# James Monroe: Some Observations on the Constitution, c. 25 May

Source: Stanislaus Murray Hamilton (ed.), The Writings of James Monroe, vol. 6 (New York: G. P. Putnam's Sons, 1902), 313–320.
Notes: Monroe's manuscript is undated and undated notes on it suggest that it was written sometime between 25 May and 1 June 1824. Hamilton, the compiler of the work, has placed it "from three manuscripts" (Monroe, Hamilton, 313). The first manuscript is a fair copy, the second is a rough draft, and the third is a fragment. Hamilton has combined the first two manuscripts, using the first as the basis, and the second to supply missing words.

Some Observations on the Constitution of the United States, with Its Amendments, Proposed by the Convention of Virginia, Communicated to the Legislature of Virginia.

The Constitution of the United States is a compact formed on the Constitution, or by parts by certain Thirteen Colonies, "Every Colony, which is represented in the House of Representatives, shall have at the Time of the Election, the Quantum of Electors, which it shall have in the House of Representatives" (Constitution, Art. 2, Sec. 1). Each Colony is a sovereign and independent community, and the Constitution is a compact between them, and not between the people of the United States, as it would be if the Constitution had been adopted by them, as it was by the Convention and Colonies. The Federal compact appeared to be a compact between the Colonies, and not between the people of the United States, because it was formed by the Colonies, and not by the people. It appeared to be a compact between the States, which it was contemplated to be, because it was formed by the Colonies, and not by the people. The Constitution, or compact, was formed by the Colonies, and not by the people, because it was the act of sovereign Colonies, or of sovereign Colonies, or of sovereign States, which it was contemplated to be, and which it was, when it was formed by the Colonies, and not by the people.

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In forming a right estimate of the consequences resulting from this property in the character of this body, and of the tone it may give to the measures of the government, we must examine its powers in every direction, and pursue its operation upon every subject. And first as to its share in the legislature or its influence upon all legislative acts.

The senate has an absolute negative upon all laws; from this it results that those not for the advantage of the states, or the prevailing faction in the government, to which they respectively belong will by those thus circumstanced be rejected; for is it to be presumed that because ten members from Virginia, eight from Massachusetts or Pennsylvania in the house of representatives, have passed a bill, whilst one from Rhode Island or Delaware only had rejected it, that these states will give up their equal suffrage in the senate? Is it not more presumable that their senators will look on at the nominal and unimportant superiority of those states, in the other house, laugh at their supposed triumph, and await coolly its submission to their board, where its fate will be inevitable? Or is it to be supposed, that the right to originate money bills, a thing proper in itself, being the more democratic branch, in the house of representatives, will controul this disposition, especially when we recollect that they are both only representative branches, equally dependent on the passage of such a bill for their wages or salary, and that the members of the latter holding their offices for a shorter term, have perhaps not been able to introduce such a degree of œconomy and order into their finances. This is a check of great importance in the English constitution, and indeed the preservation of the democracy, but the construction and principles of the two governments are so radically different, that it will be easily perceived by the slightest observer, the same effects are not to be expected from it, at least not to the same extent in this, that are experienced in that. Making due allowance for those considerations that should be taken into view, I am therefore led to believe that the defective principles of the present government, through the means of the senate, in respect to form and representation, have been communicated to this branch of the constitution. Appointed by the states and of course responsible to them for their conduct, the senators will act for those to which they respectively belong; nor can we reasonably expect from their concession any great accommodation. Thus the state spirit, with an equality among the members of the union, will be preserved in this branch of the government, and if there was an absolute necessity for yielding the point of representation, yet none suggests itself, at least to me, [870] for not remedying the defect in the form, which has been found so pernicious in the present one.

