

Thomas Jefferson to Gouverneur Morris, August 16, 1793 , from The Works of Thomas Jefferson in Twelve Volumes. Federal Edition. Collected and Edited by Paul Leicester Ford.

TO THE U. S. MINISTER TO FRANCE¹ J. MSS. (GOUVERNEUR MORRIS)

1 A history of the Cabinet proceedings on this subject is given in vol. 1, pages 252–3, and 259, as well as in the Cabinet opinion of Aug. 23, post. In *Hamilton's Works* is given a memorandum intended as an outline of this letter, as follows:

I. Explanation of fitting our privateers in Charleston, put on footing of there being no law.

II. Letter persisting in objection to it.

III. Reclaims Gideon Henfield.

IV. Very moderate answer, that courts will do right.

V. Concerning Sloop *Republican*:

1. Issuing commissions a mere consular act.

2. Insists on right of arming for defence.

3. Speaks of treaty permitting to enter.

4. Armed—to equip themselves.

5. France always in practice of issuing commissions.

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6. Will give orders to consuls to take precautions to respect our territory—political opinions of President.

7. Insists on right of arming vessels—abandonment unworthy its friends.

VI. In waiting until representatives of sovereign had resolved to adopt or reject.

VII. Complaint of proceedings of District Court against the *William*—persons labor secretly to have misunderstood.

VIII. Letter concerning debt—accomplish *infernal system*—since the federal government *without consulting Congress*.

IX. Awkwardness—Governor avails himself of political opinions.

X. Letter—opinions, private and public, of President—on s'est empressé Je ne sais sous quelle influence impression étrangères —complaints of obstruction to consular jurisdiction.

XI. Letter concerning sloop *William* requiring relinquishment.

XII. Letter concerning another vessel in same situation.

XIII. Letter concerning *Little Democrat*—letter on account of the *state* to augment the marine of France—commission, &c.

Blamed in a conversation the judicial proceedings of the consul—ought only to have made a ministerial inquiry.

1. Case of the *Swallow*.”

Another paper on the same subject in Hamilton's writing is in the Jefferson MSS., and is endorsed by Jefferson: “Hamilton's plan of remonstrance against Genet, when it was

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concluded to write Gouverneur Morris, as was afterwards done, Aug. 16, 93." As it differs materially it is here added:

Aug. 2, 93.

"I. Discussion of the points in controversy:

1. Fitting out privateers—1, as it stands on the general law of Nations—2, upon the Treaties.

2. Inlistment of our Citizens as connected with it, with reference to his *observations*.

II. Exercise of Consular Jurisdiction.

1. As it stands on general law of Nations.

2. Upon Treaties.

3. Upon the principles of France herself—see Vatel.

History of her conduct in regard to these points:

I. Impropriety of what was done at Charleston before he had come to the seat of government [and after he?] has known its sentiments, &c.

II. The expectation he gave in conversation & in writing that he would not repeat the *fitting of privateers* and would prevent improper exercise of Consular jurisdiction.

III. His contravention of these expectations, citing the different instances as to fitting out privateers and condemning prizes.

IV. Attempting to justify them as matters of right.

Enforce the idea that if his constructions were right his course was wrong.

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Ought not have persisted in doing what was contrary to the opinion of this Government, but ought to have referred the matter to National discussion, &c.

V. Impropriety of his having *reclaimed* our offending citizens as a matter of right.

VI. Disregard of the intimation of the Government with respect to Privateers *Citizen Genet* and *Sans Culotte*.

All the particulars.

VII. Disregard of sense of Government in regard to *Little Democrat*.

Stating particulars.

VIII. Offensive style of the communications, citing instances with summary comments.

IX. In connection with the last, the excessive pretensions of the Vice-Consuls disrespectfully urged & patronized by him, by transmitting and upholding their communications.

Improprieties of conduct in other respects:

I. His being President of a political society—Society of Friends of Liberty & Equality.

II. His declaration to Mr. Dallas that he would appeal from the President to the People.

General observations on the inference to be drawn from such circumstances—an inference fortified by the conduct of his Secretary, Mr. Pascal, stating it with proper remarks on the impropriety of a privileged person pursuing such a course.”

On the same subject Edmund Randolph wrote Jefferson:

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“ Philadelphia, August 4. 1793.

“I can never believe that the impeachment of Mr. G. should be drawn from any other sources, than his written and verbal communications with you. That he is president of a particular society, that his secretary may have written inflammatory queries, &c. may be reasons, privately operating to the demand of his recal, I shall not absolutely deny; because foreign ministers may give causes of displeasure, and render themselves unacceptable for intercourse by acts, which may not however be strong enough to become articles of formal accusation. But they will not satisfy the American mind, which constitutes the soul of our government.

In the letter therefore, to be written to him, the people, to whom the whole affair will sooner or later be exposed, ought to be kept in view: and it ought not to be forgotten, that Mr. G. has some zealous partizans, and the French nation too many to suffer subtleties or caprices to justify the harsh measure.

I do not conceive it to be any part of what you have requested of me, or in any degree necessary, to suggest the outlines of these remarks, which ought to precede the charges. It is only for me, to assign the reasons, upon which I grounded my opinion for a recall.

