

What Constitutes an ‘Invasion?’

By JOHN H. TANTON

The Founders of our Republic had Invasion on their minds. They mentioned it four times in the United States Constitution, but without ever defining it. Here are the citations:

Article I, Section 8, Paragraph 15: The Congress shall have the Power “To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions.”

Article I, Section 9, Paragraph 2: “The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.”

Article I, Section 10, Paragraph 3: “No state shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.”

Article IV, Section 4, Paragraph 1: “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.”

In addition to the four explicit references to “Invasion” in the U.S. Constitution, James Madison scrutinizes the meaning of protection against an “invasion” and “domestic violence” (Article IV, Section 4) in *Federalist* No. 43, “The Powers Conferred by the Constitution Further Considered (continued),”

6. [S]hall guarantee to every State in the 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....

A protection against invasion is due from every society to the parts composing it. The

latitude of the expression here used seems to secure each State, not only against foreign hostility, but against ambitious or vindictive enterprises of its more powerful neighbors. The history, both of ancient and modern confederacies, proves that the weaker members of the union ought not to be insensible to the policy of this article. Protection against domestic violence is added with equal propriety. It has been remarked, that even among the Swiss cantons, which, properly speaking, are not under one government, provision is made for this object; and the history of that league informs us that mutual aid is frequently claimed and afforded; and as well by the most democratic, as the other cantons. A recent and well-known event among ourselves has warned us to be prepared for emergencies of a like nature.



With at least 12 million (and likely tens of millions more) persons illegally in the United States and perhaps an additional 1.5 million more annually added to that number, the question arises: Does this constitute an “invasion”? If not, what would an invasion look like? If yes, then what should the federal government be doing, in the words of Article IV, Section 4, to “protect each of them (the States) against invasion”? ■

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