

The Scourge of Conscription

By now Randolph Bourne's observation that "war is the health of the state" ought to be such a cliché that it would hardly need to be said. And yet, it must be said — often — because many still haven't gotten the word.

If the state is the adversary of liberty, as it nearly always has been, then it follows that war is also the ill health of liberty. And when one thinks of war, one ought also to think of conscription because it's often somewhere close by. In a perverse way, Americans have been lucky. The divisive decade-long Vietnam war and access to the latest war-making technology have made the draft just a bad memory for Americans since 1973 and politically toxic. Repeated attempts to bring it back, even with "national service" packaging fortunately have failed.

Outrageously, however, American men 18-25 must register with the euphemistically named Selective Service System, as they've been required to do since 1979 when the Soviet Union invaded Afghanistan. Make no mistake about it. This is not a registration for a benign contest. As the Selective Service website states:

While there is currently no draft, registration with the Selective Service System is the most publicly visible program during peacetime that ensures operational readiness in a fair and equitable manner. If authorized by the President and Congress, our Agency would rapidly provide personnel to the Department of Defense while at the same time providing an Alternative Service Program for conscientious objectors.

How reassuring. The draft is always in the wings. And the penalty for the felony of not registering is a \$250,000 fine and/or a five-years prison term.

The evil of slavery is almost universally appreciated, so why is the draft, which is slavery with an expiration date and high risk of death and injury, not universally condemned? Is it because in many places people believe that governments ultimately own their subjects and may dispose of them as they see fit?

The draft has been in the news lately because Russia, the invader, and Ukraine, the invaded, compel men into combat and other military "service." It is encouraging that neither Russians nor Ukrainians are fans of that policy. Russian men are protesting and some are getting out of the country. Ukraine has had to forbid men from leaving. Many people just don't relish war.

It should go without saying that if individuals have the right to life, liberty, and the pursuit of happiness, then individuals have the right to decide when they will take up arms, free of a despotic elite or majority. We may not always like the consequences of freedom, but

that's how it is.

Until 1973 America had suffered the tyranny of conscription repeatedly, but not everyone accepted it. One of the most eloquent speeches ever delivered in the House of Representatives was aimed at conscription by Rep. Daniel Webster of Massachusetts (1782-1852) in 1814 after a bill to draft men for the lingering War of 1812 had been introduced. Despite Webster's efforts, the bill passed, but the war ended before it took effect. Originally from New Hampshire, Webster also was a U.S. senator and secretary of state. He was in the Federalist party until 1825. As a staunch nationalist, he opposed nullification by the states of national legislation, a position that will seem at odds with his objection to the conscription bill.

We must bear in mind that Webster's speech came when many people distrusted standing armies and believed that the national government constitutionally could call up the state militias only in specified emergencies, namely, to "repel invasion, suppress insurrection, or execute the laws." In the first few decades of the republic, however, membership in the militias was mandatory. But unlike a regular army, the militia did not require full-time service for a period of years. For the rank and file, it was a sideline (like being in a fire brigade) that was part of their normal lives. All but one of America's earliest wars were fought with such conscripts.

Webster objected not to compulsory military service per se, but rather to a bill according to which the "services of the men to be raised ... are not limited to those cases in which alone this government is entitled to the aid of the militia of the States." In other words, he was making a federalist case against the claims of the national government. This is a far narrower objection than a libertarian might have hoped for, but Webster still had worthwhile things to say against the inherent features of conscription.

Webster thought the bill was an attempted end-run around the Constitution. He asked:

What is this, Sir, but raising a standing army out of the Militia by draft, and to be recruited by draft, in like manner, as often as occasions require?... That measures of this nature should be debated at all, in the councils of a free government, is a cause of dismay. *The question is nothing less than whether the most essential rights of personal liberty shall be surrendered, and despotism embraced in its worst form.* [Emphasis added.]

Later in the speech he said, "If the Secretary of War has proved the right of Congress to enact a law enforcing a draft of men out of the Militia into the Regular Army, he will at any time be able to prove quite as clearly that Congress has power to create a Dictator."

He saw the threat of despotism all through the bill:

Is this, sir, consistent with the character of a free government? Is this civil liberty? Is this the real character of our Constitution? No sir, indeed it is not. The Constitution is libelled, foully libelled. The people of this country have not established for themselves such a fabric of despotism. They have not purchased at a vast expense of their own treasure and their own blood a Magna Charta to be slaves.

Imagine such words being spoken in Congress today. He clearly spelled out the consequences, which should be familiar to all in our own time:

Where is it written in the Constitution, in what article or section is it contained, that you may take children from their parents, and parents from their children, and compel them to fight the battles of any war in which the folly or the wickedness of government may engage it? Under what concealment has this power lain hidden which now for the first time comes forth, with a tremendous and baleful aspect, to trample down and destroy the dearest rights of personal liberty?

Who will show me any Constitutional injunction which makes it the duty of the American people to surrender everything valuable in life, and even life itself, not when the safety of their country and its liberties may demand the sacrifice, but whenever the purposes of an ambitious and mischievous government may require it?

Then he addressed the stated concern of Secretary of War John Armstrong, a champion of the bill:

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 an army 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 may deem expedient.

Webster, here sounding like an old Antifederalist, seemed to be rejecting the Constitution's "necessary and proper" clause as a potential blank check. That doctrine attributed to Armstrong, he said, would result in a central government of unlimited self-defined powers, which he condemned as a violation of the framers' intent: "An attempt to maintain this doctrine upon the provisions of the Constitution is an exercise of perverse ingenuity to extract slavery from the substance of a free government."

Should the law pass, he said, it would fall to the states to protect their citizens from that arbitrary national encroachment. The central government would then require an army to enforce conscription, just as it believed it needed conscription to raise an army. Webster said:

It will be the solemn duty of the State Governments to protect their own authority over their own Militia, and to *interpose between their citizens and arbitrary power*. These are among the objects for which the State Governments exist, and their highest obligations bind them to the preservation of their own rights and the liberties of their people. [Emphasis added.]

How is that not nullification?

In his expectation that the states would protect their citizens from a national draft, Webster's speech reminds us of the **Defend the Guard** campaign now going on in state legislatures to end Washington's power to commit National Guard units to overseas combat without a declaration of war, as has happened throughout the 21st century. (Watch Scott Horton's speech in Minnesota on behalf of the Defend the Guard movement there.)

The more things change....