

Sec. 8—Powers of Congress

Cls. 11, 12, 13, and 14—War; Military Establishment

appropriate funds to the Air Force for the procurement of aircraft and aeronautical equipment to remain available until expended.”¹⁵²²

Conscription

The constitutions adopted during the Revolutionary War by at least nine of the States sanctioned compulsory military service.¹⁵²³ Towards the end of the War of 1812, conscription of men for the army was proposed by James Monroe, then Secretary of War, but opposition developed and peace came before the bill could be enacted.¹⁵²⁴ In 1863, a compulsory draft law was adopted and put into operation without being challenged in the federal courts.¹⁵²⁵ Not so the Selective Service Act of 1917.¹⁵²⁶ This measure was attacked on the grounds that it tended to deprive the States of the right to “a well-regulated militia,” that the only power of Congress to exact compulsory service was the power to provide for calling forth the militia for the three purposes specified in the Constitution, which did not comprehend service abroad, and finally that the compulsory draft imposed involuntary servitude in violation of the Thirteenth Amendment. The Supreme Court rejected all of these contentions. It held that the powers of the States with respect to the militia were exercised in subordination to the paramount power of the National Government to raise and support armies, and that the power of Congress to mobilize an army was distinct from its authority to provide for calling the militia and was not qualified or in any wise limited thereby.¹⁵²⁷

Before the United States entered the first World War, the Court had anticipated the objection that compulsory military service would violate the Thirteenth Amendment and had answered it in the following words: “It introduced no novel doctrine with respect of services always treated as exceptional, and certainly was not intended to interdict enforcement of those duties which individuals owe to the State, such as services in the army, militia, on the jury, etc. The great purpose in view was liberty under the protection of effective government, not the destruction of the latter by depriving it of

¹⁵²² 40 Ops. Atty. Gen. 555 (1948).

¹⁵²³ *Selective Draft Law Cases*, 245 U.S. 366, 380 (1918); *Cox v. Wood*, 247 U.S. 3 (1918).

¹⁵²⁴ 245 U.S. at 385.

¹⁵²⁵ 245 U.S. at 386–88. The measure was upheld by a state court. *Kneedler v. Lane*, 45 Pa. St. 238 (1863).

¹⁵²⁶ Act of May 18, 1917, 40 Stat. 76.

¹⁵²⁷ *Selective Draft Law Cases*, 245 U.S. 366, 381, 382 (1918).