CIVILIAN CONTROL AND THE CONSTITUTION

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"Civilian control of the military is a basic principle of the American Constitution"; so runs the commonplace. It is the thesis of this article that the cliché could hardly be more inaccurate, for actually the American Constitution in the twentieth century obstructs the achievement of civilian control. It is well known that civil supremacy was a major concern of the Framers. They provided for it in the only form in which they knew it. But civilian control in the eighteenth century is very different from civilian control in the twentieth century: the Constitution which was expertly designed to provide for it then, for this very reason, frustrates it now. In presenting this thesis, it is necessary: (1) to show how the meaning of civilian control has changed over the intervening years; (2) to describe the Framers' concept and show how it was embodied in the Constitution; and (3) to demonstrate how the provisions which they thought would guarantee it impair its effectiveness today.

I. CIVILIAN CONTROL IN THE EIGHTEENTH AND TWENTIETH CENTURIES

The late eighteenth century knew two general types of military force.¹ The standing army was an institution of the European monarchy. Enlisted men were recruited for long periods of service from the worst elements of society through a mixture of bribery and coercion. Officers, on the other hand, were drawn from the aristocratic classes. On the continent, birth and social status determined eligibility for commissions. In England the purchase system prevailed: military commissions were only open to those who had sizeable independent means. A sharp line thus divided the officers from the enlisted men. The latter were an outcaste group with few ties to civil society; the officers were drawn from the same groups which furnished the social and political leadership of the country. The standing army was essentially an aristocratic institution, and the eighteenth century could not conceive of it otherwise.

The alternative to the standing army was the citizen militia. England had a long militia tradition, but it had also been a long time since the English county militia had ever resembled an effective military force. In America, on the other hand, the militia units of the various colonies played a not unimportant role in maintaining the security of the colonies and protecting the settlements against Indian attacks. The militia tradition, moreover, received renewed vigor in the "minute man" companies of the Revolution. Unlike the standing army, the militia was essentially a democratic institution, with officers and enlisted men drawn from the common body of citizens. Indeed, in many militia units the

¹ This discussion is purely in terms of land forces because it was these which gave rise to the issues of civilian control. What is said here about the eighteenth century standing army, however, could also apply, with slight modification, to the eighteenth century navy.
officers were elected. Neither officers nor enlisted men were divorced from society; their military duties were simply one aspect of their role as free men in a free society.

Both systems provided for civilian control, and through essentially the same method, that is, by insuring that the military leadership of the armies reflected the same interests, values, and outlook as the political leadership of society. The organization of the armed forces depended upon the political constitution of society: there were no universal principles of military organization good for all societies. In an aristocratic society, the armed forces were aristocratically organized: the lower classes were excluded from officership. In a democratic society, the armed forces were democratically organized: commissions were open to all and officers were chosen by election from the ranks or by appointment by democratically elected legislatures. Throughout the struggles in Europe at the end of the eighteenth century between the Old Regime and the bourgeois liberal elements, the supporters of the former strove to preserve the existing standing armies while the latter advocated some form of national militia or Landwehr. No clear distinction existed between what was political and what was military. Military and political leadership merged, sharing a common origin and outlook. In one sense, civil-military relations did not exist because military institutions were not yet differentiated from the other institutions of the state and society. Group conflicts in the political arena were paralleled by conflicts among the representatives of the same groups in the military arena. Civilian control in this sense may be described as subjective.2

In the nineteenth century subjective civilian control became obsolete. The mass armies of the French revolutionary and American civil wars, the growth of population, the development of technology, the beginnings of industrialism, and the rise of urbanism—all contributed to increased functional specialization and division of labor. Armies and navies became complex organisms embodying hundreds of different specialties. Thereby the need for still another specialist arose: the expert in coordinating and directing all these diverse parts to their assigned goal. No longer was it generally possible to master this skill while still remaining competent in other fields. No longer could the European amateur aristocrat and the American Jacksonian citizen soldier direct armies as a part-time pastime. Military science and military leadership emerged as a distinct area of human knowledge and endeavor, to be mastered only by sustained and concentrated effort. Officership became an exclusive role, defined by skill rather than by social status or popularity. In short, officership was professionalized. The professional skill of the officer became, in Harold Lasswell’s phrase, “the management of violence,” and his professional responsibility became the military security of his client, society.

This change forced nation after nation to alter the character of its officer

corps. Entrance was opened to all social classes on the basis of merit and education. Promotion was based upon professional qualification measured by experience and ability. Unskilled outsiders were gradually excluded from positions of military command. Educational institutions such as Sandhurst and West Point for the preliminary training of officers were established in the first part of the century. The proliferation of advanced military schools, staff and war colleges followed. Military staffs developed to apply professional knowledge to the direction of military operations. The officer corps thus became an autonomous professional body with its own distinctive skills, standards, organization, esprit, and sense of professional responsibility to the state which it served. Military institutions no longer reflected the political principles dominant in society. Instead, they reflected occupational imperatives springing from the nature of the military function.  

The same change drastically altered the nature of civilian control. Actually, by differentiating the role of the officer from other social roles, it created the modern problem of civil-military relations. The soldier becomes the professional military adviser to the political leaders. In acquiring a distinct area of professional competence, however, he also acquires an incompetence in areas outside that field. Civilian control thus depends upon the extent to which the military leaders adhere to their roles as professional advisers. Civilian control is undermined if they stray outside the military sphere or if the civilians make it impossible for them to discharge their professional responsibilities. The professional military officer obeys the state not because he shares the outlook and values of its leadership, but simply because it is his professional responsibility to obey. This objective civilian control is the form required by the conditions of modern western society. It is directly opposed to the subjective control prevalent in the eighteenth century. Subjective control achieved its end by civilianizing the military, making them the mirror of the state. Objective control achieves its end by militarizing the military, making them the tool of the state. Subjective control presupposed military participation in politics; objective control requires military abstention from politics. Most of the countries of Europe, North America, and the British Commonwealth have achieved some degree of objective control; subjective control still prevails in much of Latin America, the Middle East, and Southeast Asia. Subjective control is furthered by constitutional forms and governmental institutions which mix political and military responsibilities and which disperse control over military affairs among a number of governmental agencies. Objective control is furthered by forms and institutions which clearly delimit political and military responsibilities and which place control over military affairs in a single recognized legitimate authority.

3 For fuller treatment of the professional character of modern officership, see chaps. 1 and 2 of this author's forthcoming volume, The Soldier and the State: The Theory and Politics of Civil-Military Relations, to be published early in 1957 by the Harvard University Press.
II. THE FRAMERS AND CIVILIAN CONTROL

For the purposes of objective civilian control the American Constitution was drafted at just the wrong time in history. Twenty-five years or more later, its clauses about military affairs might well have been written very differently. For with all their political wisdom and insight the Framers, with a few exceptions, did not foresee the emergence of military professionalism and objective civilian control. Their ideas on military officership, military forces, and governmental organization with respect to military affairs all reflected a subjective theory of civilian control.

