

Framers Didn't Want National Police Force

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Victor Williams' "Founders Mandated Federal Role in Crime Control" (Podium, NLJ, 11-8-93) advocates a general federal criminal jurisdiction nowhere found enumerated in Congress' powers in Art. I, Sec. 8, of the Constitution. His reliance on Art. 4, Sec. 4, eliminates the critical condition I place in italics:

"The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence."

When it was proposed in the 1787 constitutional convention, James Wilson explained: "The object is merely to secure the states against dangerous commotions, insurrections, and rebellions." J. Elliot, *Debates on the Adoption of the Federal Constitution* 332 (1845). The convention's first draft would have had each state "protected against foreign and domestic violence," without specifying whether the assistance would be by state invitation.

The committee of detail reported it back to say that the United States "shall protect each state against foreign invasions, and, on the application of its legislature, against domestic violence." When the new clause was debated, Charles Pickney moved to strike out "on the application of its legislature." Luther Martin "opposed it, as giving a dangerous and unnecessary power. The consent of the state ought to precede the introduction of any extraneous force whatever." "Mr. [Elbridge] Gerry was against letting loose the myrmidons of the United States on a state, without its own consent. The states will be the best judges in such cases."

The convention rejected a proposal to provide that the United States could suppress domestic violence "without [the application of the state legislature], when the legislature cannot meet." Instead, the provision was amended to provide that the state executive could apply for the United States' assistance when the legislature cannot be convened.

Absent a specific state request for assistance, Congress has no power to punish domestic violence per se, to criminalize mere possession of firearms or to create other victimless crimes.

Instead of a national police force, which in the 20th century has been epitomized by brownshirts and storm troopers -- themselves a ready source of "domestic violence" -- the framers anticipated that resistance to crime and enforcement of law would remain in the hands of the states, communities and the people themselves. This is made clear in the lack of an enumerated power for Congress to create a general criminal code, the requirement that a state request assistance against domestic violence, the Second Amendment guarantee of the right of the people to keep and bear arms to promote a militia (not a federal army) to secure a free state, and the reservation of powers in the 10th Amendment to the states and the people.

