

## **Concerns of the Role of the Militias and the Standing Army in the Ratification Debate– A Socratic Seminar\***

**A Note to the Teacher:** Since the Constitution had no bill of rights, there was no Second Amendment to debate during the ratification period. Thus, there was little discussion over the right to bear arms. Many state constitutions had provisions that secured the right, but scant discussion in the ratification period was devoted directly to the right. Most of the discussion was directed at the Constitution's provisions that would enable Congress to raise and support an army. Thus, many critics of the Constitution saw these provisions as a threat to the local control that states had over their local militias. These concerns were indirectly related to the right to bear arms at the local level, they were not directly related to the debates over the national Constitution. This lesson is about the concerns many had over the national government's power over the state militias. In essence the primary framework of this lesson is the idea of federalism, not primarily about rights.

### **Preparation**

Before beginning, all students should have read a common text. For this lesson, the text is selected items from the ratification debates. Students need to prepare by reading and creating their own set of questions. Open-ended questions work best since they often encourage discussion. An alternative would be to distribute and use the questions below to guide the class as they read the selections.

#### **Discussion Questions Based on Ratification Period Documents**

- \* What are some of the common themes found within these excerpts? Are any relevant to the discussions surrounding the Second Amendment today?
- \* What are some of the purposes of militias according to these writers? In your estimation, are these rationales complementary or contradictory? Do they still make sense today?
- \* For many of these writers, there is the principle of federalism at issue when considering the role of militias. What does this suggest about the nature of the debate about the right to bear arms both then and now?
- \* Why might several of these writers suggest local control of militias is an effective way to regulate an armed citizenry?
- \* In your opinion, is there a general agreement among the writers for regulations as it relates to the ownership of arms? Is local control an effective regulatory scheme?
- \* Would you suggest that these documents support the collective or individualized right positions in the debate over the meaning of the Second Amendment?

### **Seminar Day**

On the assigned day, make sure all students have their questions ready or be ready to discuss the assigned questions. Explain the rules for to the students so that they all understand their role during the Socratic seminar. They will participate in a civil, polite discussion, not a screaming match or a debate. Seats should be arranged in a circle or rectangle. Inside the circle, place a lesser amount of seats. This is known as the inner circle. Beside the inner circle, place an extra chair. This chair should be labeled as the Hot Seat.

### **Recommended Procedures**

1. Only students in the inner circle are allowed to answer the questions. I like to set a timer so that other members of the class have an opportunity to answer questions in the inner circle.
2. Students in the outer circle will take turns asking the questions of students in the inner circle. No questions can be asked from the inside to the outside circle.
3. If a student from the outer circle would like to share their opinion of the on-going discussion in the inner circle, they may move to the Hot Seat for the duration of their comment before moving back to their outer circle seat.
4. Remind students they need to behave in a civil, polite manner. As a member of the inner circle, they should encourage further discussion from quieter members and not try to dominate the conversation. They should be respectful and not interrupt each other. The goal is to become an active participant.

As the classroom teacher, you will see the benefits of knowing how to run a Socratic seminar when students discover the significance of creating and asking their own questions rather than simply answering the questions provided at the end of a text. Through this methodology, they will build analytical and creative thinking skills, as well as understand how to participate in an educational conversation. With practice, students will gain confidence with their peers. Both of these valuable steps will help students and teachers alike.

\* Adapted from <http://www.brighthubeducation.com/high-school-teaching-tips/65364-how-to-run-a-socratic-seminar/>

## Selected Documents from the Ratification Debates on the Role of Militias and Standing Armies

### The Dissent of the Minority of the Convention, *Pennsylvania Packet*, 18 December 1787

That the people have a right to bear arms for the defense of themselves and their own state, or the United States, or for the purpose of killing game; and no law shall be passed for disarming the people or any of them, unless for crimes committed, or real danger of public injury from individuals; and as standing armies in the time of peace are dangerous to liberty, they ought not to be kept up; and that the military shall be kept under strict subordination to and be governed by the civil powers.

The inhabitants of the several states shall have liberty to fowl and hunt in seasonable times, on the lands they hold, and on all other lands in the United States not enclosed, and in like manner to fish in all navigable waters, and others not private property, without being restrained therein by any laws to be passed by the legislature of the United States.

### John De Witt V, Boston *American Herald*, 3 December 1787

[Congress has] the power of “organizing, arming and disciplining the militia, and of governing them when in service of the United States, giving to the separate States the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress.” Let us enquire, why they have assumed this power, for if it is for the purpose of forming you into one uniform, solid body throughout the United States, making you respectable both at home and abroad—of arming you more completely and exercising you oftener—of strengthening the power which is now lodged in your hands, and relying upon you and you solely for aid and support to the civil power in the execution of all the laws of the New Congress. . . .

