fall under the jurisdiction of these commissioners, are not, 1st. A case under a treaty made? and; 2d; Whether the United States are not parties? What power, then, exists either in the President and Senate, or even in the Legislature, to assume this right, which the union has vested in a judiciary, whom it has expressly declared to be independent of both? Or will it be said, that the power of making treaties implies a right to trample under foot every check that the constitution has provided against the abuses of either branch of government? Should the treasurer of the United States pay money out of the treasury in pursuance of any adjudication of these commissioners, and be afterwards called to account for the same before the judges of the supreme court, could he expect that they would suffer him to plead an order which clashes with their own powers, and derogates from the constitution? I know that inconveniences may arise from there not existing a power in the United States to determine controversies arising under treaties by the intervention of commissioners; I know also, that great security is derived from having the true construction of them, determined by the courts, and preventing the misapplication of public money, by leaving the disposition of it to tribunals that are bound by none of the solemn forms of law; whether the inconvenience does or does not overbalance these advantages, is at present out of the question. It is sufficient for me, and should be for the executive, that such is the constitution: If it is defective, let it be amended; but while it exists it is sacred.

The eighth article also provides for the *payment* of this high commission court, and settles, that their *salaries* and expences shall be regulated *by treaty*; so that the President and Senate are not only to appoint officers unknown to, and in the face of the constitution, but to assume a right, which they never yet have presumed to exercise, even where the officers were *legally* appointed, that of fixing their salaries. And this too in concurrence with his Britannic majesty.

C A T O.

C A T O—No. XIV.

THE numerous faults of the 6th article compel me reluctantly to make it the subject of another number; and the rather, as we shall thereby anticipate similar objections, which we should otherwise be obliged to notice in several. The appointment of commissioners without the concurrence of Congress—the ascertaining their salaries by treaty—their assumption of a jurisdiction over matters arising *under treaties and cases in which the United States are parties*, in derogation of the rights of the Supreme Court, having been shewn to violate the constitution—it will, I believe, be readily admitted, that no power exists in the President and Senate, to appropriate money to the payment of British debts, unless with the concurrence of Congress: That the treaty therefore is unconstitutional, inasmuch as it pledges them absolutely to do an act which they may or may not do at their discretion. Whether in the exercise of this discretion, they could constitutionally agree to this article? or whether if they could, it would be just or politic? are questions that remain to be examined. The right of the President and Senate, to appoint commissioners with judiciary powers, has already been discussed. The right of *Congress* to establish officers by law, is also limited—1st. To the President and Senate. 2d. To the courts of law. 3d. To the heads of departments. 4th. To the President alone. No power is vested in them to allow the appointment of any officer by *law*, and much less to admit that his Britannic majesty should exercise the right of appointing

judges for the trial of causes, in which they are themselves to be the parties. 2d. No power exists in Congress, to take from the Supreme Court the right to determine *all* cases arising under *treaties*—*all* cases in which the United States are parties. The determination of these cases are not less *exclusively* the right of the judiciary, than the making of laws exclusively of Congress. 3d. In examining these powers, I find none that enables them to change the rule of evidence—to alter the established laws of the country, or to authorize courts so to do. These rights therefore, not being given to Congress, I presume are exclusively invested in the State Legislatures; and of course I am led to doubt the right that Congress themselves have, to empower any five men, to examine the *plaintiff* on oath, and to receive in evidence, written depositions; papers, *copies* or *extracts*, authenticated in *any such way* “as the said commissioners shall see cause to require or allow.” A right so extensive, so liable to abuse, particularly when accompanied with the power to decide finally and arbitrarily, should, I think, be tolerated in no free state.