Military Officership. The Constitution does not envisage a separate class of persons exclusively devoted to military leadership. "I am not acquainted with the military profession," George Mason proclaimed at the Virginia ratifying convention, and except for Hamilton, Pinckney, and a few others he spoke for all the Framers. Military officership was the attribute of any man of affairs. Many members of the Federal Convention had held military rank during the Revolution; Washington was only the most obvious of the soldier-statesmen. They combined in their own persons military and political talents much as the samurai founders of modern Japan also combined them a hundred years later. Echoing Blackstone, Washington believed that when he "assumed the soldier" he "did not lay aside the citizen. . . ." And Jefferson similarly condemned the distinction "between the civil and military, which it is for the happiness of both to obliterate."4

These views were clearly revealed in the ineligibility and incompatibility clauses of Article I, Section 6:

No Senator or Representatives shall, during the Time for which he was elected, be appointed to any civil office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been increased during such time; and no person holding any Office under the United States shall be a Member of either House during his Continuance in Office.

The Convention almost unanimously supported the second clause of this paragraph making legislative office incompatible with judicial or executive (including military) office. This helped to enforce the separation of powers. It reflected the necessity of keeping the legislature distinct from the executive rather than the desirability of keeping the political distinct from the military. Attention at the Convention centered on the first clause of the paragraph. As reported from the Committee of Detail, this clause proposed to make members of the legislature ineligible for appointment to any national office during the time for which they were elected. Opinions on the desirability of permitting legislators to assume civil office varied and were finally resolved by compromise. There was, however, a universal belief that Senators and Representatives should be eligible.

for appointment to a military office. "Exclude the officers of the army & navy," said Gouveneur Morris, "and you form a band having a different interest from & opposed to the civil power: you stimulate them to despise & reproach those 'talking Lords who dare not face the foe.'" What would occur, he inquired, in the case of a war, and the Citizen the most capable of conducting it, happening to be a member of the Legislature. What might have been the consequence of such a regulation at the commencement, or even in the Course of the late contest for our liberties.

Others such as John Randolph who favored the general ineligibility of legislators for executive office also recognized that military talent might well exist in Congress; they supported an exception with respect to military office. Consequently, the final draft applied incompatibility to both civil and military office but the eligibility limitations only to civil office. Subsequently in the Virginia convention Madison defended the eligibility provisions concerning civil office by citing the absence of any such restrictions upon appointment to military office. His argument, together with the lack of any opposition to legislative eligibility to military office in the ratification debates, indicates how widespread was the acceptance of this Cincinnatus theory of military leadership.6

Military Forces. The Framers' concept of nonprofessional officership could have been embodied in either a standing army or a citizen militia. The distance of the United States from Europe, however, made a permanent military force seem unnecessary except for small frontier garrisons to deal with the Indians. Consequently the Framers generally agreed that a citizen militia was the only form of military force suitable for the new republic. It embodied the democratic principle that defense of the nation was the responsibility of every citizen. The distinction between officers and enlisted men was minimized and did not correspond to any sharp social cleavage.

Preference for the militia was almost universal throughout the states. "There was not a member in the federal Convention," John Randolph remarked with only slight exaggeration, "who did not feel indignation" at the prospect of a standing army. The ratifying conventions were even more strongly opposed to regular military forces. Nonetheless, they approved a Constitution which, while barring standing armies to the states, gave the national government unlimited power to maintain a military force, the only restriction being that no appropriations for this purpose could be made for more than two years. The reasons for this apparent anomaly were twofold. First, it was generally recognized that the national government would have to maintain some sort of permanent force along the frontier. Secondly, there was always the possibility that a standing army might be necessary in an emergency. But the hope and

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expectation were that this emergency would never occur and that the power would never be utilized. Few provisions in the Constitution were agreed to with more reluctance; some delegates most vehemently against standing forces refused to sign the Constitution. Criticism of this unrestricted congressional power was widespread in the state conventions. A number of states proposed requiring an extraordinary majority in Congress for the maintenance of such a force or adding amendments declaring the militia to be "the natural defence of a free state" and standing armies in peace "dangerous to liberty."

The preference for the militia had two important results for future civilian control. First, it assigned a major place in the American military scheme to a force which could never be professionally officered or subjected to effective control. At the time, of course, professional officers were just as rare in standing armies as they were in citizen militias. The former, however, because they were composed of full-time soldiers, could eventually evolve into a disciplined body of professionals. This was impossible in a part-time militia force. Secondly, the expectation that the militia would be the main reliance for defense made the Framers relatively unconcerned with devising institutional techniques to control military forces in being. In part, this was the result of the feeling that such devices were doomed to fail; to a larger extent, it reflected the view that they were unnecessary. The republic would be defended by its loyal citizen soldiers. Civilian supremacy would be maintained by eliminating a distinct military force.

Governmental Organization. The Framers' concept of civilian control was to control the uses to which military forces might be put rather than to control the military per se. They were more afraid of military power in the hands of political officials than of political power in the hands of military officers. Unable to visualize a distinct military class, the Framers could not fear such a class. But there was need to fear the concentration of authority over the military in any single governmental institution. As conservatives the Framers wanted to divide power, including power over the armed forces. The national government if it monopolized military power would be a threat to the states; the President if he had sole control over the armed forces would be a threat to the Congress. Consequently, the Framers identified civilian control with the fragmentation of authority over the military. The issue of the relative desirability of a militia versus a standing army was subordinate to the issues of the relative power of the states and the nation, the executive and the legislature, over the military forces, whatever their character. Those who wished a strong national government had no hesitancy in arguing: (1) that continuation of the Articles of Confederation would mean standing armies in every state; (2) that the proposed national government necessarily had to have the power to raise a standing army; and (3) that to avoid the necessity of exercising this power, the national

government ought also be able to organize and discipline the militia. The states righters, contrariwise, argued that it was unnecessary for the national government to have a standing army and that, in any case, the states ought to have exclusive control over the militia in order to protect themselves against the standing army of the national government.\footnote{Farrand, Records, I, 465, II, 385; No. 8, The Federalist, pp. 42–43; Elliott, Debates, II, 520–21, III, 169, 378, 410–11. Patrick Henry said of the nationalist claim: “This argument destroys itself. It demands a power, and denies the probability of its exercise.”}

The fragmentation of authority over military affairs had paradoxical results. The very aspects of the Constitution which the Framers and later commentators have cited as establishing civilian control are in fact those which hinder its realization: civilian control would be more easily achieved in the twentieth century if the Framers had been less eager to achieve it in the eighteenth century. Objective civilian control is maximized if the military are limited in scope to professional matters and relegated to a subordinate position in a pyramid of authority culminating in a single civilian head. The military clauses of the Constitution, however, provide for almost exactly the opposite. They divide civilian responsibility for military affairs and thereby foster the direct access of the professional military authorities to the highest levels of government:

1. Within the total federal system of government, the militia clauses divide control over the militia between the state and national governments.
2. Within the national government, the separation of powers divides control of the national military forces between Congress and the President.
3. Within the executive branch of the national government, the Commander in Chief clause tends to divide control over the military between the President and departmental secretaries.