1. His assurances, that no other commissions should be granted to privateers within the U. S. and the repetition notwithstanding.
2. The continuance of the consuls within his controul and knowledge, to exercise the functions of the admiralty; his declarations to the contrary notwithstanding.
3. His sending off the *Little Democrat* against the wishes of the government expressed to him.
4. His reprehensible language concerning and addressed to the Executive; discarding however, all ambiguities.

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5. His undertaking to reclaim those citizens of the U. S. who had been prosecuted for entering on board of French privateers.”

The following memorandum in Jefferson's writing apparently indicates his own ideas:

“Analysis of the letter.

Object of the Proclamation.

Genet's arrival at Charleston, & conduct till his arrival at Philadelphia. His subsequent conduct & correspondence reduced under the following heads.

1. His right to arm in our ports, enlist our citizens, reclaim agt. their punishment.
2. The right of the Consuls to hold Courts of Admiralty. Courts of the U. S. to try questions of Prize or not prize. Of the U. S. to protect vessels in their waters & on their coasts.
3. Requisition to drive away letters of Marque, as Privateers.
4. Claim to sell prize goods *duty free*.
5. Compld. that French goods are taken by the English out of American bottoms.
6. His assuming *to act* in opposition to the declared will of the govrrnt. within their territory.

Observations

on his dictating what subjects are proper for Congress, when they should be called &c.

His disrespectful expressions of the President of the nation.

Proofs of our friendly dispositions—particular instances.

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His recall urged—& speedily.”

Finally, another paper in Jefferson's writing throws further light on the framing of the letter.

“Alteration proposed in the Letter to G. Morris, in consequence of an examination of the treaties between France & Great Britain.

“Suppose a war between these states & Gr. Britain by the treaties Between France & Gr. Britain, in force at the signature of ours, we could not have been permitted to arm in the ports of France. She could not then have meant, in this Article, to give us such a right. She has manifested the same sense of it again in her subsequent treaty with England, made 8. years after the date of ours, stipulating in the 16th. Article of it, in the same words with our 22d., that foreign privateers, *not being subjects of either crown*, should not arm against either, in the ports of the other. If this had amounted to an affirmative stipulation that the subjects of the other crown might arm in her ports *against us*, it would have been in direct contradiction to her 22d. Article with us. So that to give to these negative stipulations an affirmative effect is to render them inconsistent with each other, & with good faith: to give them only their negative & natural effect, is to reconcile them to one another, & to good faith; & is clearly to adopt the sense in which France herself has expounded them. We may justly conclude then that the article only obliges us to refuse this right, in the present case, to Great Britain &c.”

At the bottom of this paper Hamilton has written:

“‘Not *being subjects* of either crown’ said to be in the same words with our 22 Article.—The words of our Article are ‘non appartenant’ *not belonging* &c. The sense is the same but not the words.

“Approved with this remark, which merely regards accuracy of expression. A. Hamilton.”

And Jefferson has added in margin: “Submitted essentially in the same words with our 22.”

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Randolph has in turn endorsed: "I am content either way. Edm. Randolph." And below this Jefferson wrote: "The Sec. at War has seen & approved."

Phila., Augt. 16, 1793.

Sir, —In my letter of June 13th, I enclosed to you the copies of several letters which had passed between Mr. Ternant, Mr. Genet & myself, on the occurrences to which the present war had given rise within our ports. The object of this communication was to enable you to explain the principles on which our government was conducting itself towards the belligerent parties; principles which might not in all cases be satisfactory to all, but were meant to be just and impartial to all. Mr. Genet had been then but a little time with us; & but a little more was necessary to develop in him a character and conduct so unexpected, & so extraordinary, as to place us in the most distressing dilemma, between our regard for his nation, which is constant & sincere, & a regard for our laws, the authority of which must be maintained; for the peace of our country, which the Executive magistrate is charged to preserve; for it's honour, offended in the person of that magistrate; & for it's character grossly traduced in the conversations & letters of this gentleman. In the course of these transactions, it has been a great comfort to us to believe that none of them were within the intentions or expectations of his employers. These had been too recently expressed in acts which nothing could discolour, in the letters of the Executive Council, in the letter & decrees of the National Assembly, & in the general demeanor of the nation towards us, to ascribe to them things of so contrary a character. Our first duty therefore was to draw a strong line between their intentions & the proceedings of their minister; our second, to lay those proceedings faithfully before them.

On the declaration of war between France & England, the U. S. being at peace with both, their situation was so new & unexperienced by themselves, that their citizens were not in the first instant, sensible of the new duties resulting therefrom, & of the restraints it would impose even *on their dispositions* towards the belligerent powers. Some of them imagined

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(and chiefly their transcient sea-faring citizens) that they were free to indulge those dispositions, to take side with either party, and enrich themselves by depredations on the commerce of the other, & were meditating enterprises of this nature, as there was reason to believe. In this state of the public mind, and before it should take an erroneous direction, difficult to be set right and dangerous to themselves & their country, the President thought it expedient, through the channel of a proclamation. to remind our fellow-citizens that we were in a state of peace with all the belligerent powers, that in that state it was our duty neither to aid nor injure any, to exhort & warn them against acts which might contravene this duty, & particularly those of positive hostility, for the punishment of which the laws would be appealed to; & to put them on their guard also, as to the risks they would run, if they should attempt to carry articles of contraband to any. This proclamation, ordered on the 19th & signed the 22d day of April, was sent to you in my letter of the 26th of the same month.