The justice or policy of the assumption of the debts of individuals, by the United States, must be determined by a reference to the treaty of Paris, and the subsequent measures of the United States. By the IVth article of that treaty, it was agreed, “That creditors on *either side* shall meet with no *lawful* impediment to the recovery of the full value in sterling money of all bona fide debts heretofore contracted.” It is observable that this article gives the creditors on neither side any claim upon the states, but leaves them to prosecute the individual, and the ordinary courts of law to determine their rights. In consequence of which some debtors have discharged all that was due; others have been more negligent.

Upon what principle can the British creditor charge the community with debts due from delinquent individuals? It is said, that laws were passed to restrain the payment of debts for a certain period—yet whoever will turn to Mr. Jefferson's letter to Mr. Hammond on this subject, will find, that these laws in *no one instance* have operated to the prejudice of the British creditor; that the right of Congress to make treaties, under the old confederation, being unlimited, the state courts always construed the treaty as a law which over-ruled state

laws—so that the British creditor has had the full effect of the treaty. Mr. Jefferson's reasoning was so conclusive on this head, that Mr. Hammond, notwithstanding his rage for writing and the able aid he had at Philadelphia, did not pretend to answer his arguments, but after some delay, evaded them by saying that he had sent his letters to England. Lord Grenville also (as appears by Mr. Pinckney's letters) was so struck with the force of his reasoning, that instead of answering it, he commends it in the highest terms, nor did it ever meet with a reply, until Camillus took up the gauntlet as the British champion.—It is true, indeed, that his arguments on this subject, partook so much of the quibbles of the bar, are so inconsistent with the stile of reasoning, adopted by statesmen, that, probably, Lord Grenville disdained to use them—with all his ingenuity, he has not, however, adduced *one instance* of a British creditor's being obstructed by our courts in the recovery of his debts. But admitting that there had been temporary obstructions arising, either from the situation of the country, or the breach of treaty on the part of Britain, all that she could possibly ask, was, that these obstructions should be removed. Now it is admitted that this has been done for more than six years past, so that the British creditor, from that period at least, has had the full effect of the treaty. Upon what pretence then must the United States step in between him and his debtor? Why must the farmer and mechanic be charged with the debt of the merchant, and states that owe nothing, that never have made laws of the nature complained of, pay the debts of those that owe much? But supposing (contrary to the most obvious principles of reason and justice) that the United States should be liable to the British creditors; surely, it would have been sufficient to place them in the situation of debtor, and submit themselves to the rules of law which prevailed in the state where the debt was contracted; these are known to be various in the different states—in some, for instance, land and slaves are not liable to be sold in fee, for debt, nor were so when the debt was contracted. In such states the debtor being dead, &c. it will be very difficult to get at the property in the hands of the heir.—In others, such assignments and conveyances may have been made as to put the recovery out of the creditor's power.—In others, laws, limiting the time for the recovery of debts to a short period,

may have barred the demand. All these are risks the creditor knew he was to run, when he made his contracts.—The United States, who were no party to this contract, can certainly not be bound to secure the *British creditor* against them, while it leaves them to operate against their own citizens. But what is still worse, even the rules of law, both in the decision and in the admission of evidence are to be relaxed in favour of British creditors. What circumstance, either in the treaty or in reason, can convert all these common law cases into proper subjects for courts of equity? What shall carry them, even beyond the rules established by courts of equity, which like courts of law are bound by certain known principles—while these commissioners are to determine, agreeable to their own (perhaps wild and indeterminate) ideas of “*equity and justice?*” A court of equity for instance, would not permit the complainant’s oath to influence the question, yet these commissioners are empowered to examine “*all persons that shall come before them on oath,*” nor will any courts admit of *extracts* as evidence; yet so solicitous has Mr. Jay been to swell the amount of British debts, and to increase the public debt, that every thing, *copies, papers, depositions, books, extracts,* are all to be admitted in evidence. It is very extraordinary, when we complain of an immense loss of property, by the depredations committed upon our trade, *by order* of the British government, and which of course they are bound to compensate—that Mr. Jay’s treaty sends us first to their courts of admiralty to determine the questions of right, which courts must necessarily determine agreeably to the spirit of the very instructions we complain of, nor is any case to get to his commissioners until such admiralty courts have decided upon it. The Americans must go through all the delays, and sustain all the expence of suits in British courts, to obtain redress for losses which the British government has occasioned, while the British creditor is to charge the United States with debts which *they do not owe*, without the expence of a suit in any court, and under the advantage of having all the forms of law relaxed in his favour. This is certainly a new species of reciprocity, of which nothing but the inventive genius of Mr. Jay, sharpened by the warmest attachment to Britain, could have discovered. It is a little extraordinary too, that when this article was

