

**James Madison to Martin Van Buren, September 20, 1826. Transcription: The Writings of James Madison, ed. Gaillard Hunt. New York: G.P. Putnam's Sons, 1900-1910.**

**TO MARTIN VAN BUREN. MAD. MSS.**

Montpellier, September 20, 1826.

Dear Sir, Your letter of Aug. 30. has been longer unanswered than I could have wished; but the delay has been unavoidable.<sup>1</sup> And I am sensible now that the subject invited more of development, than successive occurrences calling off my attention have permitted. The brief view taken of it, will at least be a proof of my disposition to comply with your request, which I regard as a private one, as you will be pleased to regard the answer to it.

<sup>1</sup> Van Buren wrote from Albany that he intended to propose an amendment to the constitution on the subject of internal improvements in the next Congress, having already done so in the last two sessions. He would be pleased if Madison would draft the amendment.— *Mad. MSS.*

I should certainly feel both gratification and obligation in giving any aid in my power towards making the Constitution more appropriate to its objects, & more satisfactory to the nation. But I feel also the arduousness of such a task, arising as well from the difficulty of partitioning and defining Legislative powers, as from the existing diversity of opinions concerning the proper arrangement of the power in question over internal improvements.

Give the power to the General Government as possessing the means most adequate, and the objections are, 1. the danger of abuses in the application of the means to objects

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so distant from the eye of a Government, itself so distant from the eye of the people, 2. the danger, from an increase of the patronage and pecuniary transactions of the General Government, that the equilibrium between that and the State Governments may not be preserved.

Leave the power exclusively with the States, and the objections are: 1. that being deprived by the Constitution, and even by their local relations (as was generally experienced before the present Constitution was established) of the most convenient source of revenue, the impost on commerce, improvements might not

be made even in cases wholly within their own limits. 2. that in cases where roads, & canals ought to pass through contiguous States, the necessary co-operation might fail from a difficulty in adjusting conditions and details, from a want of interest in one of them, or possibly from some jealousy or rivalry in one towards the other. 3. that where roads and canals ought to pass thro' a number of States, particular views of a single State might prevent improvements deeply interesting to the whole nation.

This embarrassing alternative has suggested the expedient which you seem to have contemplated, of dividing the power between the General & State Governmts., by allotting the appropriating branch to the former, & reserving the jurisdiction to the latter. The expedient has doubtless a captivating aspect. But to say nothing of the difficult of defining such a division, and maintaining it in practice will the nation be at the expence of constructing roads & canals, without such a jurisdiction over them as will ensure their constant subservience to national purposes? Will not the utility and popularity of these improvements lead to a constructive assumption of the jurisdiction by Congress, with the same sanction of their constituents, as we see given to the exercise of the appropriating power, already stretching itself beyond the appropriating limit.

It seems indeed to be understood, that the policy & advantage of roads & canals have taken such extensive & permanent hold of the public will, that the constructive authority of

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Congress to make them, will not be relinquished, either by that, or the Constituent Body. It becomes a serious question therefore, whether the better course be not to obviate the unconstitutional precedent, by an amendatory article expressly granting the power. Should it be found as is very possible, that no effective system can be agreed on by Congress, the amendment will be a recorded precedent against constructive enlargements of power; and in the contrary event, the exercise of the power will no longer be a precedent in favour of them.

In all these cases, it need not be remarked I am sure, that it is necessary to keep in mind, the distinction between a usurpation of power by Congress against the will, and an assumption of power with the approbation, of their constituents. When the former occurs, as in the enactment of the alien & sedition laws, the appeal to their Constituents sets everything to rights. In the latter case, the appeal can only be made to argument and conciliation, with an acquiescence, when not an extreme case, in an unsuccessful result.

If the sole object be to obtain the aid of the federal treasury for internal improvements by roads & canals, without interfering with the jurisdiction of the States, an amendment need only say. "Congress may make appropriations of moneys for roads and canals, to be applied to such purposes by the Legislatures of the States within their respective limits, the jurisdiction of the States remaining unimpaired."

If it be thought best to make a constitutional grant of the entire Power, either as proper in itself, or made so by the moral certainty, that it will be constructively assumed, with the sanction of the national will, and operate as an injurious precedent, the amendment cannot say less, than that "Congress may make roads & canals, with such jurisdiction as the cases may require."

But whilst the terms "common defence & general welfare," remain in the Constitution unguarded agst. the construction which has been contended for, a fund of power, inexhaustible & wholly subversive of the equilibrium between the General and the State

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Govts. is within the reach of the former. Why then, not precede all other amendments by one, expunging the phrase which is not required for any harmless meaning; or making it harmless by annexing to it the terms, "in the cases required by this Constitution."

With this sketch of ideas, which I am aware may not coincide altogether with yours, I tender renewed assurances of my esteem & friendly wishes.<sup>1</sup>

<sup>1</sup> On October 15 Madison wrote to Van Buren acknowledging the receipt of the report of the committee on roads and canals: "The committee have transcended all preceding advocates of the doctrine they espouse, in appealing to the old articles of Confederation for its support. Whatever might have been the practice under those articles it would be difficult to shew that it was always kept within the prescribed limits. The Revolutionary Congress was the Offspring of the great crisis, and the exercise of its powers prior to the final ratification of the articles, governed by the law of necessity, or palpable expediency. And after that event there seems to have been often more regard to the former latitude of proceeding than to the text of the Instrument; assumptions of power apparently useful, being considered little dangerous in a Body so feeble, and so completely dependent on the authority of the States. There is no evidence however that the old Congs. ever assumed such a construction of the terms 'Comon defence & general welfare' as is claimed for the new. Nor is it probable that Gen: Washington in the sentiments quoted from or for him, had more in view than the great importance of measures beyond the reach of individual States, and, if to be executed at all, calling for the general authority of the Union. Such modes of deducing power, may be fairly answered by the question, what is the power that may not be grasped with the aid of them?"— *Mad. MSS.*