On the day of it's publication, we received, through the channel of the newspapers,¹ the first intimation that mr. Genet had arrived on the 8th of the month at Charleston,

in the character of Minister Plenipotentiary

¹ See papers Apr. 22.— *T. J.*

from his nation to the U. S., and soon after, that he had sent on to Philadelphia the vessel in which he came, & would himself perform the journey by land. His landing at one of the most distant ports of the Union from his points both of departure & destination, was calculated to excite attention; and very soon afterwards, we learnt that he was undertaking to authorize the fitting and arming vessels in that port, enlisting men, foreigners & citizens, & giving them commissions to cruise & commit hostilities on nations at peace with us, that these vessels were taking and bringing prizes into our ports, that the Consuls of France were assuming to hold courts of admiralty on them, to try, condemn, & authorize their sale as legal prize, and all this before mr. Genet, had presented himself or his credentials to the President, before he was received by him, without his consent or consultation, & directly

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in contravention of the state of peace existing, & declared to exist in the President's proclamation, & incumbent on him to preserve till the constitutional authority should otherwise declare. These proceedings became immediately, as was naturally to be expected, the subject of complaint by the representative here of that power against whom they would chiefly operate. The British minister presented several memorials thereon, to which we gave the answer of May 15th, heretofore enclosed to you, corresponding in substance with a letter of the same date written to mr. Ternant, the minister of France then residing here, a copy of which I send herewith. On the next day mr. Genet reached this place,¹ about five or six weeks after he had arrived at Charleston, & might have been at

Philadelphia, if he had steered for it directly. He was immediately presented to the President, & received by him as the minister of the Republic; and as the conduct before stated seemed to bespeak a design of forcing us into the war without allowing us the exercise of any free will in the case, nothing could be more assuaging than his assurances to the President at his reception, which he repeated to me afterwards in conversation, & in public to the citizens of Philadelphia in answer to an address from them, that on account of our remote situation & other circumstances, France did not expect that we should become a party to the war, but wished to see us pursue our prosperity & happiness in peace. In a conversation a few days after, mr. Genet told me that M. de Ternant had delivered him my letter of May 15th. He spoke something of the case of the *Grange*, & then of the armament of Charleston, explained the circumstances which had led him to it before he had been received by the government, & consulted its will, expressed a hope that the President had not so absolutely decided against the measure but that he would hear what was to be said in support of it, that he would write me a letter on the subject, in which he thought he could justify it under our treaty; but that if the President should finally determine otherwise, he must submit; for that assuredly his instructions were to do what would be agreeable to us. He accordingly wrote the letter of May 27th. The President took the case again into

¹ See Public papers of May 16, 17.— *T. J.*

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consideration, and found nothing in that letter which could shake the grounds of his former decision. My letter of June 5 notifying this to him, his of June 8 & 14, mine of the 17, & his again of the 22d, will

shew what further passed on this subject, & that he was far from retaining his disposition to acquiesce in the ultimate will of the President.—It would be tedious to pursue this and our subsequent correspondencies through all their details. Referring therefore for these to the letters themselves, which shall accompany this, I will present a summary view only of the points of difference which have arisen, & the grounds on which they rest.

1. Mr. Genet asserts his right¹

¹ Ires June 8. 22. 1, May 27.— *T. J.*

of arming in our ports & of enlisting our citizens, & that we have no right to restrain him or punish them. Examining this question under the law of nations, founded on the general sense & usage of mankind, we have produced proofs,²

² June 17.— *T. J.*

from the most enlightened & approved writers on the subject,³

³ Vattel, L 3 § 104.— *T. J.*

that a Neutral nation must, in all things relating to the war, observe an exact impartiality towards the parties; that favors to one to the prejudice of the other, would import a fraudulent neutrality, of which no nation would be the dupe; that no succour should be given to either, unless stipulated by treaty, in men, arms, or anything else directly serving for war; that the right of raising troops being one of the rights of sovereignty,⁴

⁴ Wolf, 1174. Vattel. 3. § 15.— *T. J.*

& consequently appertaining exclusively to the nation itself, no foreign power or person can levy men, within its territory, without it's consent; & he who does, may be rightfully & severely punished: that if the U. S. have a right to refuse the permission to arm vessels

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& raise men within their ports & territories, they are bound by the laws of neutrality to exercise that right, & to prohibit such armaments & enlistments. To these principles of the law of nations mr. Genet answers, by calling them “diplomatic subtleties,” and “aphorisms of Vattel and others.”¹

1 June 22.— *T. J.*

But something more than this is necessary to disprove them; and till they are disproved, we hold it certain that the law of nations & the rules of neutrality forbid our permitting either party to arm in our ports.

