Mindful of the disputes that led them to seek independence from England, the framers of the United States Constitution tried to balance widespread fears of a standing army with a need to protect American citizens from external and internal threats. And so, although it does not mention an army, the Constitution gives the national government the power to protect the states against invasion and “domestic violence” and authorizes Congress to call out the militia to suppress insurrections “and execute the laws of the nation.”

The language of these provisions, William Banks (a professor of law and public policy at Syracuse University) and Stephen Dycus (a professor at Vermont Law School) point out, are remarkable for their economy — and their vagueness. In “Soldiers on the Home Front,” Banks and Dycus survey the domestic role of the military throughout American history. Their book (the first to systematically address this topic) is informative, judicious and, in the aftermath of 9/11 attacks, timely.

In the two centuries since the Constitution was ratified, Banks and Dycus indicate, the military has been asked to perform a wide range of domestic duties, some of them “with a distinctly political purpose.” Soldiers were deployed to return fugitive slaves in the 1850s and protect newly emancipated slaves in the 1860s; break strikes; intern Japanese-Americans during World War II; integrate southern schools; control race riots and suppress anti-Vietnam War protests; help communities recover from hurricanes, floods, and earthquakes; enforce drug laws; gather domestic intelligence; imprison and try terrorist suspects.

Despite several tragic exceptions, the authors assert, soldiers and their commanders have normally “exercised consummate professionalism and appropriate respect for civilian authority.” And a few statutes, most notably the Posse Comitatus Act of 1878, have placed some limits on domestic military
actions.

That said, however, Banks and Dycus are concerned that the courts, the Congress and the president have often given the military powers that compromise the fundamental liberties guaranteed in the Constitution and the Bill of Rights, including habeas corpus, free speech, privacy and due process of law, as well as the separation of powers. They recommend that Congress lay out the military’s domestic emergency powers with greater clarity, retaining “the great American tradition of avoiding the involvement of troops in civilian affairs except in cases of urgent necessity, when no viable alternative exists.”

It has often been said that the United States Constitution is not a suicide pact. And, alas, the potential threats to our nation, including chemical warfare and cyberattacks, are all too real. They may well require our armed forces to play an active role in prevention, as well as recovery.

Drafted in an atmosphere of heightened fear and anxiety, Banks and Dycus demonstrate, our current laws and practices “codify ambiguities” that at times upset the delicate balance between freedom and order. Yet even in these “exigent circumstances” and in a field “full of perplexity,” the authors remind us, well-grounded — and transparent — “rules for responding to emergencies may offer the flexibility needed to keep us safe and free.”

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