

## TRANSCRIPTION

### Letter of James Madison to George Washington, October 18, 1787

N. York Oct<sup>r</sup>. 18. 1787.

Dear Sir

I have been this day honoured with your favor of the 10<sup>th</sup> instant, under the same cover with which is a copy of Col. Mason's objections to the Work of the Convention. As he persists in the temper which produced his dissent\* it is no small satisfaction to find him reduced to such distress for a proper gloss on it; for no other consideration surely could have led him to dwell on an objection which he acknowledged to have been in some degree removed by the Convention themselves—;on the paltry right of the senate to propose alterations in money bills—on the appointment of the vice president— President of the Senate instead of making the President of the Senate the vice President, which seemed to be the alternative—and on the possibility, that the Congress may misconstrue their powers & betray their trust so far as to grant monopolies in trade &c. If I do not forget too some of his other reasons were either not at all or very faintly urged at the time when alone they ought to have been urged; such as the power of the Senate in the case of treaties, & of impeachments; and their duration in office. With respect to the latter point I recollect well that he more than once disclaimed opposition to it. My memory fails me also if he did not acquiesce in if not vote for, the term allowed for the further importation of slaves; and the prohibition of duties on exports by the States. What he means by the dangerous tendency of the Judiciary I am at some loss to comprehend. It never was intended, nor can it be supposed that on ordinary cases the inferior tribunals will not have final jurisdiction in order to prevent the evils of which he complains. The great mass of suits in every State lie between Citizen & Citizen, and relate to matters not of federal cognizance.

Notwithstanding the stress laid on the necessity of a Council to the President I strongly suspect, tho I was a friend to the thing, that if such an one as Col. Mason proposed, had been established, and the power of the Senate in appointments to offices transferred to it, that as great a clamour would have been heard from some quarters which in general eccho his Objections. What can he mean by saying that the Common law is not secured by the new Constitution, though it has been adopted by the State Constitutions. The common law is nothing more than the unwritten law, and is left by all the constitutions equally liable to legislative alterations. I am not sure that any notice is particularly taken of it in the Constitutions of the States. If there is, nothing more is provided than a general declaration that it shall continue along with other branches of law to be in force till legally changed. The Constitution of Virg<sup>a</sup>. drawn up by Col Mason himself, is absolutely silent on the subject. An ordinance passed during the same Session, declared the Common law as heretofore & all Statutes of prior date to the 4 of James I to be still the law of the

## TRANSCRIPTION

land, merely to obviate pretexts that the separation from G. Britain threw us into a State of nature, and abolished all civil rights and obligations. Since the Revolution every State has made great inroads & with great propriety in many instances on this monarchical code. The "revisal of the laws" by a Committee of w<sup>ch</sup>. Col. Mason was a member, though not an acting one, abounds with such innovations. The abolition of the right of primogeniture, which I am sure Col. Mason does not disapprove, falls under this head. What could the Convention have done? If they had in general terms declared the Common law to be in force, they would have broken in upon the legal Code of every State in the most material points: they w<sup>d</sup>. have done more, they would have brought over from G.B. a thousand heterogeneous & antirepublican doctrines, and even the ecclesiastical Hierarchy itself, for that is a part of the Common law. If they had undertaken a discrimination, they must have formed a digest of laws, instead of a Constitution. This objection surely was not brought forward in the Convention, or it w<sup>d</sup>. have been placed in such a light that a repetition of it out of doors would scarcely have been hazarded. Were it allowed the weight which Col. M. may suppose it deserves, it would remain to be decided whether it be candid to arraign the Convention for omissions which were never suggested to them—or prudent to vindicate the dissent by reasons which either were not previously thought of, or must have been wilfully concealed—But I am running into a comment as prolix, as it is out of place.

I find by a letter from the Chancellor (M<sup>f</sup>. Pendleton) that he views the act of the Convention in its true light, and gives it his unequivocal approbation. His support will have great effect. The accounts we have here of some other respectable characters vary considerably. Much will depend on M<sup>f</sup>. Henry, and I am glad to find by your letter that his favorable decision on the subject may yet be hoped for. The Newspapers here begin to teem with vehement & virulent calumniations of the proposed Gov<sup>t</sup>. As they are chiefly borrowed from the Pennsylvania papers, you see them of course. The reports however from different quarters continue to be rather flattering.

With the highest respect & sincerest attachment I remain Dear Sir

Y<sup>f</sup>. Obed<sup>t</sup>. & Affect<sup>e</sup>. Servant

JS. MADISON JR.

---

\*Madison used the long or leading s, a character that looks similar to the letter "f" but is used as an "s," often as the first of a double s as in assign or address.

Citation: James Madison Jr. to George Washington, October 18, 1787, George Washington Papers, 1741–1799: Series 4. General Correspondence. 1697–1799, Manuscript Division, Library of Congress.