By the consent of two thirds of the senators *present*, treaties shall be formed; by that of a majority, ambassadors, other public ministers, and consuls, judges of the supreme court and other public officers not otherwise provided for by law, shall be appointed. The subjecting the decision of important questions to a dependance on the occasional presence or absence of any of the members, ~~more especially as no quorum is established~~, appears to me improper. If the vote of two thirds of the body is in any instance necessary, for the security of the interests of any part of the union, why should the death or delinquency of a member deprive it of this safeguard, ~~by submitting them to the contingent of perhaps less than one fourth~~? It is further to be observed that whatever influence this branch may have in directing the measures of the executive, from the nature of its appointment, will be exerted to give it a narrow state byas, and that from this source alone, constructed as the two branches are, much injury is to be expected from this extraordinary coalition.

"The senate shall have the sole power to try all impeachments." The president is to act under their controul in the cases above stated, if in any instance a wanton violation by their direction or permission should be made, which though not probable is yet practicable, of the rights or interests of any part of the community, and after solemn debate in the house of representatives, this high officer should be brought by impeachment before this body to expiate his offence, what would be his fate, especially as he still held his office and might wield his powers in his defence? A king of England involved himself in great difficulties by an attempt to establish the validity of a general pardon, but had the constitution submitted the trial of state offenders to himself, there would have been no occasion for the contest.[7] Admitting however the members of this body to be incapable of moral turpitude, may we not suppose, as might be the case in that of any individual state; in the operation of this government, that offences might be committed against one quarter of the community, and which before a dispassionate court would receive severe reprehension, that would be highly beneficial to the others? And in such a case could we expect from the representatives of these states a candid or impartial decision against the interests of their constituents?

The placing the executive power in the hands of one person, appears to be perfectly right. If this branch had been put into commission, the state spirit would have been communicated to it, and have tainted all its measures; in addition to this there would have been less responsibility. [871] But the mode of election, does not in all respects appear, to merit such commendation. A departure from the strict representative line, by adding the equal vote of the senate to the number each state hath in the house of representatives, is made in the first instance; but it is still more exceptionable in other respects. If an election shall not be made, and in all probability this will often be the case, indeed the presumption is the contrary will seldom happen, a very extraordinary subsidiary mode is resorted to. Those having the five highest votes are to be ballotted for by the house of representatives, the vote to be taken by states, and one member from each giving the vote of the state. All cases that the constitution will admit of, should be considered as likely to happen some time or other. No person then I am persuaded who will make the calculation, can behold the facility by which the chair of the United States may be approached and atchieved, even contrary to the wishes of the people, without equal anxiety and surprize.[d] Let it be admitted that the temper of the times and the ardent spirit of liberty which now prevails, will guard it for the present from such easy access; but that person has profited but little, from the faithful admonition which all history has given him, who shall conclude from thence, that this will always be the case. His right to remain in office after impeachment, with the influence though diminished, still attending it, appears to be highly improper. That of adjournment in case of ~~impeachment,~~ ⟨disagreement⟩ between the two branches, to such time as he shall think fit, is certainly too unqualified and extensive. The impropriety of the union of this branch with the senate has already been sufficiently dilated on; it will therefore be unnecessary to repeat the same arguments here. Contemplating however the consequences of this union, the expiration of his service, should in my opinion be accompanied with a temporary disqualification. The senators, would to save the commonwealth from injury, be able to give instruction to a new president, and it would perhaps be better, to change occasionally the acting party, of a combination that might otherwise be dangerous.

