



AMERICAN CONSTITUTIONALISM
 VOLUME I: STRUCTURES OF GOVERNMENT
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Supplementary Material

Chapter 4: The Early National Era - Separation of Powers

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James Monroe, Proposal for a Military Draft (1814)¹

During the War of 1812, the British sacked Washington, D.C. Soon after, an angry Congress passed a resolution demanding that the secretary of war, James Monroe, detail “the defects in the present military establishment,” and outline “(w)hat future provisions, by law, are deemed necessary to remedy such defects.”² Monroe responded by advocating a draft to draw 4 percent of the male population between 18 and 45 into national military service. The states were understood to have the power to require service in the militia, and they had used conscriptions during the Revolutionary War. The U.S. Constitution gave the federal government the power to “raise and support” its own army. Monroe’s proposal was the first to test whether a national draft was a “necessary and proper” means for “raising” an army, an implied power of the federal government. The controversial proposal was not adopted, however, and a draft would not be tested again until the Civil War.

Monroe had been an anti-Federalist during the constitutional ratification debates, and he had sometimes been considered by more radical Jeffersonians as a possible challenger to James Madison. It was Monroe, not Madison, who was sent by the Virginia legislature to the U.S. Senate for the first Congress. But in the end, the younger Monroe waited his turn to be president, first serving in the critical offices of secretary of state and secretary of war for President Madison. Does he propose a constricted or expansive reading of federal power here?

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 [T]here [does not] appear to be any well founded objection to the right in Congress to adopt this plan, or to its equality in its application to our fellow-citizens individually. Congress have a right, by the constitution, to raise regular armies, and no restraint is imposed on the exercise of it, except in the provisions which are intended to guard generally against the abuse of power, and none of which does this plan interfere. It is proposed that it shall operate on all alike; that none shall be exempted from it except the Chief Magistrate of the United States, and the Governors of the several States.

It would be absurd to suppose that Congress could not carry this power into effect, otherwise than by accepting the voluntary service of individuals. It might happen that an army could not be raised in that mode, whence the power would have been granted in vain. The safety of the State might depend on such an army. Long continued invasions, conducted by regular, well-disciplined troops, can best be repelled by troops kept constantly in the field, and equally well disciplined. Courage in an army is, in a great measure, mechanical. A small body, well trained, accustomed to action, gallantly led on, often breaks three or four times the number of more respectable and more brave, but raw and undisciplined troops. . . . The grant to Congress to raise armies, was made with a knowledge of all these circumstances, and with an intention that it should take effect. The framers of the constitution, and the States who ratified it, knew the advantage which an enemy might have over us, by regular forces, and intended to place their country on an equal footing.

The idea that the United States cannot raise a regular army in any other mode than by accepting the voluntary service of individuals, is believed to be repugnant to the uniform construction of all grants of power, and equally so to the first principles and leading objects of the federal compact. An unqualified

¹ Excerpt from James Monroe to William Branch Giles, October 17, 1814, *American State Papers: Military Affairs*, vol. 1 (Washington, D.C.: Seaton and Gales, 1832), 14-16.

² William Branch Giles to James Monroe, September 23, 1814, *American State Papers: Military Affairs*, vol. 1 (Washington, D.C.: Seaton and Gales, 1832), 14.



grant of power gives the means necessary to carry it into effect. This is an universal maxim, which admits of no exception. Equally true is it, that the conservation of the State is a duty paramount to all others: The commonwealth has a right to the service of all its citizens; or, rather, the citizens composing the commonwealth have a right, collectively and individually, to the service of each other, to repel any danger which may be menaced. The manner in which the service is to be apportioned among the citizens, and rendered by them, are objects of legislation. All that is to be dreaded in such case, is, the abuse of power; and, happily, our constitution has provided ample security against that evil.

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