

The Breakfast Club
Constitutional Minute for 14 March 2023
Right #8: Protection Against Quartering

The Third Amendment secures one of the least controversial rights Americans have: the right to not have to quarter troops in your home without your consent. But like much of the Constitution, the drafter'sⁱ use of commonly understood (at the time) but rather generic terms in this amendment leaves plenty of "wiggle" room for misconstruction and/or mis-interpretation:

"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.

What was meant by "soldier?" Did it exclude Navy personnel? What constitutes a "home?" How is consent to be given? Must it be a *declared* war? Has Congress bothered to set out how quartering is to be accomplished if ever required by wartime contingencies?

Most Americans are familiar with the derivation of this amendment; the British had a nasty habit of quartering troops in American homes, beginning after the French and Indian War and continuing during the Revolutionary War, notably in Massachusetts and New York, but in other states as well.

After the French and Indian War, the British felt it necessary keep troops in the colonies in case the French decided to stir things up again. The war had increased British national debt by 70% and Parliament was hard pressed to pay the debt down. Logistic support for troops 3,000 miles from home was expensive.

The 1765 Quartering Act required the colony to cover the cost of the soldiers' basic needs, such as bedding, cooking utensils, firewood, beer or cider, and candles. If barracks were not available, the colony was required to house soldiers in private commercial properties, such as inns and stables, and, as a last resort, in uninhabited homes and barns. Needless to say, the Act was not popular, demonstrations and even some fights between civilians and soldiers resulted. The 1765 Act was allowed to expire in 1770.

Four years later, when it became clear that Britain and the colonies were on a collision course towards war, Parliament passed what became known as "The Coercive Acts," the fourth of which was the Quartering Act of 1774 in which private homes, occupied or not, became the target.

The practice of quartering soldiers in private homes and buildings dates back to at least the Roman Republic, when Roman governors used it as a tool of oppression and source of income in occupied territories. Ironically, one of Parliament's complaints against King Charles I in the 1628 Petition of Right was involuntary quartering of soldiers. When the monarchy was restored in 1660, King Charles II resumed the practice, leading Parliament to pass the Anti-Quartering Act of 1679. The 1689 British Declaration of Rights cited King James II's resumption of quartering as one justification for the "Glorious Revolution." Either Parliament displayed an incredibly short memory or they learned that "when the shoe is on the other foot..."

We've talked about "Incorporation" via the 14th Amendment in previous essays. You'll be happy to learn that the Third Amendment is one of the few provisions of the Bill of Rights not incorporated against the states (which means the states need not comply with the amendment).

The history of challenges of government action under the Third Amendment is quite sparse.

In 2001ⁱⁱ, a federal court dismissed as "frivolous" a claim that military flights through the airspace over the plaintiff's home violated the Third Amendment.

In June 2011 police in the City of Henderson and North Las Vegas, Nevada were called to a domestic violence incident at the home of Phillip White. White's wife had fled the home; Phillip barricaded himself inside with his infant child. Police who responded noticed that residents in nearby houses, specifically the home of Anthony Mitchell, were photographing the police and were also believed to be communicating with White about the police activity. When Mitchell refused the use of his home to observe his neighbor's actions, officers eventually forced their way into Anthony Mitchell's home, shot him with pepperball rounds, and arrested him. They also allegedly unlawfully entered Michael and Linda Mitchell's home (their relationship to *Anthony Mitchell* is not reported). Police removed Linda from the home, searched their car without a warrant, and arrested Michael without probable cause. Anthony Mitchell sued, claiming a Third Amendment violation by "forcibly occupying [his] home in order to gain a 'tactical advantage' against suspected criminals in a neighboring house." In *Mitchell v. City of Henderson (2015)* the judge decided policemen were not "soldiers" and were thus not covered by the Third Amendment (why the judge did not recognize that the Third Amendment remained unincorporated against the states is not explained).

That's about it as regards the Third Amendment. Enjoy the peace and sanctity of your home tonight unmolested by federal troops, thanks to "Jemmy" Madison.

For further reading:

[The Quartering Act of 1765](#)

[The Quartering Act of 1774](#)

<https://lawliberty.org/what-has-the-third-amendment-to-do-with-the-black-pinesnake/>

Next week: Right #9: Right to be Secure in Your Property

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ⁱ James Madison submitted the initial draft of this amendment based on suggestions from four different states (NH, NY, NC, VA). Remarkably it remained as originally submitted through final passage by the Congress. Six of the original thirteen states also adopted state constitutional provisions banning the quartering of soldiers.

ⁱⁱ *Custer County Action Ass'n v. Garvey* (2001)