under consideration, Mr. Jay should not have reflected that the 4th article of the treaty of Paris was *mutual*, that it related to debts of *either side*; yet Mr. Jay has made no stipulation for the payment of debts due *to us* from British debtors.

It is true that they have passed no laws to obstruct the recovery of them. It is also true that without such laws their courts of equity have undertaken to prevent their being recovered. And I need only appeal to the treasurer of this state to shew the amount that has been paid in discharge of debts due from persons whose estates have been forfeited, and which such persons were liable to pay to their creditors; and that too, in many cases in which suits had actually been brought in England, and the causes stopped by their courts. If my memory serves me, affidavits to this purpose from respectable merchants of New-York will be found on the files of our house of Assembly. It cannot be denied, that where the state has discharged such debts, they are creditors to the amount, and that under the express words of the treaty of Paris, they have a right to recover. Yet Mr. Jay has carefully excluded them from the benefit of this article, since he well knew that the amount of debts due from British subjects to the states and to individuals, exceeded the demands of British creditors. Is any man so blind as not to see in this article a continuation of that system which forms the strength of government upon the most corrupt principles. A public debt is thought necessary to keep the government together, as if government wanted any strength but that which she derived from the sense the people had of the advantages they derived from it. New debts are therefore to be created under every possible pretence. New debts will occasion new taxes—new taxes new officers—and new officers new supporters of the government, at the expence of the yeomanry of the country, for it is observable, that the public creditors, bank-holders, &c. pay no taxes; these burdens are all borne by those who maintain their state, and nothing is left for these lordlings to do, but to watch over the safety of government, and sing hosannas to the *highest*. It was necessary to dry up the resources of the country, least the irritation occasioned by British insolence, and the confirmation of them by treaty, should at length rouse the spirit of the people; lest being too rich they should revolt against that virtuous supporter of our government, the British nation!

It was foreseen too, as Camillus acknowledges, that clamours would be excited by the treaty. The British party might be too weak to silence them. It was a refined stroke of policy to strengthen their hands by the addition of such merchants as had unsettled accounts in Britain. The assumption of his debts by the general government, like the assumption of the state debts, cannot fail to make many partizans, nothing can be more convenient for the merchant, than that the farmer, the shop-keeper, the mechanic, the land-holder, should discharge the debts he owes, while he is tearing them to pieces for the principal, interest and profit upon that very capital which the state assumes. It may be said that this may be recovered against him by the state; but every one knows how negligent public bodies are in the recovery of debts—how impossible it will be for them to arrange all the little items of evidence on which the creditor recovers before the commissioners, especially where he is not confined to strict legal proof, and at all events, what advantages the debtor will derive from many years delay. Can we wonder that some merchants are found in our cities to advocate a treaty which enables them to ride on the necks of their fellow citizens! Should we not rather be surpris'd (when the British subjects are deducted) to find that number so very small? Is it not at once a proof of their virtue, and the egregious vices of the treaty?

C A T O.

 C A T O—No. XV.