These latter two provisions reflect the distribution of military powers in the British government in the eighteenth century. The similarity, however, turned into a fundamental difference in the course of a century and a half. The evolution of British government centralized all authority over the military in the Cabinet, and the British constitution today provides for effective objective civilian control. The American Constitution, however, remains frozen in the eighteenth century pattern. The centrifugal politics of this country and the written, inflexible character of the Constitution combined to obstruct changes similar to those in Great Britain. American lack of concern with military affairs, furthermore, left the constitutional structure almost unsupplemented by statutory enactments. Prior to the twentieth century the only significant additions to the constitutional institutions were the office of the Secretary of War created in 1789 and the office of the Secretary of the Navy created in 1798. For most of American history, the Constitution and little else determined the legal structure of American civil-military relations.

III. THE MILITIA CLAUSES AND MILITARY FEDERALISM: THE EMPIRE WITHIN AN EMPIRE

The militia clauses of the Constitution hamper civilian control in two ways.
First, they give constitutional sanction to a semimilitary force which can never be completely subordinated to military discipline nor completely removed from political entanglements. Secondly, they give constitutional sanction to a division of control over the militia between state and national governments which necessarily involves the militia in the conflicting interests of the federal system. This unique combination of characteristics—part civilian and part military, part state and part national—tends to make the militia independent of the policy-making institutions of government.

The Framers had good reasons to prefer a militia force to a regular army. But there was little rational justification for splitting up the control of this force. As Madison said, this control "did not seem in its nature to be divisible between two distinct authorities." Politics if not logic, however, forced the Framers, Madison included, to support dual control. Some, such as Hamilton, wanted complete control in the United States. Others wished for the national government to be completely excluded from authority over the militia. The clash of these two viewpoints produced a variety of compromise suggestions. In the end, the balance of political forces produced the following militia clauses:

The Congress shall have Power . . .

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 Officers, and the Authority of training the Militia according to the discipline prescribed by Congress . . . The President shall be Commander-in-Chief . . . of the Militia of the several States, when called into the actual service of the United States . . .

In addition, of course, Congress also has the authority to "raise and support armies" under the army clause. The exercise of these powers falls historically into two periods. From 1792 to 1903, the militia was under state control in time of peace and dual control in time of war. After 1903 the militia was under dual control in time of peace and national control in time of war.

State control existed in peacetime throughout the nineteenth century because Congress in the Militia Act of 1792, the basic legislation in this field until 1903, abdicated its powers under the militia clauses and provided neither for effective federal supervision nor for effective federal support. Consequently, the militia remained purely state forces when not in the active service of the United States. When in such service, however, the dual control of the militia clauses resulted in constant confusion and bickering over the purposes for which the militia might be used and over the appointment of officers. In 1812, for instance, when the President called out the militia, the governors of Massachusetts and Connecticut asserted that they and not he had the right to decide whether the circumstances justified the call. Later in the war militia forces on the Niagara frontier refused on constitutional grounds to enter Canada to

support regular American troops fighting there. In the Spanish American War militia units likewise refused to serve outside the United States.

The President was constitutional Commander in Chief of the militia while it was in federal service. Yet how could he function in this capacity when his officers, in war as in peace, were appointed by state governors? In the War of 1812 state governors challenged the authority of the President to subordinate militia units to the command of Regular Army general officers. State officials removed their troops from national service as they saw fit and upset the lines of command by appointing militia officers to higher rank than the regular officers to whom the militia units were theoretically subordinate. In the Civil War the states appointed the regimental officers of the militia and of the national volunteers assigned to the states while the President appointed the general officers. The Act of April 22, 1898 providing for the Volunteer Army for the Spanish American War reproduced this division of authority.\(^9\)

Dual control in war did not survive the nineteenth century. The militia has fought the twentieth century wars of the United States as an exclusively national force under the army clause. Nor did the system of purely state control in time of peace extend past 1903. Dual control under the militia clauses became a reality when Congress passed the Dick Act of that year. The effects of these changes were twofold. The military importance of the militia in time of war was enhanced because it now had the wherewithal to become an effective military body. The political power of the militia in time of peace was enhanced because it was placed between the two competing authorities. Objective civilian control of the militia, which in the nineteenth century was difficult in time of war, became in the twentieth century virtually impossible in time of peace. The militia clauses are thus the constitutional base for a potent political organization: the National Guard and its spokesman, the National Guard Association. It is generally recognized that constitutions are created by political forces. But constitutions likewise create or impel the creation of political interests, and this is the case with the militia clauses and the National Guard.

The National Guard Association was formed in 1878 by a group of militia officers for the primary purpose of getting Congress to act under the militia clauses. It was designed to "present a united front" for joint control.\(^10\) Its founders wished the national government to supply money, instruction, standards, and a certain measure of supervision to the state militia. The Regular Army was opposed because it did not think the militia could be an effective national force. The dual control advocates, however, won their first victory in

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10 F. P. Todd, "Our National Guard: An Introduction to Its History," Military Affairs, Vol. 5, pp. 73–86, 152–170, at pp. 162–63 (Summer, Fall, 1941). Aside from these brief articles and a few law review pieces, little scholarly work has been done on the National Guard and the National Guard Association.
1903 and subsequently strengthened and maintained their position despite the continuing hostility of the Regular Army. Throughout its existence the Guard has recognized its dependence upon the militia clauses and has stoutly defended its dual status. Guard officers maintain that these clauses embody the true sentiments of the Framers on military policy. Constitutional “dual control” is opposed to central control and to exclusive state control. The latter is impractical because the states will not carry the entire cost of the Guard and the former is unconstitutional because, according to the Guard, the army clause only gives Congress the power to maintain a standing army not to keep a federal militia. For the Guard, dual control in peace means that the national government should supply the funds and the know-how while the states supply the command and direction. The Association has consistently sought more federal money for Guard activities but has resolutely opposed extensions of federal control. In 1949, for instance, the Association demanded increased federal aid for armories and construction, a uniform clothing allowance for National Guard officers, and the franking privilege for National Guard mail. At the same time it vigorously condemned further federal control over the Guard, describing the 1948 Gray Board recommendation for a single national reserve force as “unconstitutional, un-American ... contrary to our concept and philosophy of life ... ill-advised and illegal ....” Upon the constitutional base of the militia clauses, the National Guard has created a political force of formidable proportions. As the president of the Association frankly and accurately proclaimed, the Guard is an “empire within an empire.” Within its sphere of interest its word is law, or becomes law very quickly. The extent of this power, and the ways in which the militia clauses contribute to it, may be seen in (1) its legal status; (2) its constitutional symbolism; (3) its official representation in state and national governments; (4) the status of the National Guard Association; and (5) the influence of the Guard with Congress.