From the first clause respecting the judiciary it is obvious, that the Congress, although there shall be one Supreme Court only, may establish as many subordinate to it, as they shall think fit. The presumption is, they will establish so many as shall be necessary for the discharge of the functions of the department, to the advantage of the government, and benefit of the people. The extent therefore of the duties which become the exclusive object of a federal court, may give some insight into that establishment they might probably adopt; and when we observe that the cognizance of all cases arising under the [872] constitution and the laws, either of a civil or criminal nature, in law or equity, with those other objects which it specifies, even between the citizens of the same state, are taken from those of each state and absolutely appropriated to the courts of the United States, we are led into a view of the very important interests it comprehends, and of the extensive scale upon which it operates. It will therefore be the duty of Congress to organize this branch, by the establishment of such subordinate courts, throughout the whole confederacy, in such manner as shall be found necessary to support the authority of the government, and carry justice home, so far as it may be practicable, to the doors of all its inhabitants. What mode may be best calculated to accomplish this end, belongs to that body to determine. Bound by no rule they may it is true (as in the commencement they probably would) avail themselves of those of each state; but this would be a measure of expedience only and not of right, and may hereafter be changed as the fortunes of the government, and considerations of expedience may dictate. How far it might be proper to authorise the subjects of foreign powers to carry the citizens of any state into a federal court, and afterwards by appeal into the Supreme Court, is of questionable propriety. The principal argument in its favour appears to be that of securing the United States from the danger of controversies with such powers, under the partial decisions of those of the individual states. But if they knew such cases, were by a fundamental of our government submitted to them, it were reasonable to suppose, that all just cause of complaint, would be removed. The submission to a federal court of contests upon ordinary subjects, between citizens of the same state, or even of different states, or indeed upon any subject, that did not arise under territorial controversies between states, and which originally belonged to that court, appears to be highly improper and altogether unnecessary. The appeal as to fact is still more extraordinary and exceptionable. The verdict which has been found must of course be set aside, and the court subjected to the necessity of either trying the cause upon the evidence already given, with liberty to construe it at pleasure; of hearing it over again admitting other evidence, being judges of the fact themselves; or submitting it to another jury to find a second verdict, either of which modes appears to be highly exceptionable; for if the court become judges of fact under the old or a new trial, the right of trial by jury is dispensed with; and if a second jury shall be summoned, independent of the difficulty and hardship, attending the submission of controversies contracted at the extremities of the union, by people in some degree variant in their manners, customs, and prejudices, to a jury formed of those of any one town, [873] the parties are necessarily exposed to the loss of time, (of importance especially to the lower classes of society) and the enormous expence inseparable from a tryal carried on at a great distance from home. What necessity there can be, so effectually to lay aside the state courts, (which though perhaps improperly organized at present are yet capable of improvement) and subject the good people of America to such new and unheard of difficulties, I must confess I am not able to comprehend, nor can I readily forsee the very important consequences into which it may lead.

