

Thomas Jefferson to Spencer Roane, 6 September 1819

Poplar Forest Sep. 6. 19.

Dear Sir

I had read in the Enquirer, and with great approbation the pieces signed Hampden, and have read them again with redoubled approbation in the copies you have been so kind as to send me. I subscribe to every tittle of them. they contain the true principles of the revolution of 1800. for that was as real a revolution in the principles of our government as that of 76. was in it's form; not effected indeed by the sword, as that, but by the rational and peaceable instrument of reform, the suffrage of the people. the nation declared it's will by dismissing functionaries of one principle, and electing those of another, in the two branches, executive and legislative, submitted to their election. over the judiciary department, the constitution had deprived them of their controul. that therefore has continued the reprobated system: and altho' new matter has been occasionally incorporated into the old yet the leaven of the old mass seems to assimilate to itself the new; and after 20. years confirmation of the federated system by the voice of the nation declared thro' the medium of elections, we find the judiciary on every occasion still driving us into consolidation. in denying the right they usurp of exclusively explaining the constitution I go further than you do, if I understand rightly your quotation from the Federalist of an opinion that the judiciary is the last resort in relation to the other departments of the government, but not in relation to the right of the parties to the compact under which the judiciary is derived. if this opinion be sound, then indeed is our constitution a compleat felo de se. for intending to establish three departments, coordinate and independant, that they might check and balance one another, it has given according to this opinion, to one of them alone the right to prescribe rules for the government of the others; and to that one too which is unelected by, and independent of, the nation. for experience has already shewn that the impeachment it has provided is not even a scare-crow; that such opinions as the one you combat, sent cautiously out, as you observe also by detachment, not belonging to the case often, but sought for out of it, as if to rally the public opinion beforehand to their views, and to indicate the line they are to walk in, have been so quietly passed over as never to have excited animadversion, even in a speech of any one of the body entrusted with impeachment. the constitution, on this hypothesis, is a mere thing of wax in the hands of the judiciary which they may twist and shape in to any form they please. it should be remembered as an axiom of eternal truth in politics that whatever power in any government is independant, is absolute also; in theory only, at first, while the spirit of the people is up. but in practice as fast as that relaxes. independance can be trusted nowhere but with the people in mass. they are inherently independant of all but moral law. my construction of the constitution is very different from that you quote. it is that each department is truly independant of the others, and has an equal right to decide for itself what is the meaning of the constitution in the cases submitted to it's action; and especially where it is to act ultimately and without appeal. I will explain myself by examples which, having occurred while I was in office, are better known to me and the principles which governed them.

A legislature had past the sedition law. the federal courts had subjected certain individuals to it's penalties, of fine and imprisonment. on coming into office I released these individuals by the power of pardon committed to Executive discretion, which could never be more properly exercised than where citizens were suffering without the

authority of law, or, which was equivalent under a law unauthorised by the constitution, & therefore null. In the case of Marbury and Madison, the federal judges declared that commissions, signed and sealed by the President, were valid, altho' not delivered. I deemed delivery essential to compleat a deed, which, as long as it remains in the hands of the party, is as yet no deed, it is in posse only, but not in esse, and I withheld delivery of the Commissions. they cannot issue a Mandamus to the President or legislature, or to any of their officers. the constitution controuling the common law in this particular. when the British treaty of 180– arrived, without any provision against the impressment of our seamen, I determined not to ratify it. the Senate thought I should ask their advice. I thought that would be a mockery of them when I was predetermined against following it should they advise it's ratification the constitution had made their advice necessary to confirm a treaty but not to reject it. this has been blamed by some; but I have never doubted it's soundness. In the cases of two persons antenati under exactly similar circumstances, the federal court had determined that one of them (Duane) was not a citizen; the House of Representatives nevertheless determined that the other (Smith of S.C.) was a citizen, and admitted him to his seat in their body. Duane was a republican, & Smith a federalist, and these decisions were during the federal ascendancy.

These are examples of my position that each of the three departments has equally the right to decide for itself what is it's duty under the constitution, without any regard to what the others may have decided for themselves under a similar question. But you intimate a wish that my opinion should be known on this subject. no, dear Sir. I withdraw from all contests of opinion, and resign every thing cheerfully to the generation now in place. they are wiser than we were, and their successors will be wiser than them from the progressive advance of science. tranquility is the summum bonum of age. I wish therefore to offend no man's opinions, nor to draw disquieting animadversions on my own. while duty required it I met opposition with a firm and fearless step. but loving mankind in my individual relations with them I pray to be permitted to depart in their peace; and like the superannuated soldier, 'quadragenis stipendus emeritis' to hang my arms on the post. I have unwisely, I fear, embarked in an enterprise of great public concern, but not to be accomplished within my term, without their liberal & prompt support. a severe illness the last year, another from which I am just emerged, admonish me that repetitions may be expected, against which a declining frame cannot long bear up. I am anxious therefore to get our University so far advanced as may encourage the public to persevere to it's final accomplishment. that secured I shall ring my nunc dimittas. I hope your labors will be long continued in the spirit in which they have always been exercised, in maintenance of those principles on which I verily believe the future happiness of our country essentially depends. and I salute you with affectionate and great respect.

TH: JEFFERSON