It is asserted by the most respectable writers upon Government, that a well regulated militia, composed of the yeomanry of the country have ever been considered as the bulwark of a free people. . . . When the sword is introduced, as in our constitution (speaking of the British) the person entrusted will always neglect to discipline the militia, in order to have a pretext for keeping up a standing army. . . . If they have not the same design, why do they wish a standing army unrestrained? It is universally agreed, that a militia and a standing body of troops never yet flourished in the same soil. Tyrants have uniformly depended upon the latter, at the expence of the former. Experience has taught them, that a standing body of regular forces, where ever they can be completely introduced, are always efficacious in enforcing their edicts, however arbitrary, and slaves by profession themselves, are “nothing loath” to break down the barriers of freedom with a *gout*. . . . In short, do they not preclude the necessity of any standing army whatsoever, unless in case of invasion; and in that case it would be time enough to raise them, for no free government under Heaven, with a well disciplined militia was ever yet subdued by mercenary troops.

The advocates at the present day, for a standing army in the New Congress pretend it is necessary for the respectability of government. I defy them to produce an instance in any country, in the Old or New World, where they have not finally done away the liberties of the people. . . .

*New York Journal*, 23 January 1788

“Thus much for the declaration of our rights and liberties; which will appear from what has been premised to be indeed no other than either that residuum of natural liberty, which is not required by the laws of society to be sacrificed to public convenience;” they may be said to remain, in a peculiar and emphatical manner, the rights of the people of England; “and these may be reduced to three primary articles: The right of personal security; the right of personal liberty, and the right of private property.” “To vindicate these rights, when actually violated, or attacked, the subjects of England are entitled, in the first place, to the regular administration, and free course of justice, in the courts of law; next to the right of petitioning the king and parliament for redress of grievances, and lastly to the right of having and using arms for self-preservation and defence—And all these rights and liberties it is our birth right to enjoy entire.”

**Publius: The Federalist 46, *New York Packet*, 29 January 1788**

It may well be doubted whether a militia thus circumstanced could ever be conquered by such a proportion of regular troops. Those who are best acquainted with the late successful resistance of this country against the British arms will be most inclined to deny the possibility of it. Besides the advantage of being armed, which the Americans possess over the people of almost every other nation, the existence of subordinate governments to which the people are attached, and by which the militia officers are appointed, forms a barrier against the enterprizes of ambition, more insurmountable than any which a simple government of any form can admit of. Notwithstanding the military establishments in the several kingdoms of Europe, which are carried as far as the public resources will bear, the governments are afraid to trust the people with arms. And it is not certain that with this aid alone, they would not be able to shake off their yokes. But were the people to possess the additional advantages of local governments chosen by themselves, who could collect the national will, and direct the national force; and of officers appointed out of the militia, by these governments and attached both to them and to the militia, it may be affirmed with the greatest assurance, that the throne of every tyranny in Europe would be speedily overturned, in spite of the legions which surround it. Let us not insult the free and gallant citizens of America with the suspicion that they would be less able to defend the rights of which they would be in actual possession, than the debased subjects of arbitrary power would be to rescue theirs from the hands of their oppressors. Let us rather no longer insult them with the supposition, that they can ever reduce themselves to the necessity of making the experiment, by a blind and tame submission to the long train of insidious measures, which must precede and produce it.

**Luther Martin: Address No. I, *Maryland Journal*, 18 March 1788**

In the proposed system, the general government has a power not only *without the consent*, but *contrary to the will* of the *state government*, to call out the *whole* of its militia, without regard to *religious scruples*, or any other consideration, and to continue them in service as long as it pleases, thereby subjecting the *freemen* of a whole state to *martial law*, and reducing them to the situation of *slaves*.—It has also, by another clause, the powers, by *which only* the militia can be organized and armed, and by the neglect of which they may be rendered utterly useless and insignificant, when it suits the ambitious purposes of government:—Nor is the suggestion unreasonable, even if it had been made, that the government might improperly

oppress and harrass the militia, the better to reconcile them to the idea of regular troops, who might relieve them from the burthen, and to render them less opposed to the measures it might be disposed to adopt for the purpose of reducing them to that state of insignificancy and uselessness.

**Luther Martin: *A Citizen of the State of Maryland Remarks on a Standing Army*, Pamphlet Edition of the Genuine Information, Philadelphia, 12 April 1788**

How favourable is this contrast to Britain; that Britain which we lavished our blood and treasure to separate ourselves from, as a country of slavery; but we then held different sentiments from those now become so fashionable; for this I appeal to the constitutions of the several States.

