Jefferson to John Cartwright

Dear and Venerable Sir,

Monticello in Virginia June 5, 1824.

I am much indebted for your kind letter of February the 29th, and for your valuable volume on the English constitution. I have read this with pleasure and much approbation, and think it has deduced the constitution of the English nation from its rightful root, the Anglo-Saxon. It is really wonderful, that so many able and learned men should have failed in their attempts to define it with correctness. No wonder then, that Paine, who thought more than he read, should have credited the great authorities who have declared, that the will of parliament is the constitution of England. So Marbois, before the French revolution, observed to me, that the Almanac Royal was the constitution of France. Your derivation of it from the Anglo-Saxons, seems to be made on legitimate principles. Having driven out the former inhabitants of that part of the island called England, they became aborigines as to you, and your lineal ancestors. They doubtless had a constitution; and although they have not left it in a written formula, to the precise text of which you may always appeal, yet they have left fragments of their history and laws, from which it may be inferred with considerable certainty. Whatever their history and laws shew to have been practised with approbation, we may presume was permitted by their constitution; whatever was not so practised, was not permitted. And although this constitution was violated and set at naught by Norman force, yet force cannot change right. A perpetual claim was kept up by the nation, by their perpetual demand of a restoration of their Saxon laws; which shews they were never relinquished by the will of the nation. In the pullings and haulings for these antient rights, between the nation, and its kings of the races of Plantagenets, Tudors and Stuarts, there was sometimes gain, and sometimes loss, until the final re-conquest of their rights from the Stuarts. The destitution and expulsion of this race broke the thread of pretended inheritance, extinguished all regal usurpations, and the nation re-entered into all its rights; and although in their bill of rights they specifically reclaimed some only, yet the omission of the others was no renunciation of the right to assume their exercise also, whenever occasion should occur. The new King received no rights or powers, but those expressly granted to him. It has ever appeared to me, that the difference between the whig and the tory of England is, that the whig deduces his rights from the Anglo-Saxon source, and the tory from the Norman. And Hume, the great apostle of toryism, says, in so many words, note AA to chapter 42, that, in the reign of the Stuarts, `it was the people who encroached upon the sovereign, not the sovereign who attempted, as is pretended, to usurp upon the people.' This supposes the Norman usurpations to be rights in his successors. And again, C, 159, `the commons established a principle, which is noble in itself, and seems specious, but is belied by all history and experience, that the people are the origin of all just power.' And where else will this degenerate son of science, this traitor to his fellow men, find the origin of just powers, if not in the majority of the society?

Will it be in the minority? Or in an individual of that minority?

Our Revolution commenced on more favorable ground. It presented us an album on which we were free to write what we pleased. We had no occasion to search into musty records, to hunt up royal parchments, or to investigate the laws and institutions of a semi-barbarous ancestry. We appealed to those of nature, and found them engraved on our hearts. Yet we did not avail ourselves of all the advantages of our position. We had never been permitted to exercise self-government. When forced to assume it, we were novices in its science. Its principles and forms had entered little into our former education. We established however some, although not all its important principles. The constitutions of most of our States assert, that all power is inherent in the people; that they may exercise it by themselves, in all cases to which they think themselves competent, (as in electing their functionaries executive and legislative, and deciding by a jury of themselves, in all judiciary cases in which any fact is involved,) or they may act by representatives, freely and equally chosen; that it is their right and duty to be at all times armed; that they are entitled to freedom of person, freedom of religion, freedom of property, and freedom of the press. In the structure of our legislatures, we think experience has proved the benefit of subjecting questions to two separate bodies of deliberants; but in constituting these, natural right has been mistaken, some making one of these bodies, and some both, the representatives of property instead of persons; whereas the double deliberation might be as well obtained without any violation of trueprinciple, either by requiring a greater age in one of the bodies, or by electing a proper number of representatives of persons, dividing them by lots into two chambers, and renewing the division at frequent intervals, in order to break up all cabals. Virginia, of which I am myself a native and resident, was not only the first of the States, but, I believe I may say, the first of the nations of the earth, which assembled its wise men peaceably together to form a fundamental constitution, to commit it to writing, and place it among their archives, where every one should be free to appeal to its text. But this act was very imperfect. The other States, as they proceeded successively to the same work, made successive improvements; and several of them, still further corrected by experience, have, by conventions, still further amended their first forms. My own State has gone on so far with its premiere ebauche; but it is now proposing to call a convention for amendment. Among other improvements, I hope they will adopt the subdivision of our counties into wards. The former may be estimated at an average of twenty-four miles square; the latter should be about six miles square each, and would answer to the hundreds of your Saxon Alfred. In each of these might be, 1. An elementary school. 2. A company of militia, with its officers. 3. A justice of the peace and constable. 4. Each ward should take care of their own poor. 5. Their own roads. 6. Their own police. 7. Elect within themselves one or more jurors to attend the courts of justice. And 8. Give in at their Folk-house, their votes for all functionaries reserved to their election. Each ward would thus be a small republic within itself, and every man in the State would thus become an acting member of the common government, transacting in person a great portion of its rights and duties, subordinate indeed, yet important, and entirely within his competence. The wit of man cannot devise a more solid basis for a free, durable and well administered republic.