Having now taken a view as concisely as I have been able, of the defects of the present system, suggested their remedy with the principles upon which it is founded, examined the constitution by that standard, and shewn wherein I have either approved or disapproved of it; perhaps it may be expected (as a deduction from the foregoing principles) that I should make some calculation, of the probable course and ultimate fate of the government, should it be adopted in its present form, since it might have some influence upon your opinion in the present instance. This must however be altogether conjectural, for in the operation of government, as in that of all other powers after consequences, have been clearly demonstrated, as resulting from certain causes, oftentimes some incident, not contemplated, nor taken into the combination, or extra circumstance arises, that gives it a different direction. To form any estimate in this respect some peculiarities present themselves to view very deserving of attention. The mixture between the general and state governments, being partly a consolidated and partly a confederated one, suggests a balance between sovereignties that is new and interesting. So far as it proceeds from the people and its powers embrace the care of their interests, it partakes of the qualities of the former; and so far as the state governments remain of the latter. In weighing the momentum of their relative strength or force it is no less difficult to determine which will preponderate. Founded alike by the people, by the people also may either be changed at pleasure. If the precise boundary had been drawn between them, the proper checks established, and the general government well poised, ⟨it⟩ might for a long time, and I should hope forever, be stationary; defective in these respects it will probably soon experience a change. Pursuing a natural course under those shocks it must expect, without any foreign impression to give it the fairest hopes, let us enquire what the interests of the people will dictate, for let that be its direction. Independent state sovereignties, or partial confederacies, have been reprobated in its commencement. Its foundation has been laid on the ruin of all schemes that had that tendency, and it is presumeable it [874] would in no event embrace either, at least until it had experienced a great vicissitude of fortunes. If then it escaped the first paroxisms, the severe struggles, and violent efforts against it, exposed it to, its establishment might be considered as complete. And suppressing the spirit of opposition, its constitutional basis will be found broad and extensive. It is not the aid of the Delphic oracle, the blind zeal of enthusiasm, that will be called in to its support. It has the protection of the true religion, of divine authority itself, to shield it from danger. The exercise of powers in common that will be allowed of in its commencement, must yield on the part of the states, to its acquiring strength. And wielding those the constitution has given it without availing itself of such as were constructive, the state governments, under this progress, would soon become a burthen to the people. The confederated principle, or the spirit of state sovereignty, would however not be inactive, but operate so as to bring on the crisis; and the constitution itself presents a fruitful source of controversy, for the spirit of accommodation, or the mutual fear of danger, must be great, where the line between them is not exactly drawn, if they do not interfere. If this government had been organized over one state, with a moderate extent of territory, its natural progress, through the Senate, would be to aristocracy. But as it is I am inclined to believe, that although in its operation it may bear that tone, yet when it becomes convulsed and experiences a change, it will hold a different direction. Even the construction of that branch in its operation will contribute to hurry it into monarchy,[8] and our earnest hopes and prayers should be, every circumstance considered, that it be a limited one. For these reasons and not that I fear any danger to the liberties of our country, from the effective force of the government, exerted immediately against the good people of America, could I wish those checks and guards adopted, omitted at present from neglect and an over confidence of our security, but which it is possible if the present opportunity is lost, we may contend for hereafter in vain. Political institutions, we are taught by melancholy experience, have their commencement, maturity and decline; and why should we not in early life, take those precautions that are calculated to prolong our days, and guard against the diseases of age? Or shall we rather follow the example of the strong, active, and confident young man, who in the pride of health, regardless of the admonition of his friends, pursues the gratification of unbridled appetites, and falls a victim to his own indiscretion, even in the morn of life, and before his race had been fairly begun.

I have to apologize for the trouble I have given you in the perusal of the observations. I owe it to myself however to observe that the [875] bounds within which I have been under the necessity of confining this letter has prevented my going into that detail, often necessary, especially on so intricate a subject for the sake of illustration; and the want of leisure has I fear, prevented even a tolerable degree of correctness. But if I have been able to explain myself to your satisfaction I shall be contented. Upon the whole it results that although I am for a change, and a radical one, of the confederation, yet I have some strong and invincible objections to that proposed to be substituted in its stead. Those of less weight might be yielded for the sake of accomodation; but until an experiment shall prove the contrary, I shall always believe that the exercise of direct taxation and excise, by one body, over the very extensive territory contained within the bounds of the United States, will terminate either in anarchy and a dissolution of the government, or a subversion of liberty. The judiciary I consider as illy organized and its powers as too extensive, the whole government in a great measure without responsibility, and the rights of men too loosely guarded. And when I behold the Senate, a corps more deplomatic in its principle, permanent in its station, and systematic in its operations, than even the late Congress itself, wielding in the one hand the strong powers of the Executive, and with the other controuling and modifying at pleasure, the movements of the legislature, I must confess that not only my hopes of the beneficial effects of the government, are greatly diminished, but that my apprehensions of some fatal catastrophe are highly awakened. We have struggled long to bring about this revolution, we have fought and bled freely to accomplish it, and in other respects braved difficulties almost without a parallel. Why then this precipitation, why this hurry upon a subject so momentous, and equally interesting to us all? Is it to be supposed that unless we immediately adopt this plan, in its fullest extent, we shall forever loose the opportunity of forming for ourselves a good government? That some wild phrensy or delirium of the brain will seize upon us, and losing all recollection of things past, and abandoning the social ties that bind mankind together, we shall fall into some strange and irritrievable disorder? Or is it not more natural to suppose that perfection in any science, if attainable at all, is to be approached by slow and gradual advances, and that the plan of government now presented for your inspection, though a powerful effort of the human mind, is yet to be improved by a second essay?

