THE CITIZEN MILITIAS OF THE UNITED STATES:

THEIR ANTECEDENTS, DEVELOPMENT,

AND PRESENT CONDITION

by

Gerald Orlo Van Slyke, Jr.

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DEDICATION

For my brothers in L Company, Third Battalion, Fifth Marine Regiment, First Marine Division - "The Old Breed." We were sent to the far side of the world to sacrifice our youth and innocence, were hated and abused by our own fellow citizens for keeping faith with our Oath of Allegiance to them, fought in a miserably brutal war with no rational objective or possibility of victory, and were despised for years afterward for having honorably served. Special mention is made of the 160 faithful Marines of L Company who lost their lives between 1966 and 1970. Go easy, brothers; may the earth kiss you lightly. *Semper Fidelis!*

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ABSTRACT

The community militia once was ubiquitous throughout the United States. American citizens considered it the protective cloak of the community, state, and nation. It responded to threats to the community and was often called forth statutorily by either state or federal authorities for larger issues of protection. It was the most basic defense mechanism of the early colonies and subsequently the nation. Today, however, the term "militia" evokes imagery of gun-wielding crackpots and criminals who pose a distinct danger to society. This misperception is the product of various factors. During the past few decades, some individuals claiming to be militiamen have engaged in extralegal violence, yet, as this dissertation argues, they do not fulfill the historical requirements that define that organization. Instead, they are criminals that attempt to dignify their actions by denominating themselves as militias. The violence they perpetrate bears a major responsibility for the low regard in which most of the society regards the militia.

Most militiamen today focus on other factors, believing both the national government and the media have purposefully demonized the movement. One goal of this thesis is to present many of the issues about the militia, both historical and in the current day, from the perspective of militiamen themselves. Simultaneously, the dissertation analyzes the issues from a traditional academic viewpoint. A major conclusion is that the constitutional community militias are the lawful and cultural heirs of the colonial, revolutionary, and republican militias.

CHAPTER ONE

THE AMERICAN COLONIAL MILITIA: REVOLUTION ON THE HORIZON

A robust national conversation concerning the role of citizen militias and their firearms continues to engage the attention of Americans as it has done in one guise or another since the formative era of American society. This is one of the more emotional questions in the United States today: Is the current "militia movement" (and its adjunct, the "gun culture") a respectable cultural and lawful institution or is it an archaic, extra-legal phenomenon posing distinct dangers to the security of society? A complex issue in America, as it was previously in England, the militia has been a political football kicked around by every generation since the Revolution with some aspect of it always providing a focus for political conflict, litigation, and new legislation.

Once found and respected widely in America, the militia was frequently a community social institution as well as the community's defense force. Unfortunately, some militias, like the "Paxton Boys" who slaughtered innocent Indians, did not always act honorably, even if they still garnered a great deal of respect at the time. However, the word "militia" today is likely to evoke images of American neo-Nazis destroying federal buildings or occupying government lands, or of Middle Eastern extremists blowing up hospitals, enslaving women, and killing children. Present day militiamen believe that since the Presidency of George H.W.

Bush, there has been a concerted effort by both the mass media and the federal government to demonize them by purposefully mislabeling criminal gangs and hate groups as militias. In addition, some violent extremists have claimed (incorrectly, according to the arguments of this thesis) to be militiamen, thereby besmirching the reputation of the militia movement in the broader society.[1]

This thesis seeks to redirect our attention from these heated debates about the nature of the current militia and to explore its history. It uses traditional scholarly sources—including written records, state, federal and constitutional laws, and cultural norms—to analyze the establishment and development of the militia in America. However, this dissertation also relies on the first-hand accounts of men and women prominent in the militia movement today. Drawing on a host of extensive personal interviews, the author has incorporated many of their perspectives about the militia, both past and present, in the thesis. One major argument is that most of today's militiamen are the lawful and cultural heirs of the colonial, Revolutionary, and republican militias in the new nation. This dissertation adduces considerable evidence to illuminate that assertion.

The vast majority of present day constitutional militiamen are not criminals, even if some violent extremists claim to be members of representatives of the militia. The necessity to state this fact underscores how low public opinion of the militia has fallen. Previous generations of Americans rarely thought of militiamen

[1] Vin Suprynowicz, *Send in the Waco Killers: Essays on the Freedom Movement 1993-1998* (Las Vegas: Mountain Media Publishers, 1999), 401. A detailed account from the libertarian viewpoint of the cooperation between the government and the media on this matter is contained on 392-460.

as anything more than irregular American soldiers and as guardians of the community. The same traits that characterized their distant forebears also characterize present day community militiamen. First, they are citizen volunteers who arm themselves at their own expense. Second, they subordinate themselves to the lawfully elected authorities as long as the authorities are acting in what they perceive to be a law fashion. Finally, they act in a military capacity under the rule of law in the moral and necessary defense of their community, as they understand it.

The present day American militia is a cultural based institution with deep Common Law roots, cemented into the United States Constitution and amplified by subsequent state and federal statutes and court decisions. According to current statute, every American man is born into the militia and, when between the ages of 17 and 45, is subject to being "embodied" or "called forth" to defend his state or nation.[2] The origins of the militia are not found in America, however, they are found in the distant past, in the ninth century of the Common Era. They early became enshrined in the Common Law and were an integral component of English society, which developed as it did, in large measure, because of the cultural traditions that came to surround the militia.[3] When Englishmen first came to the

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[2] (Wikipedia 2015) 10 US Code 311; "Militia: Composition and Classes," (Accessed Sept. 6, 2015). https://www.law.cornell.edu/uscode/text/10/311. "The militia of the United States consists of all able-bodied males at least 17 years of age and under 45 years of age who are, or who have made a declaration of intention to become, citizens of the United States and of female citizens of the United States who are members of the National Guard."

[3] J.R. Western, *The English Militia in the Eighteenth Century: The Story of a Political Issue 1660-1802* (London: Routledge and Kegan Paul, 1965), 436. Following Sir Winston Churchill, Western maintained that, "[The history of]...the development of both British political life and of the nation's military resources is revealed in the history of this one institution [the militia]."

new world, they brought both the Common Law and the militia with them. The English militia quickly adapted to its new world environment and to the new war-fighting realities in each colony. The colonial militias evolved into distinctly American forces and took on distinctly American personas, although still rooted in deep antiquity.

Colonization

The primary motive for the British colonization of the New World was economic. Wealth waited for those who would take it. This is not to marginalize the sincerity of the Puritans, Quakers, Baptists, and other groups of believers, but religious fervor generally took second place to the acquisition of wealth. The economic theory of mercantilism drove much of the colonial expansion and the mercantilists, unlike some of their religious contemporaries, thought wealth was a very good thing. Mercantilists believed that only a fixed amount of wealth existed in the world and that each nation should grasp as large a portion as possible. In their understanding, one did this in part by maintaining a favorable balance of trade, which amounted to selling more to other countries than one bought from them. In addition, European nations could also simply seize the wealth or labor of others, particularly Native Americans and Africans.[4]

[4] Richard W. Harris, *A Short History of 18th Century England: 1689-1793* (New York: Mentor Books, 1963), 131. Harris provides a very readable examination of mercantilism on pages 131-134, as well as the role of the *Navigation Acts* in it.

Oliver Cromwell was one of the first English rulers fully to recognize the growing importance of the British North American colonies to the matrix of national wealth and power. The colonies became an outlet for the poor of England, places where many of them migrated out of economic desperation or were banished by the state. The colonies were also phenomenally rich in the natural resources needed both by the home island manufactories and by others. As the population of the colonies grew, it would itself become a new market for British goods. Cromwell correctly evaluated the trends and enacted the *Navigation Act of 1651* to give English shippers and traders an upper hand in their competition with other Europeans, particularly the Dutch.[5] This Act (and those of 1660 and 1663) helped launch Britain on its way to hegemony over Europe. By the nineteenth century, the Union Jack became the flag the sun never set on.

This chapter centers on the era prior to the Revolution of 1776 (particularly the period between the Glorious Revolution of 1688 and the *Stamp Act* of 1765), during which the settlers formed militias, fought Indians, and participated in the imperial wars of the seventeenth and eighteenth centuries. Their militias served as the spearhead of William Pitt's plan to divest rival France of its overseas empire during the Seven Years War (1756-63). At the war's end, the colonists both witnessed and participated in the shocking spectacle of a lawfully embodied militia

[5] Alan Taylor, *American Colonies: The Settling of North America* (New York: Penguin Books, 2001), 258. The Navigation Acts essentially required English trade be carried on English ships and pass through English ports. The result was increased revenue for England, increased trade, increased shipbuilding, and a large pool of experienced sailors who could serve in the Royal Navy when required.

(the Paxton Boys) as they massacred friendly native peoples and waged open rebellion against the capital of Philadelphia. They felt their citizenship and future prosperity betrayed by the king and parliament when the British government denied them access to unenclosed (but native owned) western lands in 1763. During the ensuing dozen years, they began to see themselves as a people separate from the British with vastly different interests and with their own mature militia traditions. They began to see themselves as "Americans" and the cumulative result would be revolution and independence.

The English Common Law and English Militia Emigrate to North America

The people who settled in the British North American colonies during the seventeenth and eighteenth centuries did so for a plethora of reasons. Much of the "new territory" (new to the English) was remote, making it a safe haven for religious dissenters. It was also a place, many thought, where fortunes could be made. The limitless tracts of wilderness provided a place where one who had conflicted with the law, or a deserter from one of His Majesty's ships, or a debtor, could change his name and disappear into the friendly anonymity of the frontier leaving the Old World and the old life behind. There was an abundance of cheap land that could be cleared to raise a family, a lack of lords and ladies infesting the land, and colonial legislatures that forged their own path without accepting much interference from England. As long as colonists were willing and able to divest the

native peoples of their property, the "New World" held forth possibilities of a better life for many people from many different sectors of English society.[6]

When Englishmen began crossing the Atlantic to take up permanent residence in the New World during the seventeenth century, they brought with them the English Common Law. Many Englishmen believed that every Protestant free man had an ancient and undeniable right to arm himself if he so wished, or if the local colonial government required him to do so as they often did. Colonial Americans were born into the militia. Historian Jeffrey Rogers Hummel viewed the colonial militias from a libertarian perspective, as a rigorous obligation. It was a nearly inescapable duty of citizenship for which men were punished for neglecting.[7]

The British North American colonies evidenced both unorganized and select militias as they grew and developed during the seventeenth and eighteenth centuries. These could range from a handful of settlers on the frontier informally agreeing to cooperate with each other against attacks by Indians or other Europeans, to a semi-professional city militia like the Philadelphia Associators, or to the embodiment of a select regiment for six months or more to fight a specific war.

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[6] Charles Bruce Catton, et. al., *The National Experience: A History of the United States* (New York: Harcourt, Brace, &World, Inc, 1968), 31.

[7] Jeffrey Rogers Hummel, "The American Militia and the Origin of Conscription: A Reassessment." *Journal of Libertarian Studies*, Vol. 15, No.4, (Fall 2001), 29-77. "The militia system was originally transported to the American colonies from England. At the onset, it was grounded in the principle of universal obligation. Practices differed widely from colony to colony, but everywhere...it enrolled every able bodied male between certain ages (usually sixteen to sixty), with only a few exceptions. Colonial governments required those enrolled to furnish their own arms (no small expense) and to muster for regular scheduled training. Failure to do so resulted in fines. Initially, this mandatory training could be as frequent as once a week or more...The militia thereby provided a compulsory system of universal military training.

Colonial charters provided for each colony to conduct its own self-defense matters and each colony (except Pennsylvania) had enacted a militia act prior to the French and Indian War, the American name for the Seven Years War.[8]

Both the British militia and the colonial militia structures came under the same primary legislation, the *Militia Acts* of 1573 and 1662, and their follow-on enabling and amplifying legislation. Thus, they resembled each other even as specialized conditions of warfare forced the American militia to adapt operational methods unfamiliar to the British. The 1662 law would remain in effect until updated legislation replaced it in 1757 and in 1762 during the middle and at the end of the French and Indian War.[9] Historian John Mahon noted that the militia was (and is) a defensive organization and could only be used close to the area it was supposed to defend.

"Just as the English [militias] had stopped at county lines," Mahon wrote, "the several colonies stopped at their own boundaries." Mahon also noted that the time of service for a colonial militiaman was the three months of the Common Law. "This time limitation," he continued, "coupled with that on space, made the militia a defensive instrument only. [10]

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[8] John Mahon, *History of the Militia and the National Guard* (New York: MacMillan, 1983), 14. The Pennsylvania Quakers, a radical non-violent religious group, hoped to establish a "peaceable kingdom" in which everyone lived peacefully with one another. Pennsylvania finally passed a militia law in 1755, the second year of the French and Indian War.

[9] Western, 145. Although the 1757 *Militia Act* was in force only in England and Wales, the Board of Trade pressured colonial legislatures to adopt it as well. It provided a necessary modernization of the militia.

[10] Mahon, 19. Both Alfred and Henry VIII would have recognized this issue.

Pennsylvania provided the single exception to the war-like preparations of the British colonies. After receiving a land grant of twenty-nine million acers from Charles II in 1681, the Quaker William Penn established Pennsylvania as a "peaceable kingdom" where all people could live in harmony under the principles of the Gospel. A society based on non-violence was the goal; military preparedness was not prioritized. Nevertheless, unorganized and town militias were in evidence at places of conflict on the frontier. Pennsylvania embodied militias from time to time, but it was distasteful for the pacifistic Quakers who dominated the General Court. For half a century, Pennsylvania was a model for peaceful relations between colonists and Indian peoples. However, as the Scots and Scot-Irish migrants arrived, bringing a more militant attitude with them, peaceful relations declined. The "holy experiment" eventually failed with the Paxton Boys driving the final nail into the coffin of pacifism. "But it left an enduring legacy," historian Kevin Kenny noted, since "Pennsylvania did not fight its first war against Indians until the 1750s," when the Delawares and Shawnees retaliated for being disposed of their land by launching devastating attacks on the province.[11]

Foreign and Domestic Challenges to the American Militia

During the seventeenth and eighteenth centuries, the British Empire did not dominate Europe or the oceans in the way it came to after the defeat of Napoleon

[11] Kevin Kenny, Peaceable Kingdom Lost: The Paxton Boys and the Destruction of William Penn's Holy Experiment (New York: Oxford University Press, 2009), 3-4.

in the early nineteenth century. It was one powerful nation among other powerful European nations. It had fierce enemies and it stood in frequent danger of invasion, which had always been a favored argument on the side of those Members of Parliament supporting a strong home islands militia.[12] The British had two great enemies, powerful military states that challenged them for mastery of the seas, for mastery of the land mass of Europe, and for the establishment of colonies in the new world. These were France and Spain, both dangerous adversaries who were more than capable of inflicting a debilitating defeat on the British in Europe and of launching determined attacks on its colonies in North America and the West Indies.

Secondary powers such as the Netherlands and Portugal were strong enough that they could (and did) easily shift the balance of power from one side to the other through allying themselves with whoever pandered to their interests. Meanwhile, British colonies had to defend themselves not only against the European foes of the mother country but also against the natives of America who resisted having their lands invaded, the people Thomas Jefferson later called "the merciless Indian savages" when he penned the *Declaration of Independence* in 1776.[13] Indians easily counted as another secondary power, often a major power. Colonial governments frequently sought military alliances with stronger tribes against

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[12] Western, 197. Militiamen were now valued both by the public and by Members of Parliament. "The successes of irregular troops in America pointed the same way - notably the capture of Louisburg by British colonists in 1745 and the defeat of Braddock by the French and their Indian allies in 1755. In both these engagements the regulars showed up badly...The success of the Americans was frequently mentioned."

[13] Richard D. Heffner with Alexander Heffner, *A Documentary History of the United States: Expanded and Updated Eighth Edition* (New York: Penguin Books, 2009), 13. "He has...endeavored to bring on the inhabitants of our frontiers, the merciless Indian savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes, and conditions."

weaker ones as a strategy to divest natives of their land. After association with the European settlers had weakened tribal alliances, the allied tribes often lost their lands as well.[14]

Another threat requiring militia protection appeared in the British colonies when the English brought the first African slaves to Jamestown in 1619.[15] Stolen from their homes, these people endured a horrific voyage across the Atlantic for sale in the Americas. During the seventeenth century slavery spread throughout the colonies, even the Puritans codified it in 1631. When their numbers were few, black slaves presented little physical threat and some could possibly even prosper as free people in the Chesapeake colonies. Many gained their freedom, purchased land, worked at trades, and established families. A few could vote, baptize their children, and marry across racial lines.[16] Blacks also owned firearms and even served in the militia.[17] They lost these rights as the attitude of whites toward blacks began to harden and racism intensified.

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[14] Jane T. Merritt, *At the Crossroads: Indians & Empires on a Mid-Atlantic Frontier, 1700-1763* (Chapel Hill: University of North Carolina Press, 2003), 28-29. Alan Taylor's description in *American Colonies* (323) of the "Walking Purchase" agreement between the Pennsylvanians and the Lenni Lenape Indians in 1737 provides an example of brazen fraud that is tragically amusing in its extraordinary cheekiness on the part of white colonists.

[15] Alan Taylor, *The Internal Enemy: Slavery and War in Virginia, 1772-1832* (New York: Norton and Co., 2013), 7. "...the Virginians imagined a dreaded "internal enemy" who might, at any moment, rebel in a midnight massacre to butcher white men, women, and children in their beds." Whites became more frightened after the slave rebellion and race war in Haiti in 1804.

[16] Ira Berlin, *Generations of Captivity: A History of African-American Slaves* (Cambridge: Harvard University Press, 2003), 39.

[17] John Shy, *A People Numerous and Armed: Reflections on the Military Struggle for American Independence* (Ann Arbor: University of Michigan Press, 1990), 36. "In the Yamassee War [1715], four hundred negroes helped six hundred white men defeat the Indians." After the Stono Revolt of 1739, blacks were quickly disarmed and usually forbidden from serving in the militia.

The presence of blacks became more alarming to whites as they grew more numerous during the late seventeenth century, a result of several factors, including the proliferation of the plantation system in the Chesapeake and southern colonies.[18] Moreover, slavery had become increasingly profitable for some white owners. The 1739 Stono Revolt frightened whites and motivated them to impose greater restrictions on blacks. In addition, blackness became associated only with racial slavery and over time blacks morphed into a racial slave class. Their increased numbers frightened many of the white colonists as much as or more than the Indians did, and their presence in British American society strengthened the already strong public support for militias.[19] "They sent the militia...against black irregulars and maroons," historian Ira Berlin wrote, "defeating them in pitched battles, beheading their leaders, and driving the maroons more deeply in the swamps."[20]

The Spanish were glad to exacerbate the fears and problems of the British slave colonies. Florida bordered British territory in the south and the Spanish established it, in part, as a sanctuary for runaway slaves from the English colonies. In 1693, the Spanish offered freedom to any runaway slave who arrived in Florida

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[18] Walter Borneman, *The French and Indian War: Deciding the fate of North America* (New York: Harper Collins, 2006), 12. "The census of 1754 showed... [in] the English colonies...an estimated 1,160,000 white inhabitants, plus some 300,000 black slaves." At mid-century, blacks numbered almost 25% of British colonists and were largely concentrated in the south where the plantation economy flourished.

[19] Shy, 36-37. South Carolina provided a good example of this, especially after the Stono Revolt of 1739. "Carolinians no longer dared arm Negroes; in fact, they hardly dared leave their plantations in time of emergency," Shy wrote: "[I]ncreasingly, the South Carolina militia became an agency to control slaves, and less an effective means of defense."

[20] Berlin, 129. Although this quote actually deals with the pursuit of black British veterans during the Revolutionary War, the militia usually served as the slave patrol during the colonial era.

and converted to Catholicism, and reiterated the offer in 1733. "[T]he fugitives [were] ideal allies against the English enemy," Berlin wrote. "Former Carolina slaves no sooner arrived in Florida than they were enlisted in the [Spanish] militia and sent to raid the plantations of their old owners, assisting black men and women--many of them friends and sometimes family--in escaping bondage."[21]

Prior to the French and Indian War (1754-1763), London considered England's North American colonies too far from the metropole to allocate much in the way of expensive standing forces, troops whose presence European conflicts required. The colonies were largely on their own when it came to defense. Each colony maintained a robust roster of citizen-soldiers who answered the call to fight for the king whenever it was necessary during the wars of the seventeenth and eighteenth centuries and, for the most part, fought well.[22] These militias served for the traditional short period of service, normally the three months defined by the common law. If a force was required for an extended military operation, a commander recruited a select militia from the unorganized militia with the men agreeing to serve for a time longer than normal.

"From the very first days of settlement in Virginia, Massachusetts, and the other colonies," William Fowler wrote, "defense had been a local responsibility. [C]olonists raised and paid their own militia, selected their officers, often through

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[21] Ibid, 44-45.

[22] Bernard Bailyn, *The Ideological Origins of the American Revolution* (Cambridge: Belknap Press, 1967), 62-63, 84. The success of the colonial militia made it possible for Americans to adopt the English disdain for standing armies. Bailyn extensively cites John Trenchard's 1697 work, *An Argument, Shewing, that a Standing Army Is Inconsistent with a Free Government* as providing a foundational principle of government among colonial Americans.

elections, and determined how they would be used." Colonial militias usually drilled four times a year and stayed close to home. Few of the frontiersmen felt a need for formal military training. European formations and tactics were not suitable for the New World and the frontiersmen were not amenable to very much military discipline. "The militia tended to be undisciplined, decentralized, and independent."[23]

The British government always saw Europe as the primary theater of war. The increasingly wealthy colonies, though important, were secondary to the strategic situation in Europe. The colonists often found themselves supplying the bulk of troops for a military operation in America. They fought in five major imperial wars as well as numerous Indian wars. These were the War of the League of Augsburg (1689-1697), the War of the Spanish Succession (1702-1713), the War of Jenkin's Ear (1739-1742), the War of the Austrian Succession (1744-1748), and the French and Indian War (1754-1763).[24]

One of the low points in the history of the colonial militia occurred when a black militia force in Spanish Florida defeated General Oglethorpe and his army when it attacked St. Augustine in 1740 during the War of Jenkins' Ear. The Blacks defeated Oglethorpe's Georgia and Carolina militiamen, defeated and drove off his regiment of British regulars, including a battalion of Highland Grenadiers, and

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[23] William Fowler, Empires At War: The French and Indian War and the Struggle For North America 1754-1763 (New York: Walker and Company, 2005), 210-212.

[24] Borneman, 3. Borneman described the British strategic worldview as it pertained to North America. See also: Lawrence James, *The Rise and Fall of the British Empire* (New York: St. Martin's Griffin, 1994), 51. The War of Jenkin's Ear officially ended in 1748, but by 1742, it had become an adjunct to the War of the Austrian Succession.

captured his cannon. Oglethorpe occupied St. Augustine but could not capture the fort and withdrew in defeat. The Spanish responded two years later by landing an army on the Georgia coast which Oglethorpe defeated at the Battle of Bloody Marsh.[25]

Perhaps the high point of colonial military laurels was reached in 1745 during the War of the Austrian Succession when an all-colonial militia force (mostly from Massachusetts) aided by a British fleet assaulted and captured the strongest French fort in the New World, Louisburg, on modern day Cape Breton Island. It was the most significant British victory in the colonies during the war.[26] By the time George Washington helped spark the French and Indian War in 1754, the colonies had developed strong militia traditions.

The American Militia and the War for World Empire

Historian Walter Borneman holds that when the bells of Aix-la-Chapelle rang out the good news that the representatives of the warring powers gathered in the cathedral below had reached a settlement, everyone knew that it was only temporary. The treaty that ended the War of the Austrian Succession in the fall of 1748 could not possibly be a durable peace because, the Austrian succession aside, the treaty did not resolve the primal issue at stake between France and England:

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[25] Ibid, 9.

[26] Mahon, 27. Four thousand American militia from Connecticut, New Hampshire and Massachusetts, commanded by a militia officer from Maine, captured Louisburg on June 28, 1745, after a siege lasting more than a month.

who was going to control the trade and wealth of the Americas? Borneman suggested that all the ambassadors and representatives at Aix-la-Chapelle knew that what they had forged was only a breather, an opportunity for everyone to reload.[27]

It was a treaty of blunders and the British representatives perhaps committed the greatest blunder of all, at least concerning their American empire. They traded Louisburg, which American militiamen from New England had conquered, for Madras, a port city in India. (Gaining a claim on Madras greatly assisted the expansion of Britain into India, which became the "jewel of the British Crown" in the nineteenth and twentieth centuries.) A French presence in Louisburg facilitated Indian resistance to and attacks on American frontier farms and communities by protecting the sea approaches to Quebec. By their victory at Louisburg, American militiamen had greatly reduced the danger to their families, but now the king's representatives had restored it in favor of a seaport on the other side of the world. The British government was playing politics on a worldwide scale while Americans were thinking more regionally and locally. It gave Americans a clear idea of the level of concern the king's ministers held for the safety of their families; years afterward, they still resented it.[28]

In 1753 the French government ordered the Marquis Duquesne to establish a line of forts along the Ohio River, land claimed by France and by England, both of whom ignored the fact that it actually belonged to the Indians who lived there.

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[27] Ibid, 3.

[28] Harris, 140. "[Louisburg] was returned to the French in exchange for Madras…So long as it remained in French hands the New England colonies would not be safe from French attack, and the control of the sea would remain in doubt."

A substantial French force advanced along the Ohio and built a fort at present day Erie, Pennsylvania, and another one fifteen miles away on French Creek that they named Ft. Le Boeuf. Alarmed, the Lieutenant Governor of Virginia, Robert Dinwiddie, dispatched twenty-two-year-old Major George Washington of the Virginia militia to meet with the French and present them a letter ordering them off King George's property. He traveled to Le Boeuf and presented the letter, which evoked a return letter from the French to Dinwiddie claiming the land belonged to King Louis.[29]

The Virginia House of Burgesses authorized Dinwiddie to draw upon the colonial treasury to send Captain William Trent with a militia company to build a fort at present day Pittsburg and to enlist the aid of the Indians against the French. Washington, now promoted to Lieutenant Colonel, took the field with about 200 militiamen to force the French (who substantially outnumbered him) to abandon their new forts. The French moved quickly to counter the English threat. In April 1754, they attacked Pittsburg and forced Trent to surrender. They destroyed his half-built fort and built Fort Duquesne, a much more formidable structure, in its place.[30]

Aware of Washington's approach, the French sent Ensign Joseph de Jumonville with an escort of thirty-five men to warn Washington away. Indian scouts informed Washington that a French force was closing on his position and he

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[29] Borneman, 21-23.
[30] Daniel Marston, *The French and Indian War 1754-1760* (Oxford, UK: Osprey Publishing, 2002), 12.

assumed he was about to be attacked. He attacked first, killed a number of the French and captured others, including Jumonville.[31] While Washington interrogated the captives, Tanacharison, an Indian ally of the colonials, tomahawked Jumonville to death before Washington could stop him.[32]

Washington order his men to construct a hastily built defensive position, Fort Necessity. With little military experience or knowledge, however, Washington situated the fort in a small valley surrounded by hills -- a militarily indefensible location. The colonists could not long resist the avenging French force led by Jumonville's half-brother. During the surrender negotiations, Washington, because he did not understand the French language, admitted to allowing the murder of Jumonville. This official admission outraged France and strained relationships with Britain to the breaking point. Diplomatic niceties aside, the French and Indian War (1754-1763), also known as the Seven Years War (1756-1763) in Europe, began in the backwoods of Pennsylvania.[33]

The colonists, particularly in the north, generally expected and sometimes even welcomed the war. They were usually in conflict with the French and their Indian allies to one degree or another ranging from normal frontier friction to outright undeclared war. Because the French were more interested in trade than in seizing land, Indians often found them to be good allies against the expansionist

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[31] Ibid.
[32] Borneman, 21-22.
[33] United States Department of State Archive, *Incidents leading up to the French and Indian War, 1753-1754.* Archives Released on-line 2001-2009, http://2001-2009.state.gov/r/pa/ho/time/cp/90613.htm (accessed July 14, 2014).

British. Both Indians and their French allies raided British settlements, the former to protect their territory and the latter to maintain their control of the fur trade. The French posed yet another reason for concern.

"France was a Catholic nation," Lawrence James wrote, "which aroused deep fears among the colonists, a large proportion of whom were Presbyterians." Many colonists [or their near ancestors] had fled to America to escape religious persecution and bore no love for France, a Catholic power with a dark history of persecuting heretics. "Their anxiety was not solely based on an ancestral loathing of popery," James continued. "Catholic priests and missionaries were abroad among the Iroquois and, with official approval, were warning them that the British intended to seize all Indian lands."[34]

French strength in North America was primarily concentrated along the St. Lawrence River and in the cities of Quebec and Montreal. After the War of the Austrian Succession, the French initiated the aggressive fort building program described above which reached westward from New France to strategic points such as Detroit and Niagara and then southward into the disputed territories of the Ohio Valley. Throughout the war, French forces enjoyed excellent leadership, particularly in the person of the Marquis de Montcalm, an intelligent and adaptable officer. The French military consistently inflicted crushing defeats on the much larger British forces until Montcalm perished on the Plains of Abraham while defending Quebec in 1759.[35]

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[34] James, 87.
[35] Fowler, 210-212.

British strength was concentrated along the Atlantic coastline, extending as far west as the Appalachian crest. There were six British commanders-in-chief during the war of whom many American militiamen considered only three competent: William Shirley, Jeffrey Amherst, and Thomas Gage. The others, particularly Lord Loudon who oversaw the military disasters of 1756 to 1758, damaged colonial security and sowed the first seeds of sullen resentment toward the mother country.[36] The British, however, enjoyed two advantages that allowed them to overcome the initial stupidity and inexperience of their generals in frontier warfare: control of the seas by the Royal Navy and a colonial population twenty times the size of the population of New France.[37] These two factors made the French position in North America fundamentally untenable regardless of initial victories.[38]

The Board of Trade anticipated the coming war with France. It requested the North American colonies to hold a conference in 1754 to determine how they could improve relations with Indians and pool their military resources against the French in Canada. The resulting Albany Congress met from June 19 to July 11.

