

**James Madison to Edmund Randolph, May 1, 1781.
Transcription: The Writings of James Madison,
ed. Gaillard Hunt. New York: G.P. Putnam's Sons,
1900-1910.**

TO EDMUND RANDOLPH.1

1 From the Madison Papers (1840).

Philadelphia, May 1, 1781.

Dear Sir, —The case of the vessel captured within North Carolina was some time since remitted to Congress by Governor Harrison. I am glad to find your ideas correspond so exactly with those I had advanced on the subject. The legislative power over captures, and the judiciary in the last resort, are clearly vested in Congress by the Confederation. But the judiciary power in the first instance, not being delegated, is as clearly reserved to the Admiralty Courts of the particular States within which the captures are made. Captures made on the high seas must fall within the jurisdiction of the State into which it shall please the captor to carry them. It will be sufficient, I believe, to insert in the instructions to privateers, a clause for preventing the grievance complained of by North Carolina. The anger of Mr. Burke was erroneous in its principle, as well as intemperate in its degree. The offender being an officer of Congress, and not of Virginia, Congress, and not Virginia, should have been resorted to for redress.

On a consultation before Doctor Lee left us, it was determined that we ought to renew our attempts to obtain from Congress a decision on the cession of Virginia, before the meeting

Library of Congress

of the Legislature. The attempt was accordingly made, and produced all the perplexing and dilatory objections which its adversaries could devise. An indisposition

of the President, which suspended the vote of Maryland, furnished an argument for postponing, which it was prudent to yield to, but which is now removed by the arrival of Mr. Wright, a new Delegate from that State. We shall call again on Congress for a simple answer in the affirmative or the negative, without going into any unnecessary discussions on the point of right; and should the decision be postponed *sine die*, we hope the State will consider itself at liberty to take any course which its interest shall suggest. It happens very unluckily that Virginia will only have two Representatives present during the interesting business. Mr. Jones cannot be prevailed on to wait the event. Colonel Bland thinks the validity of charters unimportant to the title of Virginia, and that the title of the natives militates against the claims of the companies. Is not my situation an enviable one?

1 Also a delegate from Maryland.

A further communication from the French Minister informs us, that the Court of France laments the weakness of our army; insinuates the idea of co-operation in expelling the enemy from the United States; apprehends attempts to seduce the States into separate negotiations, and hopes measures will be taken to frustrate such views. I believe, from this and other circumstances, that the Court of France begins to have serious suspicions of some latent danger. It is extremely probable, that as the enemy relax in their military exertions against this country, they will redouble the means of seduction and division. This consideration is an additional argument in favor of a full representation of the States. In a multitude of counsellors there is the best chance for honesty, if not of wisdom.

The subject of Vermont has not yet been called up. Their agents and those of the land-mongers are playing with great adroitness into each others' hands. Mr. Jones will explain this game to you. Colonel Bland is still schismatical on this point. I flatter myself, however,

Library of Congress

that he will so far respect the united opinion of his brethren as to be silent. Mr. Lee entered fully into the policy of keeping the vote of Vermont out of Congress.

The refugees from New York have lately perpetrated one of the most daring and flagrant acts that has occurred in the course of the war. A captain of militia of New Jersey, who unfortunately fell a captive into their hands, was carried to New York, confined successively in different prisons, and treated with every mark of insult and cruelty; and finally brought over to the Jerseys, and in cold blood hanged. A label was left on his breast, charging him with having murdered one of their fraternity, and denouncing a like fate to others. The charge has been disproved by unexceptionable testimony. A number of respectable people of New Jersey have, by a memorial, called aloud on the Commander-in-Chief for retaliation; in consequence of which he has, in the most decisive terms, claimed of Sir Henry Clinton a delivery of the offenders up to justice, as the only means of averting the stroke of vengeance from the innocent head of a captive officer of equal rank to the Jersey captain. The answer of Clinton was not received when General Washington despatched a state of the transaction to Congress.