

# Historical Text

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# Original Text

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

# Federalist Papers No29

"The project of disciplining all the militia of the United States is as futile as it would be injurious, if it were capable of being carried into execution. A tolerable expertness in military movements is a business that requires time and practice. It is not a day, or even a week, that will suffice for the attainment of it. To oblige the great body of the yeomanry, and of the other classes of the citizens, to be under arms for the purpose of going through military exercises and evolutions, as often as might be necessary to acquire the degree of perfection which would entitle them to the character of a well-regulated militia, would be a real grievance to the people, and a serious public inconvenience and loss. It would form an annual deduction from the productive labor of the country, to an amount which, calculating upon the present numbers of the people, would not fall far short of the whole expense of the civil establishments of all the States. To attempt a thing which would abridge the mass of labor and industry to so considerable an extent, would be unwise: and the experiment, if made, could not succeed, because it would not long be endured. Little more can reasonably be aimed at, with respect to the people at large, than to have them properly armed and equipped; and in order to see that this be not neglected, it will be necessary to assemble them once or twice in the course of a year.

"But though the scheme of disciplining the whole nation must be abandoned as mischievous or impracticable; yet it is a matter of the utmost importance that a well-digested plan should, as soon as possible, be adopted for the proper establishment of the militia. The attention of the government ought particularly to be directed to the formation of a select corps of moderate extent, upon such principles as will really fit them for service in case of need. By thus circumscribing the plan, it will be possible to have an excellent body of well-trained militia, ready to take the field whenever the defense of the State shall require it. This will not only lessen the call for military establishments, but if circumstances should at any time oblige the government to form an army of any magnitude that army can never be formidable to the liberties of the people while there is a large body of citizens, little, if at all, inferior to them in discipline and the use of arms, who stand ready to defend their own rights and those of their fellow-citizens. This appears to me the only substitute that can be devised for a standing army, and the best possible security against it, if it should exist."

There is something so far-fetched and so extravagant in the idea of danger to liberty from the militia, that one is at a loss whether to treat it with gravity or with raillery; whether to consider it as a mere trial of skill, like the paradoxes of rhetoricians; as a disingenuous artifice to instil prejudices at any price; or as the serious offspring of political fanaticism. Where in the name of common-sense, are our fears to end if we may not trust our sons, our brothers, our neighbors, our fellow-citizens? What shadow of danger can there be from men who are daily mingling with the rest of their countrymen and who participate with them in the same feelings, sentiments, habits and interests? What reasonable cause of apprehension can be inferred from a power in the Union to prescribe regulations for the militia, and to command its services when necessary, while the particular States are to have the **SOLE AND EXCLUSIVE APPOINTMENT OF THE OFFICERS**? If it were

possible seriously to indulge a jealousy of the militia upon any conceivable establishment under the federal government, the circumstance of the officers being in the appointment of the States ought at once to extinguish it. There can be no doubt that this circumstance will always secure to them a preponderating influence over the militia.

<https://guides.loc.gov/federalist-papers/text-21-30>

# Anti-Federalists Papers No29

Hume, an aristocratical writer, has candidly confessed that an army is a moral distemper in a government, of which it must at last inevitably perish (2d Burgh, 349); and the Earl of Oxford (Oxford the friend of France and the Pretender, the attainted Oxford), said in the British parliament, in a speech on the mutiny bill, that, "While he had breath he would speak for the liberties of his country, and against courts martial and a standing army in peace, as dangerous to the Constitution." (Ibid., page 455.) Such were the speeches even of the enemies of liberty when Britain had yet a right to be called free. But, says Mr. [James] Wilson, "It is necessary to maintain the appearance of strength even in times of the most profound tranquility." And what is this more than a threadbare hackneyed argument, which has been answered over and over in different ages, and does not deserve even the smallest consideration? Had we a standing army when the British invaded our peaceful shores? Was it a standing army that gained the battles of Lexington and Bunker Hill, and took the ill-fated Burgoyne? Is not a well-regulated militia sufficient for every purpose of internal defense? And which of you, my fellow citizens, is afraid of any invasion from foreign powers that our brave militia would not be able immediately to repel?