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[36] Francis Jennings, *Empire of Fortune: Crowns, Colonies, and Tribes in the Seven Years War in America* (New York: W.W. Norton Co., 1988), 310-311. "When they [Americans] published their Declaration of Independence in 1776, some of their grievances had arisen relatively recently, but others can be traced back to Earl Loudoun's mission and behavior."

[37] Marston, 8. "New France was at a numerical disadvantage due to a disparity in population: New France had 75,000 settlers, while the Thirteen Colonies had 1.5 million people."

[38] Harris, 125. "The whole incident of the Albany Congress and the subsequent correspondence is worth careful study because it contains so clearly the issues of the later struggle. The organization of the empire could not remain as it was. There were three possible developments. Either a new discipline and control would be imposed on the colonies from London; or some sort of imperial federation would be worked out in full cooperation with the colonists; or there would be separation. Because the third possibility was the course which history took, it does not follow that it was the inevitable one, but it must be admitted that the odds were heavily weighted against the other two."

Benjamin Franklin of Pennsylvania and Thomas Hutchinson of Massachusetts presented a *Plan of Union*, which failed passage. Still, the Albany Congress was a model for the later Stamp Act Congress of 1765 and the First Continental Congress of 1774, both of them milestones on the road to revolution. Moreover, the *Albany Plan of Union* echoed in both the *Articles of Confederation* and the *Constitution*. If adopted, some scholars argue, Franklin's plan would have probably prevented the revolution two decades later.[39]

At the time the war started, there were almost no royal troops in North America, but that quickly changed when news of Washington's defeat arrived in London. The Prime Minister, Lord Pelham, Duke of Newcastle, was determined that the French would not encroach on English territory, but he was anxious to resolve the issue without igniting another general war between Britain and France. "Within a week after Dinwiddie's official dispatches arrived," historian Fred Anderson wrote, "Newcastle...had secured the king's approval for a plan to send two regiments of Irish infantry to America under the command of Major General Edward Braddock."[40] On January 16, 1755, two understrength regiments, the 44th and 48th Foot, along with a battery of field artillery, boarded troop ships in freezing weather, sailed from County Cork across the Atlantic in winter, and landed in Virginia on March 10.[41]

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[39] Anderson, 77-85.
[40] Anderson, 68.
[41] Ibid.

Braddock arrived in Virginia three weeks before his troops and immediately reactivated two regiments, the 50th and 51st Foot, which had been deactivated in 1748. Now, American militiamen would fill their ranks and be recruited to flesh out the 44th and 48th as well.[42] Recruiting colonials into the manpower-challenged British regulars was initially very successful. "[D]uring the opening two years of the war some 7,500 men were enlisted in America by British regiments," historian Stephen Brumwell wrote, "compared with 4,500 regulars sent from Britain itself." After the initial wave of recruits, however, enlistments by Americans in British regiments almost completely dried up.[43]

British regular army soldiers serving in North America during the French and Indian war were young, physically fit, and used to hard work. (See Appendix C for a list of British Army regiments in North America during this time.) Brumwell noted that most British regulars (private soldiers serving during 1757) were between twenty and thirty years of age, stood between five feet six inches and five feet eight inches tall, had served two years or less prior to being sent to North America, and most had worked primarily as lesser skilled laborers. Thirty percent were English, 28 percent were Scots, and another 28 percent were Irish. (For officers the percentages were only slightly different at 25 percent English, 32 percent Scots, and 31 percent Irish.) Non-British European professional soldiers

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[42] Fowler, 54. Braddock had seven regiments, seven independent companies, detachments of royal artillery and royal marines, and every American militiaman in the colonies at his disposal. Three regiments were in Nova Scotia, two Irish regiments were understrength, and two regiments existed only on paper. Fowler wrote, "Braddock's force was more impressive on paper than in fact."

[43] Stephen Brumwell, *Redcoats: The British Soldier and War in the Americas, 1755-1763* (New York: Cambridge University Press, 2002), 19.

who sold their swords to the crown made up the remainder of troops. The four battalions of the 60th Foot (the Royal Americans) contained the highest percentage of men recruited in America (36 percent), followed by the 47th Foot (24 percent).[44]

Braddock summoned the royal governors to a conference at Alexandria, Virginia, in the middle of April. He read his commission to them and then announced that William Shirley, the respected governor of Massachusetts, would be Major General and second in command. Shirley would gather the 50th and 51st at Albany as well as any available northern militia units and then proceed against the French forces at Fort Niagara at the head of Lake Ontario. Braddock would lead the 44th and 48th, reinforced by Virginia Militia, in an attack on Fort Duquesne located at modern Pittsburg. Then the two armies would march toward each other, sweeping up the French forts along the Ohio as they went. William Johnson, the British Superintendent of the Iroquois and Other Northern Indians, was to gather a strong force of local militia from New England and New York along with as many friendly Iroquois as possible, and then attack Crown Point on Lake Champlain. A fourth expedition, outfitted in Boston, would march against two French forts in Nova Scotia.[45] "It was a madly ambitious plan," historian Fred Anderson wrote, "approved by men studying maps in London unaware that their ignorance of American geography, politics, and military capacities had foredoomed it to failure."[46]

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[44] Brumwell, 315-320.
[45] Marston, 28-32.
[46] Anderson, 87-88.

The colonial governors saw the impossibilities at once and attempted to explain them to ever-arrogant Braddock, but he ignored them. The government in London had written and approved the plan, and Braddock now had his orders. He also demanded that since the Albany Congress had failed to establish or fund a unified colonial war effort the previous year, each colony must pay into a communal war chest to meet the expenses of fighting the French.[47] The governors protested that only parliament had the authority to establish a common defense fund in the colonies, but Braddock again brushed them off. The colonies needed to contribute the money quickly, he told them, and then he ordered his plans put into effect.[48]

Braddock's Defeat

As colonial governors feared, 1755 was not a good year for the British military effort. Like most British officers, Braddock had a low opinion of American militiamen who did not march well, if at all, and who displayed little concern about uniforms or saluting. He referred to them as "very indifferent men."[49] He put these seasoned frontiersmen, many of whom had previous experience fighting in the backcountry and who could have made a difference in the campaign's eventual outcome, at the end of his column where they would be out of the way.[50] Braddock

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[47] James, 87.
[48] Anderson, 88-89.
[49] James, 88.
[50] Franklin Thayer Nichols, "The Organization of Braddock's Army." *The William and Mary Quarterly*, Third Series, Vol. 4, No. 2, (April 1947), 130. At least one historian, Nichols, contests the widely accepted idea that Braddock had a dim view of his militiamen from Virginia, Maryland, and North Carolina. "Far from despising colonial troops, the general was eager to get

started the campaign with several hundred Delaware and Shawnee scouts but he quickly alienated them during a council with his declaration that the warriors were fighting for the dignity of the British Empire, not for the return of Indian lands taken by Indians allied with the French. Feeling no strong compulsion to fight for the dignity of the British Empire, the Indians melted away leaving Braddock with only seven Mingo scouts.[51]

Not until the summer of 1758 were the British regulars able to attract a significant number of Indian combatants who perceived the war to be in their own interests.[52] Braddock also disdainfully disregarded advice from colonial officers, including his aide-de-camp, George Washington, and other experienced backcountry fighters.[53] (Of course, Washington's previous military experience was less than stellar; it had ended in disaster and helped spark the conflict.)

The British began their advance on Fort Duquesne in June 1755. On July 9, they collided with the smaller French force composed of both regulars and Indians, commanded by Captain Lienard de Beaujeu, in the forest along the Monongahela River in Pennsylvania. Braddock committed a number of serious tactical blunders before and during the battle, and was soundly defeated by a force

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as many as possible for his army." Nichols wrote that the widely reported story about Richard Henry Lee being rebuffed by Braddock when offering himself and his troops was entirely a myth.

[51] Borneman, 52-53.

[52] Brumwell, 210.

[53] Peckham, 140. "Braddock's Secretary, who was Governor Shirley's son, was acute enough to observe: 'We have a general most judiciously chosen for being disqualified for the service he is employed in, in almost every respect.'"

of French regulars, Canadian militia, and Indians, only one-third the size of the British army.[54]

The Virginia frontiersmen, experienced Indian fighters, provided the only credible resistance to the King's enemies that day. They took shelter and returned fire while the British stood in ranks in a clearing and let the French and Indians shoot at their red coats from cover. A few British soldiers tried to imitate the Americans, "…but Braddock would have none of such things," D.M. Diangreco wrote. "Such fighting was not prescribed in the drill book…and he would tolerate no such disregard of order and discipline."[55]

Killed in the fighting, Braddock was buried secretly in the middle of a road so that marching troops and supply wagons passing overhead would obliterate the grave and prevent the enemy from finding it. Routed, the British fell back to Fort Cumberland, their starting point, protected from further attack by a rear guard composed of the "indifferent" Virginia militiamen, although the French did not pursue them.

"The battle lasted three hours," Howard Peckham wrote, "of the eighty-six [British] officers present, sixty-three were killed or wounded…Of the fourteen hundred and fifty troops, almost a thousand were wounded or killed. The French suffered fewer than sixty casualties."[56]

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[54] John Stewart, *American Military History Volume I: The United States Army and the Forging of a Nation, 1775-1917* (Washington, D.C.: U.S. Government Printing Office 2004), 37-38. Braddock violated the military principles of security and manoeuver.
[55] D.M. Giangreco, *United States Army: The Definitive Illustrated History* (New York: Fall River Press, 2011), 15.
[56] Peckham, 146-147.

The remainder of Braddock's defeated army marched to Philadelphia leaving the frontier settlements open to attack. A small force of militiamen from Virginia, Maryland, and Pennsylvania were all that stood between frontier families and the Indians and they served well. Conventional European tactics were worthless in the wilderness, and the British still had a lot to learn about fighting Indians and fighting Frenchmen using Indian tactics. "The militias, on the other hand," Robert Tonsetic wrote, "were well adapted to irregular warfare.[57]

Not only did a relatively few Indians and Frenchmen inflict a humiliating defeat on a much larger force of Englishmen at the Battle of the Monongahela, but in the aftermath of the battle, the French discovered Braddock's trunk full of orders and correspondence. Among other items, they discovered British plans for conquering all of Canada contrary to existing treaties. "When these documents reached Paris," Borneman wrote, "they were a diplomatic bombshell. So much for Newcastle's limited war."[58] Also found were detailed plans for the other three attacks scheduled for that summer. Alerted to the danger, the French and their Indian allies in Canada made their preparations.[59]

Few Europeans, Americans or native peoples, had previously witnessed the king's soldiers so badly beaten in battle or so entirely routed that they abandoned their artillery and baggage, out of fear of pursuit by an enemy force much smaller

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[57] Robert L. Tonsetic, *Special Operations During the American Revolution* (Havertown, PA: Casemate Publishers, 2013), 17.
[58] Borneman, 56. Braddock's Defeat is more properly called The Battle of the Monongahela.
[59] Jennings, 159-160. "[T]he papers disclosed to fascinated French eyes all the strategic military plans for campaigns against [French forts]." To strengthen places the captured plans indicated would be attacked, the French repositioned Braddock's captured cannon there and reinforced the garrisons.

than their own. "This whole Transaction," Benjamin Franklin observed, "gave us Americans the first Suspicion that our exalted Ideas of the Prowess of British Regulars had not been well founded."[60]

Braddock's death left William Shirley in overall command in British North America.[61] Shirley's army departed Albany to attack Fort Niagara as planned. His Indian scouts reported a strong build up in French numbers at the fort, the result of the French discovering Braddock's trunk. With his men now exhausted, with the element of surprise lost, and facing a sharply increased number of French defenders, Shirley cancelled the operation and built a fort at Oswego, 150 miles south of Fort Niagara.[62]

William Johnson, meanwhile, marched his 2,000 militiamen and 600 Indians to the southern end of Lake George where the French, forewarned by the information in Braddock's trunk, waited in ambush with a thousand regulars and an equal number of Indian allies. The daylong battle was inconclusive although both sides claimed victory. The high point occurred near dusk as the conflict was ending. Two hundred recently arrived colonial militiamen attacked the retreating French, drove them off, and captured their baggage. On the strength of this militia attack, the British claimed victory and knighted Johnson. He built Fort William Henry and garrisoned it over the winter. Although undefeated, Johnson was unable

[60] Ibid, 159.
[61] Marston, 31.
[62] Ruth Sheppard, *Empires Collide: The French and Indian War 1754-63* (Oxford, UK: Osprey Publishing, 2006), 84-85.

to complete his mission.[63] Significantly, the American militia had held its own against French regulars.

Only in Nova Scotia were the British successful. A force of 2,000 militia and 280 regulars sailed from Boston to attack Fort Beausejour. The British bombarded the fort forcing a thousand Acadian militia and several companies of French regulars to surrender. They continued on to capture Fort Gaspereau and spend the winter preparing to campaign against Fort Louisburg. Meanwhile, they deported about 6,000 Acadians, first to ports in the British colonies and ultimately to New Orleans to prevent them from fighting for the French again.[64]

Having defeated the British army at the Monongahela, Indians, often in retaliation for encroachment on their land, raided the frontier from New York to Carolina, opposed almost solely by local militias.[65] "After Braddock's Defeat, French-allied warriors ravaged the frontier settlements of Virginia, Maryland, and Pennsylvania," wrote historian Alan Taylor. "The raids pinned down colonial troops which enabled the French to take the offensive..."[66] The fighting on all sides was brutal and barbaric.

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[63] Peckham, 150.

[64] Ibid, 142-143. "After more than forty years of indulgence toward the recalcitrant [and Catholic] Acadians, the British government finally determined on harsh measures to solve the dilemma of this pocket of British citizens who refused all duties and responsibilities of allegiance to England while enjoying religious freedom and exemption from military obligations and even taxes, privileges they could never have enjoyed as French citizens…in July, 1755, [they] were ordered deported."

[65] Sheppard, 89. "Washington's Virginia Regiment was virtually the only force covering a 350 mile frontier...it was unable to stop [all] the war parties that could rapidly materialize, strike, and disappear into the wilderness with impunity."

[66] Alan Taylor, *Colonial America: A Very Short Introduction* (New York, Oxford University Press, 2013), 109.

Things proceeded dismally for England through 1756 and 1757, both militarily and politically, and in Europe as well as in America. On May 18, 1756, Great Britain declared war on France, which responded with its own declaration on June 9. Real disaster struck in August when the Marquis de Montcalm captured three British forts at Oswego: forts Ontario, Pepperell, and George.[67]

Montcalm reported to Quebec, "[I have] 1,600 prisoners, five flags, one hundred guns, three military chests, victuals for two years, six armed sloops, two hundred bateaux and an astonishing booty made by our Canadians and Indians."[68]

The following year, 1757, looked little better with twin disasters in August. A mixed force of British regulars and New England militia tasked to reduce Louisburg found a strong French fleet waiting for it so the troop transports returned to Boston on August 4. The warships remained, hoping to bring the French fleet to battle, but a hurricane struck on September 24 almost destroying the British fleet. One of the British line-of-battle ships, *HMS Tillbury*, sank and six others lost their masts. The British were not going to occupy Louisburg anytime soon.[69]

The second disaster occurred on the southern edge of Lake George in western New York when Montcalm captured Fort William Henry on August 9. Six hundred regulars from the 35th Foot and 1200 militia from New York, Massachusetts, New Hampshire, and New Jersey garrisoned the fort. Many died during the siege and the Indians massacred another 700 after the surrender. The

[67] Ibid, 93-95
[68] Borneman, 69.
[69] Sheppard, 112.

Ottawa, Abenaki, and Potawatomi Indians who fought alongside the French murdered and robbed many of the British prisoners as they left the fort. Montcalm did little to stop them, declaring, "I have been obliged here to gratify the Indian nations."[70] In reality, the French originally had recruited assistance from Indians by promising that they could plunder the fort after the victory. There was yet another atrocity. "Despite the anguished protests of the Jesuit fathers," historian John Miller wrote, "several of the victims were boiled and eaten."[71] Once they had looted the bodies, the Indians disappeared into the forest and went home. It had been another dismal year for the British.

Re-enter William Pitt

British fortunes began to improve in late 1757 when William Pitt again assumed office as Prime Minister. Stung by Braddock's defeat and the general lack of success in North America, Pitt made a sweeping policy change. The focus of the war now became divesting France of her overseas empire. Pitt put his plans into operation during early 1758 and they quickly began to bear fruit.[72] He promised the colonists that the government intended to make North America the focus of the war and to permanently drive out their French enemies who had so often supplied the Indians with armaments and support. To facilitate this, he asked

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[70] John Romeyn Brodhead, ed., Documents Relative to the Colonial History of the State of New York: Procured in Holland, England, and France (Albany, NY: Weed, Parsons and Company, 1856), 574.
[71] John C. Miller, This New Man, The American: The Beginnings of the American People (New York: McGraw Hill Co., 1974), 644.
[72] Marston, 40.

the colonies to raise a select militia of 20,000 men, now called Provincial troops by the British government, a militia that had its roots in Elizabeth's trained bands.[73]

The provincial volunteer forces were a type of select militia that had developed in the colonies at about the time of the War of the Austrian Succession, but there was an important distinction between them and other militia entities. The traditional militia was structured from the bottom to the top whereas the new Provincial troops were structured from the top down. The royal governor would appoint a commander, generally someone who was popular enough to insure enough enlistments, who would then appoint his subordinate officers. The lower grade officers were responsible for recruiting the men out of the unembodied militia who, in traditional militia style, would elect their corporals and sergeants. The Continental Army, as distinct from the militia, grew out of this specialized form of select militia, as well as out of the community militias and out of city militias such as the Pennsylvania Associators who also closely resembled Elizabeth's trained bands.[74]

Pitt sweetened the deal by offering for the crown to bear the full expense of the war. His generosity reenergized the fealty of the colonists to the crown. "On the morning after Pitt's letter was read to the Massachusetts Assembly," Borneman wrote, "the same legislators who had refused to accord Lord Loudoun his request for 2,128 men voted unanimously to raise 7,000 on the terms proposed by Pitt." Other colonies quickly followed suit. "Within a month," Borneman continued,

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[73] Stewart, 34-35.
[74] Ibid.

"Pitt's new policies had resulted in pledges to arm more than 23,000 provincial militia, plus thousands more to be employed as teamsters, bateaux operators, and craftsmen."[75]

Pitt sent an unprecedented number of British regulars to the colonies to fight the French alongside the American militia. A total of twenty-seven regiments, one battalion, several independent companies, a formation of the Royal Artillery, and several companies of Royal Marines, all regulars, served on the colonial front during the war. (See Appendix C for a list of British and French regiments serving in North America during the French and Indian War.) Replaced long before, the longbow had disappeared and all regulars and militiamen now carried firearms. Many Indians used bows (not longbows), but none of the Europeans did. The most advanced firearm during the French and Indian War was the muzzle loading flintlock musket, developed about 1700.[76]

American colonial gunsmiths, responding to the special localized needs of hunting and Indian fighting, had morphed the flintlock to its highest evolution with the Pennsylvania rifle (also called the Lancaster or Kentucky rifle) by about 1740.[77]

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[75] Borneman, 120. See also: Anderson, 309. Historian Anderson elaborates on this. He wrote that Pitt spared no effort to defeat France in North America. At the time, the Americans were raising their 20,000 man select militia, the royal army numbered 91,000 and was recruiting another 10,000. In addition, Parliament authorized raising another 32,000 militia to defend the home islands from an expected French invasion, many of whom needed arms issued by the government. The Royal Navy employed 71,000 men on its ships and thousands more ashore at naval bases, anchorages, docks, etc., and was looking for as many more as it could get while building scores of new frigates and line-of-battle ships of new, greatly improved design.

[76] Sheppard, 24.

[77] John G.W. Dillin, *The Kentucky Rifle* (New York: Ludlum and Beebe, 1946), 11-16. "Later this same [Lancaster] rifle contributed enormously to the success of American arms...and was a mighty factor in shaping the destinies of our great American republic."

This was the preferred weapon of the frontier militia, while most of the urban militia and British regulars carried the Tower Musket, commonly known as the "Brown Bess." The French armed their soldiers and allies with muskets similar to the Brown Bess crafted in St. Etienne and commonly called by the name of the town.[78]

The Pennsylvania rifle was a much lighter and better balanced flintlock with a rifled barrel, making it more portable as well as much more accurate than either the Brown Bess or the St. Etienne. The best marksmen among American militiaman could consistently shoot a man with a Pennsylvania rifle at 200 yards, accuracy unheard of in Europe, but the rifle had some shortcomings. Loading it took three times as long as the Brown Bess and it would not attach a bayonet. This made it unsuitable for service with the line-of-infantry, but it was an unexcelled weapon in the hands of light forces engaging the enemy at a standoff distance.[79] From then until now, the rifle has been the heart and soul of the American militia.

Pitt's new war plans, relieving France of her overseas empire, went into effect immediately; during 1758, 1759, and early 1760, they came to fruition and brought the French and Indian War to a victorious close for the British. Remembered as a good year, 1758 nevertheless began inauspiciously for the British with a defeat at Ticonderoga that rivaled their defeat at the Monongahela in 1755. Four thousand Frenchmen under the Marquis de Montcalm defeated and drove off

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[78] Philip B. Sharpe, *The Rifle in America* (New York: William Morrow Co., 1938), 5. Most American soldiers during the Revolutionary War carried French St. Etienne muskets stamped "US." The St. Etienne and not the Tower Musket became the model for the famous Springfield muskets and rifles.

[79] Dillin, 7. See Also: Stewart, 40-41. Richard Stewart amplified Dillin's statement by noting that an American rifleman could hit a man in the *head* at 200 yards. He describes the role the Pennsylvania rifle played in the development of "light infantry" units.

fifteen thousand British soldiers (9,000 militia and 6,000 regulars) under Major General James Abercrombie in July. Abercrombie's deputy commander, Lord Howe, had led the army to a series of successes until his death in battle on July 6. The British campaign against Ticonderoga fell apart at that point with Abercrombie too timid to lead the army. "Abercrombie had heard the terrible din of battle, but had not dared to venture forth to witness it," Borneman wrote. "Lord Howe had lost his life by being willing to lead his army. Abercrombie almost lost his army by refusing to lead it."[80] Reminiscent of Braddock's defeat, the British army was now a beaten mob and retreated on July 9 with two thousand men less that it had brought with it two weeks earlier.[81]

British fortunes improved later that month when Brigadier Jeffrey Amherst took Louisburg. American militiamen had captured Louisburg in 1745; the British had bargained it away, but now Americans helped seize it again. Amherst landed in Nova Scotia on June 8 with fourteen thousand regulars and militia backed by forty warships of the Royal Navy. The British had captured strategic positions around Louisburg by June 25, destroyed a small French fleet anchored in the harbor, and two days later, the fortress capitulated. This pivotal action opened the way for an eventual up-river attack on Quebec and the complete conquest of the French in Canada.[82] The year ended with several small British fiascos, but also saw the French pressured to abandon Pittsburg.

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[80] Borneman, 137-138.
[81] Ibid.
[82] James, 91.

Everything went well for the British the following year, 1759. During July, three key French forts including Niagara and Ticonderoga fell to the British. Major General James Wolfe's troops landed near Quebec in June and after a summer of skirmishing and maneuvering fought and won the Battle of the Plains of Abraham on September 13. Both commanders, Montcalm of France and Wolfe of England, lost their lives during the fighting.[83] On September 17, the French surrendered Quebec. They failed to retake it the following year, 1760, even after inflicting a severe defeat on the British garrison. The French lay siege to the city but retreated to Montreal when a British fleet arrived. The British pursued them and on September 8, 1760, the French surrendered all of Canada to the British.[84]

The Seven Years War raged on for three more years in Europe, not ending until the signing of the *Treaty of Paris* on February 10, 1763, but it was over in North America once the French lost Quebec.[85] During this first true world war, American colonial militiamen had stood shoulder to shoulder with British regulars throughout the fighting in North America, often supplying the bulk of troops and fighting as well as the regulars, all contrary to the reports of their detractors in Britain. Richard Stewart observed that two traits emerged during the frontier war in Virginia, Pennsylvania, Massachusetts, and New York, that characterized the American army from the French and Indian War through the two world wars of the 20th Century.

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[83] Fowler, 209-212.
[84] Ibid, 239-240.
[85] Borneman, 273. "When Vaudreuil signed the capitulation of Montreal and with it all of Canada, France was expelled from North America east of the Mississippi."

The first of these was the primary position of the militia for community defense and reliance on volunteer forces for more extended operations. Out of this grew the second trait, the formation of relatively permanent volunteer units within the militia. Both of these formations would be in evidence throughout subsequent American history. "The fear of a standing army of professionals, an English heritage," Stewart wrote, "had become an even stronger article of faith in America...the civilian authority…had always kept a strict rein on the military, a tradition that was to have a marked effect on American military development."[86]

How "Americanized" the British colonial militia had become was apparent when Parliament's *Militia Act of 1762* passed in March. It addressed a number of home-island issues, but also abandoned the Elizabethan practice of holding militia musters on various days during the year. At the discretion of the county lord-lieutenant, British militia now mustered twice a year for two weeks or else once a year for twenty-eight days under the new law.[87] This arrangement did not suit the colonists, however, and was foreign to their militia traditions. No American colony followed suit. "The Great War for Empire," John Mahon wrote, "did not alter the militia system of the colonies…[the colonists] also learned that the British military system was flawed and perfectly capable of defeat."[88]

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[86] Stewart, 41.
[87] Western, 189. The present day United States National Guard meets for twenty-eight days on weekends throughout the year and conducts a two-week deployment exercise once a year for a total of 42 days per year.
[88] Mahon, 30.

The British victory brought an important and immediate result. The French were ousted from Canada (at the last moment the British decided not to trade Canada for a sugar island in the Caribbean). A hundred years of skirmishing with the French along the northern colonial frontier ended.[89] The next time authorities in Canada purchased American scalps from the Indians, it would be British money paying for them.

Other results bore long-term bitter fruit. British officers and colonial militiamen discovered they did not have much respect for one another. Despite their significant contributions to the war effort, British officers held American militiamen in contempt and frequently referred to them within their hearing with uncomplimentary and derisive terms.[90] American militiamen had watched arrogant British commanders, experienced in European wars, commit what the frontiersmen considered gross stupidities, errors that cost both victories and lives.[91] The British government had also amassed a huge war debt and soon began to look for ways to coerce the colonists to help foot the bill, even after Pitt had promised they would not have to.[92]

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[89] Colin Calloway, *The Scratch of a Pen: 1763 and the Transformation of North America* (New York: Oxford University Press, 2006), 8. The gross domestic product of Canada was 14,000 pounds per year, while that of Guadalupe was 6,000,000 pounds per year. A public debate fueled by a pamphlet war erupted but in the end, the British narrowly decided to keep Canada.

[90] Miller, 660. "But even more important in its effects in creating this sense of common identity among [American] provincials was the open contempt they received from British commanders...British officers regarded the provincials as a lesser breed not to be compared with true-born Britons."

[91] Stewart, 33-34. Stewart writes of three thousand American militiamen transported to Spanish Colombia to fight an unwinnable campaign under inept British army leadership during the War of Jenkins Ear. Fewer than six hundred of the three thousand militiamen ever returned home. "It did not inspire the average American soldier with admiration for British military leadership." Service under Braddock, Abercrombie, and others fueled the contempt.

[92] Borneman, 120.

In addition, Jeffrey Amherst, flushed with the recent victory over the French, did not realize that France's Indian allies did not consider themselves a conquered people. He blundered in his diplomatic dealings with the Delaware and other Indians, helping to precipitate Pontiac's War. The resistance by Indians living west of the Appalachians helped convince the British government to issue the *Proclamation of 1763*, restricting colonial expansion on Indian lands which, in turn, helped bring about the Revolution.[93]

Concerning the beginnings of the rift, R.W. Harris observed that the "conquest of British Canada greatly strengthened the spirit of independence of the American colonists."[94] Ameicans found a new sense of nationhood during the woodland struggles, and began referring to themselves as Americans instead of as British. "They no longer needed British help to defend them from the French and Spanish," Harris continued. "Yet this was just the moment chosen by the British government to inflict new controls and indignities on the colonists."[95]

Promoted to Major General after the surrender of Canada, Amherst decided in the fall of 1761 to end the time-honored practice of giving gifts to Indian tribes in the fur trade. William Johnson begged him not to do so, but the general was adamant. "It is not my intention," historian Daniel Richter quoted Amherst, "...to attempt to gain the friendship of Indians by presents..."[96] Amherst, as historian

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[93] Kenny, 117.
[94] Harris, 144.
[95] Ibid.
[96] Daniel K. Richter, *Facing East From Indian Country: A Native History of Early America* (Cambridge, MA: Harvard University Press, 2001), 187-188. "Sir Jeffrey Amherst sought to confine the Great Lakes and Ohio Country fur trades to army posts, to ban the sale of weapons,

Kevin Kenny wrote, did not understand that he was initiating the "largest Indian rebellion in colonial American history."[97] For generations gift giving had been an expected result of diplomacy between colonists and Indians. "[D]iscontinuing gift giving not only insulted the Indians," Kenny continued, "it exposed them to economic hardship, and in some cases starvation...Amherst provoked just the outcome he was trying to avoid."[98]

As historian John Shy simply wrote, "It was a stupid policy."[99] Scholar Jon Parmenter argued that Amherst was motivated by the crushing national debt the British had acquired because of the Seven Year's War. Gifts for the Indians, he reasoned, were unnecessary and therefore wasteful. He also restricted the sale of firearms to Indians and reneged on his promise to rent the land British forts now stood on.[100] These were not the only Indian grievances; there was also the problem of the continuing thirst of the colonists for Indian land.

Once the French and Indian War ended and the dust began to settle, Indians resisted as the westward movement of white settlers began anew. Avaricious land speculators coerced and cheated tribes out of their lands (one of the most infamous incidents was perpetrated by the Connecticut-based Susquehanna Company) and sold it to land-hungry settlers who wanted to start a new and better life with land of their own in the new world. According to the understanding of many whites of the

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ammunition, and rum to Indians, and to half the expensive custom of diplomatic gift giving everywhere."

