

# The Army Officer and the Constitution

EDWARD M. COFFMAN

*Thursday, 17 September 1987, marks the 200th anniversary of the United States Constitution. To ensure that this historic event is properly commemorated, Congress created the Commission on the Bicentennial of the United States Constitution. Its life has been extended through 31 December 1991 to cover the 200th anniversary of the signing and ratification of the Bill of Rights. As its Constitutional Bicentennial feature, Parameters here publishes Professor Coffman's article on the officer and the Constitution. The article was adapted from a lecture Professor Coffman presented at Carlisle Barracks as part of the US Army Military History Institute's lecture series, "Perspectives in Military History."—Editor*

**B**asic for any consideration of the officer and the Constitution is the relationship of civil and military power in the American military tradition. This point deserves emphasis because, too often, commentators who know little or nothing about that tradition substitute inappropriate foreign models which have the military contending for dominance in contrast with the actual and much less dramatic American experience. There is and always has been in the US Army officer corps an implicit—one could almost say instinctive—acceptance of the civil power's superiority to the military in government. Inherited from the English, nourished throughout the colonial period, and confirmed during the Revolutionary War, that understanding has prevailed throughout our history, with only one major threat. That was the Newburgh Conspiracy of 1783.

In his brilliant book, *Eagle and Sword: The Federalists and Creation of the Military Establishment in America, 1783-1802* (1975), Richard H. Kohn tells the story of that deviation from the norm of the American military tradition. It is worth repeating because it points up the difference of the American experience from that of so many other countries.

During the last months of the Revolutionary War, as George Washington struggled to hold the Army together in order to guarantee a successful end of that war, idleness fostered grievances. Among officers, the major complaint concerned money; they wanted their pay and assurance of postwar pensions. As it happened, their desires conveniently fit in with the interests of a group of political leaders who wanted to strengthen the central government. They thought they could use the officers' appeal for money as an argument for a national tax which in turn would enhance the power of the central government. With this in view, Robert Morris, Gouverneur Morris, and the ever-ambitious Alexander Hamilton intrigued with and manipulated Major General Alexander McDougall and those other officers who petitioned Congress. As weeks passed and grievances festered, some of the officers began to consider the awesome step of threatening mutiny if Congress did not provide for them. The scene seems to have been set—almost in classic textbook terms—for a coup d'état. Yet it did not happen. The reasons for that result explain much about the American military tradition.

First, there was the great commander, George Washington, who set the right example. In responding publicly to the two anonymous letters which advocated extreme measures, he confronted the officers corps in blunt language:

Could the Army actually contemplate "something so shocking" as turning its swords against Congress, "plotting the ruin of both by sowing the seeds of discord and separation" between military and civil? "My God! What can this writer have in view by recommending such measures? Can he be a friend to the Army? Can he be a friend to this country? Rather is he not an insidious foe?"

This dramatic peroration stopped cold any notions of attempting to coerce civil authority with threats of military power or, in the extreme, of creating an independent military state.

There was more involved, however, than the charismatic appeal of this highly respected military leader. The officers and men were not rootless mercenaries operating in a political vacuum. They were American citizens

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turned temporarily to soldiering who were accustomed to the tradition of military subordination to civilian power. And, equally significant, there were in existence well-established, legitimate political institutions. Thus, the crucial elements which have so often led to military dictatorships as revolutions drew to a close were not present.

Concerning the importance of squelching this so-called conspiracy so near the birth of the nation, Kohn concludes: "Once civilian control is violated, even by the most halting attempts, a certain purity is irretrievably lost."<sup>1</sup> The American military tradition has thus come down to us in the 1980s unstained by the misadventures which blot that aspect of many other nations' histories. Much of the significance of this event, albeit unknown to virtually all officers since then, is that nothing happened to shake their intrinsic belief in the propriety of the American civil-military relationship. The Constitution, then, as the basic document of their government, remains paramount. Officers accept that civil-military relationship. Indeed, there is no reason to give it a thought; it is a concretely established fact.

