

1994

The United States Military under the Constitution of the United States, 1789-1989

John A. Rohr

Richard H. Kohn

Follow this and additional works at: <https://digital-commons.usnwc.edu/nwc-review>

Recommended Citation

Rohr, John A. and Kohn, Richard H. (1994) "The United States Military under the Constitution of the United States, 1789-1989," *Naval War College Review*: Vol. 47 : No. 2 , Article 19.
Available at: <https://digital-commons.usnwc.edu/nwc-review/vol47/iss2/19>

This Book Review is brought to you for free and open access by the Journals at U.S. Naval War College Digital Commons. It has been accepted for inclusion in Naval War College Review by an authorized editor of U.S. Naval War College Digital Commons. For more information, please contact repository.inquiries@usnwc.edu.

130 Naval War College Review

to write analytical history with urbanity and wit.

The resulting text remains focused, however, on the basic constitutional issue—civilian control of the military. Still, in his new introduction Schlesinger laments that if the book recorded the fairly definitive settlement of one constitutional issue, it virtually ignored another—the warmaking power of the president. Indeed both authors regretted that they did not examine Truman's position as critically as they had that of MacArthur, and they charge the former president with assuming unwarranted power and establishing a dangerous precedent of ignoring Congress and regarding war as a presidential prerogative.

MacArthur emerges from these pages as a tarnished hero, characterized as "the greatest military expatriate," in rebellion against a European-oriented foreign policy as well as American civilization as a whole. Highly critical of MacArthur, the authors assert that the roots of the civil-military dispute with Truman originated in September 1950, long before the Chinese intervention, when MacArthur took a public stand against Truman's stated policy of no military aid to Nationalist China. The subsequent intervention of forces of the People's Republic of China only exacerbated a rapidly deteriorating situation and made the conduct of foreign policy extraordinarily difficult.

As the reader sees, examining the public statements and the minutes from the Wake Island meeting between the president and his senior military commander, the clash be-

tween Truman and MacArthur was inevitable.

For Truman, the purpose of containment was not to win a war but to contain communism without global war. MacArthur, on the other hand, proposed a new unilateralism, characterized by a United States strategy to "go it alone" and to meet force with maximum counterforce until decisive military victory was achieved. Faced with a military commander in direct opposition to his own concept of limited war, Truman had no viable alternative but to call for the legendary officer's dismissal.

In retrospect, this book, republished in its original form save for Schlesinger's introductory essay and a few minor tense changes, illustrates why the Founding Fathers entrusted the chief executive with power over the nation's military forces. In that regard, its lesson is timeless. The civilian authority makes the policy; the field commander develops the military strategy to achieve the head of state's political objectives.

COLE C. KINGSEED
Colonel, U.S. Army
West Point, New York

Kohn, Richard H., ed. *The United States Military under the Constitution of the United States, 1789–1989*. New York: New York Univ. Press, 1991. 449pp. (No price given)

This collection of constitutional essays takes its place alongside Louis Henkin's *Foreign Affairs and the Constitution* and also *The Constitution and National Security* (edited by Howard E. Shuman

and Walter R. Thomas) as required reading for anyone interested in the constitutional aspects of military affairs. Far less technical than its two predecessors, the present volume focuses more narrowly on military institutions and personnel as opposed to broader questions of national security and foreign policy.

Each essay is an original contribution written for this volume, which was sponsored jointly by the United States Commission on Military History and the American Military Institute. The editor, Richard H. Kohn, is president of the American Military Institute and served as chief historian for the United States Air Force from 1981 to 1991. He currently teaches history at the University of North Carolina.

Despite the absence of an explicitly articulated theme, the careful reader will surely note the remarkable attention lavished upon Congress throughout this book. In addition to one essay devoted exclusively to Congress, every essay has something to say about the legislative branch of our government. There should be nothing unusual about this, in view of the textual support in the Constitution for an active congressional role in military affairs; but enough of the aftermath of the "imperial presidency" remains today to warrant a reminder that Congress is not necessarily "meddling" when it asserts its important constitutional powers. As Ollie North learned the hard way, the "Commander in Chief" clause is not the only military provision in the Constitution of the United States.

In his essay on secrecy, J. Kenneth McDonald captures nicely the role of

Congress when he observes that the sudden congressional interest in the CIA during the early 1970s was, from "a longer perspective of history," an entirely normal manifestation of the traditional competition between the legislative and executive powers. The unwelcome congressional attention stunned the intelligence community because for the first twenty-five years of its existence, the CIA had been virtually immune from congressional oversight. This congressional abstention, not intervention, had been the true anomaly.

Two essays on the militia and the reserve forces are understandably replete with references to Congress, in view of that institution's long-standing interest in reserve affairs, although neither essay addresses seriously the embarrassing presence of congressmen as reserve officers despite the strictures of the sixth section of the Constitution's first article. (See *Schlesinger v. Reservists to Stop the War*, 418 U.S. 208 [1974].) Allan Millett explains how Congress' powers under Article I, section 8 were matched against the Second Amendment's link between the militia and state control when early twentieth-century military reformers were looking for ways to transform the militia (rebaptized as the National Guard) into an authentic reserve force of the United States Army that could be used in military adventures abroad without constitutional scruples. In recounting the role of the militia in suppressing domestic disorders, Jerry Cooper reveals that a congressional enactment in force from 1792 to 1795 required that a federal judge verify the actual existence of conditions that would permit

132 Naval War College Review

the president to use military force to quell a domestic insurrection.