In the declaration of rights of Massachusetts, sect. 17.—The people have a right to keep and to bear arms for the common defence. And as in time of peace, armies are dangerous to liberty, they ought not to be maintained without the consent of the legislature, and the military power shall always be held in exact subordination to the civil authority, and be governed by it.

Declaration of rights of Pennsylvania, sect. 13—That the people have a right to bear arms for the defence of themselves, and the State; and as *standing armies*, in the time of peace, are dangerous to liberty, they ought not to be kept up; and that the military should be kept under strict subordination to, and governed by, the civil power.

Declaration of rights of Maryland, sect. 25—That a well regulated militia is the proper and natural defence of a free government.

Sect. 26. That *standing armies* are dangerous to liberty, and ought not to be raised, or kept, without consent of the legislature.

Sect 27. That in all cases, and at all times, the military ought to be under strict subordination to, and controul of the civil power. . . .

Declaration of the rights of Delaware, in the same words as Maryland.

Declaration of rights of North-Carolina, Sect. 17—That the people have a right to bear arms for the defence of the State; and as standing armies in times of peace are dangerous to liberty, they ought not to be kept up; and that the military should be kept under strict subordination, and governed by the civil power.

Constitution of South-Carolina, sect 42—That the military be subordinate to the civil power of the State. . . .

My Countrymen! never forget this truth, which the sad experience of your fellow mortals, has witnessed with their blood! Remember it yourselves! Engrave it on the tender minds of your children, as the first article of their political creed: *That there is no government safe with a standing army, and there is none that is not safe without.* A people may frequently be so unfortunate as to lose their liberties. They may be so foolish as to give them away, as in *Denmark*, where not only the senators and representatives of the people, but also every man in the whole empire of the smallest note or consequence, signed a formal surrender of their liberties, on an instrument now kept in the archives of that kingdom; an everlasting monument of—*how catching a thing this signing of names is*, or of what is now called—*a modest deference for the opinion of others*: But whether they lose them or give them away, they will soon regain them, or resume them, unless they are prevented by *a standing army*.

**The Society of Western Gentlemen Revise the Constitution, *Virginia Independent Chronicle*, 30 April, 7 May (Extra)**

The people have a right to keep and bear arms, for the national defence; standing armies in time of peace are dangerous to liberty, therefore the military shall be subordinate to the civil power.

The community have a right to require of every individual his personal services when necessary for the common defence, and to demand a just and equal portion of his property for public uses in consideration of the protection which he enjoys.

**Federal Farmer: An Additional Number of Letters to the Republican, New York, 2 May 1788**

A militia, when properly formed, are in fact the people themselves, and render regular troops in a great measure unnecessary. The powers to form and arm the militia, to appoint their officers, and to command their services, are very important; nor ought they in a confederated republic to be lodged, solely, in any one member of the government. First, the constitution ought to secure a genuine and guard against a select militia, by providing that the militia shall always be kept well organized, armed, and disciplined, and include, according to the past and general usage of the states, all men capable of bearing arms; and that all regulations tending to render this general militia useless and defenceless, by establishing select corps of militia, or distinct bodies of military men, not having permanent interests and attachments in the community to be avoided. . . . The militia are the people, immediately under the management of the state governments . . . and called into the service, command, and government of the union, when necessary for the common defence and general tranquility. But, say gentlemen, the general [state] militia are for the most part employed at home in their private concerns, cannot well be called out, or be depended upon; that we must have a select militia. . . .

To preserve liberty, it is essential that the whole body of the people always possess arms, and be taught alike, especially when young, how to use them; nor does it follow from this, that all promiscuously must go into actual service on every occasion. The mind that aims at a select militia, must be influenced by a truly anti-republican principle; and when we see many men disposed to practice upon it, whenever they can prevail, no wonder true republicans are for carefully guarding against it. As a farther check, it may be proper to add, that the militia of any state shall not remain in the service of the union, beyond a given period, without the express consent of the state legislature. . . .

**George Mason to John Lamb, Richmond, 9 June 1788**

That the People have a Right to keep and to bear Arms; that a well regulated Militia, composed of the Body of the People, trained to arms, is the proper, natural, and safe Defence of a free State; that Standing Armies in Time of Peace are dangerous to Liberty, and therefore ought to be avoided as far as the Circumstances and Protection of the Community will admit; and that in all Cases, the Military should be under strict Subordination to, and governed by the Civil Power. . . .

That any Person religiously scrupulous of bearing Arms ought to be exempted upon payment of an Equivalent to employ another to bear Arms in his stead.