But mr. Genet says, that the 22d article of our treaty allows him *expressly* to arm in our ports.²

2 June 22. 8.— *T. J.*

Why has he not quoted the very words of that article *expressly* allowing it? For that would have put an end to all further question. The words of the article, “it shall not be lawful for any foreign privateers not belonging to subjects of the M. C. King, nor citizens of the sd U. S. who have commissions from any Prince or State in enmity with either nation, to fit their ships in the ports of either one or the other of the aforesaid parties.” Translate this from the general terms in which it here stands, into the special case produced by the present war. “Privateers not belonging to France or the U. S., and having commissions from the enemies of one of them,” are, in the present state of things, “British, Dutch & Spanish privateers.” Substituting these then for the equivalent terms, it will stand thus, “it shall not be lawful for British, Dutch or Spanish privateers to fit their ships in the ports of the U. S.” Is this an *express* permission to France to do it? Does the negative to the enemies of France, & silence as to France herself, imply an affirmative to France? Certainly not; it leaves the question as to France open, & free to be decided according to circumstances. And if the parties had meant an affirmative stipulation, they would have provided for it expressly; they would never have left so important a point to be inferred from mere silence

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or implications. Suppose they had desired to stipulate a refusal to their enemies, but nothing to themselves; what form of expression would they

have used? Certainly the one they have used; an express stipulation as to their enemies, & silence as to themselves. And such an intention corresponds not only with the words, but with the circumstances of the times. It was of value to each party to exclude it's enemies from arming in the ports of the other, & could in no case embarrass them. They therefore stipulated so far mutually. But each might be embarrassed by permitting the other to arm in it's ports. They therefore would not stipulate to permit that. Let us go back to the state of things in France when this treaty was made, and we shall find several cases wherein France could not have permitted us to arm in her ports. Suppose a war between these States & Spain. We know that, by the treaties between France & Spain, the former could not permit the enemies of the latter to arm in her ports. It was honest in her therefore not to deceive us by such a stipulation. Suppose a war between these States & Great Britain. By the treaties between France and Gr. Britain, in force at the signature of ours, we could not have been permitted to arm in the ports of France. She could not then have meant in this article to give us such a right. She has manifested the same sense of it again in her subsequent treaty with England, made 8. years after the date of ours, stipulating in the 16th article of it, as in our 22d, that foreign privateers, *not being subjects of either crown*, should not arm against either in the ports of the other. If this had amounted to an affirmative stipulation that the subjects of the other crown might arm in her ports *against us*, it would have been in direct contradiction to her 22d article with us. So that to give to these negative stipulations an affirmative effect, is to render them inconsistent with each other, & with good faith; to give them only their negative & natural effect, is to reconcile them to one another, & to good faith, & is clearly to adopt the sense in which France herself has expounded them. We may justly conclude, then, that the article only obliges us to refuse this right, in the present case, to Great Britain & the other enemies of France. It does not go on to give it to France, either expressly or by implication. We may then refuse it. And since we are bound by treaty to refuse it to the one party, and are free to refuse it

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to that other, we are bound by the laws of neutrality to refuse it to that other.—The aiding either party then with vessels, arms, or men, being unlawful by the law of Nations, & not rendered lawful by the treaty, it is made a question

whether our citizens, joining in these unlawful enterprises, may be punished?

The U S. being in a state of peace with most of the belligerent powers by treaty, & with all of them by the laws of nature, murders & robberies committed by our citizens, within our territory, or on the high seas, or those with whom we are so at peace, are punishable equally as if committed on our own inhabitants.—If I might venture to reason a little formally, without being charged with running into “subtleties & aphorisms,” I would say that if one citizen has a right to go to war of his own authority, every citizen has the same. If every citizen has that right, then the nation (which is composed of all it's citizens) has a right to go to war, by the authority of it's individual citizens. But this is not true either on the general principles of society, or by our Constitution, which gives that power to Congress alone, & not to the citizens individually. Then the first position was not true; and no citizen has a right to go to war of his own authority; and, for what he does without right, he ought to be punished.—Indeed, nothing can be more obviously absurd than to say, that all the citizens may be at war, & yet the nation at peace. It has been pretended, indeed, that the engagement of a citizen in an enterprise of this nature, was a divestment of the character of citizen, & a transfer of jurisdiction over him to another sovereign. Our citizens are certainly free to divest themselves of that character by emigration, & other acts manifesting their intention, & may then become the subjects of another power, & free to do whatever the subjects of that power may do. But the laws do not admit that the bare commission of a crime amounts of itself to a divestment of the character of citizen, and withdraws the criminal from their coercion. They would never prescribe an illegal act among the legal modes by which a citizen might disfranchise himself; nor render treason, for instance, innocent by giving it the force of a dissolution of the obligation of the criminal to his country. Accordingly, in the case of Henfield, a citizen of these States, charged with having engaged in the port of Charleston, in an enterprise against nations at peace with

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us, & with having joined in the actual commission of hostilities, the Arty General of the U S., in an official opinion, declared that the act with which he was charged was punishable by law. The same thing has been unanimously declared by two of the circuit courts of the U S., as you will see in the charges of chief justice Jay, delivered at Richmond, and Judge Wilson, delivered at Philadelphia, both of which are herewith sent. Yet mr. Genet, in the moment he lands at Charleston, is able to tell the Governor, & continues to affirm in his correspondence here, that no law of the U S authorizes their government to restrain either it's own

citizens or the foreigners inhabiting it's territory, from warring against the enemies of France. It is true, indeed, that, in the case of Henfield, the jury which tried, absolved him. But it appeared on the trial, that the crime was not knowingly & wilfully committed; that Henfield was ignorant of the unlawfulness of his undertaking; that in the moment he was apprised of it he shewed real contrition; that he had rendered meritorious services during the late war, & declared he would live & die an American. The jury, therefore, in absolving him, did no more than the constitutional authority might have done, had they found him guilty: the Constitution having provided for the pardon of offences in certain cases, & there being no case where it would have been more proper than where no offence was contemplated. Henfield, therefore, was still an American citizen, and mr. Genet's reclamation of him was as unauthorized as the first enlistment of him.