Mr. Wilson says, that he does not know of any nation in the world which has not found it necessary to maintain the appearance of strength in a season of the most profound tranquility. If by this equivocal assertion he has meant to say that there is no nation in the world without a standing army in time of peace, he has been mistaken. I need only adduce the example of Switzerland, which, like us, is a republic, whose thirteen cantons, like our thirteen States, are under a federal government, and which besides is surrounded by the most powerful nations in Europe, all jealous of its liberty and prosperity. And yet that nation has preserved its freedom for many ages, with the sole help of a militia, and has never been known to have a standing army, except when in actual war. Why should we not follow so glorious an example; and are we less able to defend our liberty without an army, than that brave but small nation which, with its militia alone has hitherto defied all Europe?

The framers of this constitution appear to have been . . . sensible that no dependence could be placed on the people for their support; but on the contrary, that the government must be executed by force. They have therefore made a provision for this purpose in a permanent standing army and a militia that may be objected to as strict discipline and government.

A standing army in the hands of a government placed so independent of the people, may be made a fatal instrument to overturn the public liberties; it may be employed to enforce the collection of the most oppressive taxes; and to carry into execution the most arbitrary measures. An ambitious man who may have the army at his devotion, may step up into the throne, and seize upon absolute power.

The absolute unqualified command that Congress have over the militia may be made instrumental to the destruction of all liberty both public and private; whether of a personal, civil or religious

nature.

First, the personal liberty of every man, probably from sixteen to sixty years of age, may be destroyed by the power Congress have in organizing and governing of the militia. As militia they may be subjected to fines to any amount, levied in a military manner; they may be subjected to corporal punishments of the most disgraceful and humiliating kind; and to death itself, by the sentence of a court martial. To this our young men will be more immediately subjected, as a select militia, composed of them, will best answer the purposes of government.

Secondly, the rights of conscience may be violated, as there is no exemption of those persons who are conscientiously scrupulous of bearing arms. These compose a respectable proportion of the community in the State [Pennsylvania]. This is the more remarkable, because even when the distresses of the late war and the evident disaffection of many citizens of that description inflamed our passions, and when every person who was obliged to risk his own life must have been exasperated against such as on any account kept back from the common danger, yet even then, when outrage and violence might have been expected, the rights of conscience were held sacred.

At this momentous crisis, the framers of our State Constitution made the most express and decided declaration and stipulations in favor of the rights of conscience; but now, when no necessity exists, those dearest rights of men are left insecure.

Thirdly, the absolute command of Congress over the militia may be destructive of public liberty; for under the guidance of an arbitrary government, they may be made the unwilling instruments of tyranny. The militia of Pennsylvania may be marched to New England or Virginia to quell an insurrection occasioned by the most galling oppression, and aided by the standing army, they will no doubt be successful in subduing their liberty and independency. But in so doing, although the magnanimity of their minds will be extinguished, yet the meaner passions of resentment and revenge will be increased, and these in turn will be the ready and obedient instruments of despotism to enslave the others; and that with an irritated vengeance. Thus may the militia be made the instruments of crushing the last efforts of expiring liberty, of riveting the chains of despotism on their fellow-citizens, and on one another. This power can be exercised not only without violating the Constitution, but in strict conformity with it; it is calculated for this express purpose, and will doubtless be executed accordingly.

As this government will not enjoy the confidence of the people, but be executed by force, it will be a very expensive and burdensome government. The standing army must be numerous, and as a further support, it will be the policy of this government to multiply officers in every department; judges, collectors, tax-gatherers, excisemen and the whole host of revenue officers, will swarm over the land, devouring the hard earnings of the industrious like the locusts of old, impoverishing and desolating all before them. . .

<http://resources.utulsa.edu/law/classes/rice/Constitutional/AntiFederalist/29.htm>

# Militia Act of 1792

Section 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That whenever the United States shall be invaded, or be in imminent danger of invasion from any foreign nation or Indian tribe, it shall be lawful for the [President of the United States](#), to call forth such number of the militia of the state or states most convenient to the place of danger or scene of action, as he may judge necessary to repel such invasion, and to issue his orders for that purpose, to such officer or officers of the militia as he shall think proper; Insurrection against the government of any state; and in case of an insurrection in any state, against the government thereof, it shall be lawful for the President of the United States, on application of the legislature of such state, or of the executive (when the legislature cannot be convened) to call forth such number of the militia of any other state or states, as may be applied for, or as he may judge sufficient to suppress such insurrection.

or opposition to the execution of the laws of U. States. Sec. 2. *And be it further enacted,* That whenever the laws of the United States shall be opposed, or the execution thereof obstructed, in any state, by combinations too powerful to be suppressed by the ordinary course of judicial proceedings, or by the powers vested in the marshals by this act, the same being notified to the President of the United States, by an associate justice or the district judge, it shall be lawful for the President of the United States to call forth the militia of such state to suppress such combinations, and to cause the laws to be duly executed. And if the militia of a state, where such combinations may happen, shall refuse, or be insufficient to suppress the same, it shall be lawful for the President, if the legislature of the United States be not in session, to call forth and employ such numbers of the militia of any other state or states most convenient thereto, as may be necessary, and the use of militia, so to be called forth, may be continued, if necessary, until the expiration of thirty days after the commencement of the ensuing session.

