

**William H. Cabell from Thomas Jefferson, June 29, 1807, The Works of Thomas Jefferson in Twelve Volumes. Federal Edition. Collected and Edited by Paul Leicester Ford.**

**TO THE GOVERNOR OF VIRGINIA J. MSS. (WILLIAM H. CABELL.)**

Washington, June 29, 1807.

Sir, —Your favor by express was safely received on Saturday night, and I am thankful to you for the attention of which it is a proof. Considering the General and State governments as co-operators in the same holy concerns, the interest and happiness of our country, the interchange of mutual aid is among the most pleasing of the exercises of our duty. Captn. Gordon 2d in command of the *Chesapeake*, has arrived here with the details of that affair. Yet as the precaution you took of securing us against the accident of wanting information, was entirely proper, & the expense of the express justly a national one, I have directed him to be paid here, so that he is enabled to refund any money you may have advanced him. Mr. Gallatin & Genl. Dearborne happening to be absent, I have asked their immediate attendance here, and I expect them this day. We shall then determine on the course which the exigency and our constitutional powers call for. Whether the outrage is a proper cause of war, belonging exclusively to Congress, it is our duty not to commit them by doing anything which would have to be retracted. We may, however, exercise the powers entrusted to us for preventing future insults within our harbors, & claim firmly satisfaction for the past. This will leave Congress free to decide whether war is the most efficacious mode of redress in our case, or whether, having taught so many other useful lessons to Europe, we may not add that of showing them that there are peaceable means of repressing injustice, by making it the interest of the aggressor to do what is just, and

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abstain from future wrong. It is probable you will hear from us in the course of the week. I salute you with great esteem and respect.<sup>1</sup>

<sup>1</sup> The following are the President's letters to the Governor of Virginia concerning the steps to be taken consequent upon the *Chesapeake* outrage:

“ Washington, July 8, '07.

“ Sir,—You will have received from the Secretary at War a letter, requesting that the quota of the State of Virginia of 100,000 militia be immediately organized and put in readiness for service at the shortest warning, but that they be not actually called out until further requisition. The menacing attitudes which the British ships of war have taken in Hampton Road, the actual blockade of Norfolk, & their having sounded the entrance, as if with a view to pass up to the city, render it necessary that we should be as well prepared there as circumstances will permit. The Secretary at War being gone to N York to arrange a plan of defence for that city, it devolves on me to request that, according to the applications you may receive from the officers charged with the protection of the place, and the information which you are more at hand to obtain than we are here, you will order such portions of the militia as you shall think necessary & most convenient to enter immediately on duty, for the defence of the place & protection of the country, at the expense of the U. S. We have, moreover, 4 gunboats hauled up at Hampton, & 4 others on the stocks in Matthews county, under the care of Commodore Samuel Barron, which we consider as in danger. I must request you also to order such aids of militia, on the application of that officer, as you shall think adequate to their safety. Any arms which it may be necessary to furnish to the militia for the present objects, if not identically restored to the State, shall be returned in kind or in value by the U S. I have thought I could not more effectually provide for the safety of the places menaced, than by committing it to your hands, as you are nearer the scene of action, have the necessary powers over the militia, can receive information, & give aid so much more promptly than can be done from this place. I will ask

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communications from time to time of your proceedings under this charge. I salute you with great esteem & respect.”

“ Washington, July 19, 1807.

“ Sir,—Your letter of the 15th was received yesterday, and the opinion you have given to General Matthews against allowing any intercourse between the British Consul & the ships of his nation remaining in our waters, in defiance of our authority, is entirely approved. Certainly while they are conducting themselves as enemies *de facto*, intercourse should be permitted only as between enemies, by flags under the permission of the commanding officers, & with their passports. My letter of the 16th mentioned a case in which a communication from the British officers should be received if offered. A day or two ago, we permitted a parent to go on board the *Bellona* with letters from the British minister, to demand a son impressed; and others equally necessary will occur, but they should be under the permission of some officer having command in the vicinity.