Indicative of this innate acceptance is that the oath which officers took from 1790 to 1861 did not mention the Constitution. To be sure, Congress did require initially (in 1789) two oaths, including one to support the Constitution:

I, \_\_\_\_\_, do solemnly swear and/or affirm (as the case may be) that I will support the Constitution of the United States.

I, \_\_\_\_\_, do solemnly swear or affirm (as the case may be) to bear true allegiance to the United States of America, and to serve them honestly and faithfully, against all their enemies or opposers whatsoever, and to observe and obey the orders of the President of the United States of America and the orders of the officers appointed over me.

Seven months later Congress dropped the first oath and added the words "according to the articles of war" to the second. Obviously, the men in Congress considered the first oath superfluous. For the next 70 years officers and enlisted men entered the Army by pledging their allegiance to the United States of America without reference to the Constitution. In August 1861, after the Southern Confederacy had become a reality and fighting had begun, our legislative leaders reflected the influence of those events by requiring West Point cadets and future candidates for admission to the Military Academy to take an oath that was much more specific:

I, \_\_\_\_\_, do solemnly swear that I will support the Constitution of the United States, and bear true allegiance to the national government; that I will maintain and defend the sovereignty of the United States paramount to any and all allegiance, sovereignty, or fealty I may owe to any state, county, or

country, whatsoever; and that I will at all times obey the legal orders of my superior officers and the rules and articles governing the armies of the United States.

The next year, in an effort to ensure that all loopholes were closed, Congress demanded that all officers, civil and military, take an even lengthier and more complicated oath:

I, \_\_\_\_\_, do solemnly swear (or affirm) that I have never voluntarily borne arms against the United States since I have been a citizen; that I have voluntarily given no aid, countenance, counsel, or encouragement to persons engaged in armed hostility thereto; that I have neither sought nor accepted, nor attempted to exercise the functions of any office whatever under any authority or pretended authority in hostility to the United States; that I have not yielded a voluntary support to any pretended government, authority, power, or constitution within the United States, hostile or inimical thereto. And I do further swear (or affirm) that, to the best of my knowledge and ability, I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter, so help me God.

Clearly, the men who required that oath did not want to leave anything unsaid about allegiance as they carefully included every possibility.

There were complaints, and even President Abraham Lincoln objected. As he explained in a note to the Secretary of War: "On principle I dislike an oath which requires a man to swear he has not done wrong. It rejects the Christian principle of forgiveness on terms of repentance. I think it is enough if the man does no wrong hereafter." Other northern political leaders were neither as tolerant nor as forgiving, so it was not until 1884 that Congress authorized a simpler version for all officers, which their successors have taken ever since.

I, \_\_\_\_\_, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.

This review of the oaths—the legally binding pledges which officers made upon acceptance of their commissions—points up the important

fact that neither the generation of officers who entered the turbulent decade of the 1860s had taken an oath to support the Constitution nor had their predecessors since 1790.<sup>2</sup>

This leads to the logical question: What did officers then know about the Constitution? As one would assume, they probably knew about as little then as officers do today! The issue of secession, however, caused many people to ask that question. It seemed reasonable to look to the Military Academy for an answer. After all, some 68 percent of the officers in the Regular Army were West Point graduates in 1861, and almost one third (28.2 percent) of the officers left to join the Confederate Army. Although the percentage of West Point graduates who went south (26.5 percent) was actually slightly less than that of the officer corps as a whole, this fact was ignored or considered a quibble by critics. In 1861 even Secretary of War Simon Cameron joined in the attack. As far as Cameron was concerned, the problem lay not in what cadets learned about the Constitution but lay rather in the cadet disciplinary code, which, he argued, deadened cadets' sensitivity to moral wrongs by equating such wrongs as treason and disloyalty to country with mere violations of Academy regulations. To give Cameron proper due, he did not advocate abolishing the Academy as did the more extreme critics. In his next report, five months later in December 1861, he recognized the value of West Point training and even called for an increase in the strength of the Corps of Cadets.<sup>3</sup>