Legal Status. The efforts of the Association to enhance the Guard’s dual status have put the latter in a unique legal position. The National Guard is one organization but it has a double existence. As the “National Guard of the several states and territories” it is organized under the militia clause and has the mission of preserving law and order within the states under the orders of the state authorities. In this capacity it may be “called forth” by the President under the appropriate authority of Congress for the limited constitutional purposes of executing the laws of the United States, suppressing insurrection, and repelling invasions. If this were its only status, the Guard would be constitutionally incapable of participating as an organization in a foreign war. In 1917, without authority permitting overseas service, its members were drafted as groups of individuals into the national army, and Guard organization was disrupted. As a result, in 1933 the Association secured the passage of

an act which makes the Guard as the “National Guard of the United States” a reserve component of the Army of the United States under the army clause. In this capacity its mission is to furnish units for all types of military operations anywhere in the world. As the National Guard of the United States, the Guard may be “ordered” to active service by the President after Congress has declared the existence of a national emergency. The Guard has the best of two worlds. Its status under the militia clause protects it against federal control in peacetime. Its status under the army clause insures it of an institutional and prominent role in wartime.

Constitutional Symbolism. As a militia under dual control, the Guard identifies itself with two venerated constitutional symbols: the Citizen-Soldier and States Rights. Guardsmen are “amateur soldiers,” citizens first and soldiers second in the Minute Man tradition. “In the future as in the past,” the Association declared in 1944, “and based upon sound tradition, long experience, and this Nation’s fundamental law, the citizen-soldier must be the major dependence of the Nation in time of war . . . .” The federal reserves, however, can likewise claim to be citizen soldiers. But only the Guard can also invoke the banner of States Rights. Our “organizations,” claimed President Walsh, “belong to the States and are merely loaned to the Federal Government in wartime.” The Guard wants the “Federal system adhered to” in the military establishment. The Guard can thus expect the support of the state governments against the national government. In 1943, for instance, the Conference of Governors urged continued dual status for the Guard in the postwar period, and in 1948 the Executive Committee of the Conference joined the Guard in denouncing the Gray Board Report. Its state affiliations enhance the political influence of the Guard relative to that of the reserve associations of the national forces. In 1954 the Reserve Officers Association had 60,000 members and the NGA 34,000. The ROA normally has had more money and a larger staff than the NGA. Nonetheless, without a secure base of operations in the states, the ROA has not equaled the NGA in political influence. In 1946 the president of the ROA himself described his organization as the “younger brother” of the National Guard Association and admitted with reference to political influence that “The National Guard has much of what we the Reserves have not had.”

State and National Representation. The position of the Guard is strengthened by its official foothold in both the state and national governments. The heads of the Guard in the states are the adjutants general appointed by the governors. These officials represent the Guard within the state governments and are linked nationally through the Adjutants General Association which is a “corollary” organization of the NGA. The Guard is represented in the Department of the Army by the Chief of the National Guard Bureau who under the National Defense Act of 1920 must be a Guardsman and by the National Guard

members of the joint General Staff committees which, under the same act, must consider all policies affecting the Guard. These national representatives have kept the NGA informed of what transpires within the Army and the War Department. The Guard has regularly insisted that it be included at an early stage in the preparation of War Department policies which might affect it. Exclusion of the Guard in the development of policy has usually meant opposition by the NGA when the programs are submitted to Congress.\textsuperscript{13}

The National Guard Association. The NGA occupies an ambiguous position on the borderline between a private association and a public body. Legally it is simply a voluntary organization of National Guard Officers. Nonetheless, it considers itself to be “the authorized Representative of the National Guard of the United States.” It is also closely tied in with the official state and national representation of the Guard. In 1948 when only 42% of Guard officers belonged to the NGA, the Association declared it to be the responsibility of the adjutants general “to insist that every National Guard Officer be a member of the National Guard Association.” To this end it urged the states to require each new Guard officer to fill out an NGA membership application prior to appearing before the official Examining Board. Through such techniques, the NGA by 1953 achieved a 99% membership among Guard officers. As a private association the NGA carries on public relations activities, publishes the monthly National Guardsman, and represents the Guard with respect to a wide variety of legislation. At one point in the debate over the Selective Service Act of 1948, for example, when it looked as if the Guard viewpoint would not prevail, the Association brought members from thirty-four states to Washington to lobby with their congressmen. In two days they were eminently successful in getting Congress to adopt the National Guard position. In President Walsh’s words, the great virtue of the NGA is that it is the only agency on which the National Guard can rely to protect its interests, for the Association is free and untrammeled and it does not have to conform to any particular pattern nor is it bound within the narrow limits of channels of communication or the chain of command.\textsuperscript{14}

Influence with Congress. In the final analysis the influence of the Guard boils down to its influence with Congress. The fate of the militia is legally in the hands of Congress. NGA officers, however, assert that “we should settle the future of the National Guard.” To this end it must settle the actions of Congress on National Guard affairs. For half a century it has been astoundingly successful in doing exactly this. The local roots of the Guard, its appeals to States Rights and the Citizen Soldier, its support from the state governments, its lobbying and pressure tactics, have made it a power on Capitol Hill. “Congress,” in the words of President Walsh, “has ever been our refuge and our strength.”

The record of National Guard success with Congress begins with the Dick

\textsuperscript{13} Proceedings, NGA Convention, 1943, pp. 89, 93–96; 1945, pp. 50–55.

