



AMERICAN CONSTITUTIONALISM
 VOLUME I: STRUCTURES OF GOVERNMENT
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Supplementary Material

Chapter 4 The Early National Era – Powers of the National Government

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*Daniel Webster, Speech on the Proposed Military Draft (1814)*¹

Congress debated the proposed draft bill during the winter of 1814. On December 9, 1814, the young Federalist congressman Daniel Webster from the ardently anti-war New England made a powerful speech against the constitutionality of the draft bill. Was the bill defeated because of such opposition – or simply because the Treaty of Ghent ending the war was signed while the debate was taking place? What is clear is that no draft took place during the War of 1812. The issue of the federal draft did not arise again until the Civil War.

Daniel Webster would soon become known as one of the most ardent nationalists in Congress. His legal arguments on behalf of the Bank of the United States in the McCulloch case offered a broad reading of the necessary and proper clause for the Marshall Court to adopt. But during the unpopular war he emphasized limitations on federal power. This speech was left out of the collected papers published during and immediately after Webster's own lifetime. Does Monroe's argument or Webster's fit better with Marshall's opinion in McCulloch? Can Webster's argument on the draft be reconciled with McCulloch? Notice that in ridiculing the constitutional argument in favor of the draft, he compares it to an argument in favor of legal tender. That issue would rise again during the Civil War.

....

Congress having, by the Constitution a power to raise armies, the Secretary contends that no restraint is to be imposed on the exercise of this power, except such as is expressly stated in the written letter of the instrument. In other words, that Congress may execute its power, by any means it chooses, unless such means are particularly prohibited. But the general nature and object of the Constitution impose as rigid a restriction on the means of exercising power, as could be done by the most explicit injunctions. It is the first principle applicable to such a case, that no construction shall be admitted which impairs the general nature and character of the instrument. A free constitution of Government is to be construed upon free principles, and every branch of its provisions is to receive such an interpretation as is full of its general spirit. No means are to be taken by implication, which would strike us absurdly, if expressed. And what would have been more absurd, that for this constitution to have said, that to secure the great blessings of liberty it gave to Government an uncontrolled power of military conscription? . . .

But it is said, that it might happen that an army would not be raised by voluntary enlistment, in which case the power to raise armies would be granted in vain, unless they might be raised by compulsion. If this reasoning could prove anything, it would equally show, that whenever the legitimate powers of the Constitution should be so badly administered as to cease to answer the great ends intended by them, such new powers may be assumed or usurped, as any existing administration deem expedient. This is a result of his own reasoning, to which the Secretary does not profess to go. But it is a true result. For it is to be assumed, that all powers were granted, which might by possibility become necessary, and that Government itself is the judge of this possible necessity, then the powers of Government are precisely what it chooses they should be. Apply the same reasoning to any other power granted to Congress, test its accuracy by the result. Congress has the power to borrow money. How is it to exercise this power? Is it confined to voluntary loans? There is no express limitation to that effect, and, in the language of the Secretary, it might happen, indeed, it has happened, that persons could not be found

¹ Excerpt taken from Daniel Webster, "Speech on the Conscription Bill, December 9, 1814," in *The Writings and Speeches of Daniel Webster*, ed. Edward Everett, vol. 14 (Boston: Little, Brown, 1903), 55.



willing to lend. Money might be borrowed then in any other mode. In other words, Congress might resort to a *forced* loan. It might take the money of any man, by force, and give him in exchange Exchequer notes or Certificate of Stock. Would this be quite constitutional, Sir? . . .

....
Sir, in granting Congress the power to raise armies, the People have granted all the means which are ordinary and usual, and which are consistent with the liberties and security of the People themselves; and they have granted no others. To talk about the unlimited power of the Government over the means to execute its authority, is to hold a language which is true only in regard to despotism. The tyranny of Arbitrary Government consists as much in its means as in its ends; and it would be a ridiculous and absurd constitution which should be less cautious to guard against abuses in the one case than in the other. . . .

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