

**James Madison to Judge Roane, June 29, 1821.
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TO SPENCER ROANE. MAD. MSS.

Montpellier, June 29, 1821

Dear Sir, —I have recd., and return my thanks for your obliging communication of the 20th instant. The papers of "Algernon Sidney" have given their full lustre to the arguments agst the suability of States by individuals, and agst the projectile capacity of the power of Congress within the "ten miles square." The publication is well worthy of a Pamphlet form, but must attract Public attention in any form.

The Gordian Knot of the Constitution seems to lie in the problem of collision between the federal & State powers, especially as eventually exercised by their respective Tribunals. If the knot cannot be untied by the text of the Constitution it ought not, certainly, to be cut by any Political Alexander.

I have always thought that a construction of the instrument ought to be favoured, as far as the text would warrant, which would obviate the dilemma of a Judicial rencounter or a mutual paralysis; and that on the abstract question whether the federal or the State decisions ought to prevail, the sounder policy would yield to the claims of the former.

Our Governmental System is established by a compact, not between the Government of the U. States, and the State Governments; but between the States, as sovereign communities, stipulating each with the others, a surrender of certain portions, of their

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respective authorities, to be exercised by a Common Govt. and a reservation, for their own exercise, of all their other Authorities. The possibility of disagreements concerning the line of division between these portions could not escape attention; and the existence of some Provision for terminating regularly & authoritatively such disagreements, not but be regarded as a material desideratum.

Were this trust to be vested in the States in their individual characters, the Constitution of the U. S. might become different in every State, and would be pretty sure to do so in some; the State Govts. would not stand all in the same relation to the General Govt., some retaining more, others less of sovereignty; and the vital principle of equality, which cements their Union thus gradually be deprived of its virtue. Such a trust vested in the Govt. representing the whole and exercised by its tribunals, would not be exposed to these consequences; whilst the trust

itself would be controulable by the States who directly or indirectly appoint the Trustees: whereas in the hands of the States no federal controul direct or indirect would exist the functionaries holding their appointments by tenures altogether independent of the General Govt..

Is it not a reasonable calculation also that the room for jarring opinions between the National & State tribunals will be narrowed by successive decisions sanctioned by the Public concurrence; and that the weight of the State tribunals will be increased by improved organizations, by selections of abler Judges, and consequently by more enlightened proceedings? Much of the distrust of these departments in the States, which prevailed when the National Constitution was formed has already been removed. Were they filled everywhere, as they are in some of the States, one of which I need not name, their decisions at once indicating & influencing the sense of their Constituents, and founded on united interpretations of constitutional points, could scarcely fail to frustrate an assumption of unconstitutional powers by the federal tribunals.

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Is it too much to anticipate even that the federal & State Judges, as they become more & more coordinate in talents, with equal integrity, and feeling alike the impartiality enjoined by their oaths, will vary less & less also in their reasonings & opinions on all Judicial subjects; and thereby mutually contribute to the clearer & firmer establishment of the true boundaries of power, on which must depend the success & permanency of the federal republic, the best Guardian, as we believe, of the liberty, the safety, and the happiness of men. In these hypothetical views I may permit my wishes to sway too much my hopes. I submit the whole nevertheless to your perusal, well assured that you will approve the former, if you cannot join fully in the latter.

Under all circumstances I beg you to be assured of my distinguished esteem & sincere regard.