By proclamation to order insurgents to disperse. Sec. 3. *Provided always, and be it further enacted,* That whenever it may be necessary, in the judgment of the President, to use the military force hereby directed to be called forth, the President shall forthwith, and previous thereto, by proclamation, command such insurgents to disperse, and retire peaceably to their respective abodes, within a limited time.

Pay of the militia employed by U. States. Sec. 4. *And be it further enacted,* That the militia employed in the service of the United States, shall receive the same pay and allowances, as the troops of the United States, who may be in service at the same time, or who were last in service, and shall be subject to the same rules and articles of war: And that no officer, non-commissioned officer or private of the militia shall be compelled to serve more than three months in any one year, nor more than in due rotation with every other able-bodied man of the same rank in the battalion to which he belongs.

Penalty on disobeying the President of U. States. Sec. 5. *And be it further enacted*, That every officer, non-commissioned officer or private of the militia, who shall fail to obey the orders of the President of the United States in any of the cases before recited, shall forfeit a sum not exceeding one year's pay, and not less than one month's pay, to be determined and adjudged by a court martial; and such officer shall, moreover, be liable to be cashiered by sentence of a court martial: and such non-commissioned officers and privates shall be liable to be imprisoned by a like sentence, on failure of payment of the fines adjudged against them, for the space of one calendar month for every five dollars of such fine.

Courts martial how composed. Sec. 6. *And be it further enacted*, That courts martial for the trial of militia shall be composed of militia officers only.

Sec. 7. *And be it further enacted*, That all fines to be assessed, as aforesaid, Fines to be certified, shall be certified by the presiding officer of the court martial before whom the same shall be assessed, to the marshal of the district, in which the delinquent shall reside, or to one of his deputies; and also to the supervisor of the revenue of the same district, who shall record the said certificate in a book to be kept for that purpose. The said marshal or his deputy shall and duty of marshals herein. forthwith proceed to levy the said fines with costs, by distress and sale of the goods and chattels of the delinquent, which costs and the manner of proceeding, with respect to the sale of the goods distrained, shall be agreeable to the laws of the state, in which the same shall be, in other cases of distress; and where any non-commissioned officer or private shall be adjudged to suffer imprisonment, there being no goods or chattels to be found, whereof to levy the said fines, the marshal of the district or his deputy may commit such delinquent to gaol, during the term, for which he shall be so adjudged to imprisonment, or until the fine shall be paid, in the same manner as other persons condemned to fine and imprisonment at the suit of the United States, may be committed.

To pay the fines to the supervisor, &c. Sec. 8. *And be it further enacted*, That the marshals and their deputies shall pay all such fines by them levied to the supervisor of the revenue, in the district in which they are collected, within two months after they shall have received the same, deducting therefrom five per centum, as a compensation for their trouble; and in case of failure, the same shall be recoverable by action of debt or information in any court of the United States, of the district, in which such fines shall be levied, having cognizance thereof, to be sued for, prosecuted and recovered, in the name of the supervisor of the district, with interest and costs.

Powers of the marshals. Sec. 9. *And be it further enacted*, That the marshals of the several districts and their deputies, shall have the same powers in executing the laws of the United States, as sheriffs and their deputies in the several states have by law, in executing the laws of their respective states.

Continuation of this act. Sec. 10. *And be it further enacted*, That this act shall continue and be in force, for and during the term of two years, and from thence to the end of the next session of Congress thereafter, and no longer.

Approved, May 2, 1792.