[97] Kenny, 117.

[98] Ibid.

[99] Shy, 90.

[100] Jon William Parmenter, "Pontiac's War: Forging New Links in the Anglo-Iroquois Covenant Chain, 1758-1766." *Ethnohistory*, Vol. 44, No. 4, (Autumn, 1997), 623.

day, this was acceptable conduct. Most (although not all) colonial Americans saw the acquisition of Indian lands and the displacement of the Indians as both moral and necessary.

They used a variety of self-serving justifications. The Indians did not "improve" or "enclose" their land, the political philosopher John Locke had written, which left it open and available for anyone to claim. (See Appendix D for an essay on Locke's *Second Treatise on Civil Government.*) Locke did not take into account the fact that Indians used their land differently than Europeans.[101] Locke's position on removing tracts of land out of the "common" or state of nature (terrain that existed as it always had since the time of creation without change from the hand of man) provided a portion of the legitimizing political ethic for the appropriation of Indian lands in the British colonies and the later United States.[102]

The land could not be owned collectively in the Indian way, the colonists asserted, but could only be owned individually after it had been improved by the labor of an individual and then enclosed, that is, separated from the remainder of

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[101] John Locke, *Two Treatises of Civil Government and A Letter Concerning Toleration,* ed. Ian Shapiro (New Haven and London: Yale University Press, 2003), 111-113.

[102] David H. Getches, et al, *Cases and Materials on Federal Indian Law: Sixth Edition* (St. Paul, MN: West Publishing Co., 2011), 61-62. Everyone considered the foremost political philosopher in English history, John Locke, authoritative. Locke had said that unenclosed land was in a state of nature and that no one owned it, thus it was open to any man who would mix his labor with it and enclose it. However, the *Royal Proclamation of 1763* by King George III forbade white settlement west of the Appalachian Ridge, reserving the western lands for the exclusive use of the Native Americans. This constraint infuriated Americans who felt the king was denying them a natural right the Creator had provided and they added it to the list of grievances in the *Declaration of Independence* (1776).

nature. It then became "property" and was owned by an individual and reserved for that individual's exclusive use.[103]

The right to acquire property in this manner tragically became an American characteristic, firmly rooted in the American psyche and in American law (such as in the later *Homestead Acts*). Locke's opinion was not only that Native American lands could be taken, but also that the government was responsible through the social contract to defend the individual citizen's rights to that now-enclosed property.

White colonial Americans employed other justifications as well, ranging from unfounded claims that the Bible declared that Christians could seize the lands of non-Christians, to the racist argument that "inferior" people could be dispossessed of their property. Some people, like the Quakers discussed earlier, disagreed. All of the justifications seem to have promoted both the self-interest of white colonists and encouraged their imperialist mentality.[104]

Pontiac's War and the Paxton Boys:
A Militia Gone Rogue

The Indians were very unhappy with the peace and for good reason. The French had surrendered, but they had not. Many had never been defeated in battle, yet the British treated them as a conquered people. Further, the hated land

[103] Locke, 133-145. See particularly paragraphs 41 and 42 (page 140) in which Locke discussed why Native Americans had no title to lands in common. Earlier (paragraph 30) he admitted that some Native Americans did occasionally make a personal property.
[104] Calloway, 294-297.

speculators (like George Washington) now picked up where they had left off during the war. The Wyoming Valley, specifically excluded as a sacred site at the Albany Conference sale in 1754, was considered unenclosed Indian land claimed by the Susquehanna Company. There was already a small Indian town in the valley, inhabited by a band of Delawares led by Chief Teedyuscung. Assassins set fire to the chief's house during the night of April 19, 1763, burning him and his wife to death. All of the sources claim the murderers were probably in the employ of the Susquehanna Company. The remainder of the village burned as well; two weeks later, the Susquehanna Company led settlers onto the site.[105]

A warrior called Captain Bull was numbered among the dead chief's sons. Two months after Teedyuscung's murder, three drunken members of the Northampton militia murdered Captain Bull's cousin, Zacharias, along with his wife and son, three unarmed baptized Moravian Christians, for no reason. Random violence against Native Americans intensified and some of them responded in kind. In mid-April, the British hanged an Indian slave woman in Detroit on scanty evidence, leaving her body on public display on the gibbet. "If the execution was to deter Indians from further violence," Colin Calloway wrote," it seems to have had the opposite effect...Two weeks after the hanging, Indian warriors attacked Detroit." War rumbled across the wilderness yet once again, and before it was over Captain Bull became a major player.[106]

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[105] Kenny, 116.
[106] Calloway, 54-56.

One day short of three months after the signing of the Treaty of Paris, May 9, a dozen Indian tribes in western Pennsylvania and the Ohio Country rose in rebellion against the British government by attacking but failing to capture Fort Detroit. These were the opening shots of Pontiac's Rebellion (1763-1766), named after the Indian leader Pontiac, even though the conflict grew much larger than what he had initially inspired. In reality, it was just a continuation of the French and Indian War. Within the next two months, the Indians overwhelmed eight British forts, killing their garrisons. Of the major forts, only Detroit and Pitt remained in British hands.[107]

By the end of May, the fighting had spread north and south until it immersed the entire frontier in a brutal conflict from New York to Virginia. Hundreds if not thousands of settlers, many of whom had illegally moved onto Indian lands, were murdered and their farms and settlements burned; thousands more abandoned their homes and fled to the east. During mid-June, the Shawnee and Delaware captured three more forts (Venango, Presqu'ilse, and Le Beouf) and on June 21 attacked two others (Ligonier and Bedford) but failed to capture them.[108]

The frontier people demanded that Pennsylvania's anti-military Quaker assembly embody a militia to protect them in this exigency and after several weeks of arguing how to pay for the militia, it finally did so on July 4, 1763, under the insistence of the new lieutenant governor, John Penn, grandson of William Penn. Funds were appropriated to raise 700 men for the three months of the common law,

[107] Borneman, 287.
[108] Merritt, 272-273.

100 men each from Lancaster, Berks and Northampton Counties, and 400 men from Cumberland County.[109] An informal Scot-Irish-Presbyterian militia had formed in Paxton six weeks earlier to protect the town and outlying farms. These men of the unorganized militia mustered into two Paxton companies a few days after the legislature embodied them as a select militia. The militia that would become infamous as the "Paxton Boys" was now in business, and they immediately went to work.[110]

The Paxton militia episode contains issues of lawful control that lie at the heart of the distinction between a militia and a criminal gang, a distinction also important in the present day. Because of this, it will receive more in-depth attention here than have comparable issues. The Paxtons were hardscrabble Scott-Irish from Ulster, strong Presbyterians, who had squatted on Indian lands in the west. The prosperous Quakers in the east were non-violent and they controlled the state house. Some scholars have interpreted the Paxton episode as a religious controversy or as an example of the democratization of the frontier or as an instance of extreme racism. While there is a measure of truth in each of these interpretations, it was fundamentally a conflict over land and security and contained several tragic massacres.[111]

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[109] Kenny, 119.

[110] Richter, 203. "Some of the Paxton militia had been the ones who discovered the tortured bodies of the...squatters at Wyoming, and they were out for revenge...during what was, after all, a decade-long period of vengeance killings on both sides."

[111] Wilbur R. Jacobs, *The Paxton Riots and The Frontier Theory* (Chicago: Rand McNally, 1967), 1, 3. "[The Scott-Irish] frontier settlers...were repeated victims of Indian savagery (from 1763, the time of Pontiac's uprising, some two thousand of the Scott-Irish had been killed or taken prisoner) [since attacks began during the fall of 1755, after Braddock's Defeat]...The winter of 1763 was a hard one for the men of Paxton who had to fight off Indian raids and whose wives and children

The first action fought by the Paxton militia was at Munsey Hill on the morning of August 21 where they killed "a fair number" of Indian warriors while sustaining only four of their own men killed. Encouraged by the victory, their "blood was up" and they went looking for more Indians to kill. The following morning they found and killed three more. This time the victims were innocent Moravian Christians who were traveling openly on a public road, unarmed, after having attended a farmer's market in Bethlehem where they had sold pelts and squash and had bought sugar and tea. These Conestoga, a Susquehannock tribe, had long lived in peace with their white neighbors, occupying land their ancestors had bargained for with William Penn during the 1690s. [112]

At this point, the Paxtons had clearly exceeded their legislative mandate that protected the friendly Indians and were evidencing a refusal to submit to the control of the lawful authorities, a condition that would become increasingly prevalent. They had become a group of vigilantes. The Paxton Boys themselves were certain that there was no such thing as truly friendly Indians and that the non-hostile natives were passing military information to the hostile tribes.[113] They had learned to hate Indians even more because they and their families had suffered horrible, unspeakable atrocities during the last few years of the French and Indian War and Pontiac's Rebellion, a situation they largely blamed on the Quakers.[114]

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were among the victims of the marauding savages. It is hardly surprising that hatred of the Indian was at a fever pitch."

[112] Kenny, 126.

[113] Merritt, 274.

[114] James Kirby Martin, "The Return of the Paxton Boys and the Historical State of the Pennsylvania Frontier 1764-1774," *Pennsylvania History*. Vol.38, no. 2, (1971), 118.

While the colonial government in Philadelphia was sure the Christianized Indians were innocent, an overwhelming majority of the frontier settlers agreed with the Paxtons and considered the militiamen heroes. It was on the authority of community consensus that the Paxton Boys later claimed to have acted. It is noteworthy that after the events about to be described, not a single Paxton Boy was identified as a participant (except a few public leaders who were granted amnesty) and not a single arrest was ever made. This was only possible because their supportive neighbors purposefully protected their identities.[115]

A proclamation was issued by King George III on October 7, during the middle of Pontiac's Rebellion and the Paxton chapter in it, which hit the North American colonies like a thunderbolt. The *Royal Proclamation of 1763*, stated, among other things, that the Appalachian crest would be the western edge of colonial settlement and that no British citizen would be allowed to settle west of what became known as the "proclamation line." The proclamation reserved the land between the proclamation line and the Mississippi River for the king's Indian subjects, and anyone who had already settled there was required to leave. The regulars would patrol the area to enforce departure and keep out new settlers. This was a shocking turn of events for the colonists, many of whom had come to the New World in search of land. This would find its way into the list of grievances

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[115] Tom Hatley, *The Dividing Paths: Cherokees and South Carolinians Through the Era of Revolution* (New York: Oxford University Press, 1993) 183-186. General Thomas Gage said, "All the people of the frontiers, from Pennsylvania to Virginia inclusive, openly avow that they [would] never find a man guilty for killing an Indian."

listed in the *Declaration of Independence* thirteen years later.[116] Angry Americans largely ignored the proclamation line and simply invaded lands owned by Indians. There were never enough British regulars to police it and keep them out.

Brutal frontier warfare raged into the autumn with Captain Bull, now Pontiac's lieutenant, and his combatants penetrating to within 50 miles of Philadelphia, killing many people, but often sparing those who had not invaded their territory. During this time, the Paxton Boys aggressively conducted a number of militia sweeps at Grand Island, Wyalusing, the Wyoming Valley, and other places, operations that met with only varied success because the Indians always seemed to know in advance that the militia was coming. The militiamen were convinced that the Conestogas and Moravians were feeding information to the enemy that cost both lives and failed opportunities for clear-cut victories.[117] They decided to do something about it and once again passed out of the control of the government and violated their legislative mandate. On December 14, 1763, the Paxtons attacked Conestoga Indiantown, a five hundred acre tract of land bargained for by the Conestogas with William Penn himself more than half a century earlier with promises of eternal friendship.[118]

About fifty men rode into Conestoga and massacred the six Indians who were present, the fourteen others having been away at the time selling homemade

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[116] Borneman, 280-281.
[117] Jacobs, 3. "But at Paxton it was rumored that these Indians were spies and were giving shelter to war parties, and in any case the Paxton Boys were in no mood to discriminate between friendly and hostile Indians."
[118] Merritt, 284.

brooms and baskets at nearby settlements. When the local colonial authorities became aware of the murders, they housed the remaining fourteen Indians (including six children) in a government workhouse in Lancaster to protect them.[119] On December 27, the Paxton Boys rode into Lancaster during the middle of the day and, forcing their way past the guards, slaughtered the fourteen Conestogas given sanctuary there. They vented their rage on the dead bodies of the Indians in much the same way they had often seen both Indians and some frontiersmen do during recent years. William Henry, a resident of Lancaster and an eyewitness to the aftermath, stated, "...this man's hand and feet had been chopped off with a tomahawk. In this manner lay the whole of them, men, women and children spread about the prison yard; shot, scalped, hacked and cut to pieces."[120]

Relations between the colonial government and the Paxton Boys continued to deteriorate during January 1764. The government no longer considered them a legal militia (their three-month time of service was long expired). It denominated them an outlaw gang and put a price on their heads, although the Paxtons claimed themselves still to be a lawful unorganized militia because they represented the will of the people in their communities. This was more or less in accord with Anglo-Saxon concepts of organic community, but the royal government of Pennsylvania disputed this position and issued arrest warrants for the Paxtons.[121] There were

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[119] Jacobs, 3. "When news of the massacres reached Philadelphia not only the Scotch-Irish rioters but the whole Presbyterian sect was held responsible..."
[120] Andrew Kirk, "Desperation, Zeal and Murder: The Paxton Boys," *The Pennsylvania Center for the Book Quarterly* (Fall, 2009), 2.
[121] Jacobs, 9-10. Governor Penn's *Proclamation of January 2, 1764*.

centuries of militia laws that amplified the meaning of the common law as it touched the fyrd, and the Paxtons violated them. Aside from disobeying orders, they had shed innocent blood, always forbidden under the common law.[122]

Both sides had committed atrocities during the recent war, but that did not give the Paxtons liberty under either the common law or statutory law to continue to do so despite the clamor made by many pamphleteers that the common law protected their actions.[123] It did not.

A modern-day interpretation by a prominent militia leader endorses that position. John Trochmann, spokesperson for the present day Militia of Montana, maintains that the militia is a community based defensive organization. There is no room for a rouge element within the unorganized militia, which the Paxton Boys became when they went on the offensive after their time of service expired. Their role as a community militia was to *protect* all peaceful citizens including the Conestogas. Offensive operations, Trochmann said, are rightly the province of either state (select militia) or national standing forces, not community militias. Further, they violated the common law, under whose authority they claimed to operate.

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[122] Cornell University Law School, Legal Information Institute. *Common Law Murder*. http://www.law.cornell.edu/wex/murder (accessed August 6, 2014.) There are four kinds of common law murder, each characterized by malice aforethought. The Paxtons were guilty of two of these, both of which carry the death penalty. They were: 1) Intent-to-Kill-Murder, and 4) Depraved Heart Murder.

[123] Jacobs, 29-32. In a 1764 Paxtoniade pamphlet titled *The Plain Dealer, A Pro-Frontier Pamphlet*, Hugh Williamson accused the Quakers of corruption, inefficiency, and of actually inciting Indian attack on the Paxtons forcing them to exercise their common law right of self-defense.

"The Paxton boys stopped being a legitimate militia when they shed innocent blood," Trochmann continued, "and at that point became murderers. Many people today take a dim view of the militia because criminal gangs like the Paxtons try to dignify their actions by calling themselves militias."[124] Trochmann argues that whenever some marginal person or group calling themselves a militia commits a crime, the "government press" uses the incident to further demonize the present day militia.

"More than likely," present day militia leader Steve McNeil stated, "the government will attack an innocent group it doesn't like and subsequently demonize them as a militia." McNeil contends the government used this "illegal and contemptable tactic" at both Ruby Ridge and Waco after it had murdered innocent citizens at both locations.[125]

In early February, when the Paxton Boys learned that the Quakers were hiding and protecting 140 Christian Indians in Philadelphia, they marched on the capital announcing their intention of killing all the Indians they could find, including Israel Pemberton whom "they regarded as the colony's chief Indian lover," and anyone else who got in their way.[126] Philadelphia fell into panic and turmoil; the people were frightened, rumors were rife and false reports of an approaching enemy army just outside the city limits were common.[127]

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[124] John Trochmann interview by Gerald Van Slyke, August 14, 2014.
[125] Steve McNeil interview by Gerald Van Slyke, January 29, 2015.
[126] Anderson, *Crucible of War: The Seven Years' War and the Fate of Empire in British North America 1754-1766* (New York: Vintage Books, 2000), 612. Pemberton was a Quaker member of the Pennsylvania Assembly who was outspoken in defense of Indian rights.
[127] Kenny, 163.

"Militiamen, such as those who eventually joined the Paxtons," historian Jane Merritt wrote," were a particularly nasty bunch. They drank too much, they fought with each other, and they terrorized the local women."[128] Merritt's words underscore Trochmann's remark that the Paxtons were no longer a community militia but an outlaw gang. "The militia arises from the people and is the people," Trochmann asserted. "One of the founders [of this country] remarked that the militia is the whole people. Look in the mirror if you want to see the militia. If the people are afraid of the militia, then something is fundamentally wrong."[129]

John Penn called the citizens together on February 4th in an open air meeting outside the State House (later called Independence Hall) where he made an impassioned speech urging them to calm themselves and prepare to defend their city against the Paxton Boys. He ordered Benjamin Franklin to embody a volunteer militia to reinforce the Associators (the city militia) in defense of the city, which was quickly carried out: six companies of infantry, one of artillery and two of cavalry were embodied. Franklin also established a system of alarm bells and signal fires, and ordered a ring of scouts placed around the city a few miles outside of it.[130]

The only regular soldiers in eastern Pennsylvania, three infantry companies of the British army's Royal American Regiment (60th Foot), placed the Indians in their barracks for safety and guarded them there. Philadelphia was as ready as it

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[128] Merritt, 287.
[129] John Trochmann interview by Gerald Van Slyke, August 14, 2014.
[130] Kenny, 162.

could be under the circumstances but armed conflict never began, largely due to the wisdom of John Penn and Benjamin Franklin.[131] The presence of the 300 Royal Americans must have also had an impact on Paxton thinking. They most likely feared tangling with 300 regulars, the Pennsylvania Associators, and Franklin's newly minted militia.[132]

About three hundred Paxton Boys reached Germantown on February 5, only five miles from Philadelphia.[133] There they agreed to temporarily halt their march on the capital until after meeting with a delegation from Philadelphia led by Franklin, a meeting that took place two days later at Coleman's Tavern in Germantown. The furious Paxtons spoke to the delegation with such harshly provocative words and gestures and in such a belligerent manner that the Philadelphians feared for their lives.[134]

Franklin spoke rationally and in a friendly tone in an effort to calm the frontiersmen. He convinced the Paxton representatives, Matthew Smith and James Gibson, to agree to list their grievances on paper for the government to examine, a document that is remembered today as the *Declaration*. The action of sitting down and listing their grievances on paper defused the situation, as Franklin hoped it would.[135]

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[131] Anderson, 612.
[132] Kenny 162. "In halting their [the Paxtons] march at Germantown when they learned of the military presence in Philadelphia, they had merely revealed themselves...as the cowards that they were."
[133] Sources differ. Two hundred fifty is the smallest number found, 500 the largest.
[134] James E. Crowley, "The Paxton Disturbance and Ideas of Order in Pennsylvania Politics," *Pennsylvania History* No. 37, Vol. 4, (1970), 318.
[135] Merritt, 288.

Once the Paxton Boys were allowed to examine the Indians to determine whether any known murderers were among them (there were none), the bulk of them left for home, threatening that they had better not have to return, leaving only a few leaders to clean up the paperwork with the government.[136]" "At present," Franklin observed on February 11, "we are pretty quiet, and I hope that Quiet will continue."[137]

A few days later, the Paxtons submitted their *Remonstrance* to Franklin who read it and passed it up to Penn. The *Remonstrance* was a more formal statement of their grievances than the *Declaration*, but it still evidenced the same high-octane fury of the first document. It was written in "ye most audacious, daring, Insulting Language that can be imagined," according to a delegation member.[138] The language of the paper still strikes the eye today, 250 years later, as starkly blunt and angry.

It defended the killing of the Indians as a patriotic act by loyal servants of the king whose enemies the Indians were. This was, they said, a necessary duty done for the security of the king's frontier and the king's loyal subjects regardless of what the Quakers thought. The Quakers, "false friends" the Paxtons called them, did not truly have the best interests of the king at heart, and the Paxtons were certain they (the Quakers) did not care if the Scots-Irish frontier families lived or died. It castigated the Quaker majority with such venomous animosity as is seldom seen in

[136] Martin, 118.
[137] Kenny, 163.
[138] Ibid, 163-164.

a public document, blaming them for nearly every misfortune that had befallen the western colonists since the French and Indian War had begun in 1754.[139]

Things were going to be different in the future, the Paxtons threatened. Utopian foolishness in the State House was not tolerable while Indians were butchering the wives and children of frontiersmen. The Paxton Boys had done much to change the attitude toward Indians not only of the Pennsylvania colonial government, but also of Americans in general. Conflicts with Indians now began to take on an even stronger racial tone.[140] In the future, the colonials would be more ready to use violence as the first option when dealing with Indians. The Indians became a "race," despised by white colonists, much as racism against African-Americans had intensified a century earlier.[141]

Genocide and the Paxtoniade

An early use of a weapon of mass destruction by the British army underscored the new racial attitude, although it is a safe assumption there was also involved a large amount of the normal ongoing British confidence in their own superiority and resulting disdain for everyone else. There had been a smallpox epidemic around the Great Lakes. Instead of burning the clothing and blankets of the dead, as was the custom, Amherst planned to use them as a weapon. He wrote

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[139] Ibid, 165-169.
[140] Richter, 207-208. "Although neither succeeded in achieving its bloody goals, the crusades of 1763 crystalized long-simmering hatreds into explicit new doctrines of racial unity and racial antagonism. In parallel ways, Pontiac and the Paxton Boys preached the novel idea that all the Native people were Indians that all Euro-Americans were Whites and that all on one side must unite to destroy the other."
[141] Merritt, 287-295.

Colonel Bouquet, his second in command, with orders to give the infected blankets to local Indian tribes. "You will Do well to try to Inoculate the Indians by means of Blankets," he wrote, "as well as to try Every other method that can serve to Extirpate this Execrable Race."[142]

Bouquet replied that he would send the blankets to the Indians using soldiers who had survived the disease. He wrote that he wished to use light cavalry and hunting dogs to track Indians down "…who would I think effectively extirpate or remove that vermine."[143]

Given to the Indians as gifts, the contaminated blankets caused an epidemic. The British army's first recorded foray into biological warfare was a resounding success. Kenny wrote "…the commander of Fort Pitt presented two visiting Delaware leaders with blankets and handkerchiefs that had been infected with smallpox…An epidemic swept across the Fort Pitt region… [A]fter the smallpox epidemic, Shingas and Pisquetomen disappear from the historical record.[144]

Benjamin Franklin, the Philadelphia printer, triggered what became the Philadelphia "pamphlet war" in 1764 when he wrote his thoughts on the Paxton massacres in his *Narrative of the Late Massacres,* a war of words on a scope rarely undertaken previously in the colonies. Known as the "Paxtoniade," the pamphlet war was a deluge of opinion in a wide variety of genre: poems, essays, newspaper articles, pamphlets, broadsides, and the like. It was among the first written political

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[142] Borneman, 291. Amherst directed Colonel Henry Bouquet to put the plan into effect. The clothing and blankets were distributed from Fort Pitt. The quote is expanded from Kenny, 121.
[143] Kenny, 121.
[144] Ibid, 122.

opinion campaigns in the colonies. Many, like Franklin, abhorred what had happened, but many people on the frontier supported the Paxton Boys. Were they militia or criminals? This question still resonates today. The Paxtoniade initiated a new dimension to political, religious, and social disagreement in colonial America.[145]

Pontiac's Rebellion continued until the Treaty of Fort Ontario ended it on July 25, 1766. There was no clear military winner. The war ended in stalemate and captives were returned. One change the war had effected was that thousands of people who would have still been alive were dead. However, the Indians won a political victory; they forced the government in Britain to draw a line along the Appalachians to restrict the westward expansion of the white colonists. By the time of the treaty the attention of the colonials had shifted to other matters, points of friction with the London government that less than a decade later erupted into America's first civil war.[146]

Walter Borneman, often quoted in this first chapter, maintained that the white American colonists were the real long-term winners of the French and Indian War, the British and French broke more or less even, and the Indians were the biggest losers.[147] Other scholars amplify that. Daniel Richter viewed the Seven Years War as greatly intensifying racism and division between whites and Indians. The horrors created by both sides, especially at the war's end, made it impossible

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[145] Alison Olson, "The Pamphlet War Over the Paxton Boys," *The Pennsylvania Magazine of History and Biography*. Vol. CXXIII, No. 1/2. (January-April, 1999) 31-32.
[146] Fowler, 282.
[147] Borneman, 292-293.

for native peoples and white colonists to live together in an integrated society. The future of America was thereby set; Euro-American would continue to encroach on the lands and undermine the cultures of Native Americans for the next century and a half.[148]

The war thus had remade "America" itself. There were now seventeen colonies instead of thirteen. Nova Scotia, Quebec, and East and West Florida stood in the shadow of the Union Jack as it fluttered over their soil. However, they never achieved any meaningful level of fellowship with the original thirteen colonies, not by 1776 anyway. None of them joined the revolution.[149]

The events of 1754 to 1766 had forged American militiamen into the cultural military force that proved to be the capable tool the Patriot Founders would use to wrestle their independence from Great Britain. Through harsh lessons paid for with many deaths, both community and select militiamen had learned to operate within much larger formations, and militia leaders had learned to command armies.

In less time than it took a boy like Joseph Plumb Martin of Connecticut to grow into a young man ready for militia service, many Americans would become completely alienated from king and parliament and would take up arms against them. They would kill British soldiers and sink British ships while paying a terrible price in blood and misery of their own. Their hatred would eventually run so very deep that at war's end, they would force the deportation of their countrymen whose religious and political beliefs had compelled them to serve the king.

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[148] Richter, 211-214. Chapter Six provides an excellent overview of this issue.
[149] Borneman, 292-293.

The unorganized and select militias and their offspring, the Continental Army, were soon to do battle with the greatest military empire on the earth and the experience they gained during the French and Indian War was going to help see them through to victory. In its essential nature, the colonial militia on the eve of the revolution was a community-based defense force; present day militia leaders claim it still is.

CHAPTER TWO

THE FIRST CIVIL WAR: THE MILITIA FIGHTING FOR CONGRESS AND FIGHTING FOR THE KING; THE MILITIA AND THE CONSTITUTION

Most Americans in 1763 were smugly satisfied at the positive way in which the French and Indian War had resolved itself. The persistently obnoxious Catholic enemy in the north was gone at last. There were certainly some points of friction between the colonists and the mother country, but the bottom line was the colonists were proud to be British. The Proclamation of 1763 was such a stick in the eye that it wound up in the list of the king's crimes in the *Declaration of Independence*, but Americans largely ignored it and poured across the mountains anyway. There was unenclosed land out there and they felt they were morally, if no longer legally, justified in taking it.[150]

The post war economy was generally strong and historian R.W. Harris noted, "The English colonists had perhaps the highest standard of living in the world."[151] The future looked bright for Americans at the end of 1763, and as Massachusetts Governor Thomas Pownall said, "Nothing can eradicate from the

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[150] Robert Middlekauff, *The Glorious Cause: The American Revolution, 1763-1789* (New York: Oxford University Press, 2005), 60. "...pioneers were bitterly resentful, and in late 1764 and early 1765 hundreds made their way over the mountains...Other likeminded men and women, now contemptuous of British troops who had failed to protect the frontier, decided to flout the proclamation. The result was a steady migration into western Virginia, Maryland, southwestern Pennsylvania, and then northwestern Pennsylvania."

[151] Harris, 138.

colonists' hearts their natural, almost mechanical affection to Great Britain."[152] Yet, only a dozen years later an American militia army was in the field (led by the militia colonel who had sparked the French and Indian War) against king and parliament, killing British soldiers.

Prompted by the worst possible advice from the king's mercantilist ministers, the throne and parliament jointly committed one stupendous folly after another during the inter-war period and, as historian Barbara Tuchman said, "...made rebels where there had been none." Tuchman argued that England's self-interest required the crown to maintain the good will of the colonists and foster their desire to remain a part of the English nation. "Yet," she wrote, "...successive British ministries, in the face of constant warning by men and events, repeatedly...injured that relationship…these measures...were demonstrably unwise in practice, besides being impossible to implement except by force.[153]

It must have appeared to many Americans during the political fever between 1763 and 1776 that the British government was attempting to coerce them into rebellion. The ministers never failed to lead their king into the most disastrous course possible in his dealings with the colonials.[154] This chapter will begin with an overview of three primary cultural conditions that shaped the American

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[152] Borneman, 279.
[153] Barbara W. Tuchman, *The March of Folly: From Troy to Vietnam* (New York: Alfred Knopf, 1984) 129.
[154] Harris, 144-145. "Once, when Franklin was talking to Pratt, the great lawyer...Pratt prophesied that with the conquest of Canada the Americans would set up for independence. Franklin replied that no such idea had ever entered their heads, nor, he said, would it "unless you greatly abuse them." Pratt replied, "Very true, that is one of the main causes that I see will happen, and it will produce the event." Pratt knew the ministry.

militiaman of the revolutionary era: literacy, religious background, and a lengthy past-history of culturally acceptable resistance. It will only sketch the major political issues leading to the outbreak of hostilities on an April morning in 1775 and will not attempt an in-depth discussion of them. It will closely examine the militia's role in both the Lexington/Concord conflict and the assault on Breed's Hill (Bunker Hill) since both were crucial events in the civil war militiamen fought for fourteen months before turning into a formal revolution on July 4, 1776, with the signing of the *Declaration of Independence*. It will very lightly touch on the military events of the revolution but will more deeply consider the character and role of the militia and of its offspring, the Continental Army, during that conflict. It will end with the Constitutional Convention and the attempts of Americans to define the role of the military in their new society.