THE seventh article is subject, in a constitutional view, to all the objections which have been noticed in the 6th. Nothing therefore remains but to examine its political character. The first thing that strikes us, is its studied obscurity and the extreme solicitude of the parties to render Mr. Jefferson obnoxious to the censure it might naturally be supposed to draw after it, by appearing to make it originate in his letter to Mr. Hammond, written at the moment when the irritations occasioned by the controversy with Mr. Genet were highest, and when it was doubtful whether a rupture with France would not have compelled us, according to the then favourite system, to throw ourselves into the arms of England. This letter, as was natural under these circumstances, carries our concessions to Britain, far beyond any thing which the

law of nations will warrant. This only requires the restoration of vessels taken in the ports or waters of neutral nations, *if they can be recovered*; every capture under such circumstances being an insult to the nation within the jurisdiction of whom such capture was made. They also consider it as an unfriendly act, voluntarily to suffer the vessels of either party to arm themselves against the other, and should any vessel which had been so armed, enter their ports with prizes, it would be strictly consonant to the laws of nations, to order such vessel to depart *with her prize*. But no writer, that I have met with, gives the neutral nation a right to seize a prize, taken on the high seas, and to restore it to the original owner; or much less, binds them to pay for prizes so taken, which never entered their ports; merely because the vessel by which it had been captured, had privately and without the consent or knowledge of the neutral government, armed in her ports. Mr. Jefferson's letter declares the President's opinion to be, that as by *treaty* with three nations, we are bound to use all the *means in our power* to restore vessels *taken in our ports; waters; or seas near our shores*, so he thought that the same protection should be extended to the vessels of Britain; that we had no such treaty with her—that if in any particular case, we had forbore or should forbore, for political reasons to use the means for the restoring such vessels, he *then* thought we should be bound to make compensation; but otherwise, where we had used means, and those means proved ineffectual, as we should not be bound to make restoration to the *nations with whom we had treaties*—he gave *no opinion* that it ought to be done to Great Britain; that the same principle should be extended, even to captures made on the high seas, by vessels armed in our ports; *provided the prizes were brought into our ports*. He concludes as the result of these sentiments, “And hence, you see sir, that the President contemplates restitution or compensation in cases *before* the 7th of August [1793] and after that date, restitution if it *can be effected* by any means in our power.” From this it appears, that though the President's opinion was declared as to some cases, yet that as to others he gave *no opinion*. If then, the article had referred, as some have contended, to the letter for a definition of the cases in which compensation was to be made, it would be wholly indefinite, and it must have been left to the discretion of the commissioners, a majority of whom may be British subjects, to declare the cases in which

the United States shall be liable ; as it was, however, possible that a majority of these commissioners, had the question been left to be construed by Mr. Jefferson's letter, would not have extended it to the length Lord Grenville wished, this discretion was taken from them, and the cases in which the United States should be liable, carried not only far beyond what the President had declared to be his opinion, to wit, " The case of prizes taken in our waters, which we had used no means to have restored, and prizes taken upon the high seas by vessels armed in our ports, *if brought into our harbours.* The treaty renders us liable in every possible case, whether it was or was not in our power to restore the prize ; whether it was taken upon the high seas, and sailed to our own or foreign ports. Nor is the letter referred to in any part of the article, in order to define the case intended by the article, but merely (if it had any other object than that I have mentioned) to prevent a second investigation of the question, where the engagements contained in the letter had been already fulfilled. This will appear from the preamble which is always considered as a key to the article, " and whereas certain merchants and others, his majesty's subjects, complain, that in the course of the war they have sustained loss and damage by reason of the captures of the vessels and merchandize, taken within the limits and jurisdiction of the States, and brought into the ports of the same, *or taken by vessels originally armed in ports of the United States ;* it is agreed that in *all such cases* where restitution shall not have been made agreeably to the tenor of the letter from Mr. Jefferson to Mr. Hammond, &c. the complaints of the parties shall be referred to the commissioners, &c".