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# Second Militia Act of 1792

Section 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That each and every free able-bodied white male citizen of the respective states, resident therein, who is or shall be of the age of eighteen years, and under the age of forty-five years (except as is herein after excepted) shall severally and respectively be enrolled in the militia by the captain or commanding officer of the company, within whose bounds such citizen shall reside, and that within twelve months after the passing of this act. And it shall at all times hereafter be the duty of every such captain or commanding officer of a company to enrol every such citizen, as aforesaid, and also those who shall, from time to time, arrive at the age of eighteen years, or being of the age of eighteen years and under the age of forty-five years (except as before excepted) shall come to reside within his bounds; and shall without delay notify such citizen of the said enrolment, by a proper non-commissioned officer of the company, by whom such notice may be proved. That every citizen so enrolled and notified, shall, within six months thereafter,How to be armed and accoutred. provide himself with a good musket or firelock, a sufficient bayonet and belt, two spare flints, and a knapsack, a pouch with a box therein to contain not less than twenty-four cartridges, suited to the bore of his musket or firelock, each cartridge to contain a proper quantity of powder and ball: or with a good rifle, knapsack, shot-pouch and powder-horn, twenty balls suited to the bore of his rifle, and a quarter of a pound of powder; and shall appear, so armed, accoutred and provided, when called out to exercise, or into service, except, that when called out on company days to exercise only, he may appear without a knapsack. [1803, ch. 15](#). That the commissioned officers shall severally be armed with a sword or hanger and esponton, and that from and after five years from the passing of this act, all muskets for arming the militia as herein required, shall be of bores sufficient for balls of the eighteenth part of a pound. And every citizen so enrolled, and providing himself with the arms, ammunition and accoutrements required as aforesaid, shall hold the same exempted from all suits, distresses, executions or sales, for debt or for the payment of taxes.

Executive officers, &c. exempted. Sec. 2. *And be it further enacted,* That the [Vice President of the United States](#); the officers judicial and executive of the government of the United States; the members of both Houses of Congress, and their respective officers; all custom-house officers with their clerks; all post-officers, and stage drivers, who are employed in the care and conveyance of the mail of the post-office of the United States; all ferrymen employed at any ferry on the post road; all inspectors of exports; all pilots; all mariners actually employed in the sea service of any citizen or merchant within the United States; and all persons who now are or may hereafter be exempted by the laws of the respective states,[1810, ch. 37, sec. 33](#). shall be, and are hereby exempted from militia duty, notwithstanding their being above the age of eighteen, and under the age of forty-five years.

Militia how to be arranged, and Sec. 3. *And be it further enacted,* That within one year after the passing of this act, the militia of the respective states shall be arranged into divisions, brigades,

regiments, battalions and companies, as the legislature of each state shall direct; and each division, brigade and regiment, shall be numbered at the formation thereof; and a record made of such numbers in the adjutant-general's office in the state; and when in the field, or in service in the state, each division, brigade and regiment shall respectively take rank according to their numbers, reckoning the first or lowest number highest in rank. That if the same be convenient, each brigade shall consist of four regiments; each regiment of two battalions; each battalion of five companies; each company of sixty-four privates. by whom officered. That the said militia shall be officered by the respective states, as follows: To each division, one major-general and two aids-de-camp, with the rank of major; to each brigade, one brigadier-general, with one brigade inspector, to serve also as brigade-major, with the rank of a major; to each regiment, one lieutenant-colonel commandant; and to each battalion one major; to each company one captain, one lieutenant, one ensign, four sergeants, four corporals, one drummer and one fife or bugler. That there shall be a regimental staff, to consist of [1803, ch. 15, sec. 3](#). one adjutant and one quartermaster, to rank as lieutenants; one paymaster; one surgeon, and one surgeon's mate; one sergeant-major; one drum-major, and one fife-major.

Each battalion to have one company of grenadiers, &c. and one company of artillery.

Officers how to be armed. Sec. 4. *And be it further enacted*, That out of the militia enrolled, as is herein directed, there shall be formed for each battalion at least one company of grenadiers, light infantry or riflemen; and that to each division there shall be at least one company of artillery, and one troop of horse: there shall be to each company of artillery, one captain, two lieutenants, four sergeants, four corporals, six gunners, six bombardiers, one drummer, and one fife. The officers to be armed with a sword or hanger, a fusee, bayonet and belt, with a cartridge-box to contain twelve cartridges; and each private or matross shall furnish himself with all the equipments of a private in the infantry, until proper ordnance and field artillery is provided. Troops of horse how officered, &c.

There shall be to each troop of horse, one captain, two lieutenants, one cornet, four sergeants, four corporals, one saddler, one farrier, and one trumpeter. The commissioned officers to furnish themselves with good horses of at least fourteen hands and an half high, and to be armed with a sword and pair of pistols, the holsters of which to be covered with bearskin caps. Each dragoon to furnish himself with a serviceable horse, at least fourteen hands and an half high, a good saddle, bridle, mailpillion and valise, holsters, and a breast-plate and crupper, a pair of boots and spurs, a pair of pistols, a sabre, and a cartouch-box, to contain twelve cartridges for pistols. Artillery and horse of whom to be formed; That each company of artillery and troop of horse shall be formed of volunteers from the brigade, at the discretion of the commander-in-chief of the state, not exceeding one company of each to a regiment, nor more in number than one eleventh part of the infantry, to be uniformly clad at their own expense.

