

Thomas Jefferson to James Monroe, September 7, 1797, from The Works of Thomas Jefferson in Twelve Volumes. Federal Edition. Collected and Edited by Paul Leicester Ford.

TO JAMES MONROE J. MSS.

Monticello, Sep 7, 97.

The doubt which you suggest as to our jurisdiction over the case of the grand jury vs. Cabell, had occurred to me, & naturally occurs on first view of the question. But I knew, that to send the petition to the Ho of Represent. in Congress, would make bad worse; that a majority of that House would pass a vote of approbation. On examination of the question, too, it appeared to me that we could maintain the authority of our own government over it.

A right of free correspondence between citizen & citizen, on their joint interests, whether public or private, & under whatsoever laws these interests arise, (to wit, of the state, of Congress, of France, Spain, or Turkey), is a natural right; it is not the gift of any municipal law, either of England, or of Virginia, or of Congress; but in common with all our other natural rights, is one of the objects for the protection of which society is formed, & municipal laws established.

The courts of this commonwealth (and among them the General court, as a court of impeachment) are originally competent to the cognizance of all infractions of the rights of one citizen by another citizen; and they still retain all their judiciary cognizances not expressly alienated by the federal constitution.

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The federal constitution alienates from them all cases arising, 1st, under that constitution; 2dly, under the laws of Congress; 3dly, under treaties, &c. But this right of free correspondence, whether with a public representative in General assembly, in Congress, in France, in Spain, or with a private one charged with a pecuniary trust, or with a private friend the object of our esteem, or any other, has not been given to us under, 1st, the federal constitution; 2dly, any law of Congress; or 3dly, any treaty; but as before observed, by nature. It is therefore not alienated, but remains under the protection of our courts.

Were the question even doubtful, it is no reason for abandoning it. The system of the General government, is to seize all doubtful ground. We must

join in the scramble, or get nothing. Where first occupancy is to give a right, he who lies still loses all. Besides, it is not right for those who are only to act in a preliminary form, to let their own doubts preclude the judgment of the court of ultimate decision. We ought to let it go to the Ho of delegates for their consideration, & they, unless the contrary be palpable, ought to let it go to the General court, who are ultimately to decide on it.

It is of immense consequence that the States retain as complete authority as possible over their own citizens. The withdrawing themselves under the shelter of a foreign jurisdiction, is so subversive of order and so pregnant of abuse, that it may not be amiss to consider how far a law of *præmunire* should be revived & modified, against all citizens who attempt to carry their causes before any other than the State courts, in cases where those other courts have no right to their cognizance. A plea to the jurisdiction of the courts of their State, or a reclamation of a foreign jurisdiction, if adjudged valid, would be safe; but if adjudged invalid, would be followed by the punishment of *præmunire* for the attempt.

Think further of the preceding part of this letter, and we will have further conference on it. Adieu.

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P.S. Observe, that it is not the breach of mr. Cabell's privilege which we mean to punish: that might lie with Congress. It is the wrong done to the citizens of our district. Congress has no authority to punish that wrong. They can only take cognizance of it in vindication of their member.