It is observable, that there is not one word in this article that confines the judgment of the commissioners to cases in which we either connived at the capture, or used no means to restore the prize ; nor to the case of prizes, which, after having been captured on the high seas, came into our ports ; but extends the provision to *all cases* of vessels taken in our waters, provided they ever entered our ports, notwithstanding our having been unable to recover them ; or wherever taken, *or by vessels armed in our harbours, whether they came to our ports or not.* The article contains a complete and ample definition of the cases intended, so that the mention of the letter cannot be designed in any sort to limit the sense ; it does not even say that restitution *shall be made* agreeably to the

tenor of the letter, but “ where restitution has not been already made agreeably to the tenor of the letter,” that then in *all cases* of captures as described in the preamble, the commissioners shall determine the amount, and the United States shall pay. The reference to the letter was to answer the double purpose—first, of rendering the writer odious, whom Camillus tells us was Mr. Jay’s rival in his further pursuit of power; and to preclude the captors, whose prizes had been taken from them agreeably to the tenor of the letter, from a second hearing before the commissioners. Thus, then, Mr. Jay has, without any warrant from his own government, without any equivalent from the British, without any justification drawn from the law of nations, mortgaged the United States for uncertain and immeasurable sums. It was not enough, it seems, to relinquish our well founded claim, for compensation for the detention of our posts, the loss of our fur trade—the property carried off. It was not enough to charge the yeomanry of the country with the debts of the merchants; but in addition to this, we must pay a very considerable part of the havoc that has been made by French privateers on British property; and this too without any real or pretended equivalent, and while our trade was suffering under British depredations. One would really suppose that the treasures of the United States were inexhaustible; that the art of government consisted not in relieving the burthens of the people, but in adding to their load that they might crouch the more before their lordly masters; that instead of seeking for the support of government, by convincing the people of its influence on their happiness, the object was to work upon our fears only—to assemble a chosen corps of stock-jobbers about—I had almost said the throne—to make new debts, in order to acquire new recruits to this valuable band—to impose new taxes that the uneasy sensations, occasioned thereby, may afford a pretence to armed supporters of government to exert their benign influence—to strengthen these by innumerable officers, by boards of commissioners, no less than thirteen of which are provided for by this treaty, by ministers extraordinary, to put the concluding hand to a variety of matters that are purposely left unfinished by the treaty; by bands of surveyors, who are, at the expence of the union, to run over the interior of the country. In short, by adopting every expence which the profusion of a corrupt government has encouraged in Britain.

C A T Q.

N. B. As the space allotted for this paper will not admit of my entering upon a new article, I will indulge myself in a short note, in order to observe, that Camillus having done me the honor to notice some of my remarks, it will give me peculiar pleasure, when I can do it without breaking in upon the course of my observations on the treaty, to address myself to him in reply. For the present I confine myself to request, that his readers and mine will suspend their judgment of it until an investigation of his law and his facts shall enable them to judge of both with some degree of precision. Genius is with difficulty restrained within the limits of either; and as a specimen of the boldness with which it sometimes overleaps both, I will only refer back to one of his late papers. In speaking of the Indian trade, he asserts, that seven-eighths of their trade, exclusive of the Hudson Bay territories, are drawn from the north side of the lakes; the position I maintain is directly the reverse. As neither of us will probably think it delicate to balance the testimony we have received from individuals, we must recur to other data to confirm or refute our respective assertions. Those I shall assume are so consonant to known and established facts, that I think I may rely upon Camillus's candor to admit them. My first position is, that savage nations hunt chiefly for subsistence, and to procure necessaries which they cannot do without. That the proportion of this that each enjoys, is much the same in the respective tribes on either side of the lakes—That, therefore, where the greatest number of savages live by the chase, the greatest quantity of furs and peltry will be collected; with this difference, that the Indians who are nearest the market, will be most careful of those they collect; will wear finer, and exchange more; they will also have a greater taste for luxuries, which will stimulate their industry, and increase their ardour for the chase.