Forrest Pogue and Roy Flint devote chapters to Generals Marshall and MacArthur, respectively. Although the MacArthur-Truman conflict focused primarily on the issue of civilian control of the military, MacArthur's shrewd manipulation of Republican congressmen (only too willing to be manipulated) is a fascinating subplot in this well-known saga. Marshall, literally a world-class statesman in his own right, turned in innumerable virtuoso performances in keeping Congress and the president together during World War II. So trusted was Marshall by all concerned that congressmen would ask him to distinguish those proposals of President Roosevelt that truly contributed to the war effort from those that were primarily political. Most astounding of all was Marshall's success in getting House Speaker Sam Rayburn to agree to fund the Manhattan Project without knowing what it was about. In those days giants walked the earth.

Woodrow Wilson is the central figure in two chapters—one by David Trask that identifies him as the president whose war message to Congress transformed the military role of the United States in world affairs, and the other by Arthur Link and John Chambers II on Wilson as Commander in Chief. Despite Wilson's creative use of presidential war powers, his reliance on vaguely worded congressional statutes was an integral part of his wartime constitutional strategy that headed off serious separation of powers problems until the tragic *dénouement* of the

Senate's rejection of the Treaty of Versailles.

Bernard Nalty's article on the "Black Serviceman and the Constitution" highlights President Truman's famous 1948 executive order initiating the racial integration of the armed forces. The opposite side of this coin is that Truman had recourse to an executive order because congressional action along these lines would have been politically unthinkable, even though the Constitution entrusts to Congress and not to the president the power "to make rules for the government and regulation of the land and naval forces."

In providing the background to President Andrew Johnson's cataclysmic relations with Congress, Harold Hyman describes a series of military Reconstruction laws passed over Johnson's veto imposing upon the Army a number of delicate missions in such politically sensitive matters as protecting the personnel of the federal courts and the Freedmen's Bureau. Although these laws can be seen as examples of congressional confidence in the Army, they burdened soldiers with "tasks that West Point had not prepared Army officers to perform."

The book closes on a strong note with a splendid chapter by Jonathan Lurie on the federal judiciary in military affairs. Here again Congress plays a vital role—this time by enacting the Uniform Code of Military Justice and by creating the U.S. Court of Military Appeals, a *civilian* court with appellate jurisdiction over military justice.

That every contributor to this volume gives serious attention to Congress underscores the fact that separation

of powers is the beginning of wisdom for those who would understand the constitutional dimension of American military affairs. President Bush during the Gulf War insisted he did not need the approval of Congress for his actions, but he wisely sought it anyway. Congress insisted that he did need it and then, again wisely, made sure he got the approval to do what he would have done anyway.

Inextricably linked to this recent issue is the question of the effect of the treaty power on constitutional procedures and the exceedingly troublesome War Powers Act of 1973, whose ambiguities might cost this nation dearly some day.

All this is but to say that there is a certain intellectual chaos at the heart of the founding fathers' brilliant idea of preserving liberty by dividing power. Ours is an untidy regime but a fascinating one nonetheless. The same can be said of the chapters in the present volume—themeless and untidy throughout, but often fascinating and at times even brilliant.

JOHN A. ROHR
Virginia Polytechnic Institute and
State University

Millett, Allan R. *In Many a Strife: General Gerald C. Thomas and the U.S. Marine Corps, 1917–1956*. Annapolis, Md.: Naval Institute Press, 1993. 456pp. \$39.95

This book drums home for the military professional that the Marine Corps' story hangs not only on its Medal of Honor and Navy Cross heroes who

fought the Corps' battles "in the air, on land, and sea," but also on the officers who fought its battles on Capitol Hill and in the White House. Without powerful, politicized leaders like Gerald C. Thomas, there would be no Marine Corps today.

This work is not only a biography but a blow-by-blow account of naval-military politics in action and how the men with stars on their shoulders interact. Allan Millett has chosen the story of Gerald Thomas (an officer of whom few people outside the Corps ever heard) as a lens through which the broader story of how the modern Marine Corps was created can be seen. The author asserts that Thomas is important to the Corps because what he believed in and fought for is what the modern Marine Corps has become.

Millett introduces Thomas as a World War I sergeant who fought in the battles of Belleau Wood, Soissons, and Blanc Mount, for which he received a Silver Star, the Purple Heart, and a battlefield commission. But it was during the heavy-handed occupation of Haiti that Thomas met the man who "became his most important acquaintance in the Marine Corps," Major Alexander Archer Vandegrift. In the mid-1930s Captain Thomas served in Peking as a company commander and adjutant to Colonel Vandegrift. Thomas was still at his mentor's side when Major General Vandegrift led the Marines ashore on Guadalcanal in 1942 and when Vandegrift became Commandant of the Corps.

Thomas did not command a tactical unit until the Korean War. Major General Thomas requested and was