



## Madison on Rights of the States vs. Rights of the Federal Government

NOTE: The excerpts listed below are in chronological order. The Web URLs for the sources of the excerpts are provided so that interested students may access a complete version of each text.

As early as 1788, Madison felt that the powers relegated to the states would be the best guard against the potential abuses of a standing army. This excerpt is from Madison's Federalist No. 46 [<http://www.yale.edu/lawweb/avalon/federal/fed46.htm>], written January 29, 1788, and available on the EDSITEment resource **The Avalon Project**.

Extravagant as the supposition is, let it however be made. Let a regular army, fully equal to the resources of the country, be formed; and let it be entirely at the devotion of the federal government; still it would not be going too far to say, that the State governments, with the people on their side, would be able to repel the danger. The highest number to which, according to the best computation, a standing army can be carried in any country, does not exceed one hundredth part of the whole number of souls; or one twenty-fifth part of the number able to bear arms. This proportion would not yield, in the United States, an army of more than twenty-five or thirty thousand men. To these would be opposed a militia amounting to near half a million of citizens with arms in their hands, officered by men chosen from among themselves, fighting for their common liberties, and united and conducted by governments possessing their affections and confidence. It may well be doubted, whether a militia thus circumstanced could ever be conquered by such a proportion of regular troops. Those who are best acquainted with the last successful resistance of this country against the British arms, will be most inclined to deny the possibility of it. Besides the advantage of being armed, which the Americans possess over the people of almost every other nation, the existence of subordinate governments, to which the people are attached, and by which the militia officers are appointed, forms a barrier against the enterprises of ambition, more insurmountable than any which a simple government of any form can admit of.

As a member of the House of Representatives, Madison expressed his opinion on the constitutional procedure for calling up the militia, in this excerpt from the [Annals of Congress, Dec. 21, 1790](http://memory.loc.gov/cgi-bin/ampage?collId=llac&fileName=002/llac002.db&recNum=293) [<http://memory.loc.gov/cgi-bin/ampage?collId=llac&fileName=002/llac002.db&recNum=293>], available on the EDSITEment resource **American Memory**. The president, though commander-in-chief, is not empowered by the Constitution to raise an army.

Mr. Madison said, he conceived it would be necessary to pass a law authorizing a President of the United States to call out the militia, as the Constitution only says that he shall be commander-in-chief of the militia when in the service of the United States, without giving him the power of ordering it out.

In the [May 29, 1794, House debate on the bill for authorizing the president to lay, regulate, and revoke embargoes](#) [[http://memory.loc.gov/cgi-bin/query/r?ammem/hlaw:@field\(DOCID+@lit\(ed00426\)\)](http://memory.loc.gov/cgi-bin/query/r?ammem/hlaw:@field(DOCID+@lit(ed00426)))], available on the EDSITEment resource **American Memory**, Madison explained how assigning the authority to raise and command an army to different branches serves as a check on the abuse of power.

Mr. MADISON. ...did not see any such immediate prospect of a war as could induce the house to violate the Constitution. He thought that it was a wise principle in the Constitution to make one branch of the government raise an army, and another conduct it. If the legislature had the power to conduct an army, they might embody it for that end. On the other hand, if the President was empowered to raise an army, as he is to direct its motions when raised, he might wish to assemble it for the sake of the influence to be acquired by the command the Constitution had wisely guarded against the danger on either side, Upon the whole, he could not venture to give his consent for violating so salutary a principle of the Constitution as that upon which this bill encroached.

In a [House discussion of separation of powers on March 10, 1796](#) (Annals of Congress 5:493) [<http://memory.loc.gov/cgi-bin/ampage?collId=llac&fileName=005/llac005.db&recNum=243>], available on the EDSITEment resource **American Memory**, Madison explained his position on the balance of power between the states and the federal government. The powers not assigned to the central government—and therefore relegated to the states—also serve as a check against the abuse of authority. Importantly, he said that when conclusions are “doubtful,” lean toward an interpretation of the Constitution that locates less power centrally. He was not afraid to lean toward allocating power centrally when the need was great, because there were still two classes of checks against abuse.

The Constitution of the United States is a Constitution of limitations and checks. The powers given up by the people for the purposes of Government, had been divided into two great classes. One of these formed the State Governments; the other, the Federal Government. The powers of the Government had been further divided into three great departments; and the Legislative department again subdivided into two independent branches. Around each of these portions of power were seen also exceptions and qualifications, as additional guards against the abuses to which power is liable. With a view to this policy of the Constitution, it could not be unreasonable, if the clauses under discussion were thought doubtful, to lean towards a construction that would limit and control the Treaty-making power, rather than towards one that would make it omnipotent.