The subject now submitted to you, is no less interesting than it is important. Providence hath long seen nine-tenths of the habitable globe immersed, and groaning under the dreadful oppressions of slavery. To the people of America, to you it belongs to correct the opposite [876] extremes. To form a government that shall shield you from dangers from abroad, promote your general and local interests, protect in safety the life, liberty, and property, of the peaceful, the virtuous and the weak, against the encroachments of the disorderly and licentious. Whether they are now endangered, whether the plan now before you, presented under the most faithful and illustrious auspices; under the auspices of men of whose abilities and integrity you have long had the most satisfactory proofs, and who to the most important services, by abandoning the enjoyments of a peaceful and happy retirement, have added this further testimony, of their never failing attachments to the interests of their country, will accomplish this end, or is capable of still further improvement, belongs to you to determine. To differ in any respect from these men, is no pleasant thing to me; but being called upon an awful stage upon which I must now bear a part, I have thought it my duty to explain to you the principles on which my opinions were founded, under this further assurance, that if after a candid review, they shall appear indefensible, I will most chearfully submit to be governed by your wishes, and obey other instructions.

(a) *Polybius*, vol. 3, page 92.

(b) *As in the restoration of* Charles II. *in England*.

(c) *De Lolme*.

(d) *It is obvious that seven men only may elect the President; the constitution has not been capid nor any part of it, because it is presumed to be in the memory of every person*.

[1] The Articles of Confederation were approved by Congress on 15 November 1777 and finally ratified by the states on 1 March 1781.

[2] For the text of the Articles of Confederation, see CDR, 86–94.

[3] Monroe refers to the apportionment of the House of Representatives by population in which three-fifths of the slaves were counted. Such a formula was recommended by Congress in April 1783 in an amendment to the Articles of Confederation for the allocation of expenses among the states (CDR, 148–50). Eleven states (New Hampshire and Rhode Island excepted) ratified this amendment.

[4] For a summary of a congressional report, dated 31 March 1788, on the payment of the congressional requisitions by the states, see "The State Soldier" V, 2 April, note 3 (above). For Virginia's payment of its share of the congressional requisitions, see RCS:Va., 90n, 283n, 490n–91n.

[5] Montesquieu, *Spirit of Laws*, I, Book XI, chapter VI, 221–22. John Locke did not include the judiciary when he discussed the three powers of government—legislative, executive, and federative. (The legislative power was separate from the executive and federative, which were related.) Nevertheless, he believed that judges should be "*indifferent* and upright," and that the judiciary was crucial to the kind of system that he advocated. (See chapters IX and XII of John Locke's *Second Treatise of Government*.)

[6] See Article IX of the Articles of Confederation (CDR, 89–90).

[7] Monroe probably refers to the famous case involving Thomas, Earl of Danby, the Lord High Treasurer of England. In December 1678, the House of Commons impeached [877] Danby for "High Treason, and other High Crimes and Misdemeanours, and Offences." To protect his principal minister, Charles II dissolved Parliament in January 1679 and pardoned him under the Great Seal. In March 1679, the House of Lords stated that the royal dissolution "doth not alter the State of the Impeachments." Two months later, the House of Commons declared the pardon "to be illegal and void." Eventually, however, the impeachment was dropped, but Danby spent the next five years imprisoned in the Tower of London. In 1701 the Act of Settlement provided "That no Pardon under the Great Seal of England be pleadable to an Impeachment by the Commons in Parliament." This provision, however, did not prevent the King from pardoning a person after conviction and sentencing.

[8] At this point, Monroe thought about making an insertion, but he appears to have changed his mind because he blotted out the caret indicating where the insertion was to appear. This addition reads: "as there is no second class or order of nobles in America it [is?] difficult to say in what it will terminate. If there was such an ord[er?]."

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