With respect to the disbanding some portion of the troops, altho I consider Norfolk as rendered safe by the batteries, the two frigates, the 8 gun-boats present, and 9 others & a bomb-vessel which will be there immediately, & consequently that a considerable proportion of the militia may be spared, yet I will pray you to let that question lie a few days, as in the course of this week we shall be better able to decide it. I am anxious for their discharge the first moment it can be done with safety, because I know the dangers to which their health will be exposed in that quarter in the season now commencing. By a letter of the 14th from Col. Tatham, stationed at the vicinities of Lynhaven Bay to give us daily information of what passes, I learn that the British officers & men often go ashore there, that on the day preceding, 100 had been at the pleasure-house in quest of fresh provisions & water, that negroes had begun to go off to them. As long as they remain there, we shall find it necessary to keep patrols of militia in the neighborhood sufficiently strong to prevent them from taking or receiving supplies. I presume it would be thought best to assign the tour for the three months to come, to those particular corps

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who being habituated to the climate of that part of the country, will be least likely to suffer in their health; at the end of which time others from other parts of the country may relieve them, if still necessary. In the meantime, our gun-boats may all be in readiness, and some preparations may be made on the shore, which may render their remaining with us not eligible to themselves. These things are suggested merely for consideration for the present, as by the close of the week I shall be able to advise you of the measures ultimately decided on. I salute you with friendship & respect.”

“ Washington, July 24, 1807.

“ Sir,—Yours of the 20th has been duly received. The relation in which we stand with the British naval force within our waters is so new, that differences of opinion are not to be wondered at respecting the captives, who are the subject of your letter. Are they insurgents against the authority of the laws? Are they public enemies, acting under the orders of their sovereign? or will it be more correct to take their character from the act of Congress for the preservation of peace in our harbors, which authorizes a qualified war against persons of their demeanor, defining it's objects, & limiting it's extent? Considering this act as constituting the state of things between us & them, the captives may certainly be held as prisoners of war. If we restore them it will be an act of favor, and not of any right they can urge. Whether Great Britain will give us that reparation for the past & security for the future, which we have categorically demanded, cannot as yet be foreseen; but we have believed we should afford an opportunity of doing it, as well from justice & the usage of nations, as a respect to the opinion of an impartial world, whose approbation & esteem are always of value. This measure was requisite, also, to produce unanimity among ourselves; for however those nearest the scenes of aggression & irritation may have been kindled into a desire for war at short hand, the more distant parts of the Union have generally rallied to the point of previous demand of satisfaction & war if denied. It was necessary, too, for our own interests afloat on the ocean, & under the grasp of our adversary; and, added to all this, Great Britain was ready armed & on our lines, while we were taken by surprise, in all the confidence of a state of peace, & needing time to get our

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means into activity. These considerations render it still useful that we should avoid every act which may precipitate immediate & general war, or in any way shorten the interval so necessary for our own purposes; and they render it advisable that the captives, in the present instance, should be permitted to return, with their boat, arms, &c., to their ships. Whether we shall do this a 2d, a 3d, or a 4th time, must still depend on circumstances. But it is by no means intended to retire from the ground taken in the proclamation. That is to be strictly adhered to. And we wish the military to understand that while, for special reasons, we restore the captives in this first instance we applaud the vigilance & activity which, by taking them, have frustrated the object of their enterprise, and urge a continuance of them, to intercept all intercourse with the vessels, their officers and crews, and to prevent them from taking or receiving supplies of any kind; and for this purpose, should the use of force be necessary, they are unequivocally to understand that force is to be employed without reserve or hesitation. I salute you with great esteem & respect.”

“ Washington, July 27, 1807.

“ Sir,—The Secretary at War having returned from New York, we have immediately taken up the question respecting the discharge of the militia, which was the subject of your two last letters, and which I had wished might remain undecided a few days. From what we have learnt of the conduct of the British squadron in the Chesapeake, since they have retired from Hampton roads, we suppose that, until orders from England, they do not contemplate any further acts of hostility, other than those they are daily exercising, by remaining in our waters in defiance of the national authority, and bringing-to vessels within our jurisdiction. Were they even disposed to make an attempt on Norfolk, it is believed to be sufficiently secured by the two frigates *Cybele* and *Chesapeake*, by the 12 gun-boats now there, & 4 more from Matthews county expected,—by the works of Fort Nelson; to all of which we would wish a company of artillery, of the militia of the place, to be retained & trained, putting into their hands the guns used at Norfolk, and a company of Cavalry to be employed on the bay shore between Norfolk & Cape Henry, to cut off from these vessels all supplies, according to the injunctions of the proclamation, & to give immediate