2. Another doctrine advanced by mr. Genet is, That our courts can take no cognizance of questions Whether vessels, *held by theirs*, as prizes, are lawful prizes or not; that this jurisdiction belongs exclusively to their Consulates here, which have been lately erected by the National Assembly into complete courts of admiralty.

Let us consider, first, what is the extent of jurisdiction which the Consulates of France may rightfully exercise here. Every nation has of natural right, entirely and exclusively, all the jurisdiction which may be rightfully exercised in the territory it occupies. If it cedes any portion of that jurisdiction to judges appointed by another nation, the limit of their power

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must depend on the instrument of cession. The U S & France have, by their Consular convention, given mutually to

their Consuls jurisdiction in certain cases especially enumerated. But that Convention gives to neither the power of establishing complete courts of admiralty within the territory of the other, not even of deciding the particular question of Prize, or not prize. The Consulates of France, then, cannot take judicial cognizance of those questions here. Of this opinion mr. Genet was when he wrote his letter of May 27, wherein he promises to correct the error of the Consul at Charleston, of whom, in my letter of the 15th, I had complained, as arrogating to himself that jurisdiction; tho' in his subsequent letters he has thought proper to embark in the errors of his Consuls.¹

1 June 14–22.— *T. J.*

But the U S, at the same time, do not pretend any right to try the validity of captures made *on the high seas*, by France, or any other nation, over it's enemies. These questions belong, of common usage, to the sovereign of the Captor, & whenever it is necessary to determine them, resort must be had to his courts. This is the case provided for in the 17th article of the treaty, which says, that such prizes shall not be arrested, nor cognizance taken of the validity thereof; a stipulation much insisted on by mr. Genet & the Consuls, & which we never thought of infringing or questioning. As the validity of captures then, made *on the high seas* by France over it's enemies, cannot be tried within the U S by their Consuls, so neither can it by our own courts. Nor is this the Question, between us, tho' we have been misled into it.

The real question is, Whether the U S have not a right to protect vessels within their waters & on their coasts? The *Grange* was taken within the Delaware, between the shores of Jersey & of the Delaware state, & several miles above its mouth.

The seizing her was a flagrant violation of the jurisdiction of the U S. Mr. Genet, however, instead of apologizing, takes great merit in his letters for giving her up.— The *William* is

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said to have been taken within two miles of the shores of the U S. When the Admiralty declined cognizance of the case, she was delivered to the French consul, according to my letter of June 25, to be kept till the Executive of the U S should examine into the case; & mr. Genet was desired by my letter of June 29, to have them furnished with the evidence, on behalf of the captors, as to the place of capture. Yet to this day it has never been done. The brig *Fanny* was alleged to be taken within five miles of our shore; the *Catharine* within two miles & a half. It is an essential attribute of the jurisdiction of every country to preserve peace, to punish acts in breach of it, & to restore property taken by force within it's limits. Were the armed vessel of any nation to cut away one of our own from the wharves of Philadelphia, & to chuse to call it a prize, would this exclude us from the right of redressing the wrong? Were it the vessel of another nation, are we not equally bound to protect it, while within our limits? Were it seized in any other waters, or on the shores of the U S, the right of redressing is still the same; & humble indeed would be our condition, were we obliged to depend for that on the will of a foreign Consul, or on negociation with diplomatic agents. Accordingly, this right of protection, within it's waters, & to a reasonable distance on it's coasts, has been acknoleged by every nation, & denied to none: and if the property seized be yet within their power, it is their right & duty to redress the

wrong themselves.—France herself has asserted the right in herself, & recognized it in us, in the 6th article of our treaty, where we mutually stipulate that we will, *by all the means in our power* (not by negotiation), protect and defend each other's vessels & effects in our ports or roads, or on the seas near our countries, & recover & restore the same to the right owners. The United Netherlands, Prussia & Sweden, have recognized it also in the treaties with us; and, indeed, it is a standing formule, inserted in almost all the treaties of all nations, & proving the principle to be acknoleged by all nations.

How, & by what organ of the government, whether Judiciary or Executive, it shall be redressed, it is not yet perfectly settled with us. One of the subordinate courts of admiralty has been of opinion, in the first instance, in the case of the ship *William*, that it does not belong to the Judiciary. Another, perhaps, may be of a contrary opinion. The question is

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still *sub judice*, and an appeal to the court of last resort will decide it finally. If finally the Judiciary shall declare that it does not belong to the civil authority, it then results to the Executive, charged with the direction of the *military* force of the Union, & the conduct of it's affairs with foreign nations. But this is a mere question of internal arrangement between the different departments of the government, depending on the particular diction of the laws & constitution; and it can in nowise concern a foreign nation to which department these have delegated it.