There is no clear-cut answer to the question of what was taught about the Constitution at West Point. While a fire which destroyed many of the records prior to 1835 hinders research, the most significant obstacle is the obvious fact that little notice was given to that subject. Prior to the Civil War the Chaplain had the responsibility of teaching ethics, which, depending to a large extent on the inclination of the particular minister, might include varying amounts of instruction in constitutional and international law. Since that good man also had to teach philosophy, history, and geography, he certainly had to stretch himself. Apparently, when the academic curriculum was expanded to five years in 1854, there was a little more space for constitutional law. First classmen then met from 2 p.m. to 4 p.m. five times every two weeks in a class which covered American history, international and constitutional law, military history, and military law. One gets the impression that a cadet by a few momentary lapses in alertness might miss completely any information offered on the Constitution.<sup>4</sup>

Both Leonidas Polk, who graduated in 1827, left the service to become eventually an Episcopal Bishop, and then wore the stars of a Confederate general, and the leader of the desperate charge at Gettysburg, George E. Pickett of the Class of 1846, claimed that they learned in a West Point classroom that secession was legal. Such statements fanned the flame of suspicion that the allegedly southern-dominated academy had taught

treason. Actually, northerners clearly dominated among the staff and faculty at West Point, and they did what they could to dampen what they considered dangerous agitation. In the 1840s the Superintendent thus put a stop to the plans of the Cadet Dialectic Society to debate the constitutionality of a state's refusal to obey a federal law. Later superintendents attempted to shield cadets from abolitionist literature. Indeed, generally, officers—be they northerners or southerners, West Pointers or non-graduates—were moderates who deplored shifts in the governmental status quo and who considered abolitionists the major threat to that stability.<sup>5</sup>

Those who sought to pin down the culprit thought that they had found it in a book by William Rawle, *A View of the Constitution of the United States of America*. Unquestionably, two sentences in that work plainly endorsed the legitimacy of secession. They are as follows: "The secession of a state from the Union depends on the will of the people of such state. The states then may wholly withdraw from the Union, but while they continue, they must retain the character of representative republics."<sup>6</sup>

Finding those words in a book which was used as a textbook at West Point would seem to settle the matter, but the issue remains problematic. It is very difficult to determine when and if a teacher used that book in class. Douglas Southall Freeman, the famed biographer of Robert E. Lee, apparently looked into this question more carefully than any other historian. His research indicated that the book was definitely used as a text during only one academic year, 1825-26. A clinching corroboration of that finding is a statement by Jefferson Davis. If anyone would hope to gain from the claim that he had learned that secession was legal at the Military Academy, it was Davis, a member of the Class of 1828. Yet, in a letter dated 1 July 1886, the former Confederate President wrote that although Rawle had been used previously, it had been replaced by another book when he took the course.<sup>7</sup>

After the Civil War, Davis, in his memoir, attempted to justify his and his fellow secessionists' actions with an elaborate argument to the effect that it was the northern leadership rather than southern leaders who violated the Constitution. None of the officers who resigned their commissions and took up arms against the federal government went to such lengths to justify that step through interpretations of the Constitution. When they reached what Robert E. Lee called that "fearful pass" during those bleak winter and spring days of 1860-61 as the Union broke up over their heads, officers, almost to a man, deplored the terrible situation. The overwhelming majority, including some southerners, simply did their duty as US Army officers. As a leading example, there was the Commanding General, Lieutenant General Winfield Scott, who at 74 had been a general for 47 of his years. Although a Virginian, he saw no reason to place his state above the Union. After the southern states had seceded, Scott believed the best course was to let them alone. He deplored the possibility of coercing them

back into the Union; nevertheless, when President Abraham Lincoln decided on war, the aged general followed orders to the best of his ability.<sup>8</sup>

