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Title: Letter from Roger B. Taney to J. Mason Campbell

Date: December 21, 1847

Location: O-SpahrB-1965-2

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Washington Dec. 21. 1847

My Dear Sir

We fortunately have no conference to night - and I am able therefore to take on from other engagements, to think over the subject of your opinion and to write to you the result of my reflections -

But I am acting somewhat in the dark - for I have not the articles of the Constitution of Maryland to which you refer before me - and must take them as briefly stated in your letter. And acting with that limited means of information I am by no means sure that you are right. - The Constitution of 1836, you say vests the whole Executive power in the Governor, and vests in him the appointment of all officers not otherwise directed, by the Constitution or by laws consistent with the Constitution. In what is meant by laws consistent with the Constitution in respect to appointments? - There are a class of officers who have never been appointed by the Executive - for example the Constables in the different counties - and also the Clerks of the Lottery Commissioners. These officers if they may be so called are not regarded as the officers of the State - but as ^{the first} ministerial agents - who are employed

to enable the Judicial part to perform its func-
tions & preserve the peace - and the clerks of the
Lottery commissioners - and Insolvency Comrs &c &c
are necessary aids to the officers to enable them to
perform their duties. They are the instruments - the
hands by which the officers perform their duties.
To provide for such appointments as these by law
giving it to the King courts or Comrs
would evidently be a law consistent with the
Constitution. For they are not state officers. But
would a law depriving the Governor of the
power to appoint state officers by ^{be} consistent
with the Constitution? Who else would appoint
them? Hardly the Legislature? - For the sake of rights
we know that the Executive, Legislature and
Judicial powers should be separate - but
when it was supposed necessary to reserve the
power to the Legislature as in the case of the
Treasurer, it was reserved. Certainly the appoint-
ment of Lottery commissioners is not a legislative
act in its character - but an Executive one
- and I think you had best consider it well
before you express an opinion. - I do not mean
to express an opinion in this letter - for I have not
the Constitution of Maryland at hand - and if I
had I have not time to consider it. - But I
mean to suggest difficulties to be considered
and carefully weighed. I doubt the power very much,

And as I doubt an other ground whether it is
a proper case for a professional ^{opinion} your opinion
is not required by the Commons to point out their
legal duty. It is ^{intended} for the Legislature - to assist in
guiding their action. - Now the Legislature
have not asked it. - The Attorney General is their
officer & adviser. Why should you intrude (for
you the word) your opinion unasked for?
Is it entirely respectful to them as it presumes
your opinion is to have influence. If the
Law was perfect, then it would be afterwards
a proper case for a professional opinion
to enable the Commons to decide whether
they could lawfully act under it.

Again - as no professional duty requires you
to give an opinion for the Legislature, why
should you do it? - When there is no duty in
the way, considerations of expediency ought
to be regarded. - Why should you put an opinion
in the House to be badgered & abused and
be called by hard names? Why should you
voluntarily go in wresting power from
the Governor for whom you have voted?
Why should you bring upon yourself the deep
and unpardonable ~~and~~ hostility

of the whole body of your political friends
from the highest to the lowest. - For why up-
on it if the measure is attempted it will
produce vehement excitement. I do not
believe it will even be supported by Whigs
enough to carry it. - Think yourself of these
matters before you give an opinion. Truly upon
it is a step that may prove most serious and
injurious to you. - And you are under no
obligation of duty to take it. - but ought
I think to abstain from it.

I have written a long letter - without time
to think much - and if there is anything
too complex in my language refer it
to the note in which I write - the fatigue
I have undergone in court this morning
and the deep interest I feel in every
thing that concerns you - and with much
love to all

Dear Mary -

J. Mason Comptroller Genl.

R. B. Taney

Dwight Street

Baltimore

1847

Dec. 21 TANEY, ROGER BROOKE

To James Mason Campbell.

Washington Decr. 21, 1847

My Dear sir

We fortunately have no conference tonight- and I am able therefore to take an hour from other engagements, to think over the subject of your opinion and to write to you the result of my reflections.

But I am acting somewhat in the dark - for I have not the articles of the constitution of Maryland to which you refer before me - and must take them as briefly stated in your letter. And acting with that limited means of information I am by no means sure that you are right. The constitution of 1836 you say vests the whole Executive power in the Governor, and vests in him the appointment of all officers not otherwise directed, by the constitution or by laws consistent with the constitution in respect to appointments? There are a class of officers who have never been appointed by the executive - as for example the constables in the different counties - and also the clerks of the lottery commissioners. Those officers if they may be so called are not regarded as the officers of this state - but the first as ministerial agents - who are necessary to enable the judicial power to perform its functions & preserve the peace - and Insolvent commrs. &c. &c. are necessary aids to the officers to enable them to perform their duties. They are the instruments - the hands by which the officers perform their duties. To provide for such appointments as these by law giving it to the jury courts or commrs. would evidently be a law consistent with the constitution. For they are not state officers. But would a law depriving the Governor of the power to appoint state officers be consistent with the constitution? For the Bill of rights declares that the Executive, Legislative and Judicial powers should be separate - and when it was supposed necessary to reserve the power to the Legislature as in the case of the Treasurer, it was reserved. Certainly the appointment of Lottery commissioners is not a Legislative act in its character - but an Executive one - and I think you had best consider it well before you express an opinion. I do not mean to express an opinion in this letter - for I have not the constitution of Maryland at hand - and if I had I have not time to consider it. But I mean to suggest difficulties to be considered & separately weighted. I doubt the power very much. Indeed I doubt on other grounds whether it is a proper case for a professional opinion, Your opinion is not required by the commrs. to point out their legal duty. It is intended for the Legislature to assist in guiding their action. Now the Legislature have not asked it. The Attorney General is their officer and adviser. Why should you intrude (pardon the word) your opinion unasked for? Is it entirely respectful to them as it pre-supposes your opinion is to have influence. If the law was passed, then it would be afterwards a proper case for a professional opinion to enable the commrs. to decide whether they could lawfully act under it.

Again - as no professional duty requires you to give an opinion for the Legislature, why should you do it? Where there is no duty in the way, considerations of expediency ought to be regarded. Why should you put an opinion in the house to be badgered & abused and be called by hard names? Why should you volunteer to aid in wresting power from the Governor for whom you have voted? Why should you bring upon yourself the deep and unquenchable hostility of the whole body of your political friends from the highest to the lowest? For rely upon it if the measure is attempted it will produce vehement excitement.

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I do not believe it will even be supported by Whigs enough to carry it. Think gravely of these matters before you give an opinion. Rely upon it (it) is a step that may prove most serious and injurious to you - And you are under no obligation of duty to take it - but ought I think to abstain from it.

I have written a long letter - without time to think much - and if there is anything too energetic in my language impute it to the haste in which I write - the fatigue I have undergone in court this morning and the deep interest I feel in everything that concerns you - and with much

love to all

most affy

J. Mason Campbell Esqr.

R. B. Taney

Lexington Street

Baltimore