3. Mr. Genet, in his letter of July 9, requires that the ship *Jane*, which he calls an English privateer, shall be immediately ordered to depart; and, to justify this, he appeals to the 22d article of our treaty, which provides that

it shall not be lawful for any foreign *privateer* to fit their ships in our ports, to sell *what they have taken*, or purchase victuals, &c. The ship *Jane* is an English merchant vessel, which has been many years employed in the commerce between Jamaica & these states. She brought here a cargo of produce from that island, & was to take away a cargo of flour. Knowing of the war when she left Jamaica, & that our coast was lined with small French privateers, she armed for her defence, & took one of those commissions usually called letters of marque. She arrived here safely without having had any rencounter of any sort. Can it be necessary to say that a merchant vessel is not a privateer? That tho' she has arms to defend herself in time of war, in the course of her regular commerce, this no more makes her a privateer, than a husbandman following his plough, in time of war, with a knife or pistol in his pocket, is thereby made a soldier? The occupation of a privateer is attack and plunder, that of a merchant-vessel is commerce & self-preservation. The article excludes the former from our ports, & from selling *what she has taken*, that is, what she has acquired by war, to shew it did not mean the merchant vessel, & what she had acquired by commerce. Were the merchant vessels coming for our produce forbidden to have any arms for their defence, every adventurer who has a boat or money enough to buy one, would make her a privateer, our coasts would swarm with them, foreign vessels must cease to come, our commerce must be suppressed, our produce remain on our

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hands, or at least that great portion of it which we have not vessels to carry away, our ploughs must be laid aside & agriculture suspended. This is a sacrifice no treaty could ever contemplate, and which we are not disposed

to make out of mere complaisance to a false definition of the term *privateer*.—Finding that the *Jane* had purchased new carriages to mount two or three additional guns, which she had brought in her hold, & that she had opened additional port-holes for them, the carriages were ordered to be re landed, the additional port-holes stopped, & her means of defence reduced, to be exactly the same at her departure, as at her arrival. This was done on the general principle of allowing no party to arm within our ports.

4. The 17th. article of our treaty leaves armed vessels free to *conduct*, whithersoever they please, the ships & goods taken from their enemies without paying any duty, & to depart and be conducted freely to the places expressed in their commissions, which the captain shall be obliged to shew. It is evident, that this article does not contemplate a freedom to *sell their prizes* here: but on the contrary, a *departure* to some other place, always to be expressed in their commission, where their validity is to be finally adjudged. In such case, it would be as unreasonable to demand duties on the goods they had taken from an enemy, as it would be on a cargo of a merchant vessel touching in our ports for refreshment or advices; and against this the article provides. But the armed vessels of France have been also admitted to land & sell their prize goods here for consumption; in which ease, it is as reasonable they should pay duties, as the goods of a merchantman landed & sold for consumption. They have however demanded, & as a matter of right, to sell them free of duty, a right, they say, given by this article of the treaty, though the article does not give the right to sell at all. Where a treaty does not give the principal right of selling,

the additional one of selling duty free cannot be given; & the laws in admitting the principal right of selling, may withhold the additional one of selling duty free.—It must be observed, that our revenues are raised almost wholly on imported goods. Suppose prize

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goods enough should be brought in to supply our whole consumption. According to their construction we are to lose our whole revenue. I put the extreme case to evince, more extremely, the unreasonableness of the claim. Partial supplies would affect the revenue but partially. They would lessen the evil, but not the error, of the construction; and I believe we may say, with truth, that neither party had it in contemplation, when penning this article, to abandon any part of it's revenue for the encouragement of the sea-robbers of the other.

5. Another source of complaint with mr. Genet has been that the English take French goods out of American vessels, which he says is against the L. of nations & ought to be prevented by us. On the contrary, we suppose it to have been long an established principle of the law of nations, that the goods of a friend are free in an enemy's vessel, & an enemy's goods lawful prize in the vessel of a friend. The inconvenience of this principle which subjects merchant vessels to be stopped at sea, searched, ransacked, led out of their course, has induced several nations latterly to stipulate against it by treaty, & to substitute another in it's stead, that free bottoms shall make free goods, and enemy bottoms enemy goods; a rule equal to the other in point of loss and gain, but less oppressive to commerce. As far as it has been introduced, it depends on the treaties stipulating it, & forms exceptions, in special cases, to the

general operation of the Law of nations. We have introduced it into our treaties with France, Holland & Prussia; & French goods found by the two latter nations in American bottoms are not made prize of. It is our wish to establish it with other nations. But this requires their consent also, is a work of time, & in the meanwhile, they have a right to act on the general principle, without giving to us or to France cause of complaint. Nor do I see that France can lose by it on the whole. For tho' she loses *her* goods when found in our vessels by the nations with whom we have no treaties, yet she gains *our* goods, when found in the vessels of the same and all other nations; and we believe the latter mass to be greater than the former. It is to be lamented, indeed, that the general principle has operated so cruelly in the dreadful calamity which has lately happened in St. Domingo. The miserable fugitives, who, to save their lives, had taken asylum in our

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vessels, with such valuable & portable things as could be gathered in the moment out of the ashes of their houses & wrecks of their fortunes, have been plundered of these remains by the licensed sea-rovers of their enemies. This has swelled, on this occasion, the disadvantages of the general principle, that “an enemy's goods are free prize in the vessels of a friend.” But it is one of those deplorable & unforeseen calamities to which they expose themselves who enter into a state of war, furnishing to us an awful lesson to avoid it by justice & moderation, & not a cause or encouragement to expose our own towns to the same burning and butcheries, nor of complaint because we do not.

