

The Army Clause, Part 2: Drafting and Ratification History

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This Legal Sidebar is the second in a five-part series that discusses the Constitution’s [Army Clause](#), which authorizes the federal government to raise and support armies while also allowing for congressional control through the appropriations process. Because the Army Clause provides Congress with an [essential element](#) of the government’s suite of war powers, understanding the Army Clause may assist Congress in its legislative activities.

This Sidebar post discusses the drafting and ratification of the Army Clause. Other Sidebars in this series discuss the clause’s [historical backdrop](#); relationship with [appropriations, conscription, and war materials](#); role in [individual rights cases](#); and connection with [principles of federalism](#). Additional information on this and related topics is available at the [Constitution Annotated](#).

Drafting History at the Constitutional Convention

At the [Constitutional Convention](#), the Framers of the Constitution emphasized the militia as the primary guarantor of national defense, but abandoned the [Articles of Confederation’s](#) system for raising armies by “mak[ing] requisitions from each state.” During opening remarks at the Convention, Edmund Randolph, the governor of Virginia, [observed](#) that the Articles of Confederation did not provide security against foreign invasion because the national government was not “permitted to prevent a war nor to support it by [its] own authority.” In light of this experience, the [first draft](#) of the Constitution prepared at the Constitutional Convention gave Congress authority to “[raise armies](#)” without state involvement.

When the full Convention discussed this early draft of the Army Clause, the delegates [voted](#) to add the words “and support,” but they did not debate or discuss the reasons for the change. Nor was there debate over which branch of government should possess this power. It was a widely held [view](#) in Founding-era America that English monarchs’ misuse of military forces demonstrated that the power to raise and support armies should reside in the legislative branch rather than with an executive head of state.

The Army Clause quickly generated opposition from delegates who feared that it could lead to expensive and oppressive standing armies in peacetime. Immediately after the delegates agreed to the addition of language authorizing Congress to “support” armies, Massachusetts delegate Elbridge Gerry [criticized](#) the absence of a “check [against] standing armies in time of peace” in the Army Clause. Arguing that he

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“could never consent to a power to keep up an indefinite number” of troops, Gerry moved to add a limit on the number of peacetime forces, which he [suggested](#) should be no more than “two or three thousand.” New Jersey delegate Jonathan Dayton [responded](#) that “preparations for war are generally made in peace; and a standing force of some sort may . . . become unavoidable.” One delegate supported Gerry’s proposal, but others voiced objections, and Gerry’s motion was defeated.

Although Gerry’s motion for a numerical limit was quickly rejected, the delegates would [continue to debate](#) whether the Army Clause properly balanced distrust of standing armies with the need for a professional military force to provide security on American soil. Rather than place a ceiling on the number of troops, the delegates coalesced around the idea of controlling the army’s size and power by limiting congressional authority to appropriate funds for the army’s use. Delegate Hugh Williamson of North Carolina argued that limitations on appropriations would be the “[best guard](#)” against the dangers of a standing army. South Carolina Delegate Charles Pinckney later [introduced](#) a proposal mandating that “no grants of money shall be made by the Legislature for supporting milit[ary] land forces for more than one year at a time[.]” Pinckney’s proposed one-year limitation had its roots in English law and in practice with Parliament passing annual funding bills for the British army starting in the late 17th century.

Later in the Convention, an 11-person committee that had been formed to address postponed and unresolved issues in the Constitution circulated a [report](#) recommending that Congress be given the power to “raise and support armies,” provided that “no appropriation of money to that use shall be for a longer term than two years[.]” Elbridge Gerry [objected](#) that “he could not conceive a reason” to appropriate funds for the army for two years instead of one. More broadly, Gerry argued that the American people would not accept an authorization of peacetime standing armies, which were dangerous to liberty and unnecessary, even in a large country with an expansive frontier like the United States.

Roger Sherman of Massachusetts [responded](#) to both lines of argument. He countered that a two-year appropriations time frame would better align with the biannual election of legislators to the House of Representatives and that it might be inconvenient to require annual appropriations because Congress might not be in session in the time necessary to renew funding. As to Gerry’s more fundamental criticisms, Sherman argued that the two-year appropriations limit was a “reasonable restriction on the number and continuance of an army in time of peace.” Following this exchange, the Convention [voted](#) to approve the Army Clause in its final, substantive form.