With respect to our State and federal governments, I do not think their relations correctly understood by foreigners. They generally suppose the former subordinate to the latter. But this is not the case. They are co-ordinate departments of one simple and integral whole. To the State governments are reserved all legislationand administration, in affairs which concern their own citizens only, and to the federal

government is given whatever concerns foreigners, or the citizens of other States; these functions alone being made federal. The one is the domestic, the other the foreign branch of the same government; neither having control over the other, but within its own department. There are one or two exceptions only to this partition of power. But, you may ask, if the two departments should claim each the same subject of power, where is the common umpire to decide ultimately between them? In cases of little importance or urgency, the prudence of both parties will keep them aloof from the questionable ground: but if it can neither be avoided nor compromised, a convention of the States must be called, to ascribe the doubtful power to that department which they may think best. You will perceive by these details, that we have not yet so far perfected our constitutions as to venture to make them unchangeable. But still, in their present state, we consider them not otherwise changeable than by the authority of the people, on a special election of representatives for that purpose expressly: they are until then the *lex legum*.

But can they be made unchangeable? Can one generation bind another, and all others, in succession forever? I think not. The Creator has made the earth for the living, not the dead. Rights and powers can only belong to persons, not to things, not to mere matter, unendowed with will. The dead are not even things. The particles of matter which composed their bodies, make part now of the bodies of other animals, vegetables, or minerals, of a thousand forms. To what then are attached the rights and powers they held while in the form of men? A generation may bind itself as long as its majority continues in life; when that has disappeared, another majority is in place, holds all the rights and powers their predecessors once held, and may change their laws and institutions to suit themselves. Nothing then is unchangeable but the inherent and unalienable rights of man.