That the bleak regions on the north side of the lake are more thinly inhabited than those on the south, where not only the difference of latitude, but the effect of the large bodies of waters in softening the north-west winds, renders the climate much milder, and better fitted for the habitation of those who live a savage life. The great trading stations are therefore all on the *south side* of the lakes. But let us for the present wave all these circumstances which are so well known to operate upon the relative proportion of savages to the territory they inhabit; and let us, for the present, take the *extent* of

territory, as in part the rule by which to determine the number of inhabitants : it will even then be found, that the trading country of the United States is near four times larger than that of Canada, exclusive of the limits of the Hudson Bay company. Camillus professes to be ignorant of the extent of their boundary, which, I must own, surprises me, since he assures us, that he has made the fur trade an object of enquiry for years back ; and more particularly as it appears from the whole course of his writing, that he can command any materials in the power of Mr. Jay. It is hardly conceivable that this gentleman, when treating on the subject of those limits in *London*, where every document of this kind could be instantly acquired, would have been so extremely negligent as not to have possessed himself of the settlement by the commissioners, after the treaty of *Utrecht*, and the still more extended claim of the company to which, without doubt, the utmost latitude will *now* be allowed. The southern boundary of the Hudson's Bay Company, as settled by commissioners subsequent to the treaty of *Utrecht*, is the forty-ninth degree of north latitude, in the whole extent until it meets the Moose river, which brings it one third of a degree more south, thence it runs a north east course, nearly parallel with the St. Laurence river, along the heights that divide the water, which falls into Hudson's Bay from those that run into the St. Laurence. This line runs within twenty miles of the north side of the Lake of the Woods, supposing, as the latest geographers do, that lake to lie in forty-eight degrees and forty minutes north latitude ; if therefore a line run from that lake due west, should intersect the Mississippi, or if not, till it intersects a line drawn from the head of that river, due north, until it meets the west line so drawn from the Lake of the Woods, which must, in that case, be our boundary, will only leave a slip of country of less than thirty miles in extent to the north, nor will it be much broader on the north of Lake Superior. To the west of the Mississippi the British have no claim. Should the Lake of the Woods lie one half a degree higher, which is very probable, if we judge from most maps of that country, our line will overtop that of the Hudson Bay Company. But whether it does or not, the only Indian territory on the north side of the lakes of the least consequence, is the space surrounded by the Lakes, and bounded on the east by the Attawa river, which empties itself at Montreal. The country east of that, I pre-

sume cannot be frequented by our traders any more than the country east of the Hudson will. By their deducting both these from our account, and placing the Mississippi four degrees to the west of the lake of woods, the British Indian territory will be found (after deducting the great lake and settled country on both sides) to be to that of the United States as 15 is to 55. As to any territory to the west of the Mississippi, I know of no ground whatever on which it can be claimed by the British, the west and north west coast of America being actually possessed by Spain and Russia, who made the first discoveries there, and not by Britain, if we should hold so absurd a doctrine as to suppose that either one or the other could give a title to the great inland territory. After this statement of facts, if we take into consideration the infinitely greater population of the southern than the northern nations, it will not, I believe, be deemed extravagant to assert, that the Indian trade on our territory is ten times greater than that on the British side of the lakes. How greatly then must Camillus have been deceived, even though he has been for years past, as he tells us collecting information on this subject? How suspicious should it render him and his readers, when he makes assertions relative to matters with which he has taken less time to make himself acquainted? The limits of this paper will not permit me to travel from his *facts* to his *law*, or to compliment him upon the ingenuity with which he makes a judgment in the reign of Elizabeth, a commentary upon an act which past in that of Charles the Second, half a century afterwards. It would, perhaps, have been more in point to have shewn any one decision of Lord Coke, in which a bare implication was said to over-rule an express statute. But an extraordinary defence requires an extraordinary means of defence. As I greatly respect the talents of Camillus, I cannot but with sympathy enter into his feelings, when this rash undertaking compels him to sin against his better judgment.