Although it would not be modified, the Army Clause remained a controversial topic until the final days of the Convention. The day before the final vote to approve the Constitution, George Mason and two co-delegates from Virginia sought to [add cautionary language](#) highlighting the importance of state militias to guard against “the danger of standing armies in time of peace[.]” Even though James Madison was an ardent supporter of a strong federal government at the time, he [favored](#) the change, reasoning that the amendment would “not restrain Congress from establishing a military force in time of peace if found necessary; and as armies in time of peace are allowed on all hands to be an evil, it is well to discountenance them by the Constitution. . . .” After New York delegate Gouverneur Morris [argued](#) that the proposal would set a “dishonorable mark of distinction on the military class[.]” opposition formed, and Mason’s motion was defeated.

Of the delegates who remained until the close of the Federal Convention, [three declined to sign](#) the Constitution. [All of these delegates mentioned](#) the absence of checks against peacetime standing armies in their criticisms. Their opposition would presage an even more vigorous debate in the state ratifying conventions where opponents to the Constitution would frequently raise concerns about standing armies, and the Constitution’s supporters would find themselves compelled to articulate a more fulsome defense of the Army Clause.

Debate in the State Ratifying Conventions

The Army Clause was a recurring concern during the state conventions that considered whether to ratify the Constitution. Opponents of the Constitution, who would become known as Anti-Federalists, [attacked](#) the Clause “with incredible zeal and pertinacity, as dangerous to liberty, and subversive of the state governments.” The New York-based Anti-Federalist who wrote under the pseudonym “Brutus” [argued](#) that federal officials would use a permanent army to usurp power and “subvert the forms of the government, under whose authority they are raised.” Another pseudonymous Anti-Federalist, known as “Federal Farmer,” [contended](#) that the two-year appropriations limitation would not provide a meaningful check because, once Congress raised an army, it would continue to appropriate funds to support troops indefinitely. [Other](#) Anti-Federalists [argued](#) that the Army Clause and the constitutional allocation of war powers would [lead](#) to the recreation of a European-style monarch in America.

Supporters of the Constitution, who became known as Federalists, [responded](#) by [emphasizing](#) the [need](#) for a professional military force to address security threats. Federalists [argued](#) that Native American tribes, British forces that refused to evacuate their American posts after the Revolutionary War, and the Spanish presence in Florida posed significant dangers that would require a permanent military establishment. After Massachusetts was forced to suppress a violent uprising known as [Shays’ Rebellion](#) without the aid of national forces, many American leaders [concluded](#) that a stronger centralized power to raise armies was necessary to address domestic uprisings.

Federalists [noted](#) that, unlike most European systems, the Constitution placed the power to raise and support armies in a politically accountable legislative branch rather than with a monarch or other executive. Writing in the *Federalist Papers*, [Alexander Hamilton](#) and [James Madison](#) contended that, because appropriations for the army must be renewed every two years, democratic influence and political processes would prevent Congress from maintaining forces so large that they posed a threat to the American people. In the absence of a national army, [Federalists asserted](#), small states would enter into hazardous military alliances with foreign countries, and each state would [build](#) its own permanent military force, thus compounding the very problem Anti-Federalists sought to avoid. Madison also [argued](#) that “the State governments, with the people on their side, would be able to repel” any danger that a national army might present to Americans’ liberty.

Federalists and Anti-Federalists frequently sparred over the relationship between standing armies and militias. Although most Federalists recognized that the militia was to play a critical role in national defense, many [believed](#) the [militia](#) alone to be [inadequate](#) to meet America’s greatest security needs. Anti-Federalists [countered](#) that the state militias were responsible for many successes during the Revolutionary War, and that, if a peacetime standing army was present, the militia would [fall into disuse](#) and deteriorate, leaving no body of citizen-soldiers equipped to protect the people from an overbearing or tyrannical government.

These competing concerns were ultimately resolved through amendments to the Constitution in the [Bill of Rights](#) rather than through changes to the Army Clause. At the ratifying conventions, some states proposed to amend the Army Clause to require a supermajority vote in Congress to maintain peacetime standing armies, but these changes were not adopted. Instead, fears over standing armies were addressed through protections for individual rights rather than structural changes to Congress’s power to raise and support armies. The [Second Amendment](#), which recognizes the importance of “a well regulated militia” to national security, [provides](#) a right to bear arms, which was an [outgrowth](#) of concerns over centralized military powers, and the [Third Amendment](#) restricts one particularly objectionable military practice that Americans [experienced](#) while under British rule—the quartering of soldiers in private homes.

Click [here](#) to continue to Part 3.

Author Information

Steve P. Mulligan
Attorney-Adviser

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