\textsuperscript{14} Proceedings, NGA Convention, 1945, p. 47; 1946, p. 43; 1948, pp. 34, 66, 80–81; 1950, pp. 264–65; 1953, pp. 288–90.
Act of 1903. Representative Dick himself was a former president of the National Guard Association. In 1908 the Association secured the passage of the second Dick Act strengthening federal support of the Guard. In 1916 the Guard "threw every ounce of its energy into an effort to defeat" the Continental Army plan of the General Staff. It was successful, and the National Defense Act of that year was in line with its views. The position of the Guard was greatly strengthened four years later by the National Defense Act of 1920, which the Guard described as "a great achievement and a great victory." In passing the 1933 act making the Guard a reserve component of the Army in peace as well as war "Congress saw eye to eye with the proposals submitted by the National Guard..." Throughout the twenties and thirties, the NGA successfully devoted its efforts to increasing the appropriations of the Guard from $13,000,000 in 1920 to $72,000,000 in 1941. In 1940 when the Selective Training and Service Bill as originally introduced did not secure the interests of the Guard, the Association had inserted into it the "National Guard protective clause" which declared it to be "essential that the strength and organization of the National Guard as an integral part of the first line of defense of this nation be at all times maintained and assured." In 1946 the Guard fought efforts by the War Department to set up a large Organized Reserve Corps which the Guard viewed as a "competing" and "parallel" organization. A War Department recommendation for a $40,000,000 appropriation for the ORC was eliminated by Congress at the insistence of the National Guard. The Guard had no difficulty, however, in getting funds for itself. For Fiscal Year 1949 the Budget Bureau recommended $195,000,000 for the Guard. The NGA did not think this enough and got the economy-minded 80th Congress to appropriate $290,000,000. In 1948 the Association was also successful in having its views written into the Selective Service Act and in blocking the legislative recommendations of the Gray Board. In 1954 when an Assistant Secretary of Defense suggested that the Guard should be used only for Home Guard and civil defense functions, President Walsh confidently picked up the challenge: "If they want war, let it begin here."

The record shows that Congress has indeed given, in Mr. Walsh's phrase, "generous support" to the Guard. Continuing his reflections on the 80th Congress, the president went on to wonder if any organization has been so successful in the legislative field in so brief a period as the National Guard Association. It is indeed a great accomplishment to have attained all the major legislative objectives of this Association.

Two years later the NGA Legislative Committee reported that the Association had "been phenomenally successful in obtaining the enactment of legislation essential to its well-being and development." So long as the Guard retains its jealously protected dual status, this will continue. Enconced behind the
militia clauses this premier military lobby effectively dominates the proceedings of Congress concerning it. And it is the Constitution which underwrites its slogan that "There will always be a National Guard."

IV. THE SEPARATION OF POWERS: DUAL CONTROL OVER THE NATIONAL FORCES

In many respects the most significant aspect of the separation of powers is not the division of power between President and Congress, but the effects of this division upon the power of other groups. The existence of two coordinate bodies means that the power of each vis-à-vis other groups is less than it would be if either possessed full sovereign authority. The principal beneficiaries have been organized interest groups, bureaucratic agencies, and the military services. The separation of powers is a perpetual invitation, if not an irresistible force, drawing military leaders into political conflicts. Consequently, it has been a major hindrance to the development of military professionalism and objective civilian control in the United States.

With few modifications the Framers reproduced in the Constitution the division of authority over the military which prevailed in England and the colonies in the middle of the eighteenth century, "The purse & the sword," said George Mason, "ought never to get into the same hands [whether Legislative or Executive]." The President inherited the powers of the English king, Congress the powers of the English Parliament. The executive authority of the President, Hamilton stated in The Federalist, "will resemble equally that of the king of Great Britain and of the governor of New York." The Framers did, however, make one major adjustment in favor of the legislature. In granting Congress the war power they altered British practice and established a significant precedent in the evolution of representative government. The result was that Congress was given the power

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. . . . And
To make all laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

And the President was made "Commander in Chief of the Army and Navy of the United States. . . ."17

17 For discussion of royal and parliamentary authority, see Blackstone, Commentaries, I, 257-58, 262, 412-13; J. S. Omond, Parliament and the Army, 1642-1904 (Cambridge, 1933), pp. 7-8; John W. Fortescue, A History of the British Army (London, 13 vols., 1899-1930), II, 568. The Framers at first adopted in toto the language of the basic English statute, 13 Car. II, c. 6 (1661), but then realized that they could not make the President like the King commander in chief of the militia in peace as well as war. See Farrand, Records, I, 139-140, II, 185, 426-27; No. 69, The Federalist, p. 448. For the continuing debate as to whether the war power was properly legislative or executive, see Farrand,
The general intent of the Framers in making this division of power is clear. Problems arise, however, from the nature of the grant of presidential power. This clause is unique in the Constitution in granting authority in the form of an 
office rather than in the form of a function. The President is not given the function “to command the Army and Navy”; he is given the office of “Commander in Chief.” This difference in form is of considerable importance, for it left undefined the specific powers and functions. This eased the approval of the Constitution in the ratifying conventions, but it gave subsequent generations something to argue about.

The powers of the Commander in Chief might range from the extremely broad power to conduct war to a narrowly restricted power of military command. They certainly exclude all powers specifically assigned to Congress or the states, and they probably include all purely military powers not so assigned. But does the office possess nonmilitary powers as well? The Framers themselves seemed to hold conflicting opinions on this point. The Supreme Court in 1850, however, declared that the duty and power of the President as Commander in Chief were “purely military,” and denied the similarity between the presidential authority and the royal prerogative. So long as the Commander in Chief power was interpreted as purely military, it remained, in Professor Corwin’s phrase, “the forgotten clause” of the Constitution. In the Civil War and in World War II, however, Lincoln and Roosevelt used the clause to justify an extraordinarily broad range of nonmilitary presidential actions largely legislative in nature. The justification of these actions by the Commander in Chief clause was persuasive, however, only because John Rutledge defined that power as an office rather than a function. It could be argued that the office of Commander in Chief possesses authority to seize a strike-bound war plant. It would be harder to argue that the function of commanding the Army and Navy implied such authority. The Commander in Chief clause, in other words, has been of relatively little direct use in securing civilian control over the military. Indeed, in one respect it has been directly detrimental to such control. But because it was phrased as an office rather than a function, it has been of great use to the President in expanding his power at the expense of Congress. This, in turn, has broadened the area of conflict between these two institutions and, consequently, if indirectly, has further impeded civilian control by increasing the likelihood that military leaders will be drawn into political controversy.


Fleming v. Page, 9 How. 603, 615, 618 (1850). The powers of the British King as general of the kingdom extended to many nonmilitary areas. Blackstone, Commentaries, I, 262ff. For the views of Framers on the Commander in Chief power, see Farrand, Records, I, 244, 292, II, 145, 319, 426–27, III, 624; Elliott, Debates, IV, 114; The Federalist, pp. 448, 482.

For the boundaries between presidential and congressional military powers, see
The President has exercised his powers with respect to military affairs through the appointment of military personnel, the issuance of executive orders and commands, and reliance upon the instrumentality of the civilian secretary. Congressional weapons include statutes, appropriations, and investigations. These devices have normally been wielded in the name of Congress by the military and naval affairs committees, the appropriations committees, and special wartime investigating committees. On occasion both sides have found it necessary or expedient to appeal to the military for support of their plans or to seize upon and push military plans for purposes of their own. The involvement of the national officer corps in politics consequently has been less consistent and more sporadic in nature than the involvement of the militia officer corps. The division of authority between two separate governments demanded a permanent political spokesman for the interests of the militia. The division of authority between two branches of the same government led to the transitory involvement of individuals and cliques of officers in controversies over military policy and, most particularly, over the force levels of the armed services.