C A T O,

C A T O—No. XVI

THE 9th article stipulates, that such British subjects as now hold lands in the territory of the United States, shall continue to hold them according to the *tenure and nature of their respective estates*, and may sell, grant, or devise them as if they were natives, and renders this stipulation mutual. Though this article may not be extensively dan-

gerous, yet it merits our attention, as it appears to infringe the constitutional independence of the respective states.—Congress alone have the power to naturalize, but neither Congress or any member of the federal government, appear to me to have any right to declare the tenure by which lands shall be holden in the territories of the individual states, without naturalization. This is an act of sovereignty which is confined to the State Législature, and which they have not ceded to Congress; about which, therefore, I am led to doubt the right of the President and Senate to treat; “powers not delegated to the United States, being expressly reserved to the states, or the people thereof.” Is this right of the states abridged by the power of the President and Senate to make treaties? Are not their powers to treat confined to such objects as the constitution entrusts to the federal government? Had they stipulated that the Governor of New-York should always be a native of Britain, or that British subjects should, on their arrival, be members of the city corporation, or freemen of the city, we should, I believe, have pronounced this article void, as an intrusion upon the rights of the states, and an assumption of powers not vested in the parties treating. Is it left so to declare the terms on which individuals shall hold lands in the territories of the respective states? To give rights to strangers which citizens cannot enjoy, the rights of landholders without the burthens; the right of holding real property without being bound to defend it; the right to be protected in the possession of that property, by states to whom they owe no allegiance, and against whom they may even make war without incurring a forfeiture.

Happy British subjects! As merchants, you may enjoy, in every part of our country, all the privileges of our fellow-citizens—As creditors, you are entitled to recover your debts, without being compelled to submit to the forms of suits, or the usual rules of evidence—As officers, you are to command our respectful homage—As landholders, you are to possess our lands in peace, while the burden of defending them devolves on us, your former equals, your present vassals. The produce of our soil is to be diverted from every other port but yours—Our seamen are to fight your battles, but to be treated as pirates if they appear in arms against you. Our statesmen condescend to be your apologists, and our legislatures are bound in future to do no act which may affect your interests! While Congress only are entrusted with the power of declar-

ing the rules of naturalization, lest one state, by making the terms too easy, should intrude citizens upon others, can it be constitutional for the President and Senate to exercise the more dangerous power of investing the lands of the respective states in foreigners who shall not be compelled to defend them? If the right exists as to British subjects who *now* hold lands, it may be extended, on some future occasion, to all who may hereafter choose to purchase. It is true the article does not go that length, but the principle that justifies it, as far as it has gone, will apply equally to every extension of it. It may not be improper to remind those who view this article with indifference, of the quantity of land held in Georgia by companies whose avowed object is to sell it in Europe. If I am rightly informed, it greatly exceeds all the land retained by the state. In New-York, the lands commonly called Morris's, Macomb's, and Scriba's purchases, equal in quantity all the remaining lands of the state. They have had agents for some time past in England for sale of these lands; if they were effected before the ratification, or at least before the signature of the treaty, as much land may be held in this state by British subjects as by American citizens. If they were held in trust, which is highly probable, the person in whose favor the trust was created, is now secured from forfeiture, since they are to hold "according to the *nature and tenure of their respective estates and titles, &c.*" The British construction of this article will give them the full benefit of their purchases; it may then happen, even under the present treaty, as it now stands, that the greater part of the lands of two states, at least, belong to British subjects, who may look to their own sovereign for protection, even against the state whose lands they hold.—What dangers and difficulties may not this expose the states to? If it is admitted, that the President and Senate can, by treaty, stipulate, without the consent of a state, that their lands may be held by British subjects, what principle is there in the constitution which prevents their making the same stipulation in favour of the British king, or their transferring all the vacant lands in every state to him? These were formerly invested in him, and I doubt not that if he were to set up a claim under this article, that he would find advocates among us to support it. Let it be remembered that the exercise of these powers by the President and Senate is only derived from an *implication* founded on their right to make treaties. I

