

# Thomas Jefferson's Reaction

Read the following quotations by Thomas Jefferson and answer the questions which follow.

1. "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*

2. "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*

3. "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*

4. "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*

5. "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*

1. What is Thomas Jefferson's position on the concept of judicial review? Review the first quotation. What argument(s) does he present?
2. 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?
3. According to Jefferson, how should disputes between the federal and state government be resolved?
4. 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.