This New Man, the American

The average American militiaman (particularly in New England) was very similar to his British cousins in some ways, but he differed in three very significant ways. First, he could read, had the social and academic tools to gather, digest, and correctly interpret information for himself and was not about to let king and parliament force on him policies he knew to be illegal. Second, colonial society had also imbued him with a deep, religious-based sense of right and wrong and a strong sentiment that he had a personal responsibility before God to act on it. Third, he also was heir to a tradition of civil disobedience, both violent and non-violent,

in response to government tyrannies and was not afraid to raise his voice and fist in the streets. Not everyone fit this mold, but the pattern so characterized the atmosphere of colonial American society at the time that Americans, particularly New Englanders, were a moral and literary sub-culture within the British Empire.

First, American militiamen could read the law and understand what it meant. They could read the agreements and laws that made up the constitutional consensus of 1689 and the subsequent laws of the realm and gain the sense of them, and they knew when London politicians or ministers were lying for their own political gain or for the king's. They knew their rights -- constitutional, statutory, and common law -- and they had a strong sense that they had a responsibility before God to preserve these rights for their posterity. Alan Taylor noted that the high literacy rate in the colonies, especially in New England, was the result of Puritans insisting that everyone should be able to read the Bible. Puritans believed that access to written material was "fundamental to their liberty and identification as English and Protestant folk." They established the first press in the colonies at Cambridge in 1640, and passed the *Old Deluder Satan Act* in 1647 that required every town to build a school and hire a teacher. "Most women and almost all men could read," he wrote. "And book ownership…was more widespread in New England than anywhere else in the world."[155]

[155] Taylor, 179. There were three early Massachusetts School Laws: 1642, transferred school supervision from clergy to lay authorities; 1647, which required towns with fifty families to hire a public school teacher and with one hundred families to establish a grammar (college prep) school; and 1648, which resolved some administrative issues.

Widespread literacy among Americans became possible through the invention of the printing press several centuries before. Historian William Bernstein explained how important to the development of mass printing technology was the rediscovery of deep mining techniques that had been lost since the fall of the Roman Empire. This, in turn, made possible a greatly expanded and improved malleable metals industry, which then made it possible to cheaply cast durable, moveable type that quickly replaced the original wooden blocks and would align exactly on a printed page. This made possible the improved model of Gutenberg's original moveable type printing press. In one of history's more fortuitous intersections, these developments occurred at roughly the same time.[156]

A group of Frenchmen traveling through New England shortly after the Revolution was amazed at the degree of literacy among Americans. Historian Catherine Drinker Bowen wrote the visitors recorded that, "…newspapers and gazettes were numerous and kept people well informed." In addition, the people living in the building they were residing in, "busied themselves much with politics, and from the landlord to the housemaid they all read two newspapers a day."[157]

Not only was America soon covered by the penny press, broadsheets, pamphlets, etc., all eagerly read by a literate populace, it also had the most lax seditious libel laws in the British Empire and American editors were able to print

[156] William J. Bernstein, Masters of the Word: How Media Shaped History From the Alphabet to the Internet (New York: Grove Press, 2013), 141.
[157] Catherine Drinker Bowen, Miracle at Philadelphia: The Story of the Constitutional Convention May to September 1787 (New York: Little, Stewart & Co., 1966), 158.

more news and opinions critical of the Crown than anywhere else, thanks to a Swiss printer named John Peter Zenger.

Zenger published the *New York Weekly Journal* and undertook to expose the gross corruption of New York's royal governor, William Cosby. Seditious libel laws of the time held that if a charge against a government official was false, the press had damaged the government with a false accusation. It was actually an even worse crime if the charge was true because that held the government up to even greater contempt in the eyes of the public. The libel law of that day provided for juries to only determine whether the libel had actually been committed. Whether the accusation was true was irrelevant to the innocence or guilt of the accused.[158]

Arrested, Zenger spent eight months in jail before he came to trial in 1735. Andrew Hamilton of Philadelphia defended the printer and astounded the court when he challenged the jury to ignore its legal instructions. In a highly charged courtroom, he urged the jurymen to take matters into their own hands. First, establish truth as a defense in libel, he told them, and then pass judgment on the legality of the law itself, in other words practice judicial review. The outraged judges and prosecutor ordered the jury to disregard Hamilton's extra-legal requests and to execute the law. However, the courageous jury plowed fallow ground and found truth to be a defense in libel, established that a jury may overturn a law, and

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[158] Jill Lepore, *New York Burning: Liberty, Slavery, and Conspiracy in Eighteenth-Century Manhattan* (New York: Vintage, 2005), 77. Lepore offers a very readable account of the entire incident.

found Zenger innocent and ordered him released.[159] Two years later, after Cosby was safely dead, Zenger became the official printer for New York Colony.[160]

This new latitude made possible a robust interchange of ideas and sharing of information among Americans unequaled anywhere else in the British Empire. When the Second Continental Congress met to conduct their momentous deliberations, the Americans they represented were the best-informed and most enlightened revolutionaries (and loyalists) of the eighteenth century. When average Americans on the street had to choose whether to support the king or to support congress, they had the background information and understanding to make informed decisions.

Second, all Christian sects in the colonies -- both mainstream Protestant churches and Dissenters -- taught a strong morality message reenergized by the Great Awakening of the 1720s. Experiential faiths stressing a personal relationship with God, one in which the individual sinner has confessed his sins directly to God and has been forgiven and therefore "saved' from damnation, made great inroads among the colonials. This quickly made enemies of the ritualistic state churches, which encouraged legislators to outlaw the "sectaries," all of whom were Dissenters anyway, groups that were never in good odor with officialdom.[161] Undeterred by

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[159] Dwight L. Teeter and Don Le Duc, *Law of Mass Communications: Freedom and Control of Print and Broadcast Media* (Westbury, NY: The Foundation Press, 1995), 24-27. "The court trial for seditious libel was finished for the colonial period as an instrument for control of the press. Not for 40 years or more would seditious libel be used again in America by a court."
[160] Lepore, 77.
[161] Gary B. Nash, The Unknown American Revolution: The Unruly Birth of Democracy and the Struggle to Create America (New York: Penguin Books, 2006), 9.

negative government pronouncements against them, the unlicensed preachers (predominantly Baptists) continued preaching.

The government also recognized a greater danger, a deeper challenge, than just a loss of authority and revenue by the state churches. Spiritual religion not only challenged the state church, it often promoted social reforms that challenged the social order itself. There were calls from Dissenter pulpits for land reforms, for breaking up the huge proprietorships and royal land grants. Worse, these spiritual followers of Jesus made no distinctions among their adherents including, ominously, blacks and Indians.[162]

Historian Gary Nash made the argument that the Great Awakening and the subsequent religious controversy was a milestone on the road to violent radicalism of the kind that would eventually bring forth the revolution. He argues that by creating a mass movement challenging the existing social order and forcing it to change, "the Awakeners" provided a "pertinent and usable model" for the radical revolutionaries of the 1770s. The Awakeners "…forced religious toleration on those arrayed against it, and broke apart attempted unions of church and state… and claimed the freedom to question authority."[163]

Those who attended church received a steady ration of strong moral exhortations. Those who were "unchurched" still benefited from these teachings by living in a rarified social environment saturated with a biblical public morality, important in society even if it was only lip service for many. A good example of

[162] Ibid, 10-11.
[163] Ibid, 11-12.

the highly developed sense of right and wrong that characterized many colonists occurred during the Boston Tea Party in late 1773. The British had anchored some ships in Boston filled with tea imported under parliamentary tax legislation that had effectively established a monopoly for British tea interests. Local citizens dressed as Indians boarded the ships and dumped the tea into the ocean. However, one man was filling his pockets with tea. Dumping thousands of pounds of tea into the harbor was an acceptable political act of defiance, but stealing a pound of tea for one's personal use was theft. The tea party members attempted to turn the miscreant over to the constable, but he fled leaving his coat behind. The patriots nailed his coat to the Liberty Tree to shame him as a thief.[164] They also swept the spilled tea from the decks of the ships before they left because it would be wrong to cause the innocent sailors extra work. The loyalist militiamen came from the same cultural mixture; moreover, the colonial religious atmosphere forged men of integrity on both sides of the issue.

Third, the colonials were the heirs of a tradition of political dissent that stretched back through the centuries: the popular uprising. Characterized by noisy mobs demonstrating against some action taken (usually, but not always) by the government, mob actions were an acceptable way for people to vent their spleen.[165]

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[164] Alfred F. Young, The Shoemaker and the Tea Party: Memory and the American Revolution (Boston: Beacon Press, 1999), 44-45.

[165] Pauline Maier, *From Resistance to Revolution: Colonial Radicals and the Development of American Opposition to Britain, 1765-1776* (New York & London: W.W. Norton and Company, 1991), 4-5, 142-44. Not all riots were so well mannered, however, and as resistance evolved into revolution, mob actions (especially when acted out under the direction of patriot leaders) became much more militant. The use of military forces to control civil disturbances in the American colonies was unknown among the British at the time (although it was business as usual in places

Today the term "mob" describes a violent crowd of people temporarily outside the control of the law, destroying property and hurting or killing other people. The colonial use of the word "mob" described everyone present at the scene whether rioting or not. British rioters, prior to the 1740s, often damaged property but did not usually injure people. There were conventions of responsible conduct expected of a respectable British mob.[166]

Historian Denver Brunsman wrote that there were two kinds of impressment riots. Ships would either send press gangs ashore to snatch men off the streets, or else stop ships at sea and forcibly remove men from them. "Any meeting of sailors and press-gangs," Brunsman wrote, "could result in death."[167]

The previously mentioned expectations of proper mob conduct was not in operation for mobs that attacked press gangs which were groups of sailors, usually led by a junior officer, that had the authority to capture and forcibly remove any able bodied man they found on land or at sea and "recruit" him into the navy. On land, mobs would gather to attack, beat the press gangs, and burn their boats. Ships at sea would try to outrun naval vessels and there were occasional exchanges of gunfire and even broadsides.

Most impressment took place at sea and in seaports around the home islands, but one of the most notable mob actions against impressment, the Knowles

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like Ireland) and General Thomas Gage expressed shock at the idea when it was first suggested to him in 1765.

[166] Ibid, 16-17.

[167] Denver Alexander Brunsman, "The Knowles Atlantic Impressment Riots of the 1740s," *Early American Studies: An Interdisciplinary Journal.* Vol. 5, No. 2. (Fall, 2007), 334.

Riot, took place in Boston, November 16-19, 1747. It was the most violent uprising in colonial America prior to the *Stamp Act* of 1764.[168]

Admiral Knowles needed men to operate his ships and sent press gangs into Boston on November 16. In only a few hours, they collected nearly fifty very unwilling townsmen. The Boston mob soon filled the streets, kidnapped some British naval officers, and kept them under guard. Massachusetts Governor William Shirley embodied the militia the following day to control the boisterous mob that had grown to more than a thousand, but by nightfall, only the officers had responded. Humiliated, Shirley sent for militia from surrounding colonies.[169]

Admiral Knowles was furious enough that at one point he aligned his ships along the Boston shoreline and threatened to bombard the town.[170] Shirley struck an agreement with Knowles allowing the navy to keep the men who were not from Massachusetts and to let the Massachusetts men go. On November 19, he informed the colonial assembly of the agreement and they then ordered the militia to embody. "By the next day," Brunsman wrote, "the militia turned out, the mob disappeared, the kidnapped navy officers walked free, and the impressed inhabitants from Massachusetts returned to their homes."[171] Thoughtful Britons must have taken note of the fact that the militia refused the royal governor's orders but obeyed their colonial assembly. Literacy, religious intensity, and a tradition of civil

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[168] Ibid.
[169] Maier, 17.
[170] Brunsman, 361.
[171] Ibid, 356-357.

disobedience to injustice characterized the mindset of many American militiamen at the end of the French and Indian War and the start of the Revolutionary Era.

Making Rebels Where there Were None

England finished the French and Indian War deeply in debt, the annual interest alone was between four and five million pounds. The acquisition of Canada brought 100,000 French Catholics and a quarter of a million Indians into the empire (in addition to the ones already present), all of whom presented a possible threat. Fifteen regiments (10,000 men) would garrison the American colonies at a cost exceeding 200,000 pounds each year. Many in Britain felt the Americans should help pay for maintaining the military force that was in place for their protection. Americans recalled, however, that when a French army posed an immediate danger in Canada, there were very few regulars on duty in America. Now the French danger was gone and the British wanted to station fifteen regiments in America. Why? Some Americans felt it was an action taken to control them, not to defend them.[172]

Nevertheless, had the British government petitioned the colonial legislatures for money in accord with long established custom, it is likely that the ten-year political conflict leading to the revolution would have been avoided. Lord Grenville, England's Prime Minister, floated such a plan to colonial agents in

[172] Charles Bruce Catton et al, *The National Experience: A History of the United States* (New York: Harcourt, Brace, & World, 1968), 90. The American repugnance at having armed soldiers in their midst was inherited from England.

London a year prior to the enactment of the *Stamp Act*. By February 2, 1765, the colonial agents "realized at last that Grenville's offer had never been made in good faith, that a year ago, even while making the offer, he had already made up his mind to levy a stamp tax."[173] The ministers decided instead to flex their muscle and, contrary to generations of past practice, attempt to bypass the colonial legislatures and directly impose taxes on colonials themselves. Their arrogance created rebels, as previously referenced from Barbara Tuchman, where there had been none.[174]

Parliament passed the *Currency Act of 1764* which made it illegal for the colonies to print money at a time when not much hard specie was coming west across the ocean. This resulted in a lack of a medium of exchange and the colonial economy largely devolved into a barter system that brought on difficult economic conditions.[175] The *American Duties Act of 1764* (the *Sugar Act*) updated the *Molasses Act of 1733*, and dealt mostly with the importation of molasses, important because it was a prime ingredient for the manufacture of rum, one of the three legs of the profitable triangular trade. Few had ever questioned the right of parliament to regulate intercolonial trade. However, the updated law brought with it an increased tightening of the screws on smuggling, a widely accepted practice in America, along with the possibility of a person charged under the act appearing in an admiralty court rather than a civil court.

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[173] Edmund and Helen Morgan, *The Stamp Act Crisis: Prologue to Revolution* (Chapel Hill, NC: University of North Carolina Press, 1995), 68.
[174] Simon C. Smith, *British Imperialism: 1750-1970*. (Cambridge, UK: Cambridge University Press, 2000), 8.
[175] Catton et al, 89-90.

Unlike the *Sugar Act*, the follow-on *Stamp Act* (1764) was a direct tax on individual colonials, citizens who were unrepresented in parliament. The ministry threw the gauntlet down with the Stamp Act. The colonials considered the act illegal since a taxing authority in which they had no representation could not lawfully tax a British citizen.[176] Many of the colonies had existed prior to 1689 when Parliament's power began to dominate the government, and they maintained the traditional pre-Glorious Revolution distinction between Parliament legislating and Parliament taxing. Americans had their own taxing authorities, their legislatures.[177]

Americans were shocked at the temerity of Parliament, a foreign legislature, presuming to tax them in a way that the colonists knew was extra-legal and an infringement on their rights as Englishmen.[178] "Since the power to tax was the power to take away property," historian Bruce Catton wrote, "no man could call himself free if he was taxed without his own consent, given either personally or by his representative."[179] The *Stamp Act* also carried other unconstitutional provisions

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[176] Borneman, 297. "Unlike the *Sugar Act*...the *Stamp Act* was a direct tax on individuals...Patrick Henry went so far as to claim that parliament had no legal authority to tax the colonies at all."
[177] Morgan, 99.
[178] Maier, 51-53. The *Stamp Act* would, the *Newport Mercury* claimed, "deprive us of all our invaluable charter rights and privileges, drain us suddenly of our cash, occasion an entire stagnation of trade, discourage every kind of industry, and involve us in the most abject slavery." Maier wrote, "From the first announcement of the Stamp Act, royal officials reported, the colonial press was 'crammed' with this kind of 'Treason' until -- and on this the governors were virtually unanimous -- all colonists, regardless of rank, disapproved of the act."
[179] Catton et al, 90-91.

such as the suspension of the right to trial by jury for persons charged under the act.[180]

The king's mercantilist advisors ignored the distinction between legislation and taxation and asserted the colonies existed only for the benefit of the mother country, and that Parliament could tax them as it pleased. Francis Bernard, Royal Governor of Massachusetts wrote, "The rule that a British subject shall not be bound by laws, or liable to taxes, but what he has consented to by his representatives, must be confined to the inhabitants of Great Britain only; and is not strictly true even there."[181] If Bernard was correct, the American colonials truly did not have the rights of Englishmen.

The Virginia House of Burgesses responded with a resolution in June 1765 that clearly stated the American position. The Virginians reminded the crown that their royal charter guaranteed that they would lose none of the rights every English subject enjoyed by settling in Virginia. The taxing of English citizens by their own representatives was a foundation of British Freedom, they reminded the king, and imposing taxes on them from outside their own legislature would destroy the political consensus ("the ancient Constitution") of 1689.[182]

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[180] Gross, 35. The act placed a tax on almost every kind of written communication and the proceeds were to be used to defray the expense of British military activities in North America. "The most grievous innovation of all," Gross said, was the provision for enforcing the act through vice-admiralty courts. This endangered the right to impartial justice, for "in these courts, one judge presides alone! No juries have any concern there!"

[181] Morgan, 12. Bernard wrote a pro-government pamphlet in the spring of 1764, *Principles of Law and Polity, Applied to the British Colonies in North America*, in which he defended the right of king and parliament to rule the colonies as they saw fit.

[182] Ibid, 199. The Virginians wrote: "That by Two Royal Charters, granted by King *James* the First, the Colonies aforesaid are Declared Entitled, to all Liberties, Privileges and Immunities, of Denizens and Natural Subjects (to all Intents and Purposes) as if they had been Abiding and Born within the

The *Stamp Act* occasioned violent resistance such as the British government had never before seen short of civil war. There were continuous widespread riots and demonstrations by colonial mobs throughout all the colonies (but particularly in Boston and New York), mistreatment and bullying of royal tax officials, vandalism and destruction of property (including the vandalism and burning of homes), and organized legal resistance on the part of colonial legislatures against the implementation of the act.[183]

Twenty-seven delegates from nine colonies formed a Stamp Act Congress (modeled on the Albany Congress of 1754) which drew up a formal protest presented to the king, *The Declaration of Rights and Grievances*. The Congress enacted crippling embargos that immediately proved very effective with the business community in England. Letters and petitions made their way across the ocean to the king, his ministers, English clubs and church groups, English newspapers, and virtually everyone with any influence. Committees of Correspondence and the Sons of Liberty came into being throughout the colonies at this time (1764-1765). In villages and towns all across the colonies, militias

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Realm of *England*…That the Taxation of the People by Themselves, or by Persons Chosen by Themselves to Represent them, who can only know what Taxes the People are able to bear, or the easiest Method of Raising them, and must themselves be affected by every Tax laid upon the People, is the only Security against a Burthensome Taxation; and the Distinguishing Characteristic of *British* FREEDOM; and, without which, the ancient Constitution cannot exist." [Italics and upper case in the original.]

[183] Schweikart and Allen, A Patriot's History of the United States: From Columbus' Great Discovery to the War on Terror (New York: Penguin, 2004), 63-64.

increased their training schedules and the wind from across the Atlantic carried the scent of civil war to parliamentary noses.[184]

William Pitt, no longer Prime Minister but still a power in parliament, spoke at length on the floor of the house in favor of American rights and the repeal of the *Stamp Act*. "The Americans," he said, "are the sons and not the bastards of England."[185] During March 1766, parliament bowed to the twin pressures of the civil unrest in the colonies and the havoc wrought in England by the embargo, and repealed the *Stamp Act*. On the same day, it unanimously passed the *Declaratory Act* in which it claimed authority to pass any laws whatsoever for the North American colonies.[186] Regardless of the *Declaratory Act*'s last shriek of defiance, the defeat of the *Stamp Act* was an object lesson for both the British government and American colonials -- the colonies were now a powerful military, political, and economic force that could not be ignored, and their interests did not always mirror those of the mother country.[187]

British historian Simon Smith wrote a brief, cogent summary of the political conflict. "The imperial government's revenue measures after 1763 were resented [by Americans] because they symbolized an attempt by parliament to assert its supremacy over colonial assemblies," Smith argued. Americans in particular, he

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[184] Morgan, 205-206. No governor could call out the militia on behalf of the government during the crisis because the militia either would not respond or would be on the other side. Governor Wentworth of New Hampshire said the militia was out of play because, "the Militia are the very people on the other side of the question."
[185] Borneman, 300.
[186] Morgan, 289-292.
[187] Ibid, "In retreat, Parliament issued a Declaratory Act, maintaining that it had the authority to pass new taxes anytime it so chose, but both sides knew that Britain had blinked."

wrote, hated the Stamp Act. "[The Stamp Act]," he asserted, "was no mere adaptation of an existing piece of legislation but an innovation which sought to establish the right of the imperial parliament to impose internal taxation on the colonies.[188]

Historian Pauline Maier examined the development of both intercolonial and international cooperation in the matter of resistance to the *Stamp Act*, a tool of resistance that Americans continued to use throughout the revolution itself. It made sense for the Americans to garner support wherever they could, and support in places like Scotland (which had rebelled only 20 years previously) and Ireland (which was always in a semi-state of rebellion) and even in London itself, could prove to be very important. An Irishman, Dr. Charles Lucas, along with two Englishmen, John Wilkes (viciously hated by George III) and Charles Hayley, and many others of the Sons of Liberty in Europe, were corresponding members with the Sons of Liberty in America and made common cause with them. The European Sons of Liberty feared that whatever tyranny loomed for America would find its way to England next.[189]

By 1768, American leaders recognized that Parliament's continuous stream of prerogative challenges (the *Stamp Act* was merely an initiation) suggested a "ministerial plot" on behalf of the moneyed class, which was also heavily

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[188] Smith, 10.

[189] Maier, 161-162. "Even the colonists' resistance to the Stamp Act, which would have taxed only Americans, was considered [by the European supporters] but one episode in a world-wide struggle between liberty and despotism. This absorption in affairs outside their continent played a central role in the colonists' own conversion from loyalty to active revolution."

represented in Parliament and whose members largely ascribed to a mercantilist economic model. The object, they believed, was to reduce the American colonies to the condition of Ireland, thus maximizing the various incomes of the government and of the wealthy who controlled the government while destroying the prosperity and individual liberties of American colonists. Americans originally saw the king as a protector who could curb the rapacious actions of Parliament, but by 1772 George III had uttered words and had taken actions that strongly implicated him in the perceived ministerial plot. Finally recognizing the king as being an unrestrained mercantilist himself, Americans came to feel they had few if any friends in the government.[190]

Grasping and incompetent as the king's ministers were, George III, who took office when his grandfather died in 1760, was no prize either. Historian J. H. Plump wrote that the king "was very stupid, really stupid. Had he been born in different circumstances it is unlikely that he could have earned a living except as an unskilled manual laborer."[191]

The Stamp Act ignited another effusion of pamphlets just as the Paxtoniade was receding. Robert Middlekauff wrote that the pamphleteers began discussing the probability that powerful merchantilists who had the ear of the king were planning to destroy liberty not only in America but in Britain as well.[192] The *Stamp*

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[190] Ibid, 211-212.
[191] J.H. Plump, "George III: Our Last King," *Historical Viewpoints: Notable Articles from American Heritage, The Magazine of History*, ed. John A. Garrity et al. (New York: Harper and Rowe, 1971), 108, 112, 113.
[192] Middlekauff, 131. "The pamphleteers…ordinarily contented themselves with an inclusive indictment of the entire ministry...The suggestion of [a mercantilist] conspiracy imputed a larger

Act also served to intensify sectarian distrust and fear. Middlekauff noted that American Protestants feared Canadian Catholicism. He explained that, "the tale was spread that a Frenchified, Catholic party in England had designed it [the Stamp Act] in the interests of the House of Bourbon and the Catholic Church."[193]

The *Quartering Act*, part of the cluster of legislation in the annual *Mutiny Act* that governed and funded the military, passed the following year.[194] This act provided for the quartering of royal troops in empty buildings for which a rent was paid and made the colonies responsible for providing various necessities for the soldiers.[195] The act was very unpopular because the English Bill of Rights specified that Parliament could quarter troops as it saw fit in England, but in North America this was done at the direction of the Colonial legislatures.[196] It appeared as another challenge to the rights of Englishmen in America. The New York legislature passed an act to nullify the Quartering Act. "Many in England were aghast," Borneman wrote. "If a colony could nullify one act of parliament, what was to stop it from

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design than enslavement of America: the plotters aimed at destroying liberty in both Britain and America."

[193] Ibid, 131-132. The fire was fueled by a rumor that the government of England intended to establish an Anglican Bishop in Boston.

[194] Frederick B. Wiener, *Civilians Under Military Justice: the British Practice Since 1689 Especially in North America* (Chicago: the University of Chicago Press, 1967), 6-7. Prior to 1689, the military was governed by royal prerogative. Parliament took permanent control during the Glorious Revolution and initiated legislation to govern the military. The first *Mutiny Act* was passed on April 12, 1689, and among many other things, placed three classes of civilians under military discipline and subject to military law: gentlemen volunteers waiting for a vacancy to fill, commercial sutlers traveling with the army, and civilian employees and camp followers traveling with the army. These classes expanded in the future. These rules applied to both standing forces and the embodied militia.

[195] Catton et al, 89.

[196] Lawrence Delbert Cress, *Citizens in Arms: The Army and the Militia in American Society to the War of 1812* (Chapel Hill, NC: The University of North Carolina Press, 1982), 10.

nullifying others? Indeed, how did such an action square with the very term 'colony' and the supposed sovereignty of the British crown?"[197]

Parliament punished New York in 1767 by declaring all acts of the New York legislature void until the colony provided for quartering troops as the law stipulated.[198] Parliamentarians could not understand the reluctance of the colonials to pay even such modest taxes, "In 1763 imperial taxation averaged twenty-six schillings per person in Great Britain, where most subjects were struggling, compared with only one shilling per person in the colonies, where most free people were prospering."[199]

Parliament passed a series of *Townsend Acts* in 1767, which imposed taxes on certain essential items including tea (the *Tea Act*). The colonists strongly objected again because these were direct taxes not enacted by their own legislatures. The acts also reorganized the royal customs service to enforce more efficiently the import duties, and the Crown convened a special board of customs commissioners that sat in Boston. Worse, the act was arbitrarily enforced by customs inspectors and naval officers who eagerly seized ships and fined owners on flimsy clerical errors since their wages and prize money came out of the fines that were paid.[200]

Gary Nash noted that Parliament also established that year three new vice-admiralty courts (in which there was no jury) to try smugglers. The burden of proof rested on the accused, not on the state. The vice-admiralty courts remained in

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[197] Borneman, 299.
[198] Catton, et al, 95.
[199] Taylor, 438.
[200] Kevin Phillips, *1775: A Good Year for Revolution* (New York: Penguin, 2012), 116-117.

operation until the end of the revolution at which point British customs officials were withdrawn from the United States.[201]

During the upcoming revolution, areas under control of the British army either formally or informally came under martial law depending on the loyalties of the local civil structure. Loyalist civil structure remained in place but exercised little or no control. "New York was longest under British military occupation," Frederick Wiener wrote. During the more than seven years of occupation, there was no civil government; the city and such of the adjacent counties as were within the lines were ruled by the British Army. Those who held civil office…simply drew pay and obeyed military orders.[202] Some present day libertarian activists believe that the Vice Admiralty Courts are still secretly in operation. (More in Chapters Five and Seven.)

The locus of discontent and violence was again in Boston. The upheavals continued and the following year (1768) British regulars arrived in Boston to control the rioting.[203] (See Appendix E for a list of British Army regiments in North America between 1768 and 1783.) The great amount of friction that soon developed between the regulars and townspeople finally resulted in the Boston Massacre in 1770 and Anglo-American relations quickly spiraled downhill afterwards. British soldiers fired into a violent Boston mob killing five rioters and

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[201] Nash, 89. See also: Catton, 95. "Rather than take the risk, most merchants were willing to grease the commissioners' palms. Anyone who refused to play the game was likely to have his ship condemned in an admiralty court…One-third of the proceeds went to the English treasury, one-third to the governor of the colony, and one-third to the customs officers trying the case."
[202] Wiener, 95-96.
[203] Gross, 31. Four regiments arrived in 1768, but two were soon withdrawn. The 14th and 29th Foot were the remaining regulars.

wounding six others. Tried for murder and defended by John Adams, a colonial court found the soldiers innocent.[204] Patriot Committees of Safety began to appear throughout all the colonies after the Boston Massacre and almost universally took control of the community militias, which now began to train in earnest.[205]

The *Dockyard Act of 1772*, seldom mentioned by modern historians, was an important component of the issue. Robert Gross wrote that the act allowed persons charged with a violation of the revenue acts to be tried anywhere in the world. Other sources say that the act dealt with treason trials held in England for persons who committed acts of violence against Royal Navy ships. (This resulted from the *Gaspee* Affair when Rhode Island patriots burned a British revenue cutter in early 1772.) The disparity of opinion probably is the result of how different vice-admiralty courts interpreted the act. Either way, the *Dockyard Act* was a powerful, coercive tool. Someone considered a "troublemaker" could be transported to England and tried there at his own expense if the admiralty so chose.[206]

During late 1773, British cargo ships laden with tea that carried the parliamentary tax and represented a parliamentary imposed monopoly benefiting the East Indian Company, dropped anchor in Boston Harbor. The Boston Sons of Liberty dressed as Indians, boarded the tea ships in Boston harbor in December 1773, and dumped 342 chests of tea overboard. "In Delaware, nine days later,"

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[204] Thomas B. Allen, *Tories: Fighting For the King in America's First Civil War* (New York: Harper, 2010), 13-14. The British soldiers involved in the event were from the 29th Foot.
[205] Gross, 69.
[206] Robert A. Gross, *The Minutemen and Their World* (New York: Hill and Wang, 1976, 2001), 45.