would ask, whether a stronger implication in favour of an exclusive right in the state government to make regulations relative to this object is not found in the third section, fourth article of the constitution—"Congress shall have the power to dispose of and make all needful rules and regulations respecting the territory, or other property of the United States, and nothing in this constitution shall be so construed as to prejudice any claims of the United States, or of any particular States." The claim of states to declare the tenure on which their lands shall be held, has never been disputed, and so jealous have some of them been of it, that they have repeatedly refused to admit foreigners to hold lands without naturalization.

Several articles which appear to me exceptionable, remain to be discussed; but circumstances arising from the present unhappy situation of the city, compel me to lay aside my pen. When these circumstances cease to operate, I may again resume it. I trust, however, that enough has been said to shew, that the treaty has obtained no adequate compensation for the injuries we have suffered; that it has relinquished important claims that we had upon the British government, that it has given no protection to our seamen, that it is injurious to our commerce, and ruinous to our navigation, that it takes from us the means we possessed of retaliating injuries without the hazard of a war, that it pledged the country for immense sums of money, which it does not owe, while it curtails our demands upon Britain; that it gives the British subjects a variety of privileges in our country, which are but partially returned to us, that it counteracts the existing laws, and violates the federal constitution, and that it infringes the rights of individual states. It is possible, that in stating my idea of the treaty, I may have run into errors, all I can say, is, that if I have, none of them were intentional; that having no party to serve, no personal interest to promote, I have only spoken sentiments which an ardent love for a country which I have long served has inspired without wishing to mislead. I beg my fellow citizens to recollect, that if the treaty will bear the construction I have given it, though an ingenious commentator may put a different sense upon several articles; still the objections I state will remain in force, since it is not the *weakest*, but the *strangest* nation that construes the articles that admit of doubts, of which we have a striking instance in this very treaty.—In the treaty of peace, the article

relative to the taking away negroes, &c. the words are express, the intention was acknowledged at the time by the commissioners on both sides, and not doubted by either government; yet we find that Camillus has, by implications, &c. spured out a meaning which he says renders it *doubtful*; he justifies Mr. Jay in relinquishing our claim.—If this is just reasoning in the mouth of an American writer, it will still be more so in that of Britain; and the most unfavourable construction of the treaty, will be the true one with respect to us; because every doubt is to be construed against us. This argument is rendered much stronger from the circumstances under which Mr. Jay treated; for if when they were more unfavourable to Britain, than we can again hope to find them, doubtful constructions were to be construed to her advantage, by the admission of *our* envoy, they must, in future, be so. Let us not then form our opinion of the treaty from distant *implications*, or remote deductions, drawn from fanciful reasonings on the law of nations.

The express words of the treaty are our only true guide. Where they contain unfavourable stipulations, or where they neglect explicitly to declare our rights, their plain and obvious meaning is to enforce the first, and to abridge the last. Of this we have already sufficient proof in the construction they have put on some parts of the treaty by their late instructions. I should, before I close, apologise for many errors, either of the copiest or of the press, or both: It has so happened, that most of the copies were made under such circumstances as not to have been submitted to my inspection, which, together with the errors of the press multiplied, by the different impressions they have gone through, has introduced many mistakes, which the candid reader will correct. It is also proper that I should mention an error of my own in the seventh number, which has not been noticed; but which, as I have no wish to mislead, I am bound to correct. In enumerating the impositions of Britain, I stated, that she laid heavy duties on our commodities, rice and tobacco particularly, and added, *that we laid none upon her, but such as by treaty we allowed her to equalize.*—The last part of this article is an error, which the hasty manner in which these papers have been written betrayed me into, and which I take these means to acknowledge, lest (though of no great importance) it might tend to deceive those who had not at hand the proper means of correcting the mistake. C A T O.