6. In a case like the present, where the Missionary of one government construes differently from that to which he is sent, the treaties & laws which are to form a common rule of action for both, it would be unjust in either to claim an exclusive

right of construction. Each nation has an equal right to expound the meaning of their common rules; & reason & usage have established, in such cases, a convenient & well-understood train of proceeding. It is the right & duty of the foreign missionary to urge his own constructions, to support them with reasons which may convince, and in terms of decency & respect which may reconcile the government of the country to a concurrence. It is the duty of that government to listen to his reasonings with attention and candor, & to yield to them when just. But if it shall stir appear to them that reason & right are on their side, it follows of necessity, that exercising the sovereign powers of the country, they have a right to proceed on their own constructions & conclusions as to whatever is to be done within their limits. The Minister then refers the case to his own government, asks new instructions, &, in the meantime, acquiesces in the authority of the country. His government examines his constructions, abandons them if wrong, insists on them if right, and the case then becomes a matter of negotiation between the two nations. Mr. Genet, however, assumes a new and bolder line of conduct. After deciding for himself ultimately, & without respect to the authority of the country, he proceeds to do what even his sovereign could not authorize, to put himself within the country on a line with it's government, to act as co-sovereign of the territory; he arms vessels, levies men, gives

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commissions of war, independently of them, & in direct opposition to their orders & efforts. When the government forbids their citizens to arm & engage in the war, he undertakes to arm & engage them. When they forbid vessels to be fitted in their ports for cruising on nations with whom they are at peace, he commissions them

to fit and cruise. When they forbid an unceded jurisdiction to be exercised within their territory by foreign agents, he undertakes to uphold that exercise, & to avow it openly. The privateers *Citoyen Genet* & *Sans Culottes* having been fitted out at Charleston (though without the permission of the government, yet before it was forbidden) the President only required they might leave our ports, & did not interfere with their prizes. Instead, however, of their quitting our ports, the *Sans Culottes* remains still; strengthening & equipping herself, & the *Citoyen Genet* went out only to cruise on our coast, & to brave the authority of the country by returning into port again with her prizes.—Tho' in the letter of June 5 the final determination of the President was communicated, that no future armaments in our ports should be permitted, the *Vainqueur de la Bastille* was afterwards equipped & commissioned in Charleston, the *Anti-George* in Savannah, the *Carmagnole* in Delaware, a schooner & a sloop in Boston, & the *Polly* or *Republican* was attempted to be equipped in N. York, & was the subject of reclamation by mr. Genet, in a style which certainly did not look like relinquishing the practice. The *Little Sarah* or *Little Democrat* was armed, equipped & manned, in the port of Philadelphia, under the very eye of the government, as if meant to insult it. Having fallen down the river, & being evidently on the point of departure for a cruise, mr. Genet was desired in my letter of July 12, on the part of the President, to detain her till some inquiry & determination on the case should be had. Yet within three or four days after, she was sent out by orders from mr. Genet himself, & is, at this time, cruising on our coasts, as appears by the

protest of the master of one of our vessels maltreated by her.

The government thus insulted & set at defiance by mr. Genet, committed in it's duties & engagements to others, determined still to see in these proceedings but the character of

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the individual & not to believe, & it does not believe, that they are by instructions from his employers. They had assured the British minister here, that the vessels already armed to their ports should be obliged to leave them, and that no more should be armed in them. Yet more had been armed, & those before armed had either not gone away, or gone only to return with new prizes. They now informed him that the order for departure should be enforced, & the prizes made contrary to it should be restored or compensated. The same thing was notified to mr. Genet in my letter of Aug. 7. and that he might not conclude the promise of compensation to be of no concern to him, & go on in his courses, he was reminded that it would be a fair article of account against his nation.

Mr. Genet, not content with using our force, whether we will or not, in the military line against nations with whom we are at peace, undertakes also to direct the civil government; and particularly for the Executive & Legislative bodies, to pronounce what powers may or may not be exercised by the one or the other. Thus, in his letter of June 8 he promises to respect the political opinions of the President, *till the Representatives shall have confirmed or rejected them*: as if the President had undertaken to decide what belonged to the decision of congress. In his letter of June 14., he says more openly, that the President ought not to have taken on himself to decide on the subject of the letter, but that it was of importance

enough to have consulted Congress thereon; and in that of June 22. he tells the President in direct terms, that Congress ought already to have been occupied on certain questions which he had been too hasty in deciding: thus making himself, & not the President, the judge of the powers ascribed by the constitution to the Executive, & dictating to him the occasion when he should exercise the power of convening Congress at an earlier day than their own act had prescribed.

On the following expressions, no commentary shall be made.

July 9. "Les principes philosophiques proclamées par le Président."

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June 22. "Les opinions privées ou publiques de M. le Président, et cette égide ne paroissant, pas suffisante."

June 22. "Le gouvernement fédéral s'est empressé, poussé par je ne seais quelle influence."

June 22. "Je ne puis attribuer, des démarches de cette nature qu'à des impressions étrangères dont le terns et la vérité triompheront."

June 25. "On poursuit avec acharnement, en vertu des instructions de M. le Président, les armateurs Français."

June 14. "Ce refus tend à accomplir le système infernal du roi d'Angleterre, et des autres rois ses complices, pour faire peérir par la famine les Républicains Français avec la liberté."

June 8. "La lache abandon de ses amis."