Schweikart and Allen wrote, "a similar event occurred when another seven hundred chests of tea sank to the bottom of the sea, although without a Sam Adams to propagandize the event, no one remembers the Delaware Tea Party."[207] Historian Robert Middlekauff wrote of the Boston event that there was no damage to the ships themselves. "In all, 90,000 pounds of East India Company tea, valued at 10,000 [pounds], was destroyed, a small price, these men would have said, to pay for liberty."[208] If the colonists wanted to get the ministry's attention, they had it now.

The Intolerable Acts and the Quebec Act: The Militia Begins to Mobilize

The furious ministry responded with the *Intolerable Acts*, four acts of parliament designed to punish the people of Boston for the Tea Party.[209] The first was the *Massachusetts Government Act*, which suspended town meetings and revoked much of the colonial charter. The second was the *Administration of Justice Act*, which required a trial in England for any British soldier accused of a crime, and decreed that the Crown would appoint and pay all judges and sheriffs. The third was the *Boston Port Act*, which shut down the port on June 1, 1774, until Boston paid for the tea. A frigate anchored at the harbor mouth enforced the closure. Samuel Adams characterized it as a declaration of war against Massachusetts. The fourth was the *Quartering Act of 1774*, an act that had more teeth than the previous *Quartering Act*. Commanders now were able to quarter

[207] Schweikart and Allen, 67-68.
[208] Middlekauff, 232.
[209] Catton et al, 98-100

their troops in private buildings (but not occupied residences) without the owner's consent.[210]

More than anything else prior to the action at Bunker Hill, these four *Intolerable Acts* united all the colonies against the British government. Colonials responded by calling the First Continental Congress and initiating a boycott of all English goods. The Continental Congress approved a resolution in September 1774 calling on local Committees of Safety [which handled military matters] to identify militia leaders who supported the 'rights of the people,' thereby "setting in motion a series of provincial actions that made the militia the cornerstone of armed resistance to British policy through the winter of 1775."[211]

The Massachusetts Provisional Congress ordered local committees of safety to assume responsibility for training and provisioning community militias within their area of control in October 1774.[212] The Continental Congress advised each colony to structure its militia after that of Massachusetts and limited the time of active service for militiamen to four months.[213] The men were to arm themselves at their own expense and elect their company officers. Additionally, Committees of Safety throughout the colonies on their own initiative ordered community militias to increase their training musters to once a week and to begin stockpiling munitions. Special instant-response units organized within county militias included

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[210] Robert H. Churchill, To Shake Their Guns in the Tyrant's Face: Libertarian Political Violence and the Origins of the Militia Movement (Ann Arbor: University of Michigan Press, 2014), 28.
[211] Lawrence Delbert Cress, *Citizens in Arms: The Army and the Militia in American Society to the War of 1812* (Chapel Hill, NC: The University of North Carolina Press, 1982), 48.
[212] Cress, 49.
[213] Ibid.

the famous Minutemen in Massachusetts, who were to be armed and ready to fight within one minute. The instant-response units comprised about 20 percent of the entire militia. "…in ordinary times the militia mustered four times a year and now, in the spring of 1775, the Minutemen drilled twice a week."[214]

The events of 1774 resulted in the emergence of two distinct ideologies of resistance, according to historian Robert Churchill. The "Loyal Country" or "Moderate Whig" political culture was already in place, he asserts, and was the energy behind such legalistic and economic actions as the non-importation agreement and petitions and supplications. That year, however, also saw the rise of a more violent libertarian consensus develop among Americans. This point of view contributed to the preparations for a military response to the Intolerable Acts. The new Libertarian culture, "…rested on a theory of English constitutionalism that conceived of Parliamentary authority as subject to traditional restraints embodied in Common Law."[215]

As noted above, the second, more libertarian track, was military preparation and armed resistance, "To shake their guns in the tyrant's face," as the saying was (and is). The revolution, Churchill added, was a libertarian response on the part of the radicals to their perceived exclusion from the community of British citizenship. It was most powerful at a grass roots level.[216]

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[214] Gross, 6.

[215] Robert Churchill, To Shake Their Guns in the Tyrant's Face: Libertarian Political Violence and the Origins of the Militia Movement (Ann Arbor: University of Michigan Press, 2011), 29-31.

[216] Ibid, 36. "The libertarian ideology that animated the resort to armed organization and active resistance in 1774-75…resonated most vibrantly at the local level, its influence on the American Revolution and on American political theory has often been underestimated. Moreover, it offered a critique of oppressive government and state violence that would continue to apply to the acts of a

A somewhat similar dichotomy of ideology among American militiamen at the start of the revolutionary era reappeared among militiamen of the mid-1990s. Churchill denominated these two groups as the Constitutional or Whig militias, and the Millennial militias. "One set of militias dedicated themselves to open and public operation," Churchill stated, "celebrated the principle of the equality of all citizens, and…embraced a Whig analysis that explained state violence as a product of creeping authoritarianism among the officers of government."[217] These groups expect to salvage the "system," Churchill wrote. They promoted civic and political engagement, along with armed militia deterrence, as the most appropriate solution to the present day problems with government.[218]

"A second set of militias embraced the organizational vision of John Trochmann," Churchill wrote. "Such militias organized covertly, and some embraced or at least tolerated membership by white supremacists. These militias [are] much more millennial and apocalyptic in their interpretation of events."[219]

Trochmann's response to Churchill's assertion was that the demonization of the militia and the corruption of the national government prompted most militiamen in Montana and elsewhere to keep their preparations personal in order to avoid bringing unwanted attention to themselves and their families. He does not know of

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fully representative republican polity." This ideology of armed resistance gave rise to the concept of the 'sovereign citizen' that helped provide political legitimacy to the post-revolution tax insurrections.

[217] Ibid, 265.

[218] Ibid.

[219] Ibid.

a community militia in Montana today that is a racially bigoted organization although he admits that "millennial and apocalyptic" is often a fair description.[220]

A critical piece of libertarian political opinion made its appearance in America during 1774, shortly after the Tea Party. Widely read throughout the colonies, Jonathan Mayhew's *Discourse Concerning Unlimited Submission and Non-Resistance to the Higher Power,* was not original thinking but neatly summarized the undergirding legitimacy of the American position. It was a synthesis of the political philosophies of men such as John Locke, Algernon Sidney, John Trenchard, Francis Hutchinson, and others. Discussed in newspapers, in pamphlets, and on street corners, it was a powerful piece of political philosophy. Mayhew wrote that three political ethics energized Americans during 1774.[221]

"The first was that obedience was due only to those rulers whose rule was substantively just," Churchill wrote. The second ethic was that when the body politic reached a consensus that the government had become oppressive, they could replace it. "Finally, [he] declared that rulers who demanded that their subjects transgress the will of God must be resisted…"[222]

Mayhew's work, along with others like it, produced a strong impact that reinforced revolutionary American thinking in 1774. Often cited by present day militiamen in publications and on websites, Mayhew expressed the worldview of many American militiamen both then and now.

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[220] John Trochmann interview by Gerald Van Slyke, August 8, 2014.
[221] Robert Churchill, 31.
[222] Ibid.

"The federal government today continues to arrogantly break the law as if it is not accountable to the people," militiaman Old Montana Farmer said. "The oppressors think they have won, but there will be a spark as at Lexington, and the militia, the great body of American citizens, will do what needs to be done."[223]

Parliament also passed the *Quebec Act* in 1774, not formally one of the *Intolerable Acts* but one that many Americans considered the most objectionable governmental response of all. This act extended the boundary of Catholic Quebec to the lands north of the Ohio River.[224] The French were effectively back, the Americans felt, and the New Englanders were surrounded by Catholic territory. "The *Quebec Act* also mandated a governor and council appointed by the crown for Quebec, denied an elected assembly, and permitted the dominance of the Roman Catholic Church."[225]

A Catholic power in such close proximity to themselves made for queasy stomachs among the colonists. Pauline Maier wrote that by the fall of 1774, the Englishman on the street began to sense the seriousness of colonial resolve. "Thousands gathered at Parliament House when the King went there to give his assent to the Quebec Act," she wrote, "and the crowd not only hissed…but pelted him from the House of Lords to the Palace, crying out *no Roman-catholic King: no Roman-catholic religion! America forever!"* [226] [Italics and case in the original.]

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[223] Old Montana Farmer interview by Gerald Van Slyke, January 2, 2015. "Old Montana Farmer" is a protected identity.
[224] Maier, 185. "For many, the Quebec Act became the strongest proof of despotism."
[225] Charles Royster, *A Revolutionary People at War: The Continental Army and American Character, 1775-1783* (Chapel Hill, NC: University of North Carolina Press, 1979), 99.
[226] Maier, 248.

Lawrence James continued the thought. "In the end, it was the Quebec Act of 1774 that impelled Americans to adopt a course of action which transformed civil protests into armed rebellion," he wrote. "The official recognition of Catholicism in Canada provoked an outburst of Protestant hysteria."[227] Charles Royster noted that colonists believed, "…the British Government itself had joined the forces of Antichrist by enacting the Quebec Act, which protected and propagated this engine of assault on Protestant freedom." Americans feared an armed invasion of Catholics from Canada throughout the unsettled days of 1775.[228]

With the *Intolerable Acts* in effect, the British lost control of Massachusetts everywhere except in Boston, which their army occupied. Massachusetts patriots set up a Provisional Congress in Concord that ignored the royal government, assumed command of the militias, and began governing the colony on its own popular authority. Angry crowds closed the courts, refusing to allow them to conduct business under parliament's new judicial rules. Tories were harassed and cursed in the streets and there were "meetings throughout the winter [1774-1775] to prepare for the expected assault by Redcoats."[229]

Similar scenes were occurring in other colonies as well, as patriots established their own colonial governments. Richard Stewart wrote that the provisional governments established by the various colonies were effective. They took control of the militia forces and munitions stockpiles, and identified and

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[227] James, 104-105.
[228] Royster, 99.
[229] Gross, 8-9.

removed militia officers who favored the king. "This loosely knit combination of de facto governments," Stewart wrote, "established firm control over the whole country before the British were in any position to oppose them."[230]

The fates would cast Concord, Massachusetts, in the role of being the flashpoint in an upcoming march of regulars through Middlesex County. It was both the seat of the Massachusetts Provisional Congress and an important munitions depot, and the British could not overlook it. The citizens of Concord expected war and held a formal muster of its militia forces on the village green on March 13, 1775. "The Concord militia included nearly everyone between the ages of sixteen and sixty," Robert Gross wrote. "Only two groups were exempt - the young scholars of Harvard College (who even then had student deferments) and the town's dozen black slaves..."[231] One former slave, Peter Salem, was a member of the Lexington militia. An excellent rifle shot, his master had freed him so that he could join the militia. He would be on hand at both Lexington and Bunker Hill and he would do good service.[232]

Almost all of the militiamen knew each other and many were related. More than half the officers and sergeants had combat experience during the French and Indian War and had participated in the invasion of Canada.[233] The patriot militia stood in stark contrast to the British regulars whom even their own officers referred

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[230] Stewart, 46.
[231] Gross, 70.
[232] Margaret Whitman Blair, Liberty of Death: The Surprising Story of Runaway Slaves Who Sided With the British During the American Revolution (Washington, D.C.: National Geographic, 2010), 24.
[233] Gross, 70-71.

to as the "dregs of society," as well as to the later Continental regulars who came to resemble the British regulars more than their militia comrades once they too became professionals after 1777.[234]

Lexington: Captain John Parker's Political Statement

The pot continued to simmer and in April finally came to a full boil. On April 14, Major General Thomas Gage, British commander in Boston, received orders from the ministry to take some positive action against the rebels. "The King's Dignity, & the Honor and Safety of the Empire, require," the orders read, "that in such a Situation, Force should be repelled by Force."[235] On the night of April 18, he sent a group of about 700 men, some twenty-one companies of elite light infantry, grenadiers, and marines under the command of Lieutenant-Colonel Francis Smith of the 10th Lincolnshire Foot, to seize the weapons and munitions at Concord as well as capture any Patriot leaders. Lexington was on the march route so the Lexington militia were the first Americans to meet the British force.[236]

At about 4:30 in the morning of the 19th, some seventy militiamen, commanded by Captain John Parker, a veteran of Rogers' Rangers, deployed across Lexington Green facing the road entering the town from Boston as the British marched onto the green. This was the advance force of four-hundred light infantry and marines commanded by Major John Pitcairn of the Royal Marines. Parker did

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[234] Royster, 96-97.
[235] Walter R. Borneman, *American Spring: Lexington, Concord, and the Road to Revolution* (New York: Little, Brown & Company, 2014), 115.
[236] Ibid, 157-160.

not intend to impede their march or offer them any violence, only to make a political statement, but Pitcairn had orders to disarm any armed militias. He halted the troops and drew them up in line of battle and the shooting started. It is unclear who fired the shot heard 'round the world, but once fired, the first civil war had begun.[237] Eight American militiamen lay dead on Lexington Green with nine more wounded as Pitcairn's men gave three victory "huzzahs" and marched through the village enroute to Concord, the real objective. Peter Salem got a good look at Major Pitcairn and they would meet again two months later at Bunker Hill.

Concord and North Bridge

Once at Concord, the British searched the town and found a large amount of munitions. "Everywhere the British knew exactly what they were looking for and where," Robert Gross wrote. "Their spy had furnished a map of the hiding places of all the supplies."[238] The British burned much of the captured material around the town liberty pole and the fire spread to the courthouse. The soldiers put it out, but not before a huge bloom of smoke lifted skyward. The town militia had stationed itself on a ridge overlooking the town and when the men saw the smoke they assumed the British were burning Concord. They moved down the hill towards the town and at North Bridge, four-hundred militiamen collided with three companies of light infantry. The British got the worst of it and withdrew.[239]

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[237] Stewart, 47.
[238] Gross, 121.
[239] Middlekauff, 278.

The Militia Embodied to Fight for Their Homes

Their mission completed, Colonel Smith ordered his men to march for Boston. They were unmolested for the first mile, but when they reached Meriam's Corner, they found the militias from Billerica, Chelmsford, Bedford, and Reading on the north side of the road and those from Framingham and Sudbury on the south side of the road, waiting for them and eager to fight. Militiamen were pouring into the area from all over Middlesex County and beyond, and before the end of the day; they would number nearly four thousand. The battle started at Meriam's Corner and continued for the sixteen miles back to the Charlestown Neck with American militiamen keeping up a steady fire from covered and concealed positions along the road.[240]

As Smith marched eastward toward Lexington, he passed Brooks' Hill and Hartwell's Tavern. A mass of militiamen was waiting at both places, the initial units paralleling the British through the brush and wooded areas alongside the road and now joined by militias from Lincoln and Woburn. The rate of fire increased and so did the number of casualties on both sides. Captain Parker had gathered the Lexington militia (men who lived too far away to arrive early that morning had now joined the ranks) and placed it northwest of Fiske Hill on the north side of the road opposite the Woburn militia. The Lexington men, including Peter Salem, poured

[240] Borneman, *American Spring*, 200-201. The map on page 200 is excellent.

such an effective fire into the British ranks, that the place became known as "Parker's Revenge."[241]

The militia units paralleled the British route of march and, making use of the cover and concealment offered by the mostly wooded terrain, kept up a hot fire which the British were unable to answer effectively. The militiamen already engaged received continual reinforcement by freshly arriving units throughout the day. Another crescendo of gunfire enveloped the road at the Fiske house just west of Lexington as regulars and militia fought with a savagery that was surprising to officers on both sides.[242] By the time the regulars staggered into Lexington, their unit organization had collapsed and Smith's men were already "a beaten rabble," many of them collapsing on Lexington Green where they had drawn first blood earlier that day. They milled around aimlessly as Smith unsuccessfully attempted to re-form them. More militia was closing on the town and the defeated British were exhausted and short on ammunition. It looked as though the entire command faced imminent destruction.[243]

Timely reinforcements under Lord Percy arrived at Lexington from Boston at just that moment, however, and the strengthened force rested for half an hour, reorganized itself and marched off. Percy brought the 4th Foot (King's Own), the 23rd Foot (Royal Welsh Fusiliers), the 47th Foot, a battalion of Royal Marines, and

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[241] Ibid.
[242] Mark Urban, *Fusiliers: The Saga of a British Redcoat Regiment in the American Revolution* (New York: Walker Publishing, 2007), 20. "…the men were so wild…they could hear no orders."
[243] Gross, 129. "Near Fiske Hill in Lexington, they [the British] began to break ranks and run [from the battlefield] in confusion." See Also: Robert Middlekauff, 278. "The British companies soon lost their integrity…They were a rabble when they reached Lexington…"

two cannon. All of these units were missing their grenadier and light infantry companies, units already detailed to Colonel Smith's column. The relief force brought the total to about 1800 men.[244]

The reinforced British column fought its way east to Menotomy where a large number of militia were waiting, -- all the previously cited militia units, now joined by the Menotomy and Danvers militias, and many other militiamen who drifted in singly and in small groups after hearing of the clash at Lexington. The fiercest fighting occurred at Menotomy. Borneman wrote that, "Percy had about two thousand rebels hounding his rear [and] another two thousand or so armed men blocking the route through town…this stretch of road through Menotomy was the most heavily contested, and casualties along it were the heaviest on both sides."[245]

After the brutal house-to-house fighting at Menotomy, Percy fought his way down the road to Cambridge where he found several thousand fresh militiamen waiting for him. The Americans had removed the planks from the bridge over the Charles River, effectively cutting the British route of retreat to the south. Percy wisely chose discretion over battle honors and unexpectedly turned due east leaving the militiamen behind him. He fled mostly unmolested through Winter Hill to the Charlestown Neck where he was finally safe. It had been a very long day for the British army.[246]

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[244] Stewart, 47.
[245] Borneman, *American Spring*, 212.
[246] Ibid, 220-221.

When the exhausted British soldiers finally arrived in Boston that night, the withering fire from the hit-and-run militiamen had inflicted nearly three-hundred casualties on the king's soldiers, while suffering only a third that number. "At Cambridge, Percy shook off his pursuers and drove his column to Charlestown," Robert Middlekauff wrote. "There, he reached safety shortly after the sun went down. Behind him lay stragglers, wounded, dead, and missing men; and behind him, too, an increasing number of militia."[247]

American militiamen had decisively beaten the invaders and had driven them away from their homes. “Many of them concealed themselves in houses and advanced within ten yards to fire at me and other officers,” Lord Percy wrote in his official report, “tho they were mortally certain of being put to death themselves…I never believed…that they [would] have the perseverance I found in them.[248]

"Those patriot militiamen of that day did their duty exactly right," according to Steve McNeil, former leader of the present day Gallatin Militia, a militia associated with the Militia of Montana. McNeil said, "They stepped forward to defend their rights, their homes, and their families. These heroes have left us a tradition and a responsibility; they set the bar high and we need to be ready to live up to our patriot heritage."[249]

The action on April 19 led to a hardening of the ministry's position. Historian Lawrence James wrote, "The slide to war was now irreversible. News of

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[247] Middlekauff, 279.
[248] Mahon, 36.
[249] Steve McNeil interview by Gerald Van Slyke, January 29, 2015.

the skirmishes in Massachusetts left the cabinet with no choice but to apply [force]…The move was welcomed by George III, who had always been impatient with appeasement…"[250]

During the next few weeks, more than 20,000 militiamen from Massachusetts, Rhode Island, Connecticut, and New Hampshire converged on Boston as news of the events of April 19 made its way across New England. Israel Putnam rode the hundred miles to Boston in eighteen hours, calling out local militias along the way. Community militias camped as they pleased around the edges of Boston and generally took orders only from their town councils and Committees of Safety. The Provisional Congress had appointed six general officers with Boston physician Dr. Joseph Warren in nominal overall command. Boston was effectively under siege and British regulars found themselves encircled by the same militiamen they once held in contempt.[251]

With Boston quarantined, British occupation of Massachusetts ended at the picket lines around the city. General Gage received reinforcements during May and June until his force totaled 6,500 backed by a British fleet. Gage was preparing to invest Dorchester Heights but abandoned the plan on the morning of June 16 when he discovered the colonial militia had fortified Breed's Hill overnight, an action that endangered the entire British position in Boston. Gage's tactical situation required him to postpone the attack on the heights (had he a chance to

[250] James, 110.
[251] Mahon, 37.

occupy them, the siege may well have turned out differently) and drive the militia off Breed's Hill immediately or else evacuate Boston.[252]

"This be Bloody Work."
Israel Putnam, June 17, 1775

Determined to take Breed's Hill and the larger Bunker Hill behind it, Gage ordered Major General William Howe (who had opposed the *Intolerable Acts* and had supported the American position while a member of Parliament) to lead an attack on the fresh rebel entrenchments on Breed's Hill that very afternoon, June 16, almost two months after the Lexington and Concord action.[253]

Massachusetts militiamen led by Colonel William Prescott had fortified the hill overnight through a herculean effort and garrisoned it with more than a thousand men. The American militia leaders at Bunker Hill were veterans of the French and Indian War and had much more practical campaign experience than most of the British troop leaders. William Prescott had served in the militia at Louisburg, Israel Putnam and John Stark had served with Roger's Rangers, Thomas Knowlton fought the French and later served under Israel Putnam against the Spanish, and they all had fought Indians. Dr. Joseph Warren, President of the Massachusetts Provisional Congress and a general officer, was the only senior

[252] Middlekauff, 291-293.
[253] Richard M. Ketchum, *Decisive Day: The Battle For Bunker Hill* (New York: Doubleday, 1974), 139.

American leader present who was not a veteran. Warren deferred command to Prescott, declared himself an observer and took a place in the redoubt.[254]

The American entrenchments on Breed's Hill consisted of a very strong redoubt built the previous night, filled with Massachusetts militia (one of whom was a Brookfield farmer named Daniel Shays) and commanded by Colonel Prescott. Running north from the redoubt and facing east was a strong breastwork also commanded by Prescott and manned by Massachusetts militia. Two additional American strongpoints stood to the north of Prescott's positon. A rail fence ran north to south and the Connecticut militia, commanded by Colonel Thomas Knowlton, dug in behind it facing east.[255]

A heavy stone wall was quickly jumbled together and ran north from Knowlton's fence line to the waters of the Mystic River. Colonel John Stark (who later contributed decisively to the American victory at Saratoga) commanded the New Hampshire militia defending this wall and they were later to save the day by preventing the British light infantry from outflanking the American position. Brigadier General Putnam commanded on Bunker Hill and at the Charleston Neck, both made dangerous by cannon fire from naval ships throughout the day. Warren placed himself beside Prescott in the redoubt.[256]

The initial British assault force landed at two points and in two waves. The 43rd and 52nd Foot, reinforced by light infantry and grenadier companies, were to

[254] Ibid, 150.
[255] Ibid.
[256] Ibid.

land just north of Charlestown under Brigadier Robert Pigot and attack the redoubt. The 5th and 38th Foot under Major General William Howe, reinforced by ten companies of light infantry and ten companies of grenadiers, were to land to the north of Pigot's force and make the main effort against the breastwork. The 47th Foot and the 1st Battalion Royal Marines were in reserve. Later they would go into the fight along with the 63rd Foot and 2nd Battalion Royal Marines.

The attack began at about 1:30 p.m. when barges full of soldiers left Boston and headed to their landing points under the cover of a tremendous naval barrage.[257] Landing their troops, the barges returned to Boston and quickly brought the remainder of the attacking force to their landing point and then, at Howe's order, the reserves, the 47th Foot and the 1st Marines. Howe now had about two thousand men ashore. Within easy sight of Boston, loyalists and patriots alike stood on their rooftops and watched the action. The British formed into their famous red lines facing the American position, and Howe ordered light infantry to follow the beach around the north end of the American line and envelop the force defending the breastwork. The light infantry would then attack the breastwork from behind while the grenadiers assaulted it from the front. Pigot was to make a demonstration, a feint, before the redoubt to prevent Prescott from sending reinforcements to the breastworks. Once the breastworks were broken, Pigot would assault and carry the redoubt.[258]

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[257] Middlekauff, 293-294.
[258] Ketchum, 152.

The British units, closely watched by those in Boston, were on line and Howe's men began moving uphill slowly to allow the light infantry time to conduct the envelopment. The American militia was exhausted after a night of frantic digging and they were low on ammunition. "The rebels watched and waited," Robert Ketchum wrote, "anxiety and disbelief welling up in their dry throats as the finest infantry in the world moved closer and closer, threatening to engulf them."[259]

Things went poorly for the British effort from the very start. The light infantry hurried along the beach and ran into a stone wall that had not been there yesterday. Behind it crouched two hundred New Hampshire militiamen, three deep, led by John Stark. Stark had ordered ranging stakes placed in front of the wall at thirty and fifty yards out and the old ranger gave the order to fire when the British reached the fifty-yard stake.[260] A thunderous volley heard in Boston crashed out and few of Stark's men missed at that range, shooting from behind cover and steadying their firearms on top of the wall. After the initial volley, they fired independently, loading as quickly as they could and taking careful aim at a target and shooting again. In less than four minutes, more than half of the light infantry lay dead on the beach and the rest retreated at the double quick. The light infantry sustained seventy percent casualties; a senior private commanded one company at the end of the day.[261]

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[259] Ibid, 155.
[260] Paul Lockhart, The Whites of Their Eyes: Bunker Hill, the First American Army, and the Emergence of George Washington (New York: Harper-Collins, 2011), 271-272.
[261] Ketchum, 168.

Howe rode to a vantage point and gasped in horror at the mangled piles of dead Redcoats laying along the beach. His envelopment had failed spectacularly, but he was sure his grenadiers and line infantry could carry the breastwork with a direct frontal assault, which he immediately ordered.[262] Pigot meanwhile, was demonstrating against the redoubt, taking heavy fire both from the redoubt and from snipers hidden in Charleston. A signal went out to the fleet and the ships fired heated cannon balls into the town and burned it to the ground.[263]

Howe's main force assaulted both Prescott's militiamen at the breastwork and Knowlton's militiamen at the fence line, twice. In full view of Boston and to the amazement of the people there, the regulars broke and retreated both times with severe casualties. Bostonians could hear the continuous thunder of gunfire and see long lines of dead redcoats laying in "thick, grotesque piles" on the hillside.[264] Sir Henry Clinton, watching from Boston, sent over the 63rd Foot and the 2nd Battalion Royal Marines to reinforce Howe, neither of which had expected to participate in the engagement. Frustrated at the way things were going, Clinton gathered as many walking wounded and whoever was standing around and, without orders, led them across the bay to the fighting.[265]

After the second repulse, Howe almost called off the attack and withdrew his remaining troops across the bay to Boston. He decided, however, on one more attempt. It was a fortuitous decision since, unknown to the British, the Americans

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[262] Middlekauff, 296.
[263] Ibid, 291.
[264] Ibid, 296.
[265] Ketchum, 164.

were almost out of ammunition despite Israel Putnam's best efforts to find some and bring it across the neck. Howe ordered Pigot to cease demonstrating and to assault the redoubt with everything he had while he (Howe) led the rest of the men against the breastworks once more. The British marched forward again. Posted in the redoubt, Peter Salem, the best shot of the Lexington militia, recognized Major Pitcairn of the Royal Marines as the man whose troops killed eight of his neighbors at Lexington Green. Poor took aim and shot Pitcairn in the head, killing him.[266]

After bloody fighting, the 1st Battalion Royal Marines finally breached the redoubt and redcoats poured over the walls, aided by the fact that Prescott had ordered a gradual retreat back to Bunker Hill and across the neck since his men were out of ammunition. Dr. Warren remained in the redoubt until a redcoat bayoneted and killed him. The Americans withdrew slowly and in good order (for the most part) and escaped across the neck.[267] "Prescott said later," historian Richard Ketchum wrote, "that one more round of ammunition might have pushed them back then and there, but there was not one more round."[268] There were also no bayonets, just axes and shovels -- farmers' tools.

The British claimed the victory because they held the field, but everyone knew it was a hollow victory indeed. American losses were about 440; British losses were 1,054, almost fifty percent of their force.[269] Losses among British

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[266] Blair, 24.
[267] Middlekauff, 298. "The retreat that followed did not collapse into disorder. Knowlton from the rail fence and Stark moving up from the beach gave covering fire, moving backward to Bunker Hill as they did. The men at the breastwork had already pulled back under the raking from the artillery, and Prescott's troops found a shield in Knowlton and Stark."
[268] Ketchum, 174.
[269] Stewart, 49.

officers were horrific.[270] "The number of British officers killed and wounded on June 17," historian Kevin Phillips wrote, "represented a quarter of those officers killed and wounded during the entire revolution."[271] British General Henry Clinton said that Bunker Hill was, "A dear bought victory, another such would have ruined us."[272] Sir Winston Churchill wrote, "The British had captured the hill, but the Americans had won the glory…On both sides of the Atlantic men perceived that a mortal struggle impended."[273]

General Gage wrote privately to the ministry that the, "Rebels are not the despicable Rabble too many have supposed them to be." Gage noted that this militant spirit had grown among Americans during the past few years and added, "These People Show a Spirit and Conduct against us they never showed against the French."[274] The *Edinburgh Advertiser* was the first British paper to break the news of Bunker Hill. The August 1, 1775, issue styled the action a British victory and suggested to its readers that the Americans would not wish to face the determined professionals of the British Army again.[275]

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[270] James Nelson, *With Fire and Sword: The Battle of Bunker Hill and the Beginning of the American Revolution* (New York: St. Martin's Press, 2011), 306. "The Americans were targeting the officers, and unlike the British troops, they were taking aim before shooting. Protected as they were, with walls or fences to rest heavy muskets on, and with long experience in using their weapons in situations like hunting where accuracy mattered, the Americans were in a position to take care with their firing. They did, and the British officer corps took the brunt of it."
[271] Phillips, 11.
[272] Borneman, *American Spring*, 384.
[273] Winston Churchill, 66-67.
[274] Borneman, *American Spring*, 388-389.
[275] Todd Andrlik, Reporting the Revolutionary War: Before It Was History It was News (Naperville, IL: Sourcebooks Inc., 2012), 145.

