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TO JAMES PLEASANTS - Thomas Jefferson, The Works, vol. 12 (Correspondence and Papers 1816-1826) [1905]

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TO JAMES PLEASANTS

Monticello, Dec. 26. 21

Dear Sir,

j. mss.

—I learn with real regret from your favor of the 10th the several circumstances which have deprived me of the pleasure of seeing, either here or at Poplar Forest, a relation whom I have long been taught to esteem, altho I have not the advantage of his personal acquaintance. I must find my consolation in the French adage that *tout ce qui est differe n'est pas perdu*, assuring you that no visit will be received with more welcome. My hope too of a reiteration of effort is strengthened by the presumed additional excitement of curiosity to see our University; this now draws to it numerous visitors from every part of the state & from strangers passing thro it. I can assure you there is no building in the US. so worthy of being seen, and which gives an idea so adequate of what is to be seen beyond the Atlantic. There, to be sure they have immensely larger and more costly masses, but nothing handsomer or in chaster style.

The balance which you mention as coming to me from Ronald's executors be so good as to have paid into the hands of Colo. Bernard Peyton my correspondent in Richmond.

I find you are to be harassed again with a bankrupt law. Could you not compromise between agriculture and commerce by passing such a law which like the bye laws of incorporate towns, should be binding on the inhabitants of such towns only, being the residence of commerce, leaving the agriculturists, inhabitants of the country, in undisturbed possession of the rights & modes of proceedings to which their habits, their interests and their partialities attach them? This would be as *uniform* as other laws of local obligation.

(But you will have a more difficult task in curbing the Judiciary in their enterprises on the constitution. I doubt whether the erection of the Senate into an appellate court on Constitutional questions would be deemed an unexceptionable reliance; because it would enable the judiciary, with the representatives in Senate of one third only of our citizens, and that in a single house, to make *by construction* what they should please of the constitution, and thus bind in a double knot the other two thirds, for I believe that one third of our citizens chuse a majority of the Senate, and these too of the smaller states whose interests lead to lessen state influence, & strengthen that of the general government. A better remedy I think, and indeed the best I can devise would be to give future commissions to judges for six years (the

(Senatorial term) with a re-appointmentability by the president with the approbation of *both* houses. That of the H. of Repr. imports a majority of citizens, that of the Senate a majority of states and that of both a majority of the three sovereign departments of the existing government, to wit, of it's Executive & legislative branches. If this would not be independance enough, I know not what would be such, short of the total irresponsibility under which we are acting and sinning now. The independance of the judges in England on the King alone is good; but even there they are not independant on the Parliament; being removable on the joint address of both houses, by a vote of a majority of each, but we require a majority of one house and 2/3 of the other, a concurrence which, in practice, has been and ever will be found impossible; for the judiciary perversions of the constitution will forever be protected under the pretext of errors of judgment, which by principle are exempt from punishment.

Impeachment therefore is a bugbear which they fear not at all. But they would be under some awe of the canvas of their conduct which would be open to both houses regularly every 6th year. It is a misnomer to call a government republican, in which a branch of the supreme power is independant of the nation. By this change of tenure a remedy would be held up to the states, which altho' very distant, would probably keep them quiet. In aid of this a more immediate effect would be produced by a joint protestation of both Houses of Congress, that the doctrines of the judges in the case of Cohens, adjudging a state amenable to their tribunal, and that Congress can authorize a corporation of the district of Columbia to pass any act which shall have the force of law within a state, are contrary to the provisions of the Constitution of the US. This would be effectual; as with such an avowal of Congress, no state would permit such a sentence to be carried into execution, within it's limits. If, by the distribution of the sovereign powers among three branches, they were intended to be checks on one another, the present case calls loudly for the exercise of that duty, and such a counter declaration, while proper in form, would be most salutary as a precedent.

Another most condemnable practice of the supreme court to be corrected is that of cooking up a decision in Caucus & delivering it by one of their members as the opinion of the court, without the possibility of our knowing how many, who, and for what reasons each member concurred. This compleatly defeats the possibility of impeachment by smothering evidence. A regard for character in each being now the only hold we can have of them, we should hold fast to it. They would, were they to give their opinions seriatim and publicly, endeavor to justify themselves to the

world by explaining the reasons which led to their opinion. While Edmd Randolph was attorney general, he was charged on a particular occasion by the H. of R. to prepare a digest and some amendments to the judiciary law. One of the amendments he proposed was that every judge should give his individual opinion, and reasons in open court, which opinions and reasons should be recorded in a separate book to be published occasionally in the nature of Reports. Other business prevented Congress from acting then on the bill. Such a provision would produce valuable effect and emulation in forming an opinion and correctly reasoning on it; and would give us Reports, unswelled by the arguments of counsel and within the compass of our reading and book shelves. But these things belong to the present generation, who are to live under them. The machine, as it is, will, I believe, last my time, and those coming after will know how to repair it to their own minds. I cannot help sometimes yielding to senile garrulity on matters not belonging to me, yet I pray not to be quoted, but pardoned for this weakness of age. With my prayers that our constitution may *perpetuum durare per aevum* accept the assurances of my affectionate esteem and respect.