Prior to 1940 the pattern of national politics respecting the strength of military forces tended to obscure the extent of military political participation. The executive was usually more favorably inclined towards a larger military establishment than was Congress. Congress had less immediate contact with foreign dangers and was under greater popular pressure to cut spending. In addition, the easiest way to assert congressional authority in the budget process was simply to reduce executive requests. Thus, the institutional jealousy of the two branches, even apart from constituent pressure, tended to make Congress less favorable to military appropriations. In some cases, to be sure, the General Board of the Navy found a more favorable audience for its recommendations in the Congress than in the executive branch. But, generally, the military leaders appeared before congressional committees to support the President's program. Military involvement in politics on the side of Congress tends to be conspicuous and dramatic; on the side of the President it tends to be subtler and less obvious. Undoubtedly, some administrations used popular officers to rally congressional support for their military proposals. But it is extremely difficult to draw the line between the soldier giving professional advice to Congress as to what the country needs for its defense and the soldier lobbying with Congress for the administration. The two roles are distinct in theory but blended in practice.

In the post-World War II period, on the other hand, the increased importance of national defense issues and the greater concern of Congress with them has caused the legislature to insist upon an independent review of military force levels. On occasion Congress has voted more money for a particular service or

activity than was recommended by the President. Congress can only play an independent role, however, if it has access to the same professional military advice available to the President. With respect to the military budget in particular, congressmen argue that their constitutional responsibilities demand that they be able to compare the purely "military" recommendations of the Joint Chiefs with the President's budget "compounded of a number of extramilitary considerations...." The legal milestone marking the shift from the prewar pattern was the provision in the National Security Act of 1949 permitting a member of the Joint Chiefs of Staff to present to Congress "on his own initiative, after first informing the Secretary of Defense, any recommendation relating to the Department of Defense that he may deem proper." This was the first statute in American history authorizing a professional military chief to present his views directly to Congress. While it did not make the Chiefs of Staff the principal military advisers to Congress as it did with respect to the President, the National Security Council, and the Secretary of Defense, it nonetheless freed them from the legal restrictions of the 1921 Budget and Accounting Act. This legal authorization, however, can become inoperative unless there are political means of protecting the military chiefs against pressure or retaliation from the executive branch. After the dismissal in 1949 of Admiral Denfeld, Chief of Naval Operations, following his participation in the B-36 hearings, the House Armed Services Committee warned that any further "intimidation" of this nature would lead it to "ask the Congress to exercise its constitutional power of redress." The "constitutional power," however, is one which it is easier for Congress to assert than to exercise. Few effective devices are available to it to protect military officers against executive action.

The vulnerability of the chiefs places a tremendous burden upon them as to whether to speak up or to remain silent. What is the proper professional behavior when called before a congressional committee and invited to criticize the President's recommendations? How strong should be the doubts and disagreements of a Chief with the President's policy before he takes the initiative

20 The most notable instances have been the increase in National Guard funds mentioned above, a 1946 increase in research and development funds, the extra money voted for the 70-group Air Force in 1948 and 1949, the increase in Marine Corps appropriations in 1955 and in Air Force appropriations in 1956. In three of these instances, the President directed that the additional funds be impounded: a clearly unconstitutional action, as I think, arrogating to the President an item veto over appropriations bills. See J. D. Williams, The Impounding of Funds by the Bureau of the Budget, ICP Case Series: No. 28 (University, Alabama, 1955). Congress, however, has yet to develop legal or political means of forcing the President to spend funds it appropriates. See Cong. Record, Vol. 95, p. 14922 (Oct. 18, 1949); H. Rept. 1797, 81st Cong., 2d Sess., pp. 309-311 (1950); House Committee on Armed Services, Unification and Strategy, H. Doc. 600, 81st Cong., 2d Sess., pp. 40-50 (1950); Hearings before House Armed Services Committee on National Defense Program—Unification and Strategy, 81st Cong., 1st Sess., pp. 97-99, 300-301 (1949); Hearings before House Committee on Appropriations on Department of Defense Appropriations for 1951, 81st Cong., 2d Sess., pp. 50-62 (1950).

21 Carl Vinson, Cong. Rec., Vol. 95, p. 3540 (March 30, 1949).

22 Sec. 202 (c) (6), National Security Act, 63 Stat. 578 (1949).

23 H. Doc. 600, 81st Cong., 2d Sess., pp. 10-12, 45, 52.
in criticizing it before Congress? The annual psychic crisis of the Chiefs of Staff before the congressional appropriations committees has become an enduring phenomenon. If the military chief accepts and defends the President's policies, he is subordinating his own professional judgment, denying to Congress the advice to which it may constitutionally claim to be entitled, and becoming the political spokesman of an Administration policy. If the military chief expresses his professional opinions to Congress, he is publicly criticizing his Commander in Chief and furnishing ammunition to the latter's political enemies.

There is no easy way out of the dilemma. Military leaders in the post-war period have varied from more or less active campaigning against presidential policies (the admirals with respect to unification and the B-36 controversy) to the defense of presidential policies which ran counter to their professional judgment (General Bradley with respect to the Fiscal 1951 budget). A middle course, however, appears to be the most desirable one. The military chief has the professional duty to speak frankly to both President and Congress. General Ridgway's behavior under Senate questioning in 1954 and 1955 reflected an effort to find the proper path. In both cases, the general emphasized his acceptance of higher level executive decisions fixing the size of the Army which obviously did not accord with his own judgment. In 1954 he gave his own views in executive session; in 1955 he presented in public his military opinion on the desirable strength of his service.24 With respect to any significant issue of military policy, however, the national officers inevitably tend to be drawn into the legislative-executive struggle on one side or the other. The separation of powers makes it impossible for American officers ever to be at ease in their professionalism.

V. THE COMMANDER IN CHIEF CLAUSE: THE POLITICAL-MILITARY HIERARCHY

One major function of the Commander in Chief clause has been to justify the exercise of broad Presidential powers in times of national emergency. A second principal function has been to complicate the achievement of civilian control in the executive branch. Just as the separation of powers is a standing invitation to military leaders to make an end run around the President to Congress, the Commander in Chief clause is a standing invitation to make an end run around the civilian secretary to the President.

The Commander in Chief clause is the outstanding example of the Framers' mixing of political and military functions. The same thinking which permitted them to envision Senators becoming generals in war also permitted them to accept a civilian President as military Commander in Chief. In most societies from primitive nomadic tribes down to their own time, it had been customary for the chief of state also to be the chief military commander. This had been true of the Greek city state, the Roman republic, and the European national monarchies; it was to be true of Napoleonic France. Virtually all the state con-

stitutions at the time made the governor commander in chief of the militia. Military command was as much a function of the chief executive as the appointment of administrative officials or the negotiation of alliances. It was only natural for the Framers to assign this role to the President. He was to be a republican Soldier-President patterned upon the Royal Warrior of the European states.

