

**Edmond C. Genet to Thomas Jefferson, June 1, 1793,  
with Note , from The Works of Thomas Jefferson in  
Twelve Volumes. Federal Edition. Collected and Edited  
by Paul Leicester Ford.**

**TO THE FRENCH MINISTER J. MSS. (EDMOND CHARLES GENET)**

Philadelphia June 1. 1793.

Sir, —I have to acknowledge the receipt of your note of the 27th of May on the subject of Gideon Henfield, a citizen of the United States, engaged on board an armed vessel in the service of France. It has been laid before the President, and referred to the Attorney General of the United States, for his opinion on the matter of law, and I have now the honor of enclosing you a copy of that opinion. Mr. Henfield appears to be in the custody of the civil magistrate, over whose proceedings the executive has no controul. The act with which he is charged will be examined by a jury of his countrymen, in the presence of judges of learning and integrity, and if it is not contrary to the laws of the land, no doubt need be entertained that his case will issue accordingly.

The forms of the Law involve certain necessary delays; of which however, he will assuredly experience none but what are necessary.

P. S. After writing the above I was honored with your note on the subject of Singleterry on which it is in my power to say nothing more than in that of Henfield.<sup>1</sup>

<sup>1</sup> A first draft of this letter terminated as follows: “no doubt need be entertained that his case will have the favorable issue you desire. The forms of law involve certain necessary delays; of which however he will assuredly experience none but what are necessary. It

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will give me great pleasure to be able to communicate to you that the laws (which admit of no controul) on being applied to the actions of Mr. Henfield, shall have found in them no cause of animadversion.”

On the back of this first draft, Jefferson wrote: “A clause stood in the original draught in these words. ‘it will give me great pleasure to be able to communicate to you &c.—Animadversion’ (see it still legible on the other side). E. R. objected to it as conveying a wish that the act might not be punishable, and proposed it should be ‘it will give me great pleasure to be able to communicate to you that on his examination he shall be found to be innocent.’ It was done. The letter with this alteration was sent into the country to Colo. Hamilton, who found the clause, even as altered, to be too strong & proposed it should be omitted. It was therefore struck out altogether. See his letter of June 3.”

Hamilton's letter referred to, was:

“ Treasury Department, June 3d, 1793.

“ Sir,—it was not till within an hour that I received your letter of the 1st, with the papers accompanying it. I approve all the drafts of letters as they stand, except that I have some doubts about the concluding sentence, of that on the subject of HENFIELD. If the *facts* are (as I presume they are) established, may it not be construed into a wish, that there may be found no law to punish a conduct in our citizens, which is of a tendency dangerous to the peace of the nation, and injurious to powers with whom we are on terms of peace and neutrality.

“I should also like to substitute for the words ‘have the favorable issue you desire,’ these words, ‘issue accordingly.’

“I retain, till to-morrow, the paper relating to an agent to the Choctaws. My judgment is not entirely made up on the point—the state of my family and my own health having prevented due reflection upon it.

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“With great respect, I have the honor to be, &c.”

In the Washington MSS. there is a paper by Jefferson based on this Henfield case, which follows:

“ Notes.

“Cases where individuals (as Henfield &c.) organize themselves into military bodies within the US. or participate in acts of hostility by sea, where *jurisdiction attaches to the person*.

“What is the present legal mode of *restraint*? binding to the good behavior? military restraint? or what? or can the act only be *punished* after it is committed?

“Vessels originally constituting themselves cruizers here, or those so constituted elsewhere & augmenting their force here, may they be seized and detained?

“By what branch of the government? e. g. the *Polly* or *Republican* at N. Y. the *Jane* at Philade. the *Industry* at Baltimore. Their Prizes, may they be restored? e.g. the *Lovely lass*, Pr. Wm. Henry, *Jane* of Dublin, the Spanish prize &c.

“ Text.

“The Constitution having authorised the legislature exclusively to declare whether the nation, from a state of peace, shall go into that of war, it rests with their wisdom to consider Whether the restraints already provided by the laws are sufficient to prevent individuals from usurping, *in effect*, that power, by taking part, or arraying themselves to take part, by sea or by land, while under the jurisdiction of the US. in the hostilities of any one nation against any other with which the US. are at peace?

“Whether the laws have provided with sufficient efficacy & explicitness, for arresting & restraining their preparations & enterprizes, & for indemnifying their effects?

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“Captures within our waters, by whom to be restored? e. g. the *George*, the *William*, the *Providence*, the *William Tell* &c.

“Cases of the *Betsey*, an American vessel & Swedish cargo.

“The *Maxwell*, vessel & cargo Swedish.

“Merely an intimation to establish all these cases with the Judiciary.

“Whether within the territory of the US. or those limits on it's shores to which reason & usage authorize them to extend their jurisdiction & protection, & to interdict every hostile act, even between hostile nations, the partition of the national authority between the civil & military organs is delineated with sufficient precision to leave no doubt which of the two is justified, & is bound, to interpose?

“Whether either & which of them is authorized to liberate our own property, or that of other peaceable nations, taken on the high seas & brought into our ports?

“Whether all such of these interferences as may be exercised by the judiciary bodies with equal efficacy, with more regularity, and with greater safety to the rights of individuals, citizen or alien, are already placed under their cognizance, so as to leave no room for diversity of judgment among them, no necessity or ground for any other branch to exercise them, merely that there may not be a defect of justice or protection, or a breach of public order?

“For a specification of some of these duties see Jay's & Wilson's charges. Are they all sufficiently provided with specific punishments?

“Offences against the Law of Nations. Genet's conduct is one. by that law the President may order him away. Has the law provided for the efficacy of this order?”

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“And Whether the duties of a nation at peace towards those at war, imposed by the laws and usages of nature, & nations, & such other offences against the law of nations as present circumstances may produce, are provided for by the municipal law with those details of internal sanction and coercion, the mode & measure of which that alone can establish?”