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notice to Norfolk should any symptoms of danger appear,—to oppose which the militia of the borough and the neighboring counties should be warned to be in constant readiness to march at a moment's warning. Considering these provisions as quite sufficient for the safety of Norfolk, we are of opinion that it will be better immediately to discharge the body of militia now in service, both on that & the other side of James river. This is rendered expedient, not only that we may husband from the beginning those resources which will probably be put to a long trial, but from a regard to the health of those in service, which cannot fail to be greatly endangered during the sickly season now commencing, and the discouragement, which would thence arise, to that ardor of public spirit now prevailing. As to the details necessary on winding up this service, the Secretary at War will write fully, as he will, also, relative to the force retained in service, and whatever may hereafter concern them or their operations, which he possesses so much more familiarly than I do, & have been gone into by myself immediately, only on account of his absence on another service.

“The diseases of the season incident to most situations on the tide-waters, now beginning to show themselves here, & to threaten some of our members, together with the probability of a uniform course of things in the Chesapeake, induce us to prepare for leaving this place during the two sickly months, as well for the purposes of health as to bestow some little attention to our private affairs, which is necessary at some time of every year. Our respective stations will be fixed & known, so that everything will find us at them, with the same certainty as if we were here; and such measures of intercourse will be established as that the public business will be carried on at them, with all the regularity & dispatch necessary. The present arrangements of the post office admit an interchange of letters between Richmond and Monticello twice a week, if necessary, and I propose that a third shall be established during the two ensuing months, of which you shall be informed. My present expectation is to leave this place for Monticello, about the close of this or the beginning of the next week. The Secretary at War will continue in this neighborhood until we shall further see that the course of things in the Chesapeake will admit of his taking some respite. I salute you with great esteem and respect.”

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“ Monticello, August 7, '07.

“ Dear Sir,—Your letters of July 31 & Aug 5 were received yesterday. The ground taken in conformity with the Act of Congress, of considering as public enemies British armed vessels in or entering our waters, gives us the benefit of a system of rules, sanctioned by the practice of nations in a state of war, and consequently enabling us with certainty & satisfaction to solve the different cases which may occur in the present state of things. With these rules most officers are acquainted, and especially those old enough to have borne a part in the revolutionary war.

“1. As to the enemy within our waters, intercourse, according to the usages of war, can only be by flag; and the ceremonies respecting that are usually a matter of arrangement between the adverse officers commanding in the neighborhood of each other. If no arrangement is agreed on, still the right of sending a flag is inherent in each party, whose discretion will direct barn to address it to the proper adverse authority; as otherwise it would be subject to delay or rejection. Letters addressed by flag to persons in authority with the adverse power, may be sent sealed, & should be delivered. But, if to others, or to their own friends happening to be within the limits of the adversary, they must be open. If innocent in the judgment of the receiving officer, courtesy requires their delivery; if otherwise, they may be destroyed or returned by him; but in a case of only suspended amity, as ours, they should be returned. Letters sent from the interdicted vessels to their consul in Norfolk must be open; and the propriety of delivering them judged of by our officer, tempering his judgment however with liberality and urbanity. Those to their minister plenipoty here, sealed or unsealed, should be sent to the Secretary of State without any delay. As to the demand of fugitive slaves, it was the custom during the late war, for the owner to apply to our commander for a flag, and to go himself with that, to exhibit his claim and receive the fugitive. And with respect to Americans detained on board their ships, the application should be still, as heretofore, made through the Secretary of State, to whom proper documents are to be furnished. But without waiting for his application, the British

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officer, knowing them to be Americans & freemen, cannot but feel it a duty to restore them to their liberty on their own demand.

“2. As to the residue of the British nation, with whom we are as yet in peace, their persons & vessels, unarmed, are free to come into our country without question or molestation. And even armed vessels, in distress, or charged, under due authority, with despatches addressed to the government of the U. S., or its authorized agents, are, by a proviso in the proclamation, to be received. This exception was meant to cover the British packets coming to New York, which are generally armed, as well as to keep open, through other channels, the communication between the governments. Such a vessel (as the *Columbine*) needs no flag, because she is not included in the interdict. Her repairs & supplies are to be regulated by the collector of the port, who may permit them liberally (if no abuse be justly suspected) so far as wanted to carry her back to the port from whence she came. The articles of intercourse, stay & departure, are to be specially superintended by such person as the government shall authorize & instruct.

“I have thus far, in compliance with your request, stated the practice of nations so generally as to meet the cases which may arise in the neighborhood of Norfolk. In doing this, I may, in some cases, have mistaken the practice. Where I have done so, I mean that my opinion shall be subject to correction from that practice. On determining that the militia should be disbanded, except so small a portion as would require only a major to command, we concluded that so long as Capt. Decatur should remain in his present station, he should be the officer to receive, authorize & regulate intercourse by flag, with the British squadron in the Chesapeake. He has accordingly, I expect, received instructions to that effect, from the Secretary of the Navy, and I shall communicate to him a copy of this letter to assist him in that duty.

“The Secretary at War, I presume, has written to you on the appointment of a Major to command the militia retained. In your selection of the officer, I have no doubt you will be

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sensible of the importance of naming one of intelligence & activity as on him we are to rely for daily information from that interesting quarter.

“ Monticello, August 11, 1807.

“ Dear Sir,—Your favor of the 7th is received. It asks my opinion on several points of law arising out of the Act of Congress for accepting 30,000 volunteers. Altho' your own opinion, & those of some of your counsellors, more recent in the habit of legal investigation, would be a safer guide for you than mine, unassisted by my ordinary & able associates, yet I shall frankly venture my individual thoughts on the subject, and participate with you in any risk of disapprobation to which an honest desire of furthering the public good may expose us.

“In the construction of a law, even in judiciary cases of *meum et tuum*, where the opposite parties have a right & counter-right in the very words of the law, the Judge considers the intention of the law-giver as his true guide, and gives to all the parts & expressions of the law, meaning which will effect, instead of defeating, it's intention. But in laws merely executive, where no private right stands in the way, and the public object is the interest of all, a much freer scope of construction, in favor of the intention of the law, ought to be taken, & ingenuity ever should be exercised in devising constructions, which may save to the public the benefit of the law. Its intention is the important thing: the means of attaining it quite subordinate. It often happens that, the Legislature prescribing details of execution, some circumstance arises, unforeseen or unattended to by them, which would totally frustrate their intention, were their details scrupulously adhered to, & deemed exclusive of all others. But constructions must not be favored which go to defeat instead of furthering the principal object of their law, and to sacrifice the end to the means. It being as evidently their intention that the end shall be attained as that it shall be effected by any given means, if both cannot be observed, we are equally free to deviate from the one as the other, and more rational in postponing the means to the end. In the present case, the object of the act of Congress was to relieve the militia at large from the necessity of

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leaving their farms & families, to encounter a service very repugnant to their habits, and to permit that service to be assumed by others ardently desiring it. Both parties, therefore, (& they comprehend the whole nation,) would willingly waive any verbal difficulties, or circumstances of detail, which might thwart their mutual desires, & would approve all those views of the subject which facilitate the attainment of their wishes.

“It is further to be considered that the Constitution gives the executive a general power to carry the laws into execution. If the present law had enacted that the service of 30,000 volunteers should be accepted, without saying anything of the means, those means would, by the Constitution, have resulted to the discretion of the executive. So if means specified by an act are impracticable, the constitutional power remains, & supplies them. Often the means provided specially are affirmative merely, and, with the constitutional powers, stand well together; so that either may be used, or the one supplementary to the other. This aptitude of means to the end of a law is essentially necessary for those which are executive; otherwise the objection that our government is an impracticable one, would really be verified.

“With this general view of our duty as executive officers, I proceed to the questions proposed by you.

“1. Does not the act of Congress contemplate the association of companies to be formed before commissions can be issued to the Captains, &c.?

“2. Can battalion or field-officers be appointed by either the State or Congressional laws, but to battalions or regiments actually existing.

“3. The organization of the companies into battalions and regiments belonging to the President, can the Governor of the State issue commissions to these officers before that organization is made & announced to him?

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“4. Ought not the volunteers tendering their services, under the act of Feb. 24, 07, to be accepted by the President before the commissions can issue?”

“Had we no other executive powers but those given in this act, the 1st., 2d., & 3d. questions would present considerable difficulties, inasmuch as the act of Congress does appear, as you understand it, to contemplate that the companies are to be associated, & the battalions, squadrons, regiments, brigades, & divisions organized, before commissions are to issue. And were we to stop here the law might stop also; because I verily believe that it will be the zeal & activity alone of those destined for commands, which will give form & body to the floating ardor of our countrymen to enter into this service, and bring their wills to a point of union & effect. We know from experience that individuals having the same desires are rarely brought into an association of them, unless urged by some one assuming an agency, & that in military associations the person of the officer is a material inducement. Whether our constitutional powers to carry the laws into execution, would not authorize the issuing a previous commission (as they would, had nothing been said about commissions in the law), is a question not necessary now to be decided; because they certainly allow us to do what will be equally effectual. We may issue instructions or warrants to the persons destined to be captains, &c., authorizing them to superintend the association of the companies, & to perform the functions of a captain &c., until commissions may be regularly issued, when such a commission will be given to the bearer, or a warrant authorizing the bearer to superintend the organization of the companies associated in a particular district, into battalions, squadrons, &c., and otherwise to perform the functions of a colol. &c., until a commission may regularly issue, when such a commission will be given to the bearer. This is certainly within the constitutional powers of the executive, and with such a warrant, I believe, the person bearing it would act with the same effect as if he had the commission.

“As to the 4th question, the execution of this law having been transferred to the State Executives, I did consider all the powers necessary for it's execution as delegated from

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the President to them. Of this I have been so much persuaded that, to companies offering their services under this law, I have answered that the power of acceptance was in the Governor, and have desired them to renew their offer to him. If the delegation of this power should be expressly made, it is hereby fully delegated.

“To the preceding I will add one other observation. As we might still be disappointed in obtaining the whole number of 11,563, were they apportioned among the several districts, & each restrained to it's precise apportionment (which some might fail to raise), I think it would better secure the complete object of the law to accept all proper offers, that the excess of some districts may supply the deficiencies of others. When the acceptances are all brought together, the surplus, if any, will be known, and, if not wanted by the U. S., may be rejected; and in doing this, such principles of selection may be adopted as, without any imputation of partiality, may secure to us the best offers. For example, 1. we may give a preference to all those who will agree to become regulars, if desired. This is so obviously for the public advantage that no one could object to it. 2. we may give a preference to 12 month volunteers over those for 6. months; and other circumstances of selection will of course arise from the face of the offers, such as distribution, geographical position, proportion of cavalry, riflemen, &c.

“I have thus, without reserve, expressed my ideas on the several doubts stated in your letters, & I submit them to your consideration. They will need it the more, as the season and other circumstances occasioning the members of the administration to be in a state of separation at this moment, they go without the stamp of their aid & approbation. It is our consolation & encouragement that we are serving a just public, who will be indulgent to any error committed honestly, & relating merely to the means of carrying into effect what they have manifestly willed to be a law.

“I salute you with great esteem and respect.”

“ Monticello, Sep. 7, 1807.

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“ Dear Sir,—I now return you Majr. Newton's letters. The intention of the squadron in the bay is so manifestly pacific, that your instructions to him are perfectly proper, not to molest their boats merely for approaching the shore. While they are giving up slaves & citizen seamen, & attempting nothing ashore, it would not be well to stop this by any new restriction. If they come ashore indeed, they must be captured, or destroyed if they cannot be captured, because we mean to enforce the proclamation rigorously in preventing supplies. So the instructions already given as to intercourse by flag, as to sealed & unsealed letters, must be strictly adhered to. It is so material that the seaport towns should have artillery militia duly trained, that I think you have done well to permit Captain Nestell's company to have powder and ball to exercise. With respect to gun-carriages, furnaces & clothes, I am so little familiar with the details of the War department that I must beg those subjects to lie till the return of the Secretary at War, which will be in three weeks. Proposing to be absent from this place from the 9th to the 16th instant, our daily post will be suspended during that interval. I salute you with great esteem & respect.”

“ Washington, Nov. 1, 1807.

“ Dear Sir,—Your late letters have been regularly referred to the Secretary at War, who has already answered their several enquiries, or will do it immediately. I am inclined to believe that the departure of the British vessels from our waters must be in consequence of orders from England to respect the authorities of the country. Within about a fortnight we think we may expect answers from England which will decide whether this cloud is to issue in a storm or calm. Here we are pacifically inclined, if anything comes which will permit us to follow our inclinations. But whether we have peace or war, I think the present Legislature will authorize a complete system of defensive works, on such a scale as they think we ought to adopt. The state of our finances now permits this. To defensive works by land they will probably add a considerable enlargement of the force in gun-boats. A combination of these, will, I think, enable us to defend the Chesapeake at it's mouth,

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and save the vast line of preparation which the defence of all it's interior waters would otherwise require. I salute you with great esteem and respect.”