In the [Virginia Resolutions of 1798](#) [<http://www.yale.edu/lawweb/avalon/virres.htm>], available on the EDSITEment resource **The Avalon Project**, Madison made his strongest statement about the balance of power between the states and the federal government, writing the position of the Virginia General Assembly that the Alien and Sedition Acts were unconstitutional.

...the General Assembly doth solemnly appeal to the like dispositions of the other states, in confidence that they will concur with this commonwealth in declaring, as it does hereby declare, that the acts aforesaid, are unconstitutional; and that the necessary and

proper measures will be taken by each, for co-operating with this state, in maintaining the Authorities, Rights, and Liberties, referred to the States respectively, or to the people.

In Madison's [first inaugural address](http://www.yale.edu/lawweb/avalon/presiden/inaug/madison1.htm) [http://www.yale.edu/lawweb/avalon/presiden/inaug/madison1.htm], delivered on March 4, 1809 and available on the EDSITement resource **The Avalon Project**, the President, aware of the dangers of the United States being drawn into a European conflict, renewed the call for a standing army, albeit limited.

...to keep within the requisite limits a standing military force, always remembering that an armed and trained militia is the firmest bulwark of republics--that without standing armies their liberty can never be in danger, nor with large ones safe

With this evidence of hostile inflexibility in trampling on rights which no independent nation can relinquish, Congress will feel the duty of putting the United States into an armor and an attitude demanded by the crisis, and corresponding with the national spirit and expectations.

In his [State of the Union address of November 1811](http://www.jmu.edu/madison/unionmadison1811.htm) [http://www.jmu.edu/madison/unionmadison1811.htm], available via a link from the EDSITement resource **The American President**, Madison called for an increase in the military, as war against Britain loomed.

I recommend, accordingly, that adequate provisions be made for filling the ranks and prolonging the enlistments of the regular troops; for an auxiliary force to be engaged for a more limited term; for the acceptance of volunteer corps, whose patriotic ardor may court a participation in urgent services; for detachments as they may be wanted of other portions of the militia, and for such a preparation of the great body as will proportion its usefulness to its intrinsic capacities. Nor can the occasion fail to remind you of the importance of those military seminaries which in every event will form a valuable and frugal part of our military establishment.

In 1821, [Madison reflected on the division of power](http://www.jmu.edu/madison/gpos225-madison/zdivispower.htm) [http://www.jmu.edu/madison/gpos225-madison/zdivispower.htm] (available via a link from the EDSITement resource **The American President**). He saw the balance of power between the states and the federal government as a positive, but continuing tension. Too much power to the states leads to anarchy. Too much power in the central government can lead to despotism. He appreciated the checks each had on the other and felt assured that:

...Whether the Constitution, as it has divided the powers of Government between the States in their separate and in their united capacities, tends to an oppressive aggrandizement of the General Government, or to an anarchical independence of the State Governments, is a problem which time alone can absolutely determine. It is much to be wished that the division as it exists, or may be made with the regular sanction of the people, may effectually guard against both extremes; for it cannot be doubted that an accumulation of all power in the General Government would as naturally lead to a dangerous accumulation in the Executive hands, as that the resumption of all power by the several States would end in the calamities incident to contiguous and rival

Sovereigns; to say nothing of its effect in lessening the security for sound principles of administration within each of them.

...In estimating the greater tendency in the political system of the Union to a subversion, or to a separation of the States composing it, there are some considerations to be taken into the account which have been little adverted to by the most oracular authors on the science of Government, and which are but imperfectly developed, as yet, by our own experience. Such are the size of the States, the number of them, the territorial extent of the whole, and the degree of external danger. Each of these, I am persuaded, will be found to contribute its impulse to the practical direction which our great political machine is to take.

-- *Excerpted from a letter to John G. Jackson, December 27, 1821 (Madison, 1865, III, pp. 243-247)*

In his “Notes on Nullification” (Writings of James Madison, Vol. 9, pp. 606-607), Madison stated:

A political system which does not contain an effective provision for a peaceable decision of all controversies arising within itself, would be a government in name only. Such a provision is obviously essential; and it is equally obvious that it cannot be either peaceable or effective by making every part an authoritative umpire. The final appeal in such cases must be to the authority of the whole, not to that of the parts separately and independently. This was the view taken of the subject, whilst the Constitution was under the consideration of the people. It was this view of it which dictated the clause declaring that the Constitution and laws of the U. S. should be the supreme law of the Land, anything in the... laws of any of the States to the contrary notwithstanding.

Article 6, Section 2 of the U.S. Constitution is declared the ultimate authority, trumping state judges and state constitutions.