The extent to which the Framers expected the President to exercise military functions may be seen in their failure to curb his authority personally to lead troops on the field of battle. Such a restriction was contained in the New Jersey plan and had the support of Hamilton. The Convention, however, explicitly rejected these attempts to limit his authority. Some criticisms of this power were voiced in state conventions but there, too, efforts to curtail it were unsuccessful. The intention and the expectation of the Framers and of the people was that the President could, if he so desired, assume personal command in the field. Early presidents did not hesitate to do so. Washington led the troops called out to suppress the Whiskey Rebellion. James Madison took a direct hand in organizing the ineffectual defense of Washington in 1814. During the Mexican War President Polk, although he did not command the army in the field, nonetheless personally formulated the military strategy of the war and participated in a wide range of exclusively military matters. The last instance of a President directly exercising military functions was Lincoln’s participation in the direction of the Union armies in the spring of 1862. The President personally determined the plan of operations, and through his War Orders directed the movement of troop units. It was not until Grant took over in Virginia that presidential participation in military affairs came to an end. No subsequent President essayed the direction of military operations, although Theodore Roosevelt in World War I argued conversely that his previous experience as Commander in Chief proved his competence to command a division in France. 25

Until the middle of the nineteenth century, no real distinction existed in the United States between political and military competence. Just as successful generals made popular presidential candidates, so any man of affairs was capable of command. The exercise of his military functions by the President created no logical difficulties. There was a single, clear political-military hierarchy running from the President through the Secretaries of War and the Navy to the uniformed commanders. Political and military responsibilities and abilities were mixed all along the line. The President frequently had previous military experience; the Secretary of War almost always had. The top generals, on the other hand, were usually involved in politics. The organization of the service departments, consequently, was little different from that of any other department.

This unified hierarchy began to break up as the military function became professionalized. The President was no longer qualified to exercise military

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command, and even if he were qualified by previous training, he could not devote time to this function without abandoning his political responsibilities. The political functions of the Presidency became incompatible with the military functions of the Commander in Chief. Nor were the civilian politicians appointed Secretaries of War and the Navy competent to exercise military command; they were usually lawyers. On the other hand, the emergence of the military profession produced officers whose experience had been exclusively military, who were quite different types from the politician secretaries, and who were technically qualified to command. The constitutional presumption that the President exercised command still remained, however, and complicated the relations among President, secretary, and military chief. The military chief was military, the secretary political, and the President political and military. One might assume that the secretary, with his duty to represent the interests of his department, would be more military in outlook, if not in capability, than the President with his broader interests and responsibilities. The Constitution, however, reversed this relationship, and obscured the clarity of the hierarchy. Did the chain of command go up through the secretary, a civilian politician, to the President? Or were there two lines of authority emanating from the Presidency: a political-administrative line to the secretary and a military command line directly to the highest professional officer? These issues have beclouded American military organization down to the present day.

Three different types of civil-military organizational relations have existed among the President, secretary, and military chief. The balanced pattern assigns to the President a purely political function: the decision of the highest policy issues and the general supervision of the military establishment. Beneath him the secretary, also a purely political figure, is responsible for the entire military organization. Below the secretary, the hierarchy divides into military and administrative components. The highest professional officer is the leading military adviser to the secretary and normally has command of the military forces. He is subordinate to the secretary who is subordinate to the President, but neither of the two civilian officials exercise military command, which stops at the level of the military chief. Also subordinate to the secretary are administrative officials (civilian or military) who direct the nonmilitary supply, logistical, and financial activities of the department.

This balanced pattern of organization tends to maximize military professionalism and civilian control.26 Civilian and military responsibilities are clearly distinguished, and the latter, on paper at least, are clearly subordinated to the former. The President and the secretary handle political matters; the military chief military matters; and the staff or bureau chiefs administrative matters. The scope of the authority of the professional military chief is limited to the military realm by the administrative bureaus, and the level of his

26 The theoretical rationale of the balanced pattern was developed in A. T. Mahan, "The Principles of Naval Administration," Naval Administration and Warfare (Boston, 1908), pp. 3-48, and Spenser Wilkinson, Preface to the 2d edition of The Brain of an Army (London, 1913). Mahan's essay and Wilkinson's preface are brilliant analyses of executive military organization and are basic to an understanding of the subject.
authority, subordinate to the secretary, does not often involve him in overt political decisions. Administrative and military interests are balanced by the secretary under the authority of the President. English civil-military relations have been organized along comparable lines since the last half of the nineteenth century. Between 1794 and 1870 the War Office administered the civilian affairs of the army, and the Commander in Chief, directly under the sovereign, was responsible for military command and discipline. In 1870, however, the Cabinet insisted that the military chief be subordinated to the Secretary of State for War. A fully balanced scheme was achieved with the abolition of the post of Commander in Chief in 1895 and the subsequent creation of the office of Chief of the Imperial Staff. The same system also existed at the Admiralty. This organization was possible only because the sovereign consented, however reluctantly, to have his role as first general and admiral become, in Bagehot's phrase, a "dignified" part of the constitution. The "efficient" hierarchy of control ran from Parliament to Cabinet to Prime Minister to Secretary of State for War and then to the military chief and the administrative bureaus of the War Office. In the United States, however, no President has permitted his constitutional functions as Commander in Chief to atrophy. These remain efficient and not dignified. Consequently, the balanced pattern of organization has been difficult to achieve and even more difficult to maintain. In American government the Navy Department alone since 1915 has attempted to organize itself along these "balanced" lines. Only with great difficulty has it maintained this organization against the pressures of the Chiefs of Naval Operations either to expand their authority over the bureaus or to establish a direct line of responsibility to the President. 27 American civil-military relations almost inevitably tend in the direction of other arrangements which tend to weaken military professionalism and civilian control.

The coordinate scheme involves the separation of military and administrative functions immediately below the President. The secretary is limited to non-military administrative duties, and the military chief discharges his military functions directly under the President. The chain of administration goes from President to Secretary to bureau chiefs; the chain of command from President to military chief to the military forces. This accords with constitutional theory and keeps civilians, except the President, out of the military hierarchy. It tends, however, to undermine civilian control. The scope of the authority of the military chief is limited to military matters, but the level of his authority with direct access to the President involves him in political issues. The President is normally too busy with other affairs to devote sufficient attention to the interrelation of political and military policies, and the military chief consequently has to make political decisions. His direct access to the President also

encourages the latter to try his hand at military affairs and to intervene in pro-
fessional military planning and command where he has no special competence.
The Army and the War Department were organized on a coordinate basis from
1821 to 1903. The Secretary of War was responsible for fiscal and administra-
tive matters and supervised the activities of the staff departments. The Com-
manding General of the Army, on the other hand, was independent of the
Secretary and directly responsible to the President for the military command
and discipline of the Army. The result was continuous friction erupting at
times into violent acrimony between the Secretary and the Commanding Gen-
eral.

The vertical pattern solves the problem of the Commander in Chief clause in
a different manner, but one equally inconsistent with civilian control. In this
scheme the secretary and the military chief have identical supervisory respon-
sibilities. The administrative bureau heads are subordinated to the professional
military chief, and the professional military chief is subordinated to the secre-
tary who is in turn responsible to the President. Since the President is still
Commander in Chief, and some connection must exist between him and the
rest of the military hierarchy, the secretary is given a place in the military
chain of command and is described as the President's deputy commander in
chief or in some similar terms. The military chief, however, is given control
over all the activities of the department under the secretary, the specifically
military command and planning functions being delegated down the hierarchy
to a subordinate of the military chief's on the same level as the administrative
chiefs of bureaus. This prevents the military chief from achieving direct access
to the President because his responsibilities are identical with those of the secre-
tary. He can claim no peculiar relation to the President. On the other hand, he
supervises all the activities of the department below the secretary and, by
reason of long familiarity with the establishment, may be able to reduce the
transient secretary to a figurehead. By combining in his own person political
and administrative responsibilities, as well as functions of military command,
the military chief transgresses beyond his competence. He sacrifices higher
level for broader scope which is equally damaging to his professional status.
Also, the extension of the constitutional myth so that not only the President
but also the secretary is assumed to exercise military command violates the
facts of reality. Since 1903, the General Staff system of the Army has closely
approximated the vertical pattern of civil-military relations.

The National Security Act of 1947 raised the problem of executive civil-
military relations from the single service level to the central defense level. The
Act itself was a compromise, not clearly and definitively establishing any one
of the three patterns of civil-military relations. Elements of the coordinate
system, however, existed in those provisions of the Act which made the Joint
Chiefs of Staff the "principal military advisers" to the President and to the
National Security Council and which placed the Chiefs under the "authority
and direction" of the President as well as the Secretary. In actual practice the
Joint Chiefs organization at times tended to view itself as a semi-autonomous
corporate body not wholly subordinate to the Secretary of Defense. In addi-
tion, in both the Truman and Eisenhower Administrations the Chairman of the Joint Chiefs was more than just a professional military adviser. He played a key role in the formulation and advocacy of national policy. It is still too early to say finally which of the three patterns of civil-military relations the Department of Defense will approximate. But it is clear that the constitutional hindrances to the achievement of the balanced system have not been entirely overcome.

VI. CIVILIAN CONTROL AND CONSTITUTIONAL GOVERNMENT

Objective civilian control has at times existed in the United States. It has been, however, the product of geographical isolation and the international balance of power which permitted the virtual elimination of standing military forces and the exclusion of the military from political power. Civilian control in this sense has been so effective that Americans have called it a fundamental principle of their system of government. But they have been deluding themselves in ascribing to the Constitution a virtue of geography. Objective civilian control in the United States has been extra-constitutional, a part of our political tradition but not of our constitutional tradition. Civilian control has, in a sense, been like the party system. The Framers did not foresee the rise of popular democracy; consequently, they did not provide for political parties. They did not foresee the rise of the military profession; consequently, they did not provide for objective civilian control. Neither is contemplated in the Constitution, yet both have been called into existence by nonconstitutional forces. The Constitution has contributed its share to obstructing the growth of a strong party system such as exists in Great Britain. It has also contributed its share to obstructing effective civilian control such as exists in Great Britain. The restraints of a written constitution have proved effective against some of the most powerful functional imperatives.

The question thus arises: To what extent is it possible, short of amending the Constitution, to provide for objective civilian control in the existing framework? The difficulties are constant but they are not all of equal strength. The extent to which the Commander in Chief clause operates to damage civilian control largely depends upon the individuals who occupy that office. It adds nothing and detracts much from military professionalism and civilian control. The British Prime Minister who is not Commander in Chief and has no military functions has more effective control over his military forces than does the American President. The principal positive use of the clause has been to expand presidential power against Congress in nonmilitary areas. If the clause can come to be viewed primarily in this nonmilitary sense, and if presidents would exercise constitutional self-restraint so as to make their military command of the armed forces as honorific as that of the king of England, this obstacle to civilian control would be removed, and a balanced pattern of executive organization be made workable.

The militia clauses directly hamper the development of military professionalism in only one segment of the armed forces. Conceivably, of course,
Congress could abolish dual control over the militia. But in the face of the political strength of the National Guard this hardly seems likely. And, given the existing situation, it probably would not even be desirable. The more appropriate course is to make the best of the situation of military federalism. The existence of the Guard will necessarily prevent the development of a strong and ready national reserve organization. The Constitution has made the Guard into a powerful political force, and it is not inconceivable that this political strength may make the Guard into an effective military organization. At the end of 1954, the Army and Air National Guard had almost 400,000 men on drill pay status—twice the number of the Army and Air Force Reserves. At the beginning of 1956 Guard ground forces consisted of twenty-one infantry divisions, six armored divisions, nine regimental combat teams, nine armored cavalry regiments, 123 antiaircraft battalions, seventy-four field artillery battalions, and miscellaneous other units. The Air National Guard was organized into twenty-seven combat wings. The readiness of the Guard was at a higher level than ever before in its history. Many of the antiaircraft units and interceptor squadrons were participating in the air defense of the nation on a semi-active alert status. By its very nature the National Guard can never be brought fully within objective civilian control. But it may still be possible to create a respectable reserve force within the existing constitutional and political framework.

The real constitutional stumbling block to objective civilian control is the separation of powers. This is the essence of the American system of government, and its impact is felt throughout the armed forces. Short of fundamental constitutional change, the separation of powers cannot be altered. Indeed, it is highly questionable even if such change were possible, whether it would be worth the price. There are values other than civilian control and military professionalism, and these were the values the Framers had in mind when they wrote the Constitution. Foreign countries may have more effective systems of civilian control but no country has as effective a system of restraints upon arbitrary political power or such a unique balance of executive unity and legislative diversity. Inevitably, both military officers attempting to adhere to professional standards and civilian secretaries attempting to exercise civilian control look with envy to the cabinet system. Such a system, however, is not for the United States. Within the framework of the separation of powers, institutional adjustments can be made which will reduce its deleterious effects upon civilian control. But it will never be possible to eliminate these effects completely. A lesser measure of objective civilian control and lower standards of military professionalism are the continuing prices the American people will have to pay for the other benefits of their constitutional system.