[1803, ch. 15](#).

What colors &c. and by whom to be furnished. and shall be uniformly clothed in regimentals, to be furnished at their own expense; the colour and fashion to be determined by the brigadier commanding the brigade to which they belong.

Sec. 5. *And be it further enacted*, That each battalion and regiment shall be provided with the state and regimental colours by the field officers, and each company with a drum and fife, or bugle-horn, by the commissioned officers of the company, in such manner as the legislature of the respective states shall direct.

Adjutant-general in each state, his duty. Sec. 6. *And be it further enacted*, That there shall be an adjutant-general appointed in each state, whose duty it shall be to distribute all orders from the commander-in-chief of the state to the several corps; to attend all public reviews when the commander-in-chief of the state shall review the militia, or any part thereof; to obey all orders from him relative to carrying into execution and perfecting the system of military discipline established by this act; to furnish blank forms of different returns that may be required, and to explain the principles on which they should be made; to receive from the several officers of the different corps throughout the state, returns of the militia under their command, reporting the actual situation of their arms, accoutrements, and ammunition, their delinquencies, and every other thing which relates to the general advancement of good order and discipline: all which the several officers of the divisions, brigades, regiments, and battalions, [1803, ch. 15](#). are hereby required to make in the usual manner, so that the said adjutant-general may be duly furnished therewith: from all which returns he shall make proper abstracts, and lay the same annually before the commander-in-chief of the state.

Rules of discipline. Sec. 7. *And be it further enacted*, That the rules of discipline, approved and established by Congress in their resolution of the twenty-ninth of March, one thousand seven hundred and seventy-nine, shall be the rules of discipline to be observed by the militia throughout the United States, except such deviations from the said rules as may be rendered necessary by the requisitions of this act, or by some other unavoidable circumstances. It shall be the duty of the commanding officer at every muster, whether by battalion, regiment, or single company, to cause the militia to be exercised and trained agreeably to the said rules of discipline.

Officers how to take rank. Sec. 8. *And be it further enacted*, That all commissioned officers shall take rank according to the date of their commissions; and when two of the same grade bear an equal date, then their rank to be determined by lot, to be drawn by them before the commanding officer of the brigade, regiment, battalion, company, or detachment.

Provision in case of wounds, &c. Sec. 9. *And be it further enacted*, That if any person, whether officer or soldier, belonging to the militia of any state, and called out into the service of the United States, be wounded or disabled while in actual service, he shall be taken care of and provided for at the public expense.

Brigade inspector's duty. Sec. 10. *And be it further enacted*, That it shall be the duty of the brigade-inspector to attend the regimental and battalion meetings of the militia composing their several brigades, during the time of their being under arms, to inspect their arms, ammunition, and accoutrements; superintend their exercise and manœuvres, and introduce the system of military discipline before described throughout the brigade, agreeable to law, and such orders as they shall from time to time receive from the commander-in-chief of the state; to make returns to the adjutant-general of the state, at least once in every year, of the militia of the brigade to which he belongs, reporting therein the actual situation of the arms, accoutrements, and ammunition of the several corps, [1803, ch. 15](#). and every other thing which, in his judgment, may relate to their government and the general advancement of good order and military discipline; and the adjutant-general shall make a return of all the militia of the state to the commander-in-chief of the said state, and a duplicate of the same to the [President of the United States](#).

Artillery &c. now existing, And whereas sundry corps of artillery, cavalry, and infantry now exist in several of the said states, which by the laws, customs, or usages thereof have not been incorporated with, or subject to the general regulations of the militia:

to retain their privileges. Sec. 11. *Be it further enacted*, That such corps retain their accustomed privileges, subject, nevertheless, to all other duties required by this act, in like manner with the other militia.

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# Militia Act of 1903

Dick championed the Militia Act of 1903, which became known as the Dick Act. The 1903 act repealed the Militia Acts of 1795 and designated the militia (per Title 10 of the U.S. Code, Section 311) as two classes: the Reserve Militia, which included all able-bodied men between ages 17 and 45, and the Organized Militia, comprising state militia (National Guard) units receiving federal support