

Constitution Day Military Connections

Military Force and the Constitutional Convention

The question of military force, in the form of an army, navy, and militia, was a central topic for debate at the Constitutional Convention in 1789. In the end, compromise produced a uniquely American solution derived from colonial modifications of a European heritage: a federal system of checks and balances that divided responsibility between the states and the national government, a separation of the latter's powers into executive, legislative, and judicial branches, and a clear subordination of the military to the elected government.

The Legislative Branch

[Article 1, Section 8](#) – Many of the actions taken by Congress are allowable as part of Article 1, Section 8 stating that Congress can provide for *the common Defense and general Welfare of the United States*. Additionally, Congress can *make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers...*

Other clauses from this section that pertain to the military are:

To define and punish Piracies and Felonies committed on the high Seas, and Offenses against the Law of Nations;

To declare War, grant [Letters of Marque](#) and [Reprisal](#), and make Rules concerning Captures on Land and Water;

To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

To provide and maintain a Navy;

To make Rules for the Government and Regulation of the land and naval Forces;

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

To provide for organizing, arming, and disciplining the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

The Congress is given the power to declare war. There is no limitation or condition on this power. The Congress can declare war at any time for any reason it wishes, including to free the people of a country from oppression, or because we dislike the color of the other nation's flag. The trick is that Congress as a body must agree by at least a majority, and that is why declarations of war are so rare. It is a major task to convince half of both houses of Congress that a declaration of war is necessary.

The United States has been involved in a great many military actions, but only a very few declared wars. A "declared war" is one where Congress actually passes a resolution placing the country into a state of war. Following is the list of all declared wars the United States has been involved in:

- The War of 1812 (1812-1815)
- The Mexican War (1846-1848)
- The Spanish-American War (1898-1899)
- World War I (1917-1918)
- World War II (1941-1945)

Military Justice

Military justice is not mentioned specifically in the Constitution, but can be found in [Article 1, Section 8](#) (power to define penalties for piracy and felonies on the high seas and for violations of the law of nations, power to declare war, power to raise armies and navies) and in [Article 2, Section 2](#) (president is commander in chief of the military).

Limits on Congress

[Article 1, Section 9](#) – Outlines the limits on Congress and two of the clauses apply to military situations

The privilege of the Writ of [Habeas Corpus](#) shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

No Bill of [Attainder](#) or [ex post facto](#) Law shall be passed.

Habeas Corpus habeas corpus *n.* Law A writ issued to bring a party before a court to prevent unlawful restraint. [Med. Lat., you should have the body]

The basic premise behind habeas corpus is that you cannot be held against your will without just cause. To put it another way, you cannot be jailed if there are no charges against you. If you are being held, and you demand it, the courts must issue a writ of habeas corpus, which forces those holding you to answer as to why. If there is no good or compelling reason, the court must set you free. It is important to note that of all the civil liberties we take for granted today as a part of the Bill of Rights, the importance of habeas corpus is illustrated by the fact that it was the sole liberty thought important enough to be included in the original text of the Constitution.

Powers Prohibited of States

Article 1, [Section 10 - Powers Prohibited of States](#)

No State shall enter into any Treaty, Alliance, or Confederation; grant [Letters of Marque](#) and [Reprisal](#);

No State shall, without the Consent of Congress, lay any duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

Executive Branch

Article 2, [Section 2 - Civilian Power Over Military, Cabinet, Pardon Power, Appointments](#)

The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any subject relating to the Duties of their respective Offices, and he shall have Power to Grant Reprieves and Pardons for Offenses against the United States, except in Cases of [Impeachment](#).

Bill of Rights

[Amendment 1 - Freedom of Religion, Press, Expression](#)

The First Amendment does come into play concerning military service, speech and assembly.

[Amendment 3 - Quartering of Soldiers](#)

No Soldier shall, in time of peace be [quartered](#) in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

Links to Short Articles

[Who can declare war?](#)

[Is the draft unconstitutional?](#)

[Martial Law](#)

America Responds to Terrorism Lincoln and the Writ of Liberty
<http://www.crf-usa.org/terror/Lincoln.htm>

Soldier-Statesmen of the Constitution
<http://www.history.army.mil/books/RevWar/ss/ch4.htm>

The Creation of the U.S. Armed Forces
<http://www.fpri.org/footnotes/1210.200704.maslowski.creationusarmedforces.html>

War and Treaty Powers
<http://www.law.umkc.edu/faculty/projects/ftrials/conlaw/warandtreaty.htm>

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"*Boumediene v. Bush* (2008)." American Government. 2008. ABC-CLIO. 25 Aug. 2008
<http://www.americangovernment.abc-clio.com>

This court case was one of many that petitioned the U.S. Supreme Court to define the rights of enemy combatants. In 2002, Lakhdar Boumediene and five other Algerians were arrested by Bosnian authorities on U.S. suspicions of terrorist activities and transferred to the prison camp at Guantanamo Bay, Cuba. Boumediene filed a writ of habeas corpus, which was dismissed by the U.S. Court of Appeals on the grounds that the Military Commissions Act (MCA) of 2006 removed the jurisdiction of federal courts to hear habeas writs from enemy combatants. The MCA had been approved by Congress after the Supreme Court permitted detainees to petition their imprisonment and rejected the military tribunal system because it had not gained congressional approval in *Hamdan v. Rumsfeld* (2006). On June 12, 2008, the Supreme Court ruled 5–4 that enemy combatants are entitled to the habeas writ. Furthermore, the Court stated that the MCA violated the U.S. Constitution and the Geneva Convention because it restricted enemy combatants to the alternative legal court system created by the Detainee Treatment Act (2005), which did not include adequate means for detainees to petition their right to due process. Below is the full text of the majority decision written by Justice Anthony Kennedy.

War and the Constitution
<http://www.historyreferenceonline.abc-clio.com/?bookid=9781576079492&loc=18&format=entry>

War powers refer to the authority of the president to wage and conduct war against other nations. While the Constitution expressly vests in Congress the power to declare

war, the War Powers Acts of 1941 and 1945 gave the president additional powers to deal with war situations. The War Powers Resolution of 1973, however, imposed new limitations on the president's war powers.

"War Powers." American Government. 2008. ABC-CLIO. 25 Aug. 2008
<<http://www.americangovernment.abc-clio.com>>.

Dirck, Brian R. *Waging War on Trial: A Handbook with Cases, Laws, and Documents*. Santa Barbara: ABC-CLIO, 2003. *History Reference Online*. ABC-CLIO. 25 Aug. 2008