July 25. "En vain le désir de conserver la paix fait-il sacrifier les intérêts de la France à cet intérêt du moment; en vain le soil des richesses l'emporte-t-elle sur l'honneur dans la balance politique de l'Amérique. Tout ces ménagemens, toute cette condescendance, toute eerie humilité n'aboutissent à rien; nos ennemis on rient, et les Francais trop confiants sont punis pour avoir eru que la nation Américaine, avoit un pavilion, qu'elle avoit quelque

égard pour ses loix, quelque conviction de ses forces, et qu'elle tenoit au sentiment de sa dignité. Il ne m'est pas possible de peindre toute ma sensibilité sur ce scandale qui tend à la diminution de votre commerce, à l'oppression du notre, et à l'abaissement, à l'avilissement des républiques. Si nos concitoyens out été trompés, si vous nêetes point en état de soutenir la souveraineté de votre peuple, parlez; nous l'avons garantie quand nous étions esclaves, nous saurons la rendre redoutable étant devenus libres."

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We draw a veil over the sensations which these expressions excite. No words can render them; but they will not escape the sensibility of a friendly & magnanimous nation, who will do us justice. We see in them neither the portrait of ourselves, nor the pencil of our friends; but an attempt to embroil both; to add still another nation to the enemies of his country, & to draw on both a reproach, which it is hoped will never stain the history of either. The written proofs, of which mr. Genet himself was the bearer were too unequivocal to leave a doubt that the French nation are constant in their friendship to us. The resolves of their National convention, the letters of their Executive council, attest this truth, in terms which render it necessary to seek in some other hypothesis the solution of mr. Genet's machinations against our peace & friendship.

Conscious, on our part, of the same friendly & sincere dispositions, we can with truth affirm, both for our nation & government, that we have never omitted a reasonable occasion of manifesting them. For I will not consider as of that character, opportunities of sallying forth from our ports to waylay, rob & murder defenceless merchants & others, who have done us no injury,

and who were coming to trade with us in the confidence of our peace & amity. The violation of all the laws of order & morality which bind mankind together, would be an unacceptable offering to a just nation. Recurring then only to recent things, after so afflicting a libel, we recollect with satisfaction, that in the course of two years, by unceasing exertions, we paid up seven years' arrearages & instalments of our debt to France, which the inefficiency of our first form of government had suffered to be accumulating; that pressing on still to the entire fulfilment of our engagements, we have facilitated to mr. Genet the effect of the instalments of the present year, to enable him to send relief to his fellow citizens in France, threatened with famine: that in the first moment of the insurrection which threatened the colony of St. Domingo, we stepped forward to their relief with arms & money, taking freely on ourselves the risk of an unauthorized aid, when delay would have been denial: that we have received according to our best abilities the

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wretched fugitives from the catastrophe of the principal town of that colony, who, escaping from the swords & flames of civil war, threw themselves on us naked & houseless, without food or friends, money or other means, their faculties lost & absorbed in the depth of their distresses: that the exclusive admission to sell here the prizes made by France on her enemies, in the present war, tho' unstipulated in our treaties, & unfounded in her own practice, or in that of other nations, as we believe: the spirit manifested by the late grand jury in their proceedings against those who had aided the enemies of France with arms & implements of war, the expressions of attachment to his nation, with which mr. Genet was welcomed on his arrival & journey from south to north, & our long forbearance under his gross usurpations and outrages of the laws & authority of our country, do not bespeak the

partialities intimated in his letters. And for these things he rewards us by endeavors to excite discord & distrust between our citizens and those whom they have entrusted with their government, between the different branches of our government, between our nation and his. But none of these things, we hope, will be found in his power. That friendship which dictates to us to bear with his conduct yet a while, lest the interests of his nation here should suffer injury, will hasten them to replace an agent whose dispositions are such a misrepresentation of theirs, and whose continuance here is inconsistent with order, peace, respect, & that friendly correspondence which we hope will ever subsist between the two nations. His government will see too that the case is pressing. That it is impossible for two sovereign & independent authorities to be going on within our territory at the same time without collision. They will foresee that if mr. Genet perseveres in his proceedings, the consequences would be so hazardous to us, the example so humiliating & pernicious, that we may be forced even to suspend his functions before a successor can arrive to continue them. If our citizens have not already been shedding each other's blood, it is not owing to the moderation of mr. Genet, but to the forbearance of the government. It is well known that if the authority of the laws had been resorted to, to stop the *Little Democrat*, its officers and agents were to have been resisted by the crew of the vessel, consisting partly of American citizens. Such events are too serious, too possible, to be left to hazard, or to

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what is worse than hazard, the will of an agent whose designs are so mysterious. Lay the case then immediately before his government. Accompany

it with assurances, which cannot be stronger than true, that our friendship for the nation is constant & unabating; that, faithful to our treaties, we have fulfilled them in every point to the best of our understanding; that if in anything, however, we have construed them amiss, we are ready to enter into candid explanations, & to do whatever we can be convinced is right; that in opposing the extravagances of an agent, whose character they seem not sufficiently to have known, we have been urged by motives of duty to ourselves & justice to others, which cannot but be approved by those who are just themselves; and finally, that after independence and self-government, there is nothing we more sincerely wish than perpetual friendship with them.

I have the honor to be, with great respect & esteem, Dr Sir, your most obedient & most humble servant.