

Jefferson to William Charles Jarvis

I thank you, Sir, for the copy of your Republican which you have been so kind as to send me, and I should have acknowledged it sooner but that I am just returned home after a long absence. I have not yet had time to read it seriously, but in looking over it cursorily I see much in it to approve, and shall be glad if it shall lead our youth to the practice of thinking on such subjects and for themselves. That it will have this tendency may be expected, and for that reason I feel an urgency to note what I deem an error in it, the more requiring notice as your opinion is strengthened by that of many others. You seem, in pages 84 and 148, to consider the judges as the ultimate arbiters of all constitutional questions; a very dangerous doctrine indeed, and one which would place us under the despotism of an oligarchy. Our judges are as honest as other men, and not more so. They have, with others, the same passions for party, for power, and the privilege of their corps. Their maxim is “boni judicis est ampliare jurisdictionem,” and their power the more dangerous as they are in office for life, and not responsible, as the other functionaries are, to the elective control. The constitution has erected no such single tribunal, knowing that to whatever hands confided, with the corruptions of time and party, its members would become despots. It has more wisely made all the departments co-equal and co-sovereign within themselves. If the legislature fails to pass laws for a census, for paying the judges and other officers of government, for establishing a militia, for naturalization as prescribed by the constitution, or if they fail to meet in congress, the judges cannot issue their mandamus to them; if the President fails to supply the place of a judge, to appoint other civil or military officers, to issue requisite commissions, the judges cannot force him. They can issue their mandamus or distringas to no executive or legislative officer to enforce the fulfilment of their official duties, any more than the president or legislature may issue orders to the judges or their officers. Betrayed by English example, and unaware, as it should seem, of the control of our constitution in this particular, they have at times overstepped their limit by undertaking to command executive officers in the discharge of their executive duties; but the constitution, in keeping three departments distinct and independent, restrains the authority of the judges to judiciary organs, as it does the executive and legislative to executive and legislative organs. The judges certainly have more frequent occasion to act on constitutional questions, because the laws of meum and tuum and of criminal action, forming the great mass of the system of law, constitute their particular department. When the legislative or executive functionaries act unconstitutionally, they are responsible to the people in their elective capacity. The exemption of the judges from that is quite dangerous enough. I know no safe depository of the ultimate powers of the society but the people themselves; and if we think them not enlightened enough to exercise their control with a wholesome discretion, the remedy is not to take it from them, but to inform their discretion by education. This is the true corrective of abuses of constitutional power. Pardon me, Sir, for this difference of opinion. My personal interest in such questions is entirely extinct, but not my wishes for the longest possible continuance of our government on its pure principles; if the three powers maintain their mutual independence on each other it may last

long, but not so if either can assume the authorities of the other. I ask your candid re-consideration of this subject, and am sufficiently sure you will form a candid conclusion. Accept the assurance of my great respect.

TH: Jefferson

The logo for Monticello, featuring the name "Th. Jefferson" in a cursive script above the word "MONTICELLO" in a serif font.

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