Blaming him for the debacle at Bunker Hill, the king recalled Gage to London for "consultations" and he never returned to North America. The disgraced Gage left Boston almost unnoticed on October 11 and Sir William Howe became Commander in Chief in America.[276] Bunker Hill had a more far-reaching result than just the relief of the British commander. United, as never before, the colonies now presented a single front to the British. "A profound change had taken place in America after June 17. No longer was it going to be possible to deal separately with the northern and southern colonies."[277]

The rebels now closed ranks behind their Congress. A year later, on July 4, 1776, the civil war changed into a formal revolution with the adoption by Congress of the *Declaration of Independence*, which eventually resulted in Britain's recognition of American independence.[278] Historian R. B. Bernstein called the Declaration a "Lockean document," because it incorporated so many of Locke's precepts.[279] (See Appendix D for an essay on *Locke's Second Treatise on Civil Government*.)

Historian D.J. Mulloy has investigated the role historically significant words and imagery play in the political perceptions of modern militiamen. He cites the successful actions at Lexington and Concord as well as at Bunker Hill, and later at Saratoga, to be the most significant events in the identity sustaining rhetoric and

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[276] Ibid, 389.
[277] Ketchum, 212.
[278] R.B. Bernstein, ed., The Constitution of the United States with the Declaration of Independence and the Articles of Confederation (New York: Fall River Press, 2002), xii.
[279] Ibid.

self-perception of the modern militiaman (more in Chapter Seven). Mulloy records that, "The [present day] militia use the past to bolster their sense of [shared] identity, to confer significance on their activities, and to legitimize their concerns." Present day militias, he wrote, cite Lexington and Concord in their effort to name April 19 a national holiday, National Militia Day In short," he continued, "in the hands of militia members American history becomes aligned with, and is made to serve, explicit political ends…This is not to argue that the nation's history is completely distorted in the process."[280]

Many investigators who have researched the present day militia either seem to have mistaken criminal gangs for militias or erroneously viewed the militia as a fringe political force. This dissertation argues that it is a constitutional military force that aspires to be under the control and authority of local government, even if not often characterized as such by public opinion makers. Indeed, every military force uses significant words and imagery to strengthen the shared identity and cohesion of the men in the unit to make them more effective soldiers. From wearing uniform clothing and identifying unit patches, to honoring unit flags, singing unit songs and participating in other unit cultural traditions, every military force attempts to promote the loyalty and commitment of its soldiers in this way. It would

[280] D.J. Mulloy, *American Extremism: History, Politics, and the Militia Movement* (London and New York: Routledge, 2004), 62. "…the militias thus evidence a keen, extensive, and, one would argue, genuine interest, in many different facets of America's Revolutionary history," Mulloy wrote. "Indeed, to some extent, militia members appear to be engaged in similar endeavors to those undertaken by professional historians as they seek to educate both themselves and their fellow citizens about their nation's past."

be odd if the present day militia did not do the same and it is a stretch to see anything ominous in it.

The Militia at Saratoga

Perhaps the high point for the militia during the Revolutionary War was the victory at Saratoga (1777), an engagement that destroyed the British northern army, encouraged the French and Spanish to enter the war on the side of the Americans and, in retrospect, may well have been the turning point of the war itself.[281] The American force contained both continentals and various militias including the New Hampshire Militia commanded by Brigadier General John Stark of Bunker Hill fame.[282] The British initiated the Saratoga campaign as one arm of a three-pronged strategy to isolate New England from the remainder of the country. A British army commanded by Lieutenant-General John Burgoyne moved south across Lake Champlain and down the Hudson River from Montreal. Another force under the command of Colonel Barry St. Leger was to follow the Mohawk River from Ontario into New York while Major-General William Howe was to lead an army up the Hudson River from New York City. The three armies expected to unite near Albany, New York, but the plan collapsed almost immediately when St. Leger was

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[281] John Chambers, ed., *The Oxford Guide to American Military History* (New York: Oxford University Press, 1999), 638.

[282] Winston Churchill, 76. "As Burgoyne advanced the New England militia gathered against him. [H]e was harassed by raids, and his troops began to falter and dwindle…[T]he New Englanders, their strength daily increasing, closed in…Days of hard fighting in the woodlands followed…[T]he Germans [Hessian mercenaries] refused to fight any longer and on October17, 1777, Burgoyne surrendered to the American commander, Horatio Gates."

defeated at Ft. Stanwix and forced to retreat, and Howe decided to sail to Philadelphia instead of up the Hudson without bothering to inform Burgoyne.[283]

Burgoyne began his descent from the north on June 20 with 3,700 British regulars, 3,000 German regulars, 650 Tories and Canadian militia, 600 artillerymen with 138 cannon, and 400 Iroquois.[284] Also traveling with the army was a large number of camp followers (more than 300) and prostitutes, all of whom had to be fed and protected.[285] The regulars included the British 9th, 20th, 21st, 24th, 29th, 31st, 47th, 53rd, and 62nd regiments of foot, as well as five German regiments and the artillery.[286] Burgoyne committed his first major blunder at the starting gate. He issued an insulting and confusing proclamation to the American colonists in the operational area that, among other things, threatened to turn loose his Indians on the civil population if the colonists did not support the British army.[287]

Everyone on the frontier knew exactly what that meant and many Americans who would have remained aloof from the fighting pledged themselves to the militia to save their families from unspeakable horrors.[288] Burgoyne's Indians sealed the colonists' expectations and hardened their spirit of resistance when they murdered and scalped an innocent young woman named Jane McCrea for no

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[283] D.M. Giangreco, United States Army: The Definitive Illustrated History (New York: Fall River Press, 31.
[284] Middlekauff, 377.
[285] Richard Ketchum, *Saratoga: Turning Point of America's Revolutionary War* (New York: Henry Holt and Co., 1997), 432.
[286] Morrissey, 19-20.
[287] Middlekauff, 379.
[288] Ibid.

reason. A pretty girl, McCrea was the daughter of a minister and was traveling unarmed to join her fiancé.[289]

Further, Indians occasionally practiced ritual cannibalism, as noted in Chapter One, which fueled the arguments of those who wanted them exterminated. Early in the campaign, the Indians requested that Burgoyne give them two American prisoners to eat. He refused but word of the request spread among the colonists. The Indians also habitually committed blood-chilling atrocities.[290] Burgoyne's allies could not have done more to insure his defeat.

Things began well for the British. They crossed the border into New York and captured Ft. Ticonderoga after a brutal skirmish several miles from the fort. General Simon Fraser's force of about 850 British regulars collided with a thousand American militia led by Colonel Seth Warner just before dawn on July 7. The Americans were on the verge of victory after three hours of bitter fighting, but British reinforcements arrived just in time and forced the colonials to retreat. British leaders were surprised that militia had stood toe to toe with their regulars for three hours and very nearly won the engagement, and then had conducted an orderly retreat. A British officer, the Earl of Balcarres, testified to parliament that the Americans had fought "very gallantly."[291]

Pushing south, Burgoyne passed through Skenesboro, New York, and captured Fort Anne without much of a fight. British morale soared but Burgoyne's

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[289] Thomas Fleming, *Liberty! The American Revolution* (New York: Penguin Group, 1997), 249-250.
[290] Ketchum, *Saratoga*, 272.
[291] Middlekauff, 380-381.

fortunes had now reached their zenith. "The worst of the campaign -- though not the fighting -- was now over for the Americans," Middlekauff wrote. "For the British it was really just beginning."[292] Congress, dismayed at the loss of Ticonderoga and Anne, replaced the American commander, General Philip Schuyler, with General Horatio Gates on August 4. A favorite of the militiamen, Gates was a veteran of the French and Indian War and had risen to be a major in the British army. He was aggressive, the soldiers liked him, he knew how to get the most out of militiamen, and he knew how to fight both British regulars and Indians.[293]

Burgoyne was now in critical need of horses, wagons, draft animals, and food. He was far from Canada and he was traveling heavy. He had 138 cannon and hundreds of non-combatants hindering his movements. He decided to forage locally and sent about 1,400 British and German regulars under Colonels Fredrick Baum and Heinrich von Breymann to appropriate the needed supplies from farmers around nearby Bennington. The British force also included three loyalist militias totaling more than 300 men.[294] Unknown to the British, General John Stark had moved about 2,000 New Hampshire militiamen into the area the day before the battle and was waiting for them.[295] Colonel Seth Warner reinforced Stark's command with 350 Green Mountain Boys just before the battle. Stark's force was

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[292] Ibid.
[293] Ibid, 378. Middlekauff maintained that both regulars and militia despised Schuyler because of his lack of aggressiveness in a previous campaign, the fact that he was a severe disciplinarian, and that he often acted like a snobbish Dutch patroon.
[294] Brendan Morrissey, *Saratoga 1777: Turning Point of a Revolution* (Oxford, UK: Osprey Publishing, 2000), 22, 25-26, 49-50.
[295] Ketchum, *Saratoga*, 297.

operating independently from the continentals since Stark, a militia officer, refused to take orders from a continental regular officer, a situation that would often occur until the end of the Second Civil War (1861-1865) and was not finally resolved until the National Defense Act of 1920. "In all the states," Mahon wrote, "militia officers resisted being subordinated to Continentals and endlessly bickered over relative rank."[296]

The fighting began at 3:00 on the afternoon of August 16 and continued until after dark. It was a disaster for Burgoyne's army. The British lost 205 dead, an unrecorded number wounded, and about 700 captured while American casualties numbered about 70. The Battle of Bennington cost Burgoyne a tenth of his force, men he could not replace, and denied him the horses and food for which his army was quickly becoming desperate. It also prompted his Indian allies to desert him. Additionally, it materially contributed to the eventual American victory in the Saratoga Campaign which itself helped convince the French, Spanish and Dutch to enter the war against the British.[297] John Stark, the militia general who refused to take orders from a continental officer, became a Brigadier General in the Continental Army after this victory.[298]

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[296] Mahon, History of the Militia, 43.
[297] Morrissey, 87-88. "Word of Saratoga reached Paris on December 5, 1777…King Louis XVI declared his recognition of the United States of America the next day…and a formal treaty of alliance was signed on February 6, 1778. The after-shock in America and Europe transformed a civil war into a global struggle…and eventually lost George III his American colonies."
[298] Catton, 114. "But on August 16 a force of New Hampshire Militia under John Stark caught a British detachment at Bennington, killed over 200, and took 700 prisoners." See also: Wikipedia, *John Stark* (accessed February 21, 2015). http://en.wikipedia.org/wiki/John_Stark

Severe food shortages forced Burgoyne to order his soldiers' rations reduced by one third on October 4. Further, it had become cold at night and Burgoyne's men were wearing summer uniforms. More than 800 soldiers were in hospital including some of the wounded from Bennington and those suffering from camp fever. The sick and wounded represented about 15 percent of his force.[299]

Burgoyne now learned that neither St. Leger nor Howe was coming to rescue him. Guerilla attacks by local community militias that had responded to news of the murder of Jane McCrea by hastening to reinforce the American forces, exacerbated his supply situation and critical lack of horses. The American army began the campaign with 9,000 men, a number that swelled to more than 15,000 by the end of the campaign. "The civilian population," historian Don Higgenbotham wrote, "[morphed] into a loosely arrayed body of irregulars of the sort unknown in the Old World."[300] Sergeant Roger Lamb served under Burgoyne in the 9th Foot during the Saratoga campaign. "Numerous parties of American militia," he wrote, "swarmed around the little adverse army like birds of prey."[301] Militia riflemen hidden in the forests continually sniped at the British or gobbled like turkeys to unnerve the invaders. The British had no rest.

Gates and Burgoyne clashed at the Battle of Freeman's Farm on September 19, an action that was a Pyrrhic victory for the British. They collided again on October 7 at the Battle of Bemis Heights, a decisive American victory. Burgoyne

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[299] Fleming, 257.
[300] Don Higgenbotham, *The War of American Independence* (New York: Macmillan & Co., 1971), 164.
[301] Christopher Ward, *The War of the Revolution* (New York: Macmillan & Co., 1952), 538.

struggled to retreat at Saratoga but was cornered and forced to surrender on October 17. It was the first time in history that a British Lieutenant-General surrendered with his entire army. The British suffered 440 killed during the campaign, 695 wounded, and 6,222 captured compared to American losses of 90 killed and 240 wounded.[302] The British northern army ceased to exist.

Back in England, news of Burgoyne's defeat was reported in the *London Chronicle*, which printed the entire *Articles of Surrender* on December 11, 1777.[303] Parliamentary supporters of the home militia cited the American victory as proof of the ability of militia forces to cope with regulars. With the entry of France into the war on February 6, 1778, the ground invasion of England was a specter that once again loomed large in the minds of both the members of parliament and the Englishman on the street. So much of the royal army was committed across the Atlantic in North America that it would have been difficult to defend the home islands in the event of an invasion.[304]

The American Patriot Militias in the First Civil War

The patriot militias served on every front throughout the war. "[T]here was an American army," John Mahon wrote, "only because there was a militia

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[302] Morrissey, 86. Sources differ on the numbers of casualties.
[303] Andrlik,, 229-233.
[304] Western, 209. "It was not until after Saratoga…that the ministers had to make extensive preparations for home [island] defence…a number of new regular regiments were raised…the embodiment of the [entire] militia was ordered in March 1778, when it became known that France had made an alliance with America…Fencible regiments were raised [in Scotland]. In 1778, parliament [expanded] the militia by…one company per battalion…when Spain entered the war in June 1779, Lord North proposed to double the strength of the militia…"

system."[305] It reinforced the Continental Army in battle (often providing half of the force or more), it recruited volunteers for the Continental Army, and it protected patriots while harassing and controlling loyalists. The British took the American militia very seriously, more seriously than some American regular continental officers did. Historian John Shy wrote that the militia was a political law enforcement tool everywhere the British Army was absent. "From the British viewpoint," Shy wrote, "rebel militia was one of the most troublesome and predictable elements in a confusing war. The militia nullified every British attempt to impose royal authority short of using massive armed force." The militia's ubiquitous presence meant that it was more active in more places than the Continental Army, and it was the local representative of Congress and the state revolutionary governments in communities throughout America. "From the British viewpoint, the militia was the virtual inexhaustible reservoir of rebel military manpower, and it was also the sand in the gears of the pacification machine.[306]

The militia policed areas that were under the control of the revolutionaries, fought the British, and enforced revolutionary 'political correctness' on the populace. Historian Garry Wills notes: "They [American militiamen] exerted almost as much political force on their own people as military force on the enemy."[307] Kevin Phillips, commenting on the independence of both Patriot and Loyalist militias, wrote that they fought each other continuously in every state.

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[305] Mahon, History of the Militia, 38.
[306] Shy, 237.
[307] Garry Wills, A Necessary Evil: A History of American Distrust of Government (New York: Touchstone Publishers, 2002), 40.

"During the entire war, the American militia participated on its own in 191 engagements in Connecticut, New York, New Jersey, and did likewise on 194 occasions in the Carolinas and Georgia."[308]

American Loyalist Militias
During the First Civil War

Not all Americans were patriots and not all American militiamen fought for Congress. "Curiously, despite all the evidence that there were large numbers of loyalists in the colonies who were ready and eager to fight for the Crown," Richard Ketchum wrote, "no intelligent effort was made to capture this substantial reservoir of manpower…They were simply ignored."[309] Nevertheless, more than 150 known loyalist militias of various sizes fought for the king, a force that drew in about fifty thousand men during the course of the war.[310]

Many loyalist militias were lost to history when the British burned their records in an attempt to protect the militia members after the British defeat. Loyalist militiamen played the same role for the British that the patriot militia did for congress. They controlled civil populations, collected taxes, recruited men for the army and fought patriot militias in brutal small-unit warfare. Very unwelcome in

[308] Phillips, 419.
[309] Ketchum, 212.
[310] Thomas B. Allen, *The Loyalist Corps: Americans in Service to the King* (Takoma Park, MD: Fox Acre Press, 2011) 9.

America at the end of the war, most of them escaped to Nova Scotia, Jamaica, or England itself, their property long before confiscated by the patriots.[311]

There were also blacks and Indians serving on both sides. William Draper, a staunch royalist, published a pamphlet in London in December 1774, in which he urged freeing and arming American slaves who were willing to join the British Army and to serve against their former masters. Favorably received at court the idea was widely reported in the southern colonies. Every American soon understood that, "a Scheme, the most diabolical [to] offer Freedom to…Slaves, and turn them against their Masters," was being refined in London.[312] Slaves had observed the rift between their white masters and sought ways to take advantage of it. During the revolution, mounted patrolling, which had once been largely a social event, had become a rough and dangerous duty and it was now not unheard of for men to be wounded or killed on patrol. White persons at all levels observed ever-increasing black unrest and feared it.[313]

On April 24, 1775, amid rising conflict with patriot militiamen, Lord Dunmore, royal governor of Virginia, surreptitiously removed fifteen barrels of gunpowder from the Williamsburg powder magazine and transported them to a British warship. White Virginians were furious about this claiming that they daily

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[311] Allen, *Tories*, xviii-xix. "From the battle at Concord to the battle at Yorktown, Patriot troops fought armed Loyalists as well as British troops. By one tally, Loyalists fought in 576 of the war's 772 battles and skirmishes."

[312] Holton, 140-141. See also James, "There was also, in 1779, an attempt by the British to enlist the help of slaves. An appeal had been made to them in November 1775 by Lord Dunmore [and others]...Between 1779 and 1781 thousands of Negroes made their way to the British army, drawn by (Sir Henry) Clinton's offer of freedom to any slave of a rebel." (117)

[313] Ibid, 142-145. The Patrollers were an informal militia or mounted police force that searched for escaped slaves.

expected a general slave revolt across Virginia and the royal governor had just elected to steal their ammunition. An angry uproar from both the middle and upper classes around the state caused the governor to fear for the safety of the capital and offer to pay for the powder.[314] He raised and trained a small militia of Shawnee Indians and runaway slaves which fought and defeated the Princess Anne County Militia on November 14, 1775, killing four of the rebels and scattering the rest. The rebel commander, Joseph Hutchinson, was recognized and captured by two of his former slaves.[315]

Lord Dunmore was so pleased with this well-executed action that he immediately issued a proclamation declaring that, "all indentured servants, Negroes or others, (appertaining to rebels) that are able and willing to bear arms, they joining His Majesty's Troops...will be free."[316] More than a thousand escaped slaves joined Dunmore's "Ethiopian Regiment" and were trained and served as auxiliary troops of the British Army. The practice spread throughout the colonies and soon British units everywhere were accepting black volunteers to fill the holes in their ranks.

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[314] James Corbett David, Dunmore's New World: The Extraordinary Life of a Royal Governor in Revolutionary America - With Jacobites, Counterfeiters, Land Schemes, Shipwrecks, Scalping, Indian Politics, Runaway Slaves, and Two Illegal Royal Weddings (Charlottesville, VA: University of Virginia Press, 2013), 94-95.

[315] Holton, 155.

[316] Ira Berlin, *Generations of Captivity*: *A History of African-American Slaves* (Cambridge & London: Harvard University Press, 2003), 112. "Lord Dunmore, who, in return for freedom, accepted their (Blacks) offer of military service in the King's cause. But in December 1775, Dunmore's Ethiopian Regiment was defeated at the Battle of Great Bridge, forcing the governor and his black allies to evacuate the region. Thereafter, the Chesapeake became a minor theater of war, armed conflict did not return until 1782. Still, Dunmore's Proclamation and the occasional raid on Patriot plantations stirred slaves throughout the Chesapeake, allowing several thousand to seize their freedom…In all, more than 5,000 Upper South slaves escaped bondage (in this manner) during the war, and perhaps an equal number remained free in the South." However, the majority of slaves remained where they were.

Many of the blacks who sought refuge with the British had brought their wives and children with them and most of these survived the revolution and removed to Nova Scotia at war's end.[317] Many of them later immigrated to Sierra Leone.[318] Historian Woody Holton wrote that Jefferson considered Dunmore's Emancipation Proclamation a major cause of the revolution. By endangering loyalists and patriots alike, Dunmore drove many loyalists into the arms of the revolutionaries.[319]

Aside from Lord Dunmore's well-known proclamation, there were other efforts to recruit slaves on the part of both sides. Their recruitment philosophies differed. Generally, the British offered freedom to any black who would enlist and whose master was a rebel (such as in General Henry Clinton's *Philipsburg Declaration* of 1779), while the Americans recruited free blacks and also offered freedom to any slave who would enlist in the army with his owner's permission.[320]

"It is thought that about 5,000 blacks served with American troops," Margaret Blair wrote. While it is a far smaller number than those who escaped to British protection (estimated to be closer to 15,000 or 20,000, though some put the number closer to 80,000 or 100,000), they were still a considerable source of strength. It is hard to know the precise number because most of the American units were integrated, and the race of those who enlisted usually was not recorded.[321]

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[317] Holton, 156.
[318] Blair, 47-49.
[319] Holton, 158-159.
[320] James, 117. "There was also, in 1779, an attempt by the British to enlist the help of slaves. An appeal had been made to them in 1775 by Lord Dunmore…between 1779 and 1781 thousands of negroes made their way to the British army, drawn by [Sir Henry] Clinton's offer of freedom to any slave of a rebel."
[321] Blair, 23.

Historian Holly Mayer noted that by December 1777, so many blacks had joined the rebel army that a captured German officer wrote that he never saw an American regiment without "a lot of negroes."[322]

One would be surprised if most Indians did not favor the British, for the king had established the Proclamation Line of 1763 to protect Indian lands and the American colonials had completely ignored it. Nevertheless, historian Colin Calloway made a strong case that many Indians, regardless of the official position of their tribe, sided with the rebels because of cross-cultural exchanges that had made the frontier a "cacophony of cultures," a place unlike the frontier described by Frederick Jackson Turner as a simplistic boundary line of advancing white settlements moving westward.[323]

There were complex trade relationships, intermarriages, shifting alliances, ongoing cultural and social development among the Indians resulting from contact with Europeans, and a respectable degree of interdependence among the various frontier peoples. New groups of hybrid peoples came into being, new tribes emerged from the remains of older tribes, new languages appeared, and many Europeans and Africans chose to dwell among the Indians. "Cultural boundaries between Indians and Europeans, and between Indians and Africans (as between Indians and other Indians), were often fuzzy and porous."[324] Despite the efforts of

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[322] Holly A. Mayer, *Belonging to the Army: Camp Followers and Community during the American Revolution* (Columbia, S.C.: University of South Carolina Press, 1999), 57.
[323] Colin G. Calloway, The American Revolution in Indian Country: Crisis and Diversity in Native American Communities (Cambridge, UK: Cambridge University Press, 1995), 16.
[324] Ibid, 19. Calloway provides a masterful overview of frontier society in the twenty-five page preface to his book.

those who, like the Delaware prophet Neolin, wished to make all Indians "Indians," and like the Paxton supporters who wished to make all white people "white people," many of the people in an "Indian village" in 1775 often were not Indians, or were not Indians of that particular tribe. Many served the king and many served Congress.

The Militia Roots of the Continental Army

Although this investigation centers on the militia, it would be an oversight to ignore the Continental Army, which began as New England militia and never completely outgrew its community origins. The American Continental Army came into being on June 12, 1775, when Congress designated the embodied militia units (both unorganized and select units) laying siege to Boston to be the new standing force of the emerging American nation, without asking them first.[325] They were a loose collection of independent militias, each serving under its own elected officers. The following day Congress appointed George Washington General-in-Chief of the new Continental Army. He arrived at Boston on July 2, two weeks after Bunker Hill, and found the American forces in a profoundly sorry condition. Washington observed in one of the all-time great examples of understatement, that his army was "...a mixed multitude of people...under very little discipline, order or government."[326] The American General-in-Chief spent most of the first two years of the war struggling resolutely to forge free-spirited and often unreliable American

[325] Phillips, 245.
[326] Stewart, 52.

militiamen into regulars while at the same time attempting to prevent the British from destroying his force.[327]

Congress created twenty-seven Continental regiments out of militias already in service at the start of 1776. By December, Congress had authorized an additional 104 battalions. (Washington reorganized the army into eighty regiments in 1779 and reduced it to fifty-eight larger regiments the following year.)[328] Beset by the plague of problems attending any new-from-scratch army, the Continentals eventually learned their lessons, finally came to parity with the British regulars in 1777-78, and then ultimately defeated them.

The Continentals shed their militia sloppiness and flippant attitude during the hard campaigns, bitter defeats, and many deaths of 1776-1777, a metamorphosis no doubt aided by their demanding Prussian drillmaster at Valley Forge. During June 1778, the Continentals came of age at the Battle of the Monmouth Court House, trading musket volleys and bayonet assaults face-to-face with the British regulars, counter attacking when pushed back and refusing to break and flee. After Monmouth, everyone including the British recognized the Continentals as a professional army.[329]

The army the Continentals faced in battle was a well-supplied and formidable force. The British made an extreme effort to quell the rebellion and sent overseas the largest army in their national history prior to the Napoleonic Wars,

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[327] Mahon, History of the Militia, 37.
[328] Middlekauff, 517.
[329] Ibid, 88, 512. The demanding Prussian drillmaster was Baron Von Steuben who would paly a role after the revolution in pre-figuring the National Guard of the United States.

including sixty-nine regiments of line infantry (including regular Loyalist regiments), two of artillery, two of cavalry and two battalions of marines and two of foot guards. In addition, there were five regular regiments of the "American Establishment," a multitude of provincial troops, traditional community militias, associated Loyalist and local volunteer units, and a large naval force. There were also about 30,000 German mercenaries (George III was Prince Elector of Hanover as well as King of England) from several German principalities.[330]

Paradoxically, from a political point of view, the further the Continental Army strayed from the ideal of the "American Free Man," the more efficient it became.[331] The Continental soldiers increasingly originated in the lower, poorer levels of society as the war wore on and the initial patriot fervor had cooled, until they began to resemble their British counterparts more than they resembled their militia counterparts. Like the British regulars, they became aliens within their own society and saw themselves as an oppressed group, which they were.[332]

They were always short of supplies of every kind and paid in worthless continental script no one would accept. The promised land grants offered as an enlistment incentive seldom materialized. Reduced to rags, they were always a

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[330] Robin May, *The British Army in North America 1775-83* (Oxford, UK: Osprey Publishing, 1998) 21-24. See Appendix E for a list of British forces serving in North America during the American Revolution.

[331] Middlekauff, 514. "And the Continentals, recruited increasingly from the poor and dispossessed, apparently fought better as they came to resemble their professional and apolitical enemy, the British infantry."

[332] Sergeant Joseph Plumb Martin, A Narrative of Some of the Adventures, Dangers and Sufferings of a Revolutionary Soldier; Interspersed With Anecdotes or Incidents that Occurred Within His Own Observation (New York, Signet Classics, 2001) 243-44. Martin's book was first published in 1830.

little more than half-starved and suffered terribly from the elements, from preventable diseases brought on by malnutrition and from an army wide angst that grew out of their sense of isolation from an abandonment by their fellow citizens. They knew that the food, clothing and medicine they needed to survive were readily available in America, and that their fellow citizens were purposefully withholding it from them.[333] Sergeant Joseph Plumb Martin of the Fifth and Eighth Regiments of the Connecticut Line well remembered his sufferings years later when he penned his account of service in the Continental Army. His remains an authentic voice of the revolution after nearly two and a half centuries.[334]

The problem was that Americans had inherited from their British ancestors a strong repugnance for standing forces, a repugnance obvious in both the forthcoming *Articles of Confederation and Perpetual Union* and subsequent *Constitution.*[335] "The most prevalent wartime legacy of the ingrained suspicion of a standing army was not ideological but emotional," according to Charles Royster in his in-depth examination of the cultural and philosophical ramifications of the

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[333] Ibid, 247-248.

[334] Ibid, 125, 179-180, 245, and 247. "Why were we made to suffer so much in so good and just a cause; and a note of admiration to all the world, that an army voluntarily engaged to serve their country, when starved, and naked, and suffering everything short of death (and thousands even that), should be able to persevere through an eight years war, and come off the conquerors at last!" [This was the result of] an ungrateful people who did not care what became of us, so they could enjoy themselves while we were keeping a cruel enemy from them…The country was rigorous in exacting my compliance to my engagements to a punctilio, but equally careless in performing her contracts with me…Almost everyone has heard of the soldiers of the Revolution being tracked by the blood of their feet on the frozen ground. This is literally true; and the thousandth part of their sufferings has not, nor ever will be told…The truth was, none [of the citizens] cared for them [the soldiers]; the country was served, and faithfully served, and that was all that was deemed necessary. It was, soldiers, look to yourselves, we want no more of you. I hope that someday I shall find land enough to lay my bones in. If I chance to die in a civilized country, none will deny me that. A dead body never begs a grave; thanks for that.

[335] Royster, 36.