I was glad to find in your bo ok a formal contradition, at length, of the judiciary usurpation of legislative powers; for such the judges have usurped in their repeated decisions, that Christianity is a part of the common law. The proof of the contrary, which you have adduced, is incontrovertible; to wit, that the common law existed whilethe Anglo-Saxons were yet Pagans, at a time when they had never yet heard the name of Christ pronounced, or knew that such a character had ever existed. But it may amuse you, to shew when, and by what means, they stole this law in upon us. In a case of quare impedit in the Year-book 34. H. 6. folio 38. (anno 1458,) a question was made, how far the ecclesiastical law was to be respected in a common law court? And Prisot, Chief Justice, gives his opinion in these words, `A tiel leis qu' ils de seint eglise ont en ancien scripture, covient à nous à donner credence; car ceo common ley sur quels touts manners leis sont fondés. Et auxy, Sir, nous sumus obligés de conustre lour ley de saint eglise: et semblablement ils sont obligés de conustre nostre ley. Et, Sir, si poit apperer or à nous que l'evesque ad fait come un ordinary fera en tiel cas, adong nous devons ceo adjuger bon, ou auterment nemy,' &c. See S. C. Fitzh. Abr. Qu. imp. 89. Bro. Abr. Qu. imp. 12. Finch in his first book, c. 3. is the first afterwards who quotes this case, and mistakes it thus. `To such laws of the church as have warrant in holy scripture, our law giveth credence.' And cites Prisot; mistranslating `ancien scripture,' into `holy scripture.' Whereas Prisot palpably says, `to such laws as those of holy church have in antient writing, it is proper for us to give credence;' to wit, to their antient written laws. This was in 1613, a century and a half after the dictum of Prisot. Wingate, in 1658, erects this false translation into a maxim of the common law, copying the words of Finch, but citing Prisot. Wing. Max. 3. And Sheppard, title, `Religion,' in 1675, copies the same mistranslation, quoting the Y. B. Finch and Wingate. Hale expresses it in these words; `Christianity is parcel of the laws of England.' 1 Ventr. 293. 3 Keb. 607. But he quotes no authority. By

these echoings and re-echoings from one to another, it had become so established in 1728, that in the case of the King vs. Woolston, 2 Stra. 834, the court would not suffer it to be debated, whether to write against Christianity was punishable in the temporal court at common law? Wood, therefore, 409, ventures still to vary the phrase, and say, that all blasphemy and profaneness are offences by the common law; and cites 2 Stra. Then Blackstone, in 1763, IV. 59, repeats the words of Hale, that `Christianity is part of the laws of England,' citing Ventris and Strange. And finally, Lord Mansfield, with a little qualification, in Evans' case, in 1767, says, that `the essential principles of revealed religion are part of the common law.' Thus ingulphing Bible, Testament and all intothe common law, without citing any authority. And thus we find this chain of authorities hanging link by link, one upon another, and all ultimately on one and the same hook, and that a mistranslation of the words `ancien scripture,' used by Prisot. Finch quotes Prisot; Wingate does the same. Sheppard quotes Prisot, Finch and Wingate. Hale cites nobody. The court in Woolston's case, cite Hale. Wood cites Woolston's case. Blackstone quotes Woolston's case and Hale. And Lord Mansfield, like Hale, ventures it on his own authority. Here I might defy the best read lawyer to produce another scrip of authority for this judiciary forgery; and I might go on further to shew, how some of the Anglo-Saxon priests interpolated into the text of Alfred's laws, the 20th, 21st, 22nd and 23rd chapters of Exodus, and the 15th of the Acts of the Apostles, from the 23rd to the 29th verses. But this would lead my pen and your patience too far. What a conspiracy this, between Church and State! Sing Tantarara, rogues all, rogues all, Sing Tantarara, rogues all!

I must still add to this long and rambling letter, my acknowledgments for your good wishes to the University we are now establishing in this State. There are some novelties in it. Of that of a professorship of the principles of government, you express your approbation. They will be founded in the rights of man. That of agriculture, I am sure, you will approve: and that also of Anglo-Saxon. As the histories and laws left us in that type and dialect, must be the text books of the reading of the learners, they will imbibe with the language their free principles of government. The volumes you have been so kind as to send, shall be placed in the library of the University. Having at this time in England a person sent for the purpose of selecting some Professors, a Mr. Gilmer of my neighborhood, cannot but recommend him to your patronage, counsel and guardianship, against imposition, misinformation, and the deceptions of partial and false recommendations, in the selection of characters. He is a gentleman of great worth and correctness, my particular friend, well educated in various branches of science, and worthy of entire confidence.

Your age of eighty-four and mine of eighty-one years, insure us a speedy meeting. We may then commune at leisure, and more fully, on the good and evil, which, in the course of our long lives, we have both witnessed; and in the mean time, I pray you to accept assurances of my high veneration and esteem for your person and character.

Th. Jefferson