

# Thomas Jefferson on Politics & Government

## 17. Interpreting the Constitution

The purpose of a written constitution is entirely defeated if, in interpreting it as a legal document, its provisions are manipulated and worked around so that the document means whatever the manipulators wish. Jefferson recognized this danger and spoke out constantly for careful adherence to the Constitution as written, with changes to be made by amendment, not by tortured and twisted interpretations of the text.

"Our peculiar security is in the possession of a written Constitution. Let us not make it a blank paper by construction." --**Thomas Jefferson to Wilson Nicholas, 1803. ME 10:419**

"Where a constitution, like ours, wears a mixed aspect of monarchy and republicanism, its citizens will naturally divide into two classes of sentiment, according as their tone of body or mind, their habits, connections and callings, induce them to wish to strengthen either the monarchical or the republican features of the constitution. Some will consider it as an elective monarchy, which had better be made hereditary, and therefore endeavor to lead towards that all the forms and principles of its administration. Others will view it as an energetic republic, turning in all its points on the pivot of free and frequent elections." --Thomas Jefferson to James Sullivan, 1797. ME 9:377 "The Constitution to which we are all attached was meant to be republican, and we believe to be republican according to every candid interpretation. Yet we have seen it so interpreted and administered, as to be truly what the French have called, a monarchie masque." --**Thomas Jefferson to Robert R. Livingston, 1800. ME 10:177**

### With Plain, Ordinary Understanding

"Laws are made for men of ordinary understanding and should, therefore, be construed by the ordinary rules of common sense. Their meaning is not to be sought for in metaphysical subtleties which may make anything mean everything or nothing at pleasure." --**Thomas Jefferson to William Johnson, 1823. ME 15:450**

"Common sense [is] the foundation of all authorities, of the laws themselves, and of their construction." --**Thomas Jefferson: Batture at New Orleans, 1812. ME 18:92**

"The Constitution on which our Union rests, shall be administered by me [as President] according to the safe and honest meaning contemplated by the plain understanding of the people of the United States at the time of its adoption--a meaning to be found in the explanations of those who advocated, not those who opposed it, and who opposed it merely lest the construction should be applied which they denounced as possible." --Thomas Jefferson: Reply to Address, 1801. ME 10:248 "I do then, with sincere zeal, wish an inviolable preservation of our present federal Constitution, according to the true sense in which it was adopted by the States, that in which it was advocated by its friends, and not that which its enemies apprehended, who therefore became its enemies." --**Thomas Jefferson to Elbridge Gerry, 1799. ME 10:76**

## **When Two Meanings Are Possible**

"It is a rule, where expressions are susceptible of two meanings, to recur to other explanations. Good faith is in favor of this recurrence." --**Thomas Jefferson to William Short, 1791. ME 8:186**

**"Whenever the words of a law will bear two meanings**, one of which will give effect to the law, and the other will defeat it, the former must be supposed to have been intended by the Legislature, because they could not intend that meaning, which would defeat their intention, in passing that law; and in a statute, as in a will, the intention of the party is to be sought after." --**Thomas Jefferson to Albert Gallatin, 1808. ME 12:110**

"It was understood to be a rule of law that where the words of a statute admit of two constructions, the one just and the other unjust, the former is to be given them." --**Thomas Jefferson to Isaac McPherson, 1813. ME 13:326**

"When an instrument admits two constructions, the one safe, the other dangerous, the one precise, the other indefinite, I prefer that which is safe and precise. I had rather ask an enlargement of power from the nation, where it is found necessary, than to assume it by a construction which would make our powers boundless." --**Thomas Jefferson to Wilson Nicholas, 1803. ME 10:418**

"Where a phrase is susceptible of two meanings, we ought certainly to adopt that which will bring upon us the fewest inconveniences." --**Thomas Jefferson: Opinion on Apportionment Bill, 1792. ME 3:208**

"The general rule [is] that an instrument is to be so construed as to reconcile and give meaning and effect to all its parts." --**Thomas Jefferson to ----, 1816. ME 14:445**

"In every event, I would rather construe so narrowly as to oblige the nation to amend, and thus declare what powers they would agree to yield, than too broadly, and indeed, so broadly as to enable the executive and the Senate to do things which the Constitution forbids." --**Thomas Jefferson: The Anas, 1793. ME 1:408**

The Intention of the Lawgivers "The government will certainly decide for itself on whose counsel they will settle the construction of the laws they are to execute. We are to look at the intention of the Legislature, and to carry it into execution while the lawyers are nibbling at the words of the law." --**Thomas Jefferson to Albert Gallatin, 1808. ME 12:168**

"The [legislature's] laws have always some rational object in view; and are so to be construed as to produce order and justice." --**Thomas Jefferson: Batture at New Orleans, 1812. ME 18:122**

"In the construction of a law, even in judiciary cases of meum et tuum, where the opposite parties have a right and counter-right in the very words of the law, the Judge considers the intention of the lawgiver as his true guide, and gives to all the parts and expressions of the law, that meaning which will effect, instead of defeating, its 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, and 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." --**Thomas Jefferson to William H. Cabell, 1807. ME 11:318**

"The true key for the construction of everything doubtful in a law is the intention of the lawmakers. This is most safely gathered from the words, but may be sought also in extraneous circumstances provided they do not contradict the express words of the law." --**Thomas Jefferson to Albert Gallatin, 1808. ME 12:59**

"On every question of construction carry ourselves back to the time when the Constitution was adopted, recollect the spirit manifested in the debates and instead of trying what meaning may be squeezed out of the text or invented against it, conform to the probable one in which it was passed." --**Thomas Jefferson to William Johnson, 1823. ME 15:449**

"Strained constructions... loosen all the bands of the Constitution." --**Thomas Jefferson to George Ticknor, 1817. FE 10:81**

"One single object... [will merit] the endless gratitude of society: that of restraining the judges from usurping legislation." --**Thomas Jefferson to Edward Livingston, 1825. ME 16:113**

### **Furthering the Principal Object**

"It often happens that, the Legislature prescribing details of execution [of a law], some circumstance arises, unforeseen or unattended to by them, which would totally frustrate their intention, were their details scrupulously adhered to and 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 should 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." --**Thomas Jefferson to William H. Cabell, 1807. ME 11:319**

"It is not honorable to take a mere legal advantage, when it happens to be contrary to justice." --**Thomas Jefferson: Opinion on Debts due to Soldiers, 1790. ME 3:25**

"[There are] cases which, though within the words of the law, [are] notoriously not within its intention, and are therefore relievable by an equitable exercise of discretionary power." --**Thomas Jefferson to Albert Gallatin, 1808. ME 12:173**

"It is a maxim of our municipal law, and, I believe, of universal law, that he who permits the end, permits of course the means, without which the end cannot be effected." --**Thomas Jefferson to Albert Gallatin, 1808. ME 12:18**

## **Limited by the Separation of Powers**

"The capital and leading object of the Constitution was to leave with the States all authorities which respected their own citizens only and to transfer to the United States those which respected citizens of foreign or other States; to make us several as to ourselves, but one as to all others. In the latter case, then, constructions should lean to the general jurisdiction if the words will bear it, and in favor of the States in the former if possible to be so construed." --**Thomas Jefferson to William Johnson, 1823. ME 15:448**

"Among the purposes to which the Constitution permits [Congress] to apply money, the granting premiums or bounties is not enumerated, and there has never been a single instance of their doing it, although there has been a multiplicity of applications. The Constitution has left these encouragements to the separate States." --**Thomas Jefferson to Dr. Maese, 1809. ME 12:231**

"[The Constitution] specifies and delineates the operations permitted to the federal government and gives all the powers necessary to carry these into execution. Whatever of these enumerated objects is proper for a law, Congress may make the law; whatever is proper to be executed by way of a treaty, the President and Senate may enter into the treaty; whatever is to be done by a judicial sentence, the judges may pass the sentence." --**Thomas Jefferson to Wilson Nicholas, 1803. ME 10:419**

"In giving to the President and Senate a power to make treaties, the Constitution meant only to authorize them to carry into effect, by way of treaty, any powers they might constitutionally exercise." --**Thomas Jefferson: The Anas, 1793. ME 1:408**

"Surely the President and Senate cannot do by treaty what the whole government is interdicted from doing in any way." --**Thomas Jefferson: Parliamentary Manual, 1800. ME 2:442**

"We conceive the constitutional doctrine to be, that though the President and Senate have the general power of making treaties, yet wherever they include in a treaty matters confided by the Constitution to the three branches of Legislature, an act of legislation will be requisite to confirm these articles, and that the House of Representatives, as one branch of the Legislature, are perfectly free to pass the act or to refuse it, governing themselves by their own judgment whether it is for the good of their constituents to let the treaty go into effect or not." --**Thomas Jefferson to James Monroe, 1796. ME 9:329**

"I was glad... to hear it admitted on all hands, that laws of the United States, subsequent to a treaty, control its operation, and that the Legislature is the only power which can control a treaty. Both points are sound beyond doubt." --**Thomas Jefferson to James Madison, 1798. ME 10:41**

"According to the rule established by usage and common sense, of construing one part of the instrument by another, the objects on which the President and Senate may exclusively act by treaty are much reduced, but the field on which they may act with the sanction of the Legislature is large enough; and I see no harm in rendering their sanction necessary, and not much harm in annihilating the whole treaty-making power, except as to making peace." --**Thomas Jefferson to James Madison, 1796. ME 9:330**

## Limited vs. Universal Powers

"I say... to the opinion of those who consider the grant of the treaty-making power as boundless: If it is, then we have no Constitution. If it has bounds, they can be no others than the definitions of the powers which that instrument gives." --**Thomas Jefferson to Wilson Nicholas, 1803. ME 10:419**

"The construction applied... to those parts of the Constitution of the United States which delegate to Congress a power "to lay and collect taxes, duties, imports, and excises, to pay the debts, and provide for the common defense and general welfare of the United States," and "to make all laws which shall be necessary and proper for carrying into execution the powers vested by the Constitution in the government of the United States, or in any department or officer thereof," goes to the destruction of all limits prescribed to [the General Government's] power by the Constitution... Words meant by the instrument to be subsidiary only to the execution of limited powers ought not to be construed as themselves to give unlimited powers, nor a part to be so taken as to destroy the whole residue of that instrument." --**Thomas Jefferson: Draft Kentucky Resolutions, 1798. ME 17:385**

"To lay taxes to provide for the general welfare of the United States, that is to say, "to lay taxes for the purpose of providing for the general welfare." For the laying of taxes is the power, and the general welfare the purpose for which the power is to be exercised. They are not to lay taxes adlibitum for any purpose they please; but only to pay the debts or provide for the welfare of the Union." --**Thomas Jefferson: Opinion on National Bank, 1791. ME 3:147**

"Aided by a little sophistry on the words "general welfare," [the federal branch claim] a right to do not only the acts to effect that which are specifically enumerated and permitted, but whatsoever they shall think or pretend will be for the general welfare." --**Thomas Jefferson to William Branch Giles, 1825. ME 16:147**

"They are not to do anything they please to provide for the general welfare, but only to lay taxes for that purpose. To consider the latter phrase not as describing the purpose of the first, but as giving a distinct and independent power to do any act they please which might be for the good of the Union, would render all the preceding and subsequent enumerations of power completely useless. It would reduce the whole instrument to a single phrase, that of instituting a Congress with power to do whatever would be for the good of the United States; and, as they would be the sole judges of the good or evil, it would be also a power to do whatever evil they please... Certainly no such universal power was meant to be given them. It was intended to lace them up straitly within the enumerated powers and those without which, as means, these powers could not be carried into effect." --**Thomas Jefferson: Opinion on National Bank, 1791. ME 3:148**

"It is an established rule of construction where a phrase will bear either of two meanings, to give it that which will allow some meaning to the other parts of the instrument, and not that which would render all the others useless." --**Thomas Jefferson: Opinion on National Bank, 1791. ME 3:148**

"The general rule, in the construction of instruments, [is] to leave no words merely useless, for which any rational meaning can be found." --**Thomas Jefferson: Opinion on the Tonnage Payable, 1791. ME 3:290**

"For authority to apply the surplus [of taxes] to objects of improvement, an amendment of the Constitution would have been necessary." --**Thomas Jefferson to John W. Eppes, 1813. ME 13:354**

"[If] it [were] assumed that the general government has a right to exercise all powers which may be for the 'general welfare,' that [would include] all the legitimate powers of government, since no government has a legitimate right to do what is not for the welfare of the governed." --**Thomas Jefferson to George Washington, 1792. ME 8:397**

"Our tenet ever was... that Congress had not unlimited powers to provide for the general welfare, but were restrained to those specifically enumerated, and that, as it was never meant that they should provide for that welfare but by the exercise of the enumerated powers, so it could not have been meant they should raise money for purposes which the enumeration did not place under their action; consequently, that the specification of powers is a limitation of the purposes for which they may raise money." --**Thomas Jefferson to Albert Gallatin, 1817. ME 15:133**

"Congress are authorized to defend the nation. Ships are necessary for defense; copper is necessary for ships; mines necessary for copper; a company necessary to work mines; and who can doubt this reasoning who has ever played at 'This is the House that Jack built?' Under such a process of filiation of necessities the sweeping clause makes clean work." --**Thomas Jefferson to Edward Livingston, 1800. ME 10:165**

"If, wherever the Constitution assumes a single power out of many which belong to the same subject, we should consider it as assuming the whole, it would vest the General Government with a mass of powers never contemplated. On the contrary, the assumption of particular powers seems an exclusion of all not assumed." --**Thomas Jefferson to Joseph C. Cabell, 1814. ME 14:83**

"I hope our courts will never countenance the sweeping pretensions which have been set up under the words 'general defence and public welfare.' These words only express the motives which induced the Convention to give to the ordinary legislature certain specified powers which they enumerate, and which they thought might be trusted to the ordinary legislature, and not to give them the unspecified also; or why any specification? They could not be so awkward in language as to mean, as we say, 'all and some.' And should this construction prevail, all limits to the federal government are done away." --**Thomas Jefferson to Spencer Roane, 1815. ME 14:350**

"This phrase,... by a mere grammatical quibble, has countenanced the General Government in a claim of universal power. For in the phrase, 'to lay taxes, to pay the debts and provide for the general welfare,' it is a mere question of syntax, whether the two last infinitives are governed by the first or are distinct and coordinate powers; a question unequivocally decided by the exact

definition of powers immediately following." --**Thomas Jefferson to Albert Gallatin, 1817. ME 15:133**

"Although the power to regulate commerce does not give a power to build piers, wharves, open ports, clear the beds of rivers, dig canals, build warehouses, build manufacturing machines, set up manufactories, cultivate the earth, to all of which the power would go if it went to the first, yet a power to provide and maintain a navy is a power to provide receptacles for it, and places to cover and preserve it." --**Thomas Jefferson to Albert Gallatin, 1802. ME 10:337**

"While we pursue, then, the construction of the Legislature, that the repairing and erecting lighthouses, beacons, buoys, and piers, is authorized as belonging to the regulation of commerce, we must take care not to go ahead of them and strain the meaning of the terms still further to the clearing out the channels of all the rivers, etc., of the United States. The removing a sunken vessel is not the repairing of a pier." --**Thomas Jefferson to Albert Gallatin, 1803. ME 10:379**

"I suppose an amendment to the Constitution, by consent of the States, necessary [for certain objects of public improvement], because the objects now recommended are not among those enumerated in the Constitution, and to which it permits the public moneys to be applied." --**Thomas Jefferson: 6th Annual Message, 1806. ME 3:424**

"The interests of commerce place the principal object [i.e., a western exploring expedition] within the constitutional powers and care of Congress, and that it should incidentally advance the geographical knowledge of our own continent, can not but be an additional gratification." --**Thomas Jefferson: Confidential Message on Western Exploration, 1803. ME 3:493**

### **Unauthorized Assumptions of Power**

"Where powers are assumed which have not been delegated, a nullification of the act is the rightful remedy." --**Thomas Jefferson: Draft Kentucky Resolutions, 1798. ME 17:386**

"[The States] alone being parties to the [Federal] compact... [are] solely authorized to judge in the last resort of the powers exercised under it, Congress being not a party but merely the creation of the compact and subject as to its assumptions of power to the final judgment of those by whom and for whose use itself and its powers were all created and modified." --**Thomas Jefferson: Draft Kentucky Resolutions, 1798. ME 17:387**

"The government created by this compact was not made the exclusive or final judge of the extent of the powers delegated to itself, since that would have made its discretion and not the Constitution the measure of its powers; but... as in all other cases of compact among powers having no common judge, each party has an equal right to judge for itself, as well of infractions as of the mode and measure of redress." --**Thomas Jefferson: Draft Kentucky Resolutions, 1798. ME 17:380**

"I think it important... to set an example against broad construction by appealing for new power to the people. If, however, our friends shall think differently, certainly I shall acquiesce with satisfaction, [confident] that the good sense of our country will correct the evil of construction

whenever it shall produce ill effects." --**Thomas Jefferson to Wilson Nicholas, 1803. ME 10:420**

"It is a happy circumstance in human affairs that evils which are not cured in one way will cure themselves in some other." --**Thomas Jefferson to John Sinclair, 1791. ME 8:231**

"As to [the giving to Congress the power of internal improvement on condition that each State's federal proportion of the moneys so expended shall be employed within the State], there is probably not a State in the Union which would not grant the power on the condition proposed, or which would grant it without that." --**Thomas Jefferson to Robert J. Garnett, 1824. ME 16:15**

"An express grant of the power [for internal improvements]... would render its exercise smooth and acceptable to all and insure to it all the facilities which the States could contribute to prevent that kind of abuse which all will fear, because all know it is so much practiced in public bodies: I mean the bartering of votes. It would reconcile everyone, if limited by the proviso that the federal proportion of each State should be expended within the State. With this single security against partiality and corrupt bargaining, I suppose there is not a State, perhaps not a man in the Union, who would not consent to add this to the powers of the General Government." --**Thomas Jefferson to Edward Livingston, 1824. ME 16:25**

"One precedent in favor of power is stronger than an hundred against it." --**Thomas Jefferson: Notes on Virginia Q.XIII, 1782. ME 2:172**

"The utility of the thing [shall sanction] the infraction [of the Constitution]. But if on that infraction we build a second, and on that second a third, etc., any one of the powers in the Constitution may be made to comprehend every power of government." --**Thomas Jefferson to Albert Gallatin, 1802. ME 10:338**

"On every unauthoritative exercise of power by the legislature must the people rise in rebellion or their silence be construed into a surrender of that power to them? If so, how many rebellions should we have had already?" --**Thomas Jefferson: Notes on Virginia Q.XIII, 1782. ME 2:171**

"The Constitution of the United States is a compact of independent nations subject to the rules acknowledged in similar cases, as well that of amendment provided within itself, as, in case of abuse, the justly dreaded but unavoidable ultimo ratio gentium [the final argument of nations, i.e., war]." --**Thomas Jefferson to Edward Everett, 1826. ME 16:163**

"[The Louisiana Purchase was] laid before both Houses [of Congress], because both [had] important functions to exercise respecting it. They... [saw] their duty to their country in ratifying and paying for it so as to secure a good which would otherwise probably be never again in their power. The Constitution has made no provision for our holding foreign territory, still less for incorporating foreign nations into our Union. The Executive, in seizing the fugitive occurrence which so much advances the good of their country, have done an act beyond the Constitution. The Legislature in casting behind them metaphysical subtleties and risking themselves like faithful servants, must ratify and pay for it and throw themselves on their country for doing for them unauthorized what we know they would have done for themselves had they been in a

situation to do it. It is the case of a guardian investing the money of his ward in purchasing an important adjacent territory and saying to him when of age, I did this for your good; I pretend to no right to bind you. You may disavow me, and I must get out of the scrape as I can. I thought it my duty to risk myself for you. But we [were] not disavowed by the nation, and their act of indemnity [confirmed] and [did] not weaken the Constitution by more strongly marking out its lines." --**Thomas Jefferson to John Breckenridge, 1803.**