American Revolution. "The revolutionaries felt a strong distaste for an army in repose, an army as an institution, an army as an organ of the state."[336]

The necessity for a standing force such as the Continental Army was an indictment of the citizenry, which was guilty of not doing its duty to serve as militia, thus creating the need for professional soldiers. It meant, "citizens were too selfish to sacrifice property, time, or lives by personal military service…[I]t showed that a people were fit for the tyranny that would inevitably follow."[337] In addition, the very existence of regulars was an indictment of all humanity. Royster summarized the American attitude that the regular was "dangerous, viscious, and damned." A regular soldier, Royster explained, killed for money, made war his trade, and "corrupted or defied" the civil government of laws.[338]

The poor treatment the American regulars received at the hands of their country helped to establish their brotherhood as members of an identity sustaining group. Contemporary observers often remarked on their strong cohesion during the last six years of the war. They developed a tough, self-reliant military ethic that had little to do with the "Cause" or anything other than their own interdependence and survival. They felt abandoned and betrayed, and they were, but this prompted them to depend on one another to a greater degree.[339]

American militiamen today experience much the same angst that the continentals experienced," modern-day militiaman Sandro Bellinger said. "People

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[336] Ibid.
[337] Ibid, 35.
[338] Ibid, 46.
[339] Martin, 241.

and families in the Patriot movement tend to stick to each other to avoid the hurt and heartbreak of the demonization the out-of-control government has branded them with."[340]

The Continentals consistently served well after 1776. A German nobleman, Baron von Closen, greatly admired American soldiers who were, he wrote, ragged in appearance and always hungry, but at the same time very cheerful. He wrote that it was "…incredible that soldiers composed of men of every age, even children of fifteen, of whites and blacks, almost naked, unpaid, and rather poorly fed, can march so well and withstand fire so steadfastly."[341]

However, the Continental regulars ended the revolution on a sour note. Once the British had been defeated in the field, peace talks were underway and the war began to wind down, the disgruntled Continental Army appeared poised to seize power and govern the country as the New Model Army did under Cromwell. "It was a shameful end to a war," Ferling wrote, "that began when leaders urged the citizenry 'to arms...fight like Freemen contending for liberty'."[342]

Unpaid officers and soldiers petitioned the penniless congress for their back pay. Congress also had not guaranteed army officers the half-pay for life stipend they demanded. This "Newburgh Conspiracy" threatened lawful government in the new nation but Washington defused it with tact and a sense of theater. He called a meeting of his officers and soon had them in actual tears over their threatened

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[340] Sandro Bellinger interview by Gerald Van Slyke, January 1-2, 2016.
[341] Mayer, 57.
[342] John Ferling, A Leap In The Dark: The Struggle to Create the American Republic (New York: Oxford University Press, 2003), 254

treason. Most of them signed an oath of loyalty to support Congress as the national government.[343] Washington himself was no Cromwell and proved it when he handed back his powers to Congress as it sat at Annapolis in late 1783. British King George said Washington's act of peacefully laying down power made him, "the greatest man in the world."[344]

Congress ratified the *Treaty of Paris* on September 3, 1783, and Washington furloughed most of the Continental Army a few days later. He hoped they would disperse and not remain in groups that could easily morph into outlaw gangs. Most of the men did disperse, they were anxious to get home. However, during June a large number of Pennsylvania veterans surrounded the state house in Philadelphia and did not disperse until congress promised them their back pay. A few weeks later a smaller group from Lancaster marched on the capital. "This time Congress fled," historian John Ferling wrote.[345]

Congress had fled Philadelphia when British regulars occupied the city in 1775 and again in 1777. In 1783, Ferling wrote, "Congress was run out of town by eighty anxious and tetchy Continentals from the Pennsylvania hinterlands. As if to keep its whereabouts a secret, Congress stayed on the move, meeting in Princeton, then Trenton, and finally Annapolis during the last six months of 1783."[346]

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[343] Ibid, 254-255.
[344] Ibid, 255.
[345] Ibid, 254.
[346] Ibid.

The Articles of Confederation and the Constitution

The *Articles of Confederation* were the first framework of the national government of the new United States. Submitted to the states by Congress for ratification in 1777, and finally approved on March 1, 1781, the articles provided for a weak central government and authoritative, sovereign states.[347] During this time, two clear-cut political camps came into being among Americans. There were the "centrists" (Whigs) who favored a strong national government and the "anti-centrists" (radical Whigs) who favored a weak national government and strong state governments. It was not until the ratification process that preceded the adoption of the new federal Constitution of 1789 that these two groups were redenominated as "federalists" and "anti-federalists," America's first political parties.[348]

The federalist ideology grew out of moderate Whig philosophy while that of the anti-federalists grew out of the radical Whig philosophy which energized the American Revolution and whose roots stretched back a hundred years to James Harrington, Algernon Sidney, and others.[349] This is still the basic political division among Americans. Present day Democrats (descended philosophically from federalists) see advantages in a strong central government while Republicans

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[347] Ibid, 177-179.
[348] John K. Mahon, *The American Militia: Decade of Decision, 1789-1800* (Gainsville, FL: University of Florida Press, 1960), iv.
[349] James B. Whisker, *The Rise and Decline of the American Militia System* (Selinsgrove, PA: Susquehanna University Press, 1999), 41.

(descended philosophically from anti-federalists) call for less federal control and regulation, and more authority for the states.[350]

The militia was the sole force of national defense under the Articles. Article VI was explicit about the legal responsibility of each state to maintain its own militia system and appoint the officers. "Each state," it read, "shall always keep a well-regulated and disciplined militia, sufficiently armed and accoutered, and shall provide and have constantly ready for use, in public stores, a due number of field pieces and tents, and a proper quantity of arms, ammunition and camp equipage."[351]

Both centrists and non-centrists agreed that the militia would be the bulwark of the country's defense. "(1) Distance and ocean gave partial protection from the armies of Europe," historian John Mahan wrote, "(2) the country was too poor to maintain an adequate standing army, (3) from the previous two it followed that reliance upon militia was both safe and necessary."[352]

During the mid-1780s, George Washington, Henry Knox, Alexander Hamilton, and Baron Von Steuben, all strong centrists, set about designing a national militia. A select militia, they agreed after considering the various plans, taken out of the unorganized militia (composed of all abled-bodied men and under the control of state governments), would be rigorously trained and commanded by federal officers for federal service. Baron Von Steuben suggested there should be 21,000 of these young men, the same number as in the New Model Army, who

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[350] Lawrence Delbert Cress, *Citizens in Arms: The Army and the Militia in American Society to the War of 1812* (Chapel Hill: The University of North Carolina Press, 1982), 93.
[351] Mahon, Decade of Decision, 4.
[352] Ibid, 5.

would train for thirty-one days each year for three years. Washington (and others) backed the original "Steuben Plan" but it failed to leave committee because the anti-centrists could see no significant difference between the proposed national militia and a standing army of regulars. When it came up for consideration again, the Constitutional Convention was already in session.[353]

The centrist plan (later known as Knox's plan), a resuscitation of Steuben's original plan, was not without its supporters and the desire for a centralized military force would bear fruit at the Philadelphia Convention. Lawrence Cress wrote that "Knox was convinced that a careful blending of ideological and practical considerations could insure not only a strong national defense but also the perpetuation of traditional republican values and institutions."[354] The government under the Articles never did debate the issue however, since the Constitutional Convention overshadowed it.

There were many challenges facing the new United States in 1787 and it was obvious to everyone that the Articles of Confederation were in need of serious revision. A convention of fifty-five men from twelve states sat in Philadelphia between May and September 1787 to revise the Articles, but quickly decided to scrap them and invent an entirely new government. According to present day neo-antifederalist Kenneth W. Royce, this was the point at which the country went wrong. He believes the Constitution was the result of a pre-planned cabal on the part of centrists. "This had all been planned for months," he wrote. "His Virginia

[353] Whisker, 51-52. See also Cress, 92.
[354] Cress, 92.

Plan of outright national government (instead of merely strengthening the Confederacy, as was the Convention's mandate) was hotly contested by the defenders of state sovereignty."[355]

Anti-federalists like Royce (who does not call himself an anti-federalist but is one -- an angry one) are now a reemerging phenomenon, today known as the "neo-antifederalists" to differentiate them from the original anti-federalists. Their goal is to return governing authority to the states and return the national government to its original position as merely an agent for the sovereign states. Royce believes, however, that the tipping point has passed and American liberty is only a rapidly disappearing memory. Pushing a much more aggressive, more confrontational agenda, he bitterly blames moderate conservatives for allowing the forces of totalitarianism to control America, thus laying bare to the public eye a family fight within the far right wing. He refers to traditional conservatives as "patriot light…spineless sellout conservatives…[and] the real enemy."[356]

The vinegar of the neo-antifederalists has permeated militias across the nation and "patriot light" has now become an often heard insult directed against members of the constitutionalist or Whig militias by members of the more radical millennial militias. "Patriot light is a good name for anyone who is not prepared to do whatever it takes to return this country to constitutional government," said

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[355] Kenneth W. Royce, *Hologram of Liberty: The Constitution's Shocking Alliance with Big Government* (printed in the United States in no "federal area" or State: The Javelin Press, 2012), 51. The author requires the following statement in any citation: "Common Law Copyright 1995-2012 by Javelin Press. With explicit reservation of all Common Law Rights without prejudice. Sold for academic study and informational purposes only."

[356] Ibid, 321-322. Royce's opinion does not reflect that of the great majority of militiamen.

William Wolf of the Gallatin Committee of Safety. "The patriot light is a man who professes to love American freedoms but will only go to 'this point and no further' to defend them."[357]

Libertarian economics professor, Dr. Thomas J. DiLorenzo, agrees with Royce in that he holds the constitutional convention to be the point at which the young nation took a wrong turn. Alexander Hamilton, he maintains, was the archenemy of state sovereignty and individual liberty and the man who was the fundamental player in interjecting the seeds of totalitarianism into the Constitution, seeds that began blossoming during the second Civil War (1861-1865) and are now in full flower.[358] Among DiLorenzo's many books and journal articles on America's libertarian roots is *Hamilton's Curse*, which outlines the role Hamilton played at the constitutional convention and as the nation's first secretary of the treasury.

DiLorenzo holds Hamilton to be one of the great villains in American history, the antithesis of that fabled architect of individual liberty, responsibility, and state sovereignty, Thomas Jefferson. DiLorenzo admits that, "Arguably, no other founder has had a bigger impact on American society than he [Hamilton] has." The problem, DiLorenzo argued, is that Hamilton's contributions to the American state were all negative. "Hamilton's main political and economic ideas were a

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[357] William Wolf, interview by Gerald Van Slyke, January 29, 2015. Wolf's opinion does not reflect that of the great majority of militiamen.

[358] Thomas DiLorenzo, *Hamilton's Curse: How Jefferson's Archenemy Betrayed the American Revolution - and What It Means For Americans Today* (New York: Crown Forum, 2008), 171-195. Chapter Eight is: "The Poisoned Fruits of Hamilton's Republic" and discusses the present day destruction that some feel he engineered.

combination of dictatorial democracy, centralized power, imperialism, and economic mercantilism. These were the defining characteristics of the British Empire that the American revolutionaries had waged war against."[359]

Dawn Lemieux, a libertarian activist and spokesperson for the Posterity United Montana Assembly (PUMA), agreed with both Royce and DiLorenzo. "Hamilton was in the pocket of the moneyed interests and was nothing short of a secret agent of the Crown," she asserted. It was Hamilton, she believes, who developed the unconstitutional doctrine of 'inherent powers' in violation of the Tenth Amendment, advocated and achieved a large national debt, pushed for a national bank, proposed a large standing army. "He wanted nothing less than a feudal centrist government that would have reduced the states to provinces as they had been under the British. He was the founding father of every kind of constitutional subversion."[360]

Not everyone considered Hamilton a villain, then or now. Men no less than George Washington, Henry Knox, and John Adams agreed with and depended on him as one of their spokespersons, and whole-heartedly supported his centrist proposals. Some of the convention delegates actually wanted a stronger central government than Hamilton wanted.[361] Royce, DiLorenzo, and others who cast Hamilton in such a negative light, generally are not active militiamen. They are - in the absence of a better term -- "libertarian activists of the patriot movement" --

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[359] Ibid, 9.
[360] Steven and Dawn Lemieux interview by Gerald Van Slyke, November 26, 2014.
[361] Ron Chernow, *Washington: A Life* (New York: the Penguin Press, 2010), 534.

representing a minority of opinion among present day patriots (more in Chapter Seven). Numerous constitutional militiamen one has interviewed since 2013 consistently revere the founders, including Hamilton, and just as consistently regard the constitution (with all the faults some perceive to be in it) to be the best system of government ever devised by the hand of man. They are militiamen because they love the constitution and insist that present day government officials must abide by it.

Saul Cornell looked at the issues of that day the way Hamilton would have seen them in 1789. He wrote that Shay's Rebellion (more in Chapter Three) "had frightened many of the nation's leaders" and helped fix the mindset of the delegates throughout the convention.[362] Other troubles were legion, causing many Americans to favor a strong central government. Cornell also noted the southern planters who feared a slave revolt, attacks by hostile Indians, an unfriendly Spanish colonial government in New Orleans that was tightening its grip on the Mississippi, and the British garrison in Canada that continued to hold royal troops on American soil.[363] Cornell also wrote that, "No one doubted that the militias were the creatures of the individual states…Control of the militia became a crucial issue in defining the future balance of power between the states and the new national government." Some founders wanted to remove the militia from the states entirely and make it strictly a federal function. Others wanted to do away with the general or "unorganized" militia in favor of a national militia. The real issue was, "…would

[362] Cornell, 39.
[363] Ibid.

the militia continue to be an agent of the state power or would it become a tool of the powerful national government?" This last was a nightmarish scenario for the majority of the founders and it came into being in 1933.[364] (More in Chapters Six and Seven.)

The Constitution that the convention hammered together out of the many plans, compromises, and proposals that the delegates put forward, provided for each state to maintain a militia. John Mahon wrote that the militia was a cultural institution so integral to American society that its continued existence under the new republic generated little discussion.[365] As Cornell noted, the only issue was whether control of the militia should rest primarily in federal hands or with the states. As with the rest of the Constitution, the militia debate concluded in a compromise and the delegates approved the military clauses of the Constitution on August 27, 1787.[366] These clauses still stand today.

The executive emerged as the national military leader. The President would be commander-in-chief of the American military, the Regular Army and Navy, including the state militias when called into active service. The President could appoint regular military officers and the states could not keep standing forces or ships of war during peacetime without the consent of Congress. The states also could not declare war, which was a function of the national government.[367] Mahon went on to note, "…the federal government [could] tax and maintain [regular]

[364] Ibid. (More in Chapters Six and Seven.)
[365] Mahon, Decade of Decision, 9-10.
[366] Ibid.
[367] Ibid.

armies without having to exercise either of those attributes of sovereignty through the states. [The Constitution] established a direct [military] connection…between the central authority and the individual citizen."[368]

Found in Article I (powers of the legislature) and in Article II (powers of the executive), the military clauses established the essential nature of the military in American society. The powers of Congress are:

> The Congress shall have power…to declare War, grant Letters of Marque and Reprisal, and make rules concerning captures on Land and Water;
> To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;
> To provide and maintain a Navy;
> To make Rules for the Government and Regulation of the land and naval forces;
> To provide for calling forth the Militia to execute the Laws of the Union, suppress insurrections and repel invasions;
> To provide for organizing, arming, and disciplining, the militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;[369] (Article I, Sec. 8.)

> The powers of the President are:

> The President shall be Commander-in-Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States.[370] (Article II, Sec. 2.)

"To raise and support armies…" is often called 'the Army Clause' while "To provide for organizing, arming, and disciplining, the militia…" is called the

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[368] Ibid.
[369] Anonymous, The Constitution of the United States: With Index and the Declaration of Independence (Washington D.C., Government Printing Office, 2000), 6-7.
[370] Ibid, 11.

'Militia Clause.' The fact that these two military forces – the national army and state militias - are recognized under different clauses in the Constitution resulted in considerable intergovernmental conflict and confusion during the following 127 years. A separate core of laws and traditions grew up around each, as well as separate camps of partisans supporting one or the other, and a permanent militarily workable synthesis would not appear until the *National Defense Act of 1933*.[371]

Royce argues that giving the federal government control of both the standing army (the President is Commander-in-Chief) and of the militia (Congress can federalize it for any of three purposes: 1. execute the laws of the union; 2. suppress insurrections; and 3. repel invasions) was a disaster that emasculated state sovereignty. From this point forth Royce no longer spells "states" with an upper case "S" since he believes that federal control of the military has reduced the states to provinces. "…since the feds control both the military and the militia," he wrote, "there's little the state or the people can do about [protecting their rights]. This should now be acutely obvious to all."[372]

There was a *Second Amendment*, enshrined in the *Bill of Rights*, added to the Constitution on December 15, 1791. It reads: "A well-regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."[373] Perhaps no part of the Constitution generated as much contention during the past half century as the Second Amendment. Many

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[371] Barry M. Stentiford, *The American Home Guard: The State Militia in the Twentieth Century* (College Station, TX: Texas A&M University, 2002), 13.
[372] Royce, 126.
[373] The Constitution, 21.

claimed that the amendment provided only a collective right for the National Guard to be armed; others claimed that the amendment provided a right for every individual citizen to be armed. The U.S. Supreme Court finally settled the question in its 2008 landmark decision, *Heller vs the District of Columbia*.[374] In this case the court held, Justice Antonin Scalia writing the majority opinion, that the Second Amendment guaranteed both a collective right and an individual right for American citizens to keep and bear arms. The Amendment, originalist Scalia maintained, must be understood as people in 1791 understood it.[375]

Historian Richard Stewart's words about the militia are especially significant since his work is the official history of the U.S. Army, printed by the government printing office, and taught to army officer cadets at West Point and in ROTC departments around the nation [prior to *Heller*]. "The militia issue," he wrote, was also central to the shaping of the Second Amendment to the

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[374] Cornell University Law School, *"Majority and Minority Opinions in Heller vs. the District of Columbia, 2008*." Cornell University Law School Legal Information Institute, http://www.law.cornell.edu/supct/html/07-290.ZS.html (Accessed Jan. 19, 2014).

[375] Ibid. Justice Scalia, writing the majority opinion (with Justices Stevens and Breyer writing minority opinions) ruled that American citizens have a right to keep and bear arms both as members of militias and as private citizens. Of militias, Scalia wrote on page 23 of the opinion: "Unlike armies and navies, which Congress is given the power to create...the militia is assumed by Article I *already to be in existence*...This is fully consistent with the ordinary definition of the militia as all able bodied men." On page 24, Scalia then quotes an earlier authority, "The militia is the natural defense of a free country" Of the individual right he said on page 22: "There seems to us no doubt, on the basis of both text and history, that the Second Amendment conferred an individual right to keep and bear arms." On page 19: "This meaning is strongly confirmed by the historical background of the Second Amendment. We look to this because it has always been widely understood that the Second Amendment, like the First and Fourth Amendments, codified *a pre-existing right*. The very text of the second amendment implicitly recognizes the pre-existence of the right and declares only that it "shall not be infringed". (The italics are in the original text.)

Constitution…The concept of the militia and the right to bear arms are inextricably joined.[376]

Two other Amendments appertain to the militia. The *Third Amendment* forbids the quartering of soldiers in any house during peacetime, a direct response to the British Quartering Acts. The *Fifth Amendment* withholds some legal protections from militiamen on active service and under military regulations and discipline.[377]

Congress presented the Constitution to the states for ratification on September 17, 1787. Approved on June 21, 1788, after a raucous national debate that included a splendid newspaper and pamphlet war, it went into effect on March 4, 1789, and George Washington took office as the first president the following month.[378] Many stomachs in the United States felt queasy at the thought of such a strong central government while many others finally felt safe. Ratification had been successful and now the Constitution was an accomplished fact. The stage of state now existed on which many bitter scenes were acted out between federalists and anti-federalists during the first twenty years of the new nation's existence.

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[376] Stewart, 112-113. "The militia issue was also central to the shaping of the Second Amendment to the Constitution: the right to keep and bear arms. If the founding fathers recognized the centrality of freedom of speech, the press, and assembly, they also made clear those freedoms would remain secure if the people could keep and bear arms as an ultimate check on the powers of the government. The Second Amendment has been much politicized since its adoption as part of the Bill of Rights, but there is no question that the architects of our government believed that the people in arms -- the militia -- were the final guarantors of our freedom. Any subsequent reinterpretation of that amendment must start with the fact that our leaders, fresh from their experiences in the Revolutionary War, relied on the militia as the centerpiece of our national military establishment. The concept of the militia and the right to bear arms are inextricably joined".[376]

[377] The *Constitution*, 21-22.

[378] Andrew Allison, et al, *The Real George Washington: The True Story of America's Most Indispensable Man* (New York: National Center For Constitutional Studies, 2009), 520-521.

Historian James Whisker holds that the framers of the Constitution distrusted standing armies. Standing armies were agents of the devil and did not conform to the philosophical undergirding of the new nation. "The American philosophical and theological position has traditionally supported both the right to keep and bear arms and the militia concepts…The armed citizen-soldier was doing his Christian duty by defending the liberties and property which God had given him and his neighbors," Whisker wrote.[379] Whisker's statement accurately portrays the motivation of many present day militiamen. "Those words lay bare the deep-down truth," militiaman Phil Johnson said. "It's never been said better.[380]

Much had changed in America and in the British Empire during the two decades between 1763 and 1783. Americans had little or no thought of independence in 1763, but the British government, aided by a particularly objectionable attitude of arrogance fueled by a strong sense of superiority, committed a series of follies during the decade leading to the Revolution that created rebels where there had been none. Both Patriot and Loyalist militiamen -- black, white, and native -- often served with distinction (and often not) during the first civil war. The Patriot militia was able to claim the victory and subsequently became the only military force protecting the nation under the Articles of Confederation other than a tiny standing establishment of several hundred men.

Now serving the new republic, the American militia would participate (on both sides) in two armed tax insurrections, would fight Indians and the occasional

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[379] Whisker, 81.
[380] Phil Johnson interview by Gerald Van Slyke, June 20, 2015.

Spaniard, and would pursue black fugitives during the last decade of the eighteenth century. The *Militia Acts of 1792 and 1795* that Congress passed during George Washington's presidency would structure and govern the nation's land forces during the entire nineteenth century with only minor adjustments until superseded by the *Militia Act of 1903* (the *Dick Act*) and *The National Defense Act of 1916*. As Americans poured west into Indian lands, the militia traveled with them and often it and the church were the only social institutions on the far frontier. Through it all the American militia remained, in its essential community nature, a republican version of the colonial militia.

CHAPTER THREE

LIBERTY, REBELLIONS, AND THE MILITIA IN THE NEW NATION

The new federal government was on its shakedown cruise during the 1790s and Americans were testing the seaworthiness of their new ship of state. Many Americans already disagreed with each other about the meaning of various parts of the Constitution, saw the history and meaning of the revolutionary era from different perspectives, and therefore drew different conclusions about the significance of the events of the day. One of those issues was the disposition of the military forces of both the several states and the United States. The new Constitution established the framework of the military forces but left many unsettled areas of concern, and legislation was necessary to clarify these areas. The militia acts passed during this first decade would govern the structure of the U.S. military into the twentieth century.[381]

Resolution of the issues proved a contentious process throughout the decade. From the time the convention sat in Philadelphia until the Jeffersonian revolution of 1800, there was continual political conflict of such severity that it sometimes threatened disunion. Federalists and antifederalists could agree on very little, and three armed tax rebellions were an important factor as well. What many anti-federalists viewed as "liberty," federalists viewed as "licentious liberty."

[381] Mahon, History of the Militia, 52.

Historian Saul Cornell maintained that this particular point was the crux of conflict between Americans concerning the proper operation of their government during the early republic. He asserts that virtually every serious disagreement was rooted in that point of contention.[382]

This chapter will consider the military legislation of the early republic, the definitions and natures of both liberty and licentious liberty as they affected the militia, and three armed tax insurrections. It will consider the move to war and will examine the militia system's great triumphs and dismal failures during the second Anglo-American war, and throughout it will illuminate the opinions and passions associated with the militia that concerned Americans of that time as well as many Americans today.

Federal Military Legislation
Prior to the War of 1812

When George Washington took office as the first president under the new Constitution in April 1789, he became the leader of a fledgling government that claimed a territory about the size of Western Europe and had fewer than 900 regulars to protect and control the area.[383] The military power of the new United States rested squarely on the militias of the several states. The militia legislation of medieval and early-modern British monarchs, and the principles that emerged

[382] Cornell, 26-27. "The ideal that Americans venerated was not the unrestrained liberty of the state of nature, but the idea of well-regulated liberty…Outside of a well-regulated society governed by the rule of law, liberty was nothing more than licentiousness and anarchy."
[383] Stewart, 113.

from the Glorious Revolution, as discussed in previous chapters, were still the foundation for established common law militia practice among Americans.[384]

However, each state's militia had developed its own individual character over the preceding century and a half. Each of these thirteen individual militia systems remained essentially the same separate organizations as they had been under the colonial governments during the French and Indian War. They had developed separate traditions responding to separate needs and there was little similarity in their organization and accoutrement.[385]

A "regiment" in one state, for example, might consist of a thousand men while the same kind of unit in another state might number barely three hundred names on its roster. Each state had its own ideas about the selection of officers and non-commissioned officers and about the size and mix of companies found in a regiment: line infantry, light infantry, grenadiers, artillery, horse, and so on. A hodgepodge of infantry weapons was existent (each man bringing his own in most cases), and almost none of them provided for a bayonet attachment or was of a uniform caliber to the others. It was difficult to the point of impossible to piece together a coherent national army out of such disparate groupings, or to supply it in the field -- a fact that Washington, Hamilton, Von Steuben, and Knox had

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[384] Mahon, Decade of Decision, 3-9.

[385] Ibid. "Another disadvantage was that the detachments from the several states, because they were dissimilar, could not be combined into larger units." See also: Mahon, *History of the Militia*, 64.

recognized back in 1786 when they had tried to create a uniform national militia under the Articles of Confederation.[386]

In addition, Washington and his federalist supporters did not share the enthusiasm for state militias that the anti-federalists did. Although committed to militias out of sheer fiscal and cultural necessity, these Revolutionary War officers well remembered the shortcomings of the poorly regulated and undisciplined state militias during active service. George Washington had thirty-five years' experience with militiamen on the day of his inauguration. He acutely understood their strengths and shortcomings having personally observed both on a grand scale. Washington understood the prevalent fear of standing armies but considered it unwarranted now that monarchial government had been removed from America and there was an elected government responsive to the will of the people. John Mahon wrote that Washington and the other federalist generals understood that in the absence of a powerful regular army the need for a national militia that classified all American men by age was paramount. "Young and active men," he wrote, "intensively trained would be called first…the oldest would be called only in the gravest sort of national crisis".[387]

The new president ordered Secretary of War Henry Knox to dust off and revise the 1786 plan that the Confederation Congress had not acted upon. As

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[386] Mahon, *History of the Militia*, 7. "The elite corps [of the militia], all four planners agreed [Washington, Hamilton, Von Steuben, and Knox], was to be a national militia. This was crucial! Instead of thirteen unrelated systems there was to be a [uniform] national militia."

[387] Ibid, 51. Washington was opposed to "factionalism" and did not refer to himself as a Federalist. However, his supporters became the core group of the emerging Federalist Party.

discussed in Chapter Two, this provided for recruiting a select militia of healthy young men who would train for 31 days each year for three years. Their numbers would parallel that of Cromwell's New Model Army. Drawn from state militias, federal officers would organize, arm, and train them in a uniform manner. It was to be a national select militia under federal control while the state militias would support and reinforce the national militia when necessary.[388] A makeover of the British county militias, it probably would have well served the young, impecunious nation and made the War of 1812 a much less bitter experience had Congress adopted it as initially written.

Knox sent his plan to Congress in January 1790. When it finally emerged after bouncing from committee to committee for two years and four months of revision upon revision, it bore little resemblance to his original recommendation. *An Act more effectually to provide for the National Defense by establishing an Uniform Militia throughout the United States* became law on May 8, 1792. Generally called the "*Uniform Militia Act*," it provided almost no uniformity for the militia forces of the several states. It restated the obligation of every male to defend the country and to provide his own weapons. It outlined the conduct of training and the organization of the militia, but left oversight and enforcement to the states, and it failed to create a national select militia. It also failed to establish any penalties for disobeying the law and the phrase, "if the same be convenient," made it an empty law with no teeth.[389]

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[388] Whisker, 51, 52. See also: Cress, 92.
[389] Mahon, Decade of Decision, 18-19.

Companion legislation, *An Act to Provide for Calling Forth the Militia to Execute the Laws of the Union, Suppress Insurrections and Repel Invasions,* became law on May 2, 1792, six days before the Uniform Militia Act.[390] Usually called the *Calling Forth Act*, this legislation afforded the President the authority to bypass both Congress and state governments and embody the militia in any area threatened by an external force, either already invaded or threatened by invasion. He could embody the militia to quell an internal disturbance only if a federal judge informed him the problem was too large for normal law enforcement procedures and only after giving the parties involved an opportunity peacefully to disperse. The Calling Forth Act also provided stiff penalties for failure to answer the president's summons.[391]

Mahon saw a significant difference in these laws as they affected the states. The Calling Forth Act imposed stiff penalties for ignoring a summons from the president. What was Congress' thinking in making the Calling Forth Act enforceable and the Uniform Militia Act unenforceable? "The legislators felt no strong objection, to [federal] involvement in affairs too difficult for the states to handle," Mahon wrote, "but were…unwilling to create a national militia capable of being turned against the states [resulting in] federal despotism."[392]

The President first exercised his powers under these laws in 1794 when westerners, particularly in Pennsylvania, objected to the *Distilled Spirits Tax of*

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[390] Mahon, History of the Militia, 53.
[391] Ibid.
[392] Ibid. "This act confirmed [the] long-standing custom in limiting the compulsory term of any militiaman in federal service to three months in a year."

1791 (usually called the *Whiskey Tax*) and raised an insurrection. When a federal judge informed President Washington that the situation was out of control, he sent a peace commission to hear the complaints of the disaffected citizens and order them to disperse. When that failed, Washington appointed Alexander Hamilton to lead 12,950 militiamen from Pennsylvania, New Jersey, Maryland, and Virginia to quell the uprising, which they did. Hamilton envisioned the move as a way to strengthen the federal government. Washington, meanwhile, purposefully used militia instead of the tiny regular army because he recognized the fear among many anti-federalists that the regular army posed both a menace to them and a threat to increase the power of centralized government.[393]

Congress passed an enhanced *Calling Forth Act* on February 28, 1795, in partial response to the "Whiskey Rebellion," as it had become known. The new act was the same as the old one save for one important point: it abolished the requirement for a federal judge to inform the president that normal law enforcement mechanisms were not able to quell the disturbance. This act and the Uniform Militia Act would be the basis for legislation dealing with the U.S. military the entire nineteenth century and into the first decade of the twentieth.[394]

Four years later, President John Adams ignored Washington's example when he committed regular federal troops, reinforced by militia, to crush Fries Rebellion in the German area of southern Pennsylvania. Prompted once again by the imposition of a tax that many considered unfair if not unlawful, the rebellion

[393] Ibid, 54.
[394] Mahon, Decade of Decision, 28.

spread rapidly. Conflict with France loomed and the tax was an attempt by the national government to generate revenue with which to fight the upcoming war. The farmers resisted the war tax in addition to a number of other very unpopular measures promulgated by the Adams administration, prominent among them the *Sedition Act* of 1798.[395] The rebellion largely fizzled out with the presence of federal troops and a defusing of the situation with France.[396]

Both the militia and the regular army served alongside one another during the Indian Wars and the War of 1812 as they had during the revolution. On the day the federal government first went into operation, there were fewer than 900 regulars in the whole country. The authorized number of regulars by 1798 had risen to 12,696; a year later saw it temporarily established at 41,000, both measures in response to the perceived threat of a French invasion during the undeclared French Naval War (1798-1800).[397] Once the threat diminished, so did the number of regulars.

