

Thomas Jefferson's Reaction to *Marbury v. Madison* (1803)

"The question whether the judges are invested with exclusive authority to decide on the constitutionality of a law has been heretofore a subject of consideration with me in the exercise of official duties. Certainly there is not a word in the Constitution which has given that power to them more than to the Executive or Legislative branches."

—Thomas Jefferson to W. H. Torrance, 1815. ME 14:303

"But the Chief Justice says, 'There must be an ultimate arbiter somewhere.' True, there must; but does that prove it is either party? The ultimate arbiter is the people of the Union, assembled by their deputies in convention, at the call of Congress or of two-thirds of the States. Let them decide to which they mean to give an authority claimed by two of their organs. And it has been the peculiar wisdom and felicity of our Constitution, to have provided this peaceable appeal, where that of other nations is at once to force."

—Thomas Jefferson to William Johnson, 1823. ME 15:451

"But, you may ask, if the two departments [i.e., federal and state] should claim each the same subject of power, where is the common umpire to decide ultimately between them? In cases of little importance or urgency, the prudence of both parties will keep them aloof from the questionable ground; but if it can neither be avoided nor compromised, a convention of the States must be called to ascribe the doubtful power to that department which they may think best."

—Thomas Jefferson to John Cartwright, 1824. ME 16:47

"The Constitution . . . meant that its coordinate branches should be checks on each other. But the opinion which gives to the judges the right to decide what laws are constitutional and what not, not only for themselves in their own sphere of action but for the Legislature and Executive also in their spheres, would make the Judiciary a despotic branch."

—Thomas Jefferson to Abigail Adams, 1804. ME 11:51

"To consider the judges as the ultimate arbiters of all constitutional questions [is] a very dangerous doctrine indeed, and one which would place us under the despotism

of an oligarchy. Our judges are as honest as other men and not more so. They have with others the same passions for party, for power, and the privilege of their corps. Their maxim is *boni judicis est ampliare jurisdictionem* [good justice is broad jurisdiction], and their power the more dangerous as they are in office for life and not responsible, as the other functionaries are, to the elective control. The Constitution has erected no such single tribunal, knowing that to whatever hands confided, with the corruptions of time and party, its members would become despots. It has more wisely made all the departments co-equal and co-sovereign within themselves."

—Thomas Jefferson to William C. Jarvis, 1820. ME 15:277

"In denying the right [the Supreme Court usurps] of exclusively explaining the Constitution, I go further than [others] do, if I understand rightly [this] quotation from the Federalist of an opinion that 'the judiciary is the last resort in relation to the other departments of the government, but not in relation to the rights of the parties to the compact under which the judiciary is derived.' If this opinion be sound, then indeed is our Constitution a complete *felo de se* [act of suicide]. For intending to establish three departments, coordinate and independent, that they might check and balance one another, it has given, according to this opinion, to one of them alone the right to prescribe rules for the government of the others, and to that one, too, which is unelected by and independent of the nation. For experience has already shown that the impeachment it has provided is not even a scare-crow . . . The Constitution on this hypothesis is a mere thing of wax in the hands of the judiciary, which they may twist and shape into any form they please."

—Thomas Jefferson to Spencer Roane, 1819. ME 15:212

"This member of the Government was at first considered as the most harmless and helpless of all its organs. But it has proved that the power of declaring what the law is, *ad libitum*, by sapping and mining slyly and without alarm the foundations of the Constitution, can do what open force would not dare to attempt."

—Thomas Jefferson to Edward Livingston, 1825. ME 16:114

"My construction of the Constitution is . . . that each department is truly independent of the others and has an equal right to decide for itself what is the meaning of the Constitution in the cases submitted to its action; and especially where it is to act ultimately and without appeal."

—Thomas Jefferson to Spencer Roane, 1819. ME 15:214

Questions to Consider:

What is Thomas Jefferson's position on the concept of judicial review? Review the first quotation. What argument(s) does he present?

Does Jefferson agree or disagree with Chief Justice Marshall about the need for an "ultimate arbiter" to resolve disputes? Who does Jefferson think should be the ultimate arbiter?

According to Jefferson, how should disputes between the federal and state government be resolved?

In the seventh quotation, Jefferson says, "This member of the Government was at first considered as the most harmless and helpless of all organs." Who is he referring to when he says "this member of government?"

What does Jefferson fear will happen if the Supreme Court of the United States is given the power of judicial review? Include excerpts from the quotations in your answer.

Based on what you have read, how did Jefferson feel about the Supreme Court's decision in the case of *Marbury v. Madison*? How would he have decided the case? Provide support for your argument.

For Extension:

Chief Justice John Marshall and President Thomas Jefferson had different views on the power of the federal government and the power of judicial review. Create the dialogue of a conversation between the two officials.

Do you agree with Marshall or Jefferson? Should the Supreme Court of the United States have the power of judicial review? Why or why not?