Destiny focused attention on Scott's most famous protégé, Robert E. Lee, who took the opposite course. As he observed events and agonized over what he might have to do, there was never any question in Lee's mind that he would follow his state if it left the Union. Privately he deplored secession, and on 23 January 1861 he confided in a letter that he did not believe that the framers of the Constitution considered it a right. In this discussion, he indicated his lack of knowledge of that document by confusing some of the wording with that in the Articles of Confederation. After the war, when a British writer pressed him on his constitutional views, Lee contradicted his earlier stand by stating that he thought secession was a constitutional right, but one which he considered a mistake to exercise. Then, in a curious example of circuitous reasoning, he said that he believed Lincoln's coercive actions in the spring of 1861 were unconstitutional. One gets the impression that, for Lee, casting his decision in constitutional terms was forced and artificial. He and others did not make their decisions after careful study of the Constitution but on the simple basis of placing their home above the Union. With what was real opposed to what seemed abstract, there was no problem for many in making the decision. There was instead, as in the case of Lee, the agony of having to live with such a decision.<sup>9</sup>

In his epic poem, *John Brown's Body*, Stephen Vincent Benét caught the essence of what motivated these men when he described the thoughts of his southern hero, Wingate:

He brooded a moment. It wasn't slavery, . . .  
Nor even states-rights, at least not solely,  
But something so dim that it must be holy.  
A voice, a fragrance, a taste of wine,  
A face half-seen in old candleshine,  
A yellow river, a blowing dust,  
Something beyond you that you must trust . . . .

More succinctly, E. P. Alexander, who at 26 had to make the decision, summed up the basic reason: "I must go with my people."<sup>10</sup>

During that twilight period before war broke out, most officers demonstrated the predominance of reality over the abstract by their attempts to follow regular routines. Understandably, they concentrated on the reality of the immediate situation rather than the abstraction of future possibilities. By tending to the mundane, by acting as if they were not skirting the edge of the abyss, they could thus retain a sense of control over their destinies. In Lee's case, for example, despite the fact that he had been considering for months what he must do if his state seceded, he still formally

accepted his promotion to colonel (ironically President Lincoln signed the commission) on 30 March 1861, just three weeks to a day before he resigned.

Surely the most bizarre series of incidents on that order during those hectic days were the actions of P. G. T. Beauregard. As an indication of the apparent general obliviousness to the coming crisis, the Chief of Engineers, Brevet Brigadier General Joseph G. Totten, appointed the Louisianian to the Superintendency of West Point in January 1861, although Beauregard told him that he would go with his state if it seceded and there was war. On his part, Brevet Major Beauregard accepted the post, proceeded to the Academy, and assumed the office even though Louisiana's secession convention was meeting at the time. Totten had second thoughts, however, and revoked the orders on 24 January, the day after Beauregard arrived at West Point. As an officer would under normal circumstances, he protested such a sudden relief. Of course, the situation was hardly normal. To be fair, Beauregard acknowledged the immediate possibility of his state's secession (and, indeed, the convention did vote to leave the Union on the 26th), but argued that he did not intend to resign his commission unless there was war. In this instance, Totten showed a firmer grasp of reality by ignoring that protest. After only five days as Superintendent, Beauregard left for Louisiana where he promptly became a general in the Confederate Army. What makes this story almost fantastic is that he not only put in for mileage reimbursement for his trip from West Point to New Orleans but also pressed the federal government for his \$165 claim even after he took command of forces which threatened the federal garrison at Fort Sumter.<sup>11</sup>



Courtesy Roger D. Hunt



Courtesy USAMHI

**P. G. T. Beauregard as a Union officer . . . then as a Confederate.**

Turning to those who fought for the Union, one again finds few mentions of constitutional reasons for their decision in their memoirs. Two who did refer to the Constitution in their reminiscences were George B. McClellan and Ulysses S. Grant. As it happened, both had resigned their commissions some years before and were civilians in early 1861. In both cases, their comments, like those of Lee, appear to be forced. Curiously, a reader who did not know who these men were might assume, on the basis of their remarks on the Constitution, that they had fought against the Union. McClellan, who, it should be remembered, made his opposition to the policies of the government clear by running against Lincoln for the presidency in 1864, inveighed against what he considered the unconstitutional appropriation of power by the federal government. Grant, whose two terms in the White House may have caused him to take note of the constitutional aspects, seemed to contradict himself. On one page, he stated:

The fact is the constitution did not apply to any such contingency as the one existing from 1861 to 1865. Its framers never dreamed of such a contingency occurring. If they had foreseen it, the probabilities are they would have sanctioned the right of a state or states to withdraw rather than that there should be war between brothers.