Thomas Jefferson became president the following year and the policy of the American government changed, as well as the way it did business.[398] Jefferson rarely questioned using war as an instrument of national policy; he just did not think

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[395]Teeter and Le Duc, 28-29. The Sedition Act made it a federal crime to "…to publish or utter false, scandalous, and malicious criticism of the President, Congress, or the government with the intent to defame them or bring them into disrepute." Fourteen actions were brought under the Sedition Act, all of them against newspaper editors. Each was fined and sentenced to several months in prison. The Sedition Act generated much hatred among Americans toward the Federalist Party. The act passed because War loomed with France and many Americans felt that French agents had infiltrated the country.

[396] Robert Churchill, 75-84.

[397] Mahon, History of the Militia, 63.

[398] Ron Chernow, *Alexander Hamilton* (New York: the Penguin Press, 2004), 578-579.

a large army was necessary to accomplish the task. Jefferson believed that a citizen militia, not regulars, was the best guarantee of security for a free society.[399] Jefferson emasculated the regular army in 1802, leaving only 20 companies of infantry and 20 of artillery, and dry docked most of the ocean-going navy. However, he did build 263 gunboats manned by naval militia for harbor defense.[400]

After a skirmish at sea between British and American warships in 1807, Jefferson ordered the states to alert 100,000 militiamen for possible embodiment out of a national total variously set by different sources at 450,000 to 600,000 men. Congress added eight regiments to the regular force in April 1808, tripling the number of regular soldiers from 3,068 to 9,311.[401]

Congress took an action in 1808 that many see as one of the seeds that germinated and grew into the National Guard of the United States during the next century (more in Chapters Five and Six). "Congress appropriated $200,000 per year to arm the militia (those who did not own a firearm)," John Mahon wrote. "[I]t was important because the act committed the federal government to the principle of providing arms to the citizen soldiers." This legislation eventually bore fruit that few in 1808 could have foreseen.[402]

James Madison became the fourth President of the United States on May 2, 1809, and he led the Americans during the upcoming war with Britain. He

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[399] Mahon, History of the Militia, 63.
[400] Ibid, 64. Naval militia were militiamen living along the coast who operated small boats for coastal defense. They had existed since earliest times and are still in existence today.
[401] John K. Mahon, *The War of 1812* (Gainsville, FL: University of Florida Press, 1972), 4.
[402] Ibid, 66.

substantially increased the size of the regular force. On November 4, 1811, Historian George Doughan explained, "Madison urged Congress to strengthen the nation's defenses, which for the last eleven years under Republican rule had been allowed to deteriorate." The President asked Congress for an additional 10,000 men for the regular army. Such an appropriation would raise the numbers of regulars to about 20,000. "Congress responded on January 11, 1812, by increasing bounties for an enlistment of five years from $12 to $16; plus three months' pay and 160 acres of land [on discharge], and it approved an increase in the regular army of…more troops than…Madison asked for."[403]

In January 1812, Congress again increased the size of the regular force. It added ten regiments of infantry, two of artillery and one of light dragoons. In February, Congress authorized President Madison to recruit 50,000 *federal volunteers* (See Appendix A for a list of militia terms).[404] Between March and May 1812, Congress established the organizational infrastructure that allowed the army to become self-sustaining. During March, Congress established an Army Quartermaster Department and the Office of the Commissary General for Purchases within the War Department. In addition, Congress established the Ordnance Corps three months later.[405]

During April, Congress again authorized the president to alert 100,000 militiamen for possible embodiment. "By late spring of 1812," John Mahon wrote,

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[403] George C. Daughan, *1812: The Navy's War* (New York: Perseus Books, 2011), 27.
[404] Stewart, 134. Federal Volunteers were men directly recruited from the militia by federal officers, bypassing state recruitment mechanisms.
[405] Stewart, 134.

"the authorized land forces of the United States had been pushed to formidable levels: 35,925 regulars, 50,000 [federal] volunteers, and 100,000 militia. Although never fully reached, the new recruiting goals resulted in a substantial expansion of the regular forces."[406] America would soon require every available fighting man it had.

The Militia and Liberty

Americans in the 1790s were a people accustomed to the rationalization of rebellion. They had successfully rebelled against King George III, their lawful monarch and the man who stood at the head of the greatest military empire in the world. Consequently, some Americans, especially on the frontier where law enforcement was thin and where official indignation did not travel much beyond county lines, acquired a cavalier attitude toward the law and saw no need to obey laws they considered unjust or inconvenient. Was that not why they had run the king off in the first place? Often, frontiersmen simply acted as they thought right in accord with their understanding of the common law, a radical libertarian attitude today sometimes called the *Doctrine of the Sovereign Citizen.* The further west one went, the more prevalent this licentious attitude and the less control the government exercised.[407]

Often loosely defined as free citizens willingly submitting themselves to the rule of just and necessary laws for the well ordering of society and the protection

[406] Mahon, History of the Militia, 67.
[407] Slaughter, 131-134.

of all of its citizens, liberty was the goal of most wealthy, east-coast founders of the new nation. Licentious liberty, however, was not an objective. Licentious liberty occurred when individual prerogative became more important than the rule of law, and it frightened the federalists as well as most of the anti-federalists. "The ideal that Americans venerated," Saul Cornell wrote, "was not the unrestrained liberty of the state of nature, but the idea of well-regulated liberty."[408] Attended by men looking for a stable, commercial society of secure contracts, banking laws, and the protection of private property, the Constitutional Convention still provided an outlet for licentious liberty through its recognition of the community nature of the militia.[409]

Historian Pauline Maier argued that the men at the convention were anxious to see the rule of law maintained, but not at the expense of forcefully suppressing the impulse of freedom in the people. An embodied community militia evidenced "a public allowance, under due restrictions," she wrote, "of the natural right of resistance and self-preservation when the sanctions of society and laws are found insufficient to restrain the violence of oppression." Maier continued this thought in blunt language. "The constant possibility of insurrection - as institutionalized in the militia - was to remain an element in the United States Constitution, just as it had played a role in Great Britain's."[410] Slaughter agreed and offered a "localist"

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[408] Cornell, 27.
[409] Pauline Maier, "Popular Uprisings and Civil Authority in Eighteenth Century America," *The William and Mary Quarterly*, Vol. 27, No. 1, (January 1970), 32-33.
[410] Ibid, 32-33.

argument popular at the time. "Maintain strong local militias," he wrote, "to protect against the encroachments of mercenary [regular] armies."[411]

In the opinion of some scholars, this tacit approval seemed to prompt and condone the tax revolts of the first decade of the republic. "The notion that the militia might nullify an unjust law by refusing to enforce it, or in extreme situations actually take up arms against the government," Saul Cornell wrote, "were two of the most radical ideas to emerge out of the intellectual ferment of the revolutionary era."[412] Robert Churchill noted that the centrist delegates had offered an assurance that "under the Constitution the people would retain the capacity to embody themselves in the militia and resist tyranny." The convention debates, he wrote, clearly demonstrated that both "Federalists and Anti-Federalists continued to view the militia as a legitimate agent of resistance against a corrupt and violent state and the Framers incorporated the libertarian strain of Whig ideology acted out in 1774 into the political theory of the founding."[413]

Cornell amplified Churchill's thought. He noted that the post-revolutionary insurgent groups considered that the common law provided them a rationale for their actions just as the Paxton Boys had claimed thirty years earlier. He wrote that the Shaysites saw the militia as a cultural force rising from the people and "an expression of the locality, not a creature of the state.[414]

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[411] Slaughter, 131.
[412] Cornell, 33-34.
[413] Robert Churchill, 41-42.
[414] Cornell, 30-34. "[These] movements were an expression of a species of popular constitutionalism in which the people took direct action themselves and thus bypassed the courts or the legislature… [During Shays Rebellion] the protestors claimed a natural [common law] right that superseded any written constitutional text. The voice of the people spoke not through written

Pauline Maier agreed. "So often considered a class uprising," she wrote, "[disturbances such as Shays] proved *extra-institutional* in character more often than…anti-institutional; they served the community…or intervened beyond what the [lesser] magistrates…could do officially to cope with a local problem.[415]

Present day militia leader Steve McNeil pointed out that the Shaysites never claimed to be a state militia but were organic community militias that acted under the authority of the common law, not state law. They had a right and even an obligation, he believes, to defend their communities against what they considered the corrupt debtor courts since the great bulk of the citizenry wanted and depended on them to do so. McNeil himself is a supporter of licentious liberty as expressed by Robert Churchill and Saul Cornell (and by many libertarians). If a law is obviously unlawful and hurtful, McNeil believes, an individual should just ignore it if possible, and resist it if necessary.[416]

In post-Revolutionary America it was not only community militias that protected the rights of individuals, but also lesser- or mid-level magistrates had both a right and duty to protect local citizens from unjust or unlawful laws or actions by higher authorities. Called the *Doctrine of the Lesser Magistrates,* it is rooted in the

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texts, but directly through popular assemblies, including the militia…Shays Rebellion exposed a tension in American constitutional theory: was the militia an agent of government authority, or was it a popular institution that served as a check on government?...[The Shaysites] defended their actions in a language that reflected…their desire to defend their local communities against outside threat…the militia was an expression of the locality, not a creature of the state."

[415] Maier, "Popular Uprisings and Civil Authority in Eighteenth Century America," 3-35. (Italics are in the original.)

[416] Steve McNeil and William Sullivan interview by Gerald Van Slyke, Jan 29, 2015.

principle of interposition.[417] *Black's Law Dictionary* defines "interposition" as a sovereign state rejecting a mandate or law of the federal government if the state considers it illegal or in violation of the Tenth Amendment limiting federal power.[418] (Black's definition is accurate in the present day, but interposition had a somewhat wider application in previous times.) The *Virginia and Kentucky Resolutions* of 1798 (ghost written by Jefferson and Madison) cited interposition as a legal basis for those two state governments to protect their people from the exercise of unpopular federal legislation.[419]

Two examples of interposition occurred during the Constitution's first decade and were both rooted in state control of the militia. During May 1794, about 150 Georgia militiamen murdered a number of friendly Indians who were camped outside Ft. Fidius on the western frontier. The survivors ran inside the fort, manned by federal regulars, who closed the gate to protect the remaining Indians from the Georgians. At one point, federal soldiers and Georgia militiamen faced each other with firearms loaded and cocked until the Georgians withdrew.[420] This was an example of reverse interposition on the part of a federal officer protecting individuals from an organ of a state government.

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[417] Matthew Trewhella, The Doctrine of the Lesser Magistrates: A Proper Resistance to Tyranny and a Repudiation of Unlimited Obedience to Civil Government (Charleston, SC: Create Space Independent Publishing Platform, 2013), 2, 8. "The lesser magistrates act as a buffer for the people -- placing themselves between the unjust laws or decrees of the higher authority and the people."

[418] Henry Campbell Black, *Black's Law Dictionary* (St. Paul, MN: West Publishing Company, 1978), 733.

[419] Winston Churchill, 103-104.

[420] John K. Mahon, "Military Relations Between Georgia and the United States, 1789-1794," *Georgia Historical Quarterly*, Vol. 43, No. 2, (June 1959), 152-153.

In 1798, Virginians were so incensed by what they considered unconstitutional legislation by the Adams Administration (the Sedition Act) that the governor called forth the militia to march on Washington and end it.[421] This conflict, like the one in Georgia, concluded peacefully and the nineteenth century came into being without federal soldiers and state militiamen firing on one another, but it would not end that way. However, the precedent was set and reinforced. Militiamen would serve their states before serving the federal union.

A Bicultural Massachusetts

Community militiamen had already fired on state militiamen a decade prior to the incident at Ft. Fidius. It was in a different part of the country, the federal government was not yet in existence, and Indians were not a party to the conflict, but it had a lasting impact on what became the Government of the United States. Discharged from the Continental Army in 1780, Daniel Shays returned home to Brookfield, Massachusetts, to discover that he was a man with debts, and he was only one of many thousands. Presented with a ceremonial sword for courage by the Marquis de Lafayette, he had honor in plenty. He had served under Captain Parker at Lexington and Concord, under Colonel Prescott at Bunker Hill, under General Stark at Saratoga, and over the years had risen to the rank of captain in the Continental Army.[422] He had never, however, been paid in specie by the army and

[421] Mahon, History of the Militia, 62.
[422] Jay Wink, The Great Upheaval: America and the Birth of the Modern World 1788-1800 (New York: Harper-Collins, 2007), 59. See also Gross, 1.

hard money was what his creditors demanded. Congress could not afford to pay its debts or even redeem its paper currency, and Shays now found himself with a pocket full of worthless "continentals" and just as unable as congress to pay his debts.[423]

The Massachusetts he was born and grew up in, and now lived in, contained at least two kinds of people separated from one another by two economic systems and two worldviews. There were the yeomen freeholders, men of the agricultural countryside like Shays, and the urban capitalists of the seacoast towns. There was such a profound difference between the values and goals of the two groups that historian David Szatmary maintains they were literally at different stages in social development.[424]

The yeomen were mostly subsistence level farmers, often freeholders who normally used only a fraction of their land. Twenty-nine year old Paul Smith and his wife were typical. They owned fifty-six acres near Whateley, Mass., using 3.8 acres to grow wheat (Indian corn some years), 3.6 acres as pastureland, 3.6 acres to grow hay, and 2 acres for hemp and flax. The remaining forty-two acres (73.2 percent of the total acreage) were unimproved forestland. Throughout Massachusetts, the small holders commonly left more than sixty percent of their land unimproved. In Brookfield, the average yeoman tilled only five percent of his

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[423] Robert A. Gross, "Foreword: The Uninvited Guest," in *In Debt to Shays: The Bicentennial of an Agrarian Rebellion*, ed. Robert A. Gross, (Charlottesville, VA: University of Virginia Press, 1993), 1-2.

[424] David Szatmary, *Shay's Rebellion: The Making of an Agrarian Insurrection* (Amherst, MA: The University of Massachusetts Press, 1980), 16.

acreage. When a family cleared more land for cultivation, it was not with the goal of increased profits but to meet the needs of their growing family.[425]

The Smiths could have farmed more of their land, but they did not need to do so. The accumulation of wealth was not of paramount importance to them; community membership and cooperation with neighbors was what mattered most. The Smiths were comfortable, their neighbors were comfortable, and that was enough.[426] People of this background are often better equipped than urbanites, culturally and spiritually, to construct very strong militias. (More in Chapter Seven.)

Along the seacoast, especially in port cities like Boston, many of the wealthy residents took a different path. The accumulation of wealth was paramount for them. They had little sense of cooperation; if one is in competition with his neighbor, what is there to cooperate on? They were mostly merchants of various types, bankers, lawyers, and ship owners, along with some necessary artisans and mechanics required to keep a town prospering. The yeomen often did not like or trust the capitalists who, in their turn, considered the rural free holders to be rubes.[427]

The continued friction between these two peoples of Massachusetts resulted in open conflict during 1786-1787, which included hostilities between militias supporting either side. This conflict and the military course of the rebellion exerted

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[425] Ibid, 2-5.
[426] Ibid, 7-8.
[427] Gross, "Foreword: The Uninvited Guest," 4-17. See also Szatmary, 11.

a considerable impact on the political development of the United States. Like the Paxton Boys before them, the Shaysites left a legacy far more important than the relatively minor conflict they caused.[428]

Historian Jonathan Smith condensed the causes of the difficulties into three issues. First, he wrote, was the absence of a strong national government that the people could believe in and trust. Second was the enormous amount of worthless and hopelessly irredeemable paper currency issued by the states, the Continental Congress, and the Confederation Congress. Third was, "The extreme poverty of the people, resulting from the long war of the Revolution, the total absence of manufacturing industries, the ruin of American commerce, and the crushing burdens of public and private indebtedness."[429] Put simply, the nexus of the post-war conflict was debt, aggravated by economic depression and heavy taxes, and it was an economic situation, not surprisingly, engineered mostly by the British government, resentful at having lost the Revolutionary War.[430]

The capitalists needed trade to generate capital to finance their oversea ventures (if they could get into the markets). They had expected that once the war was over, they would resume their robust pre-war trade. The vindictive British

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[428] Stephen E. Patterson, "The Federalist Reaction to Shays Rebellion," in *In Debt to Shays: The Bicentennial of an Agrarian Rebellion*, ed. Robert A. Gross, (Charlottesville, VA: University of Virginia Press, 1993), 102. "Was the rebellion a significant cause of the movement for a federal constitution? Massachusetts Federalists thought so." See also Michael Lienesch, "Reinterpreting Rebellion; The Influence of Shays Rebellion on American Political Thought," *In Debt to Shays: The Bicentennial of an Agrarian Rebellion*, ed. Robert A. Gross, (Charlottesville, VA: University of Virginia Press, 1993), 161. The rebellion, "acted as a catalyst, precipitating the decision to call a convention to meet in Philadelphia in the summer of 1787."

[429] Jonathan Smith, "The Depression of 1785 and Daniel Shays Rebellion," *The William and Mary Quarterly*, Vol. 5, No. 1, (January 1948), 78.

[430] Szatmary, 23.

parliament stymied the aspirations of American traders in 1784 when it voted to extend all the provisions of the Navigation Acts to the United States, since it was now an independent nation, which effectively cut off much of the commerce between America and the British Empire. American merchants also quickly discovered that they no longer had an advantage in any European markets now that the power of the British government no longer backed them.[431]

Parliament followed this with a law excluding Americans from the lucrative West Indies trade, forcing many New England shippers to either enter the ongoing New England slave trade (which many did) or go bankrupt.[432] The Board of Trade strongly discouraged extending credit to American merchants, and British manufacturers began demanding cash in advance before they would ship cargos to the United States.[433] The impact on Americans was immediate and severe. The capitalists found themselves in a very tight place and needed the rural yeomanry to pay their debts so that capital would become available to finance what business opportunities might still be possible under the new British mandated economic order, and they began to pressure them to do so. The yeomen, on the other hand, had financial problems of their own. Like Daniel Shays, they had pockets filled with empty promises but no hard money with which to pay their debts.

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[431] Patterson, 111-112. See also: Szatmary, 23. The British had other issues as well as the pleasure of revenge. The Treaty of Paris required Americans to repay debts to Britons. They had not done so, not even debts accrued prior to the revolution. Further, the British could foresee America becoming a serious competitor in trade and wanted to prevent that.

[432] Szatmary, 23-24. Many American shippers were already involved in the slave trade, but now many more also entered the trade.

[433] Patterson, 109-110.

There was a critical lack of specie, forcing the frontier people to conduct much of their business in barter, a condition that suited their cultural heritage but did nothing for the accumulation of cash for expenses outside the community.[434] Many yeomen, like Shays, were former Continental Army soldiers who saw hard service during the revolution. It was several years since the Treaty of Paris, and they had not yet received the land grants or back pay promised by congress and the states, and no solution was in sight. Coupled with the shortage of specie and a crushing tax burden, they became men with a grudge.[435]

"These were the farmers who had defeated Burgoyne and Cornwallis," Nash and Hodges wrote, "who had returned home to difficult lives, and who now brimmed over with bitterness as lawyers, creditors, and process servers began stripping them of their only means of livelihood."[436] Many like Shay were appalled at the injustice done to the honest, plain-spoken agrarians.

The poorer yeomen farmers were in debt to the middle-class storekeepers who, in turn, were in debt to the wealthy merchants. The commercial class brought legal pressure against the storekeepers for payment, the storekeepers brought legal pressure against the yeomen for payment and soon the courts staggered under the number of debtor actions.[437] By 1786, there were court actions to seize land in

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[434] Smith, "The Depression of 1785 and Daniel Shays Rebellion," 79.
[435] Walter A. Dyer, "Embattled Farmers," *The New England Quarterly*, Vol. 4, No. 3 (July 1931), 463.
[436] Gary Nash and Graham Hodges, Friends of Liberty: Thomas Jefferson, Tadeusz Kosciuszko, and Agrippa Hull (New York: Perseus Books, 2008), 90.
[437] Jonathan M. Chu, "Debt Litigation and Shay's Rebellion," in *In Debt to Shays: The Bicentennial of an Agrarian Rebellion*, ed. Robert Gross, (Charlottesville, VA: University of Virginia Press, 1993), 84-94. See also: Szatmary, 29. See also: Dyer, "Embattled Farmers," 463-464.

payment for debts lodged against more than thirty percent of the small freeholders in Massachusetts. Since 1784 the Massachusetts General Court had received petition after petition (more than one-third of the towns in the state sent one) urging them to pass tender laws and to issue state backed paper money until the specie and credit crisis passed, otherwise countless numbers of small-holders would be ruined and would suffer the loss of their property.[438]

Such a solution was not in the interests of the eastern merchants who longed to acquire the western properties at foreclosure prices and who controlled the General Court.[439] The British may have helped initiate the crisis, but American bankers and speculators fueled it. Marxist historian John Peterson made a strong case for the federalist moneyed interests, whom he considered despots in their own right, supplanting the wealthy English mercantilists whose avarice had done much to bring on the revolution in the first place. He writes convincingly of Alexander Hamilton being a one-man replacement for the Board of Trade. Modern libertarians echo Peterson's criticism.

"This was clearly the case in the Americans' struggle against the British Empire," Peterson continued. "The revolutionary-democratic ideas of the Enlightenment and the fiery rhetoric of propagandists like Thomas Paine and Samuel Adams aroused the toiling masses to believe another world was possible

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[438] Szatmary, 57.

[439] Ibid. George Brock, a yeoman from Attleboro, claimed that the General Court had treated, "…with supreme contempt our respectful petitions [and stigmatized farmers as] traitors, incendiaries, vile creatures and nearly threatened them with prosecutions for daring to enquire into the present gross mismanagement of our rulers." Many felt that the General Court intended to render the frontier farmers into wage laborers or tenants under "lordships" after the English fashion.

and worth fighting for." The avowed goals of the Whig revolutionaries in 1775, Peterson asserted, had been betrayed by those in control after the war. The old moneyed regime was still in power and had merely assumed a new name and a new flag.[440]

Shays Rebellion 1786-1787

Thomas Slaughter wrote that by 1786 the cycle of peaceful protest against a crushing tax and debt burden had finally run its course on the western frontier of Massachusetts. Providing relief for the beleaguered agrarians would have been a simple thing for the legislature to do, but it ignored the pleas of the westerners. "[T]hese rural people knew [that] the canon of Whig political philosophy," Slaughter wrote, "dictated resistance to tyranny by every means. The aggrieved had not only the right but the duty to resist oppression by force."[441] The farmers of western Massachusetts were preparing to do just that. "The era of loyalty to existing governments was over," Slaughter continued. "Outright rebellion in the names of liberty and justice now ruled the day."[442] Robert Gross took a much dimmer view of the troubles. "In an inexorable sequence," he wrote, "liberty soon turned into "licentiousness," anarchy ensued, and tyranny gained sway."[443]

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[440] Ibid.

[441] Slaughter, 47-48. See also: Lienesch, "Reinterpreting Rebellion," 165. "In the Whig theory of Harrington, Sidney, and Locke, insurgents found a time-honored terminology of protest, in which the rights of citizens were posed against the power of their rulers…rights were fragile, never secure…power was grasping and never satisfied. [The people had] a responsibility to resist power…"

[442] Ibid.

[443] Robert A. Gross, "A Yankee Rebellion? The Regulators, New England, and the New Nation," *The New England Quarterly*, Vol. 82, No. 1, (March 2009), 118-119.

Newspapers and tavern life were the recruiting tools of the Shaysites. Contemporary geographer Jedidiah Morse estimated that 30,000 newspapers appeared each week in New England and that everyone could read them. "Any [white] person of mature age, who cannot both read and write, is rarely to be found."[444] Newspapers provided an important system of communication among the rebels, providing upcoming court dates and encouraging accounts of Shaysite activities in other places.[445] Taverns were traditional meeting places where travelers could share news and gossip with local people that newspapers would not print. Taverns were also often gathering places for the militia and during the rebellion, many served as recruiting centers for the Shaysite regulators.[446] Newspapers and taverns functioned as an important cog in the machinery of Shays Rebellion, just as they had been during the Revolution.

Another issue affecting the rebellion was that western Massachusetts in 1786 was not nearly the monolithic religious community it had been on that April morning more than ten years previously when British regulars were on the march for Concord. In 1789, seventy-seven percent of all Massachusetts churches were still Congregational (descended from the original Puritans), but the Dissenters had made strong inroads.[447] The Dissenters, primarily Baptists and Shakers, had arrived long before and they had greatly proliferated following the revolution. By

[444] Szatmary, 63.
[445] Ibid, 63.
[446] Ibid, 63-64.
[447] Ibid, 60.

1786, some lived in almost every town.[448] A Baptist lay preacher, Isaac Backus, stumped the countryside preaching against the Shaysites, which deterred many Baptists sympathizers from joining the rebels, but few if any Baptists joined the government forces. Baptists were also already deeply involved in a struggle with the General Court over the required payment of a religious tax to the Congregational Church.[449]

Badly fractured themselves, the Congregationalists no longer presented the strong, unified front they once did. During the mid-eighteenth century, "the Great Awakening…had surged through the region," Gross wrote, and continued to fester. "Division between Old Lights and New Lights distracted Congregationalists, who fought over everything…"[450] Gross argued that many individuals supported the rebellion, but many of the western towns were less than enthusiastic, in part because of religious splintering.[451]

David Szatmary has identified four phases of Shays Rebellion: first, Agrarian Protest characterized by reasonable demands for needed reform (1784-1786). Second was the radicalization of the agrarian leadership and The Regulation (regulators were vigilantes), which included the closure of courts and the mutiny of

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[448] Gross, "A Yankee Rebellion?" 131-132. "Of the sixteen…'banner towns' of the rebellion, eleven had Dissenters in their midst."
[449] Satzmary, 61. The Baptists had grown to about 16 percent of the population of Western Massachusetts.
[450] Gross, "A Yankee Rebellion?" 131-132.
[451] Ibid. "The fracturing of religious unity may help explain why so few communities, in the end, actively participated in the Regulation."

some militias (1786). Third was the Clash of Armies including three battles (January - February 1787). Fourth was Punitive Raids (February - June 1787).[452]

Local community militias sympathetic to the yeoman farmers began closing debtor courts in 1786 as the patriot militias had also done a dozen years earlier. The first to have its doors shut was the Hampshire County debtor court on August 29, 1786; many others soon followed, including Great Barrington.[453] Historian Howard Zinn wrote that an embodied state militia of a thousand men, sent to reopen the court, stood face to face against the much smaller community militia of Great Barrington. The men of the state militia took a vote and most of them sided with the local militiamen and refused to enforce the government's orders. The militiamen then closed the court, broke open the county jail, and released all the debtors. The militia refused to enforce the law, a de facto libertarian declaration by the citizens under arms that the law was unlawful.[454]

The state government ordered the western county militias to move against the insurgents but none of them would do so. Most of the militiamen sympathized with the yeomen, now called Shaysites, and many were Shaysites themselves. The Shaysites were also strong in number; more than thirty percent were combat veterans who knew their way around a battlefield and no one wanted an unnecessary conflict with them.[455] Moreover, most people agreed that the best

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[452] Szatmary, 37-38.
[453] Ibid, 58-59.
[454] Howard Zinn, *A People's History of the United States* (New York: Harper Collins, 1999), 93.
[455] Szatmary, 64. Among the senior leadership of the Shaysites were five captains and two majors of the Continental Army. Many of the men had served together in the ranks and had establish strong bonds of brotherhood with one another.

solution to the issue would be simply to resolve the debt and specie crisis with fast tracked legislation. Once again, the legislature could have solved the problem quickly, but a merchant class unsympathetic to farmers controlled the governing body.[456] The General Court's hostile response drove most of the fence sitters in Worcester, Berkshire, and Hampshire counties, and many of them in Bristol and Middlesex Counties, into the arms of the Shaysites.[457]

The heavy-handed response of the Massachusetts government mirrored or exceeded that of the royal governor ten years earlier. On Oct. 24, 1786, the General Court enacted a *Militia Act*, which promised death to any militiaman who sided with the Shaysites. A *Riot Act* followed this on October 28 forbidding public gatherings. The busy legislature passed a suspension of the writ of *habeas corpus* on November 10, and a *Sedition Act* on November 16 that forbid speaking ill of the government or any of its officers.[458]

British observers found the situation amusingly ironic. "Strange that the ungrateful multitude should turn on the illustrious patriots," one said, "who led them to seek such happiness." Another wrote, "America exhibits a curious scene at this time, rebellion growing out of rebellion; particularly in that seedling-bed and hot-bed of discontent, sedition, riot and rebellion - Massachusetts Bay."[459]

Since the county militias in the affected area refused to support the government, General Benjamin Lincoln of Revolutionary War fame raised enough

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[456] Ibid, 76.
[457] Smith, "The Depression of 1785 and Daniel Shays Rebellion," 80.
[458] Szatmary, 83-84.
[459] Ibid, 98.

money from the Boston merchants and other commercial elites to fund a select militia of several thousand men to act under the control of and on behalf of the state government. These men embodied on January 19, 1787.[460] The Shaysites responded to this by progressing from demanding reform to the second phase, regulation, which amounted to open rebellion, and eventually demanding the overthrow of the present state government.[461]

The Shaysites proceeded quickly to the third phase and attacked the Confederation arsenal at Springfield in January 1787, but they had concocted too elaborate a plan of attack that quickly deteriorated into confusion. Driven off by artillery that fired grape shot into their ranks, the Shaysites retreated but were far from defeated.[462] There were skirmishes at Worcester on February 2, Petersham on February 4, and the Battle of Sheffield on February 27, all of which the insurgents lost.[463] Without artillery to match that of the state select militia, the Shaysites suffered from an unenviable military posture. Shays Rