

**James Madison to James Monroe, September 24,
1822. Transcription: The Writings of James Madison,
ed. Gaillard Hunt. New York: G.P. Putnam's Sons,
1900-1910.**

TO JAMES MONROE. MAD. MSS.

Montpr., Sepr. 24, 1822

Dear Sir, The mail of saturday brought me your favor of the 16th. The letters inclosed in it are returned. Accept my thanks for the odd Vol: of Congl. Journals.

As I understand the case presented in the other paper inclosed, it turns on the simple question, whether the Senate have a right in their advice & consent to vary *the date* at which, according to the nomination of the President, an appointment to office is to take effect.

The subject continues to appear to me in the light which I believe I formerly intimated. The power of appointment, when not otherwise provided by the Constitution is vested in the President & the Senate. Both must concur in the act, but the act must originate with the President. He is to nominate, and their advice & consent are to make the nomination an appointment. They cannot give their advice & consent without his nomination, nor of course, differently from it. In so doing they would originate or nominate, so far as the difference extended, and it would be his, not their advice & consent which consummated the appointment. If the President shd. nominate A, to be an officer from the 1st day of May, and the Senate shd. advise that he be an officer from the 1st day of Jany preceding, it is evident that for the period not embraced by the nomination of the P. the nomination wd.

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originate with the Senate, and would require his subsequent sanction to make it a joint act. During that period therefore it would be an appt. made by the nomination of the Senate with the advice & consent of the President; not of the President with the advice & consent of the Senate.

The case is not essentially changed by supposing the Presidt. to nominate A to be an officer from the 1st day of Jany, and the Senate to confirm it from the 1st day of May following. Here also the nomination of the P. would not be pursued; and the Constitutional order of appt. would be transposed. Its intention would be violated, and he would not be bound by his nomination to give effect to the advice & consent of the Senate. The proceeding would be a nullity. Nor wd. this result from pure informality. The P. might have as just objections to a postponement of the date of an appt. for three months as good reasons for its immediate commencement. The change in the date might have an essential bearing on the public service; and a collateral or consequential one on the rights or pretensions of others in the public service. In fact, if the Senate in disregard of the nomination of the P. would postpone the commencement of an appt. for a single day, it could do it for any period however remote, & whatever might be the intermediate change of things. The date may be as material a part of the nomination, as the person named in it.

We are still suffering under the intense drought of which you witnessed its increasing effects. *Ten* weeks have now passed since we had any rain of sensible value. On some of our farms it may be sd. there has been none at all. Our crops of Corn, notwithstanding, they were *forward* were so favored by the early part of the season, as to promise support, until the next summer harvest. The Tobo. crop is in a sad plight, and no weather now can repair it. Your neighborhood, in Albemarle, I understand, has fared much better.