

Timothy Pickering to Rufus King

[Transcript begins at bottom of page]

Washington, March 3, 1804.

Dear Sir:

As long ago as the 4th of November last, you were so obliging as to notice my Letter concerning Louisiana. The ruling party do not now pretend that the Louisianians are Citizens of the U. States. They do not venture to say—they have never said—that the Government had a Constitutional power to incorporate that new and immense Country into the Union; yet they will not givethemselves the trouble to alter the Constitution for that purpose. It appears very evident that in a few years, when their power shall be more confirmed, and the implicit obedience of the people as habitual, they will erect States in that Territory and incorporate them into the Union. Mr. Adams had not arrived when the Treaty was ratified, but he approved of it and of the consequent appropriation for the purchase-money; fondly believing that an amendment to the Constitution, to embrace that new object, would have been a mighty easy thing. He presented a Resolution really for that purpose; but after lying some time, it was called up and even contemptuously rejected; his own, Mr. Hillhouse's and mine being the only votes in its favour. It is further evident, that the Constitution will henceforward be only a convenient instrument, to be shaped, by construction, into any form that will best promote the views of the operators. In the name of the Constitution they will commit every arbitrary act which their projects may require; or they will alter it to suit their purposes. I begin to think it would be better if we had none. The leaders of the populace wanting the sanction of a constitutional power might then be more cautious in their measures.

We have commenced the consideration of the Impeachment of Judge Pickering of Portsmouth (I presume you know that he is not a relative of mine) for high crimes and misdemeanors. Process was served upon him in January and he was summoned to appear at the bar of the Senate yesterday. Mr. Harper delivered to the President (Mr. Burr) a letter from himself, and a petition (admirably drawn) from Jacob L. Pickering the Judge's son. In his letter Mr. Harper suggested Judge Pickering's insanity, and that he appeared not as his attorney and could not enter an appearance for him, but at his son's request, to support the facts stated in his petition; which described Judge Pickering to have been insane at the times when he eld the district courts mentioned in the articles of impeachment; and as still insane and so infirm in body as to be utterly incapable of being brought at this time, in person, to the Bar of the Senate, and tendered affidavits to substantiate these facts: praying also that the trial of the impeachment might be postponed. Mr. Harper asked if he might be permitted to speak in support of the petition.

The managers on the part of the House of Representatives ob—jected. They wished the non-appearance

of the Judge might be recorded as a default. The Senate retired (conformably to a previous arrangement) to an adjoining room to consider this point. After near an hour spent in loose debate, they came to this conclusion only, that they would return to their Chamber, and that the President should inform the managers, that the Senate had not come to a determination; and that when they had they would give due notice thereof to the House of Representatives.

To-day we met again, and with closed doors, discussed the question. All the Jeffersonians who spoke were for denying the prayer of the petition and the hearing of counsel in support of it, declaring that Judge Pickering ought to plead, or that his friends should put in a plea for him, if not guilty; and that under this plea, all the evidence they proposed to offer, to prove his insanity, must be given. Some of them supposed, or pretended to think, that if he was proved to be insane, he might be found guilty. Mr. Tracy replied, with a poignancy which would have excited a proper feeling in men unhabituated in the measures of a party malignant and cruel as death. He remarked that intelligence was essential to the commission of a crime, and that no court would pronounce an insane person guilty of high crimes and misdemeanors, who were not themselves insane. Still, however, they all persisted to argue against the hearing of counsel on the petition until near four o'clock when the court adjourned.

In this debate (I am sorry it was not public) there were manifested a virulence and rancor which shocked every man, who had any feelings of justice or humanity. Let this party progress in the course they have travelled for two years past, and before Mr. Jefferson's second Presidency expires, I shall not be surprised, if I live so long, to see bloody victims of their ambition, inexorable malice and revenge. One or two Marats or Robespierres, with half a dozen congenial spirits, would carry along enough of the half moderates to make a majority in the Senate to concur in any measures; and by similar means they would be forced through the House of Representatives. Could Senators vote by ballot, Judge Pickering would not, being proved insane, be convicted of any crime; but voting viva voce, many have not honest fortitude enough to say nay to any measure which is supposed to involve popularity, and I do not know what will be the result. The late amendment to the Constitution would hardly have been adopted by a majority; much less by two thirds of the Senate, if their votes had been given by ballots.

The British Convention for settling Boundaries, which you took some pains to negotiate, and which was signed the 12th of May, you would naturally suppose must have been readily approved by the Senate; seeing it conformed to your instruction; and was, in fact, made by our own Government; and especially after the President, in his message at the opening of the Session, had informed Congress and the world that the terms of the Convention were entirely satisfactory to both parties. But the President altered his mind; the Senate followed of course; and the advice to ratify was, with the exception of the fifth article, which, you will recollect, respected the Northwestern boundary. And yet in a paper which he sent me, (occasioned with an accidental correspondence between us) speaking of the Treaty of Cession of Louisiana, to the U. States, he said expressly "But this Treaty was not known to the negotiators of either party at London nor could the rights acquired by it be affected by arrangements instituted and completed there merely for the purpose of explaining and supplying provisions in the Treaty of 1783." Why then suspend the 5th Article? why not ratify absolutely? Mr. Jefferson is not contented with the immense extent of Louisiana as held by the French. Its northern boundary not having been explicitly defined (though undoubtedly it reached to the utmost range of the Mississippi and Missouri) he wants to carry it to the

parallel of the 49 degree of North Latitude. To effect this end, he certainly supposes the suppression of the 5th Article will contribute. For this object your entirely satisfactory convention is put in jeopardy. He thinks, however, or pretends to think, that G. Britain will readily agree to the other articles; and he doubtless supposes they will negotiate to his wishes relative to the northern boundary of Louisiana. Some of his magnanimous partisans in the Senate have openly avowed the propriety of pushing G. Britain now on any points we desire to gain; because her present critical situation will dispose her to yield (as they imagine) what in a time of peace she might refuse! This avowal was made this week, when we were discussing Sam. Smith's wise bill for the protection of the seamen of the U. States; and which the Senate (doubtless on the hint from the oracle) had the grace to reject, by postponing it to next December. A like bill before the ouse of Repres. must meet the like fate. It is understood the President is negotiating on this Subject.

In this debate S. Smith told us that you were once on the point of signing a convention relative to American seamen—or rather seamen on board of American vessels; when it was suddenly declined by the British Ministry. In a former debate, he said the British Ministry had consented to renounce all impressments from our vessels, except within the narrow seas. Apropos. What do the British mean by the words “narrow sea”?

I shall be much obliged by your giving me any information which it may not be improper to communicate on the subject of impressing our seamen; or, if any part be confidential, you will so mark it. The Act of Congress, presenting the certificates to be given to seamen, is defective. I have had some thoughts of offering a bill for amending it; and to introduce some guards to prevent the disreputable modes of obtaining proofs of citizenship, whereby all certificates, even of our native seamen, are rendered suspicious. Any hints on this head will be gratefully received.

Faithfully yours

T. Pickering

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