

**Thomas Jefferson to James Madison, May 25, 1810 ,  
from The Works of Thomas Jefferson in Twelve  
Volumes. Federal Edition. Collected and Edited by Paul  
Leicester Ford.**

**TO JAMES MADISON J. MSS.**

Monticello May 25 10.

Dear Sir, —I inclose you the extract of a letter from Govr Tyler which will explain itself, and I do it on the same principle on which I have sometimes done the same thing before, that whenever you are called on to select, you may have under consideration all those who may properly be thought of & the grounds of their pretensions. From what I can learn Griffin cannot stand it long, and really the state has suffered long enough by having such a cypher in so important an office, and infinitely the more from the want of any counterpoint to the rancorous hatred which Marshal bears to the government of his country, & from the cunning & sophistry within which he is able to enshroud himself. It will be difficult to find a character of firmness enough to preserve his independence on the same bench with Marshall. Tyler, I am certain, would do it. He is an able & well read lawyer, about 59 years of age: He was popular as a judge, & is remarkably so as a governor, for his incorruptible integrity, which no circumstances have ever been able to turn from it's course. Indeed I think there is scarcely a person in the state so solidly popular, or who would be so much approved for that place. A milk & water character in that office would be seen as a calamity. Tyler having been the former state judge of that court too, and removed to make way for so wretched a fool as Griffin has a kind of right of reclamation, with the advantage of repeated elections by the legislature, as admiralty judge, circuit judge, & Governor. But

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of all these things you will judge fairly between him & his competitors. You have seen in the papers that Livingston has served a writ on me, stating damages at 100,000. D.

The ground is not yet explained, but it is understood to be the batture. I have engaged Wirt, Hay, & Wickham as counsel. I shall soon look into my papers to make a state of the case to enable them to plead: and as much of our proceedings was never committed to writing, and my memory cannot be trusted, it is probable I shall have to appeal to that of my associates in the proceedings. I believe that what I did was in harmony with the opinion of all the members of the administration, verbally expressed altho' not in writing. I have been delighted to see the effect of Monroe's late visit to Washington on his mind. There appears to be the most perfect reconciliation & cordiality established towards yourself. I think him now inclined to rejoin us with zeal. The only embarrassment will be from his late friends. But I think he has firmness of mind enough to act independently as to them. The next session of our legislature will shew.

We are suffering under a most severe drought of now 3. weeks continuance. Late sown wheat is yellow but the oats suffer especially. In speaking of Livingston's suit, I omitted to observe that it is a little doubted that his knolege of Marshall's character has induced him to bring this action. His twistifications in the case of Marbury, in that of Burr, & the late Yazoo case shew how dexterously he can reconcile law to his personal biasses: and nobody seems to doubt that he is ready prepared to decide that Livingston's right to the batture is unquestionable, and that I am bound to pay for it with my private fortune. Ever affectionately yours.<sup>1</sup>

<sup>1</sup> On the subject of this vacancy in the Supreme Court, Jefferson further wrote to Judge John Tyler:

“ Monticello, May 26, 1810.

“ Dear Sir,—Your friendly letter of the 12th has been duly received. Although I have laid it down as a law to myself, never to embarrass the President with my solicitations, and have

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not till now broken through it, yet I have made a part of your letter the subject of one to him, and have done it with all my heart, and in the full belief that I serve him and the public in urging that appointment. We have long enough suffered under the base prostitution of law to party passions in one judge, and the imbecility of another. In the hands of one the law is nothing more than an ambiguous text, to be explained by his sophistry into any meaning which may subserve his personal malice. Nor can any milk-and-water associate maintain his own dependance, and by a firm pursuance of what the law really is, extend its protection to the citizens or the public. I believe you will do it, and where you cannot induce your colleague to do what is right, you will be firm enough to hinder him from doing what is wrong, and by opposing sense to sophistry, leave the juries free to follow their own judgment.

“I have long lamented with you the depreciation of law science. The opinion seems to be that Blackstone is to us what the Alcoran is to the Mahometans, that everything which is necessary is in him, and what is not in him is not necessary. I still lend my counsel and books to such young students as will fix themselves in the neighborhood. Coke's institutes and reports are their first, and Blackstone their last book, after an intermediate course of two or three years. It is nothing more than an elegant digest of what they will then have acquired from the real fountains of the law. Now men are born scholars, lawyers, doctors; in our day this was confined to poets. You wish to see me again in the legislature, but this is impossible; my mind is now so dissolved in tranquillity, that it can never again encounter a contentious assembly; the habits of thinking and speaking off-hand, after a disuse of five and twenty years, have given place to the slower process of the pen. I have indeed two great measures at heart, without which no republic can maintain itself in strength.

1. That of general education, to enable every man to judge for himself what will secure or endanger his freedom.
2. To divide every county into hundreds, of such size that all the children of each will be within reach of a central school in it. But this division looks to many other fundamental provisions. Every hundred, besides a school, should have a justice of the peace, a constable and a captain of militia. These officers, or some others

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within the hundred, should be a corporation to manage all its concerns, to take care of its roads, its poor, and its police by patrols, &c., (as the select men of the Eastern townships.) Every hundred should elect one or two jurors to serve where requisite, and all other elections should be made in the hundreds separately, and the votes of all the hundreds be brought together. Our present Captaincies might be declared hundreds for the present, with a power to the courts to alter them occasionally. These little republics would be the main strength of the great one. We owe to them the vigor given to our revolution in its commencement in the Eastern States, and by them the Eastern States were enabled to repeal the embargo in opposition to the Middle, Southern and Western States, and their large and lubberly division into counties which can never be assembled. General orders are given out from a centre to the foreman of every hundred, as to the sergeants of an army, and the whole nation is thrown into energetic action, in the same direction in one instant and as one man, and becomes absolutely irresistible. Could I once see this I should consider it as the dawn of the salvation of the republic, and say with old Simeon, *nunc dimittas Domine*. But our children will be as wise as we are, and will establish in the fulness of time those things not yet ripe for establishment. So be it, and to yourself health, happiness and long life.”