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The Forgotten Political Theory of the Third Amendment



“No soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.” (U.S. Const.)

THE FORGOTTEN POLITICAL THEORY OF THE THIRD AMENDMENT

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The Third Amendment has been described as the “forgotten” amendment, “languish[ing] in comparative oblivion” to the rest of the revered Bill of Rights ([Bell, 1993](#)). The Supreme Court has never decided a case based on it nor even determined if it has been incorporated by the states (*McDonald v. City of Chicago*, 561 U.S. 742, 765 n. 13 (2010)). On a deeper look, however, the Third Amendment has a more extended historical pedigree than nearly any of its peers and reveals a critical political theory of republican government important to the Founders and essential to the passage of the U.S. Constitution.

The Third Amendment protects one of the oldest recognized English rights: the rejection of the involuntary quartering of soldiers. In 1130, Henry I’s London Charter laid out a regulation prohibiting involuntary billeting even before the Magna Carta ([Fields & Hardy, 1991](#)). From early on, the forced quartering of professional soldiers was juxtaposed with the English support for a militia of the whole, composed of the armed citizens themselves: “By 1181, every English freeman was required to annually prove ownership of weapons according to the worth of his chattels, and to serve the king at his own expense when summoned by the sheriff of his county” ([Fields & Hardy, 1991](#)).

The connection between opposition to a standing army and quartering was made explicit in the English Declaration of Rights, which complained that King James “did endeavor to subvert, and extirpate . . . the laws and liberties of the kingdom’ by, *inter alia*, ‘keeping a standing army within the kingdom in time of peace without consent of Parliament and quartering soldiers contrary to law” ([Fields & Hardy, 1991](#)). Instead of supporting a standing army, prone to tyranny, Classical Republican political theorists in England heralded the militia as “necessary to a free State” ([Fields & Hardy, 1991](#)). One such inspiration to the Founders, James Harrington, believed that “property, political power, and arms should be in the same hands”—those of the people, not the monarch ([Fields & Hardy, 1991](#)). Thus, the rejection of unsanctioned quartering (and the standing army it sustained) emphasized in the Third Amendment directly bolsters the Second Amendment’s focus on the militia of the whole and the importance of widespread gun ownership by the people.

The promise of the Third Amendment was also essential to the passage of the Constitution. The Anti-Federalists railed against the fact that Constitution “gave Congress *carte blanche* to raise and maintain a standing army, an institution which was still anathema to Americans” ([Fields & Hardy, 1991](#)). Anti-Federalist Patrick Henry noted, “One of our first complaints, under the former government, was the quartering of troops upon us. This was one of the principal reasons for dissolving the connection with Great Britain. Here we may have troops in times of peace. They may be billeted in any manner—to tyrannize, oppress, and crush us” ([Fields & Hardy, 1991](#)). In response, five of the eight state ratifying conventions that included recommendations for the national bill of rights as part of the passage of their ratification included the demand for no quartering of troops.

Commenters have long argued that the Third Amendment prioritizes the sanctity of the home. Justice Joseph Story noted of the amendment that its “plain objective is to secure the perfect enjoyment of that great right of common law, that a man’s house shall be his own castle, privileged against all civil and military intrusion” ([Story, 1833](#)). But a deeper look shows us that it was a historically grounded expression of a broader view of the best way to protect liberty by placing power in the people over kings and armies.

AUTHOR BIOGRAPHIES

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