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The Posse Comitatus Act And Related Matters: The Use Of The Military To Execute Civilian Law



The Posse Comitatus Act and Related Matters: The Use of the Military to Execute Civilian Law

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Synopsis

The Constitution permits Congress to authorize the use of the militia âœto execute the Laws of the Union, suppress Insurrections and repel Invasions.â • And it guarantees the states protection against invasion or usurpation of their âœrepublican form of government,â • and, upon the request of the state legislature, against âœdomestic violence.â • These constitutional provisions are reflected in the Insurrection Acts, which have been invoked numerous times both before and after passage of the Posse Comitatus Act, 18 U.S.C. Â§ 1385, in 1878. Congress has also enacted a number of statutes that authorize the use of the land and naval forces to execute their objective. The Posse Comitatus Act outlaws the willful use of any part of the Army or Air Force to execute the law unless expressly authorized by the Constitution or an act of Congress. History supplies the grist for an argument that the Constitution prohibits military involvement in civilian affairs subject to only limited alterations by Congress or the President, but the courts do not appear to have ever accepted the argument unless violation of more explicit constitutional command could also be shown. The express statutory exceptions include the legislation that allows the President to use military force to suppress insurrection or to enforce federal authority, 10 U.S.C. Â§Â§ 331- 335, and laws that permit the Department of Defense to provide federal, state and local police with information, equipment, and personnel, 10 U.S.C. Â§Â§ 371-382. Case law indicates that âœexecution of the lawâ • in violation of the Posse Comitatus Act occurs (a) when the Armed Forces perform tasks assigned to an organ of civil government, or (b) when the Armed Forces perform tasks assigned to them solely for purposes of civilian government. Questions concerning the actâ™s application arise most often in the context of assistance to civilian police. At least in this context, the courts have held that, absent a recognized exception, the Posse Comitatus Act is violated when (1) civilian law enforcement officials make âœdirect active useâ • of military investigators; or (2) the use of the military âœpervades the activitiesâ • of the civilian officials; or (3) the military is used so as to subject âœcitizens to the exercise of military power which was regulatory, prescriptive, or compulsory in nature.â • The act is not violated when the Armed Forces conduct activities for a military purpose. The language of the act mentions only the Army and the Air Force, but it is applicable to the Navy and Marines by virtue of administrative action and commands of other laws. The law enforcement functions of the Coast Guard have been expressly authorized by act of Congress and consequently cannot be said to be contrary to the act. The act has been applied to the National Guard when it is in federal service, to civilian employees of the Armed Forces, and to off-duty military personnel. The act probably only applies within the geographical confines of the United States, but the supplemental provisions of 10 U.S.C. Â§Â§ 371-382 appear to apply

worldwide. Finally, the act is a criminal statute under which there has been but a handful of known prosecutions. Although violations will on rare occasions result in the exclusion of evidence, the dismissal of criminal charges, or a civil cause of action, as a practical matter compliance is ordinarily the result of military self-restraint. This report provides an historical analysis of the use of the Armed Forces to execute domestic law and of the Posse Comitatus Act, including their apparent theoretical and constitutional underpinnings. The report then outlines the current application of the act as well as its statutory exceptions, and reviews the consequences of its violation. This report appears in abridged form as CRS Report RS20590, The Posse Comitatus Act and Related Matters: A Sketch.

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