On the next page he said:

The fathers themselves would have been the first to declare that their prerogatives were not irrevocable. They would surely have resisted secession could they have lived to see the shape it assumed.

To give General Grant proper credit, in a letter dated 19 April 1861 he said that a true patriot would "be for maintaining the integrity of the glorious old stars & stripes, the Constitution and the Union."<sup>12</sup>

From 1861 to the present, when researchers looked into the educational background of officers to ascertain possible influences on their decisions in the secession crisis, they have naturally focused their attention on the Military Academy. Yet one should ask about the other 31 percent of the officer corps. What, if any, knowledge of the Constitution did the War Department require of them? In 1839 Secretary of War Joel R. Poinsett stipulated that civilian applicants for a commission had to show competence in an examination which covered mathematics, geography, history, and "knowledge of the political organization of the Government of the United States, as developed in the Constitution." In this apparently first specific mention of a requirement for familiarity with the Constitution, it is interesting to note that this section of the examination was weighted less than

the other three areas: mathematics-10; geography-10; history-8; and Constitution-6. Thirty-three civilians were commissioned in 1839, so presumably they passed that test. We cannot be certain that their successors had to do so. The regulations in 1847 are more general as they call for "an examination touching upon . . . physical ability, moral character, attainments, and general fitness for the service." It is not until 1854 that one finds another requirement for background in the Constitution on the part of applicants for a commission. At that time, in General Orders Number 17, dated 4 October 1854, the War Department stated the terms of the examination for non-commissioned officers who sought lieutenantcies. In so doing, the Army did change the wording of the constitutional requirement in such a way as to emphasize more the document itself as well as to include an entirely new subject: "knowledge of the Constitution of the United States and of the organization of the government under it, and of the general principles which regulate international intercourse." There was also the addition of a section on English grammar to include "ability to read and write with facility and correction." The weighting was also different, with the Constitution, government, and diplomacy section worth 8 points along with English and history, while mathematics and geography still ranked higher with 10. Since only a dozen non-coms earned commissions in the years 1854 through 1860, such familiarity with the Constitution as they may have possessed presumably had little consequence in the secession crisis.<sup>13</sup>

It was not until 1867 that the War Department made the 1854 examination requirements specifically applicable to all candidates for commission. It would be interesting to see what questions the examining boards asked over the years. While I have not been able to find a set of questions from this period, I do have one from 1901. It is likely that these differed little from those asked prospective second lieutenants in the last third of the 19th century. This particular examination was given to a young VMI graduate. In its entirety, it read:

1. In whom are the executive powers vested and what are the qualifications for the office?
2. What is the provision of the constitution concerning the declaration of war?
3. To what cases does the judicial power of the United States extend?
4. What is the writ of habeas corpus? By whom may it be issued and for what purpose?
5. How can a state be formed from another state?

Fortunately for the nation, George C. Marshall, Jr. passed that examination.<sup>14</sup>

What are we to conclude about the Constitution and the officer? It is apparent that while our hypothetical officer was probably not particularly

familiar with that document, he accepted the order of civil-military relationship which had prevailed since 150 years before the Constitution was written. Even in the time of the greatest threat to the Union, virtually all officers made their decision to support or fight against the United States with little or no thought of the Constitution. Nor did most civilians of that day think in terms of the Constitution. As long as officers, however, accept the traditional civil-military arrangement and are willing to fight and die for the Constitution and the Nation, it really does not matter whether they are scholars of the founding document itself.

#### NOTES

1. Richard H. Kohn, *Eagle and Sword: The Federalists and Creation of the Military Establishment in America, 1783-1802* (New York: Free Press, 1975), Chap. 2. The quotations are from pp. 31 and 38.
2. I am indebted to William G. Eckhardt for suggesting this line of inquiry and for calling my attention to Thomas H. Reese's interesting article, "An Officer's Oath," *Military Law Review*, 25 (July 1964), 1-41. The last oath and Lincoln's comment on the 1862 oath are from pages 8-9. I found the other oaths in John F. Callan, *The Military Laws of the United States* (Philadelphia: G. W. Childs, 1863), pp. 87, 89, 483, and 508.
3. *Report of the Secretary of War, July 1, 1861*, pp. 27-28; *Annual Report of the Secretary of War, December 1, 1861*, pp. 8-9; Edward M. Coffman, *The Old Army: A Portrait of the American Army in Peacetime, 1784-1898* (New York: Oxford Univ. Press, 1986), pp. 45, 92; James L. Morrison, Jr., "The Best School in the World": *West Point, the Pre-Civil War Years, 1833-1866* (Kent, Ohio: Kent State Univ. Press, 1986), pp. 132-34.
4. Morrison, pp. 92, 116-17, 161, 170; Walter Scott Dillard, "The United States Military Academy 1865-1900: The Uncertain Years" (Ph.D. dissertation, University of Washington, 1972), p. 120.
5. William M. Polk, *Leonidas Polk: Bishop and General*, 2 vols. (New York: Longmans, Green, and Co., 1915), I, 302; Arthur Crew Inman, ed., *Soldier of the South: General Pickett's War Letters to His Wife* (Boston: Houghton Mifflin, 1928), p. 2; Morrison, p. 130 and Appendix Six. For a general summary of officers' attitudes and actions at the time of secession, see Coffman, pp. 92-96.
6. As quoted by R. T. Bennett, "Morale of the Confederate," *Southern Historical Society Papers*, 22 (1894), 83.
7. *Ibid.*; Douglas Southall Freeman, *R. E. Lee*, 4 vols. (New York: Scribner's, 1937), I, 78-79; Dillard, p. 331; Edward S. Holden and W. L. Ostrander, "A Tentative List of Textbooks Used in the U.S. Military Academy at West Point," in *The Centennial of the United States Military Academy at West Point, New York: 1802-1902*, 2 vols. (Washington: GPO, 1904), I, 441.
8. Freeman, I, 420; Charles W. Elliott, *Winfield Scott: The Soldier and the Man* (New York: Macmillan, 1937), pp. 697-98, 706-07.
9. Freeman, I, 420-23.
10. Stephen Vincent Benét, *John Brown's Body* (New York: Farrar & Rinehart, 1928), p. 77; Edward P. Alexander, *Military Memoirs of a Confederate* (New York: C. Scribner's Sons, 1908), p. 6.
11. Freeman, I, 433, 440. T. Harry Williams, *P. G. T. Beauregard: Napoleon in Gray* (Baton Rouge, La.: Louisiana State Univ. Press, 1954), pp. 45-47.
12. George B. McClellan, *McClellan's Own Story* (New York: C. L. Webster & Co., 1887), pp. 32-33; U. S. Grant, *Personal Memoirs*, 2 vols. (New York: C. L. Webster & Co., 1885), I, 220-21; John Y. Simon, ed., *The Papers of Ulysses S. Grant*, multi-volume (Carbondale, Ill.: Southern Illinois Univ. Press, 1969), II, 3.
13. The first regulation is as quoted in *Army and Navy Chronicle*, 10 (14 May 1840), 313; *General Regulations for the Army of the United States: 1847*, Article VI #32; WDGO #17, 4 October 1854. The number of NCOs commissioned is from John J. Lenney, *Rankers* (New York: Greenberg, 1950), p. 134. Lenney's statistics also point up the dramatic impact of war on the number of civil appointees. In this period, there were 219 civilians who obtained appointments in the 19 years from 1839 through 1860, excluding 1846-47-48. In contrast, during those three Mexican War years, 565 civilians entered the Army through that route (Lenney, pp. 133-34).
14. WDGO #93, 31 October 1867. I appreciate Larry Bland's locating a copy of Marshall's examination in the George C. Marshall Research Library in Lexington, Va.