



Written by [Joe Wolverton, II, J.D.](#) on August 23, 2014

## This Day at 1787 Convention: State Sovereignty and Standing Armies

It's been 227 years since August 23, 1787, but the debates that occupied the 50 or so delegates present that day at the so-called Federal Convention in Philadelphia can still be heard in Congress today.

On that hot summer day, representatives confronted the delicate and divisive issue of state sovereignty.

Less than a week earlier, the imminent Virginian George Mason proposed that the legislative branch of the federal government be granted power "to make laws for the regulation and discipline of the militia of the several states, reserving to the states the appointment of officers."

In defense of his motion, Mason declared (as reported by James Madison) that "he considered uniformity as necessary in the regulation of the militia throughout the union." South Carolinians Charles C. Pinckney and Pierce Butler spoke in support of Mason's position, pointing out various "serious mischiefs" that had occurred during the War for Independence on account of the critical differences among the state militias. They argued that left to their own devices, states "would never keep up a proper discipline."

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James Madison also agreed with his countryman, stating that the regulation of the militias was so inextricably tied to the public defense that it was senseless to separate that power between the states and the federal government.

Then, in a demonstration of the occasional naïveté of those advocating for a stronger national government, John Langdon of New Hampshire assured his colleagues that "he saw no more reason to be afraid of the general government than of the state governments."

This and other similar statements made by Langdon that day aroused the ire of the bloc of delegates determined to protect the sovereignty of their states.

Oliver Ellsworth, Roger Sherman, Elbridge Gerry, and John Dickinson were adamant that the militias should remain under state control. Ellsworth warned that the federal government "could not sufficiently pervade the union for such a purpose, nor could it accommodate itself to the local genius of the people. It must be vain to ask the states to give the militia out of their hands."

In 2014, have we not effectively done just that by allowing the federal Department of Homeland Security to [co-opt local law enforcement](#), putting power over the running of these forces under the control of the federal government?

Gerry joined the fray next, declaring with biblical bravado that he thought this to be "the last point





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remaining to be surrendered. If it be agreed to by the convention, the plan will have as black a mark as was set on Cain. I have no confidence in the general government as some men professed, and believe it would be found that the states have not.”

Later, he rose again and spoke hotly on the subject. As recorded in Madison’s convention journal:

This power in the United States is making the states drill-sergeants. He as lief let the citizens of Massachusetts be disarmed as to take the command from the states and subject them to the general legislature. It would be regarded as a system of despotism.... He warned the convention against pushing the experiment too far. Some people will support a plan of vigorous government at every risk. Others of a more democratic cast will oppose it with equal determination and a civil war may be produced by the conflict.

Once again, the pro-state-sovereignty delegates proved themselves a bit more prescient than their nationalist counterparts. Fewer than 75 years would pass before states in the South would resist what they considered tyrannical moves by the federal government to impose on the prerogatives of states. A bloody war between the states would result in the death of an estimated 620,000 men.

In response, James Madison tried to stake out the middle ground, as was his habit:

The discipline of the militia is evidently a national concern and ought to be provided for by a national constitution.... As the greatest danger is that of disunion of the states, it is necessary to guard against it by sufficient powers to the common government; and as the greatest danger to liberty is from large standing armies, it is best to prevent them, by an effectual provision for a good militia.

Madison would make this point again some months later in what became *Federalist* Number 46.

In that essay, Madison described a symbiotic relationship of state and federal government that would obviate a clash of powers. Madison believed that states would maintain their supremacy over the federal government in terms of their sovereignty principally through the effects of the greater attachment of the “affections” of the people to their state governments than to the distant federal authority.

History, it seems, has not borne out Madison’s confidence in the connections of the people to the state governments.

Madison assumed, however, that the people’s devotion to their state legislatures would compel them to resist any effort by agents of the federal government to subordinate states to second-class status.

The states and the people, Madison argued, would never submit to such despotic designs. The power of this duo — inherent in the latter and artificial in the former — would prevent his opponents’ predicted consolidation of all political power by the federal government.

“What degree of madness,” Madison asks incredulously, could ever drive the federal government to such an extremity,” to ambitiously encroach on the state governments?

Specifically, Madison wrote that should the federal government somehow deceive the states and the people into aiding its accumulation of all power, the people, through the states, would recover their senses and “repel the danger” through a militia mustered and “fighting for their common liberties.” These citizen-soldiers would form a popular armed force that Madison believed “could never be conquered.”



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The mustering and maintenance of an organized militia, considered by Madison to be last line of defense against a tyrannical federal government, is often rejected even by many within the liberty movement. Establishment types consider the subject to be an embarrassment and a fascination of the lunatic fringe of the Right. Its advocates, they insist, should be shunned by all right-minded conservatives.

The plan to marginalize militias has been startlingly successful. There remain only 23 state defense forces (not including units of the National Guard and Reserve which are under the command of the president and are effectively just reserves of the federal armed forces). The problem, however, is that even these state-run militias are not militias in the sense that Madison and the Founders were familiar with. They are nothing close to a citizen army that could be counted on to repel federal invasions.

Despite the laudable efforts of Ellsworth, Gerry, and others to deny the federal government the power to regulate state militias, Mason's motion passed and was included in Article I, Section 8 of the Constitution.

At the end of that historic day, many members of the convention began meeting in private to discuss how the power of states might be protected. At one of these gatherings, Luther Martin of Maryland said that he was "confident no state in the union would more readily accede to a proper system of government than Maryland, but that the system under consideration was of such a nature that [he] never could recommend it for acceptance and that [he] thought the state never ought to adopt it, and expressed [his] firm belief that it never would."

Today, not only does the federal government control a massive standing army of regular troops and sailors, but through various federal grant programs, it is beginning to [convert local law enforcement into outposts](#) of that force considered by the Founders to be the sine qua non of despotism.

Photo shows police in Ferguson, Missouri, Aug. 17, 2014: AP Images

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