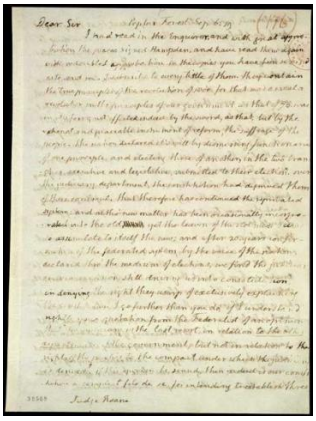
Thomas Jefferson's Views on the Constitution



This image is the original letter - maintained at the Library of Congress - which Thomas Jefferson wrote to Spencer Roane on the 6th of September, 1819.

By this time, Jefferson was no longer America's president.

Roane - the son-in-law of Patrick Henry (of "give me liberty, or give me death!" fame) - was a Judge in Virginia and was publishing his opinions about states' rights (versus federal-government control) under the name "Hampden." He lived at Mahockney Plantation (one of America's oldest homes which is still privately owned).

In this letter, Jefferson discusses the U.S. Constitution and how it was intended to work (and be interpreted). An elderly man, at the time of this writing, Jefferson still had *very* strong views on the subject.

The following is the transcription of the letter, broken into paragraphs and including modern grammar for easier reading:

Dear Sir

Poplar Forest Sep. 6. 19. [September 6, 1819]

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 1776 was in its 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 its 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 control.

That, therefore, has continued the reprobated system, and although 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 twenty years' confirmation of the federal system by the voice of the nation, declared through 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 rights of the parties to the compact under which the judiciary is derived."

If this opinion be sound, then indeed is our constitution a complete felo de se. For intending to establish three departments, co-ordinate and independent, 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 shown that the impeachment it has provided is not even a scarecrow; 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 into any form they please. It should be remembered, as an axiom of eternal truth in politics, that whatever power in any government is independent, is absolute also; in theory only, at first, while the spirit of the people is up, but in practice, as fast as that relaxes.

Independence can be trusted nowhere but with the people in mass. They are inherently independent of all but moral law.

My construction of the constitution is very different from that you quote. It is that each department is truly independent of the others, and has an equal right to decide for itself what is the meaning of the constitution in the cases submitted to its 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 passed the sedition law. The federal courts had subjected certain individuals to its 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 unauthorized by the constitution, and therefore null.

In the case of Marbury and Madison, the federal judges declared that commissions, signed and sealed by the President, were valid, although not delivered. I deemed delivery essential to complete 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. [1]

When the British treaty of ----- 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 its 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 its soundness.

[1] The constitution controlling the common law in this particular,--T.J.

After reading this letter, we could conclude several things about the drafter of the Declaration of Independence and America's third President. One of those conclusions is this: Thomas Jefferson was not afraid of tackling controversial subjects or of taking minority viewpoints!

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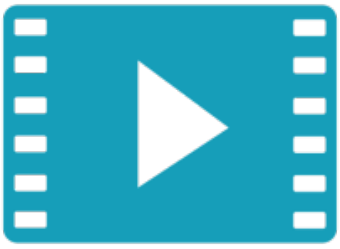

Patrick Henry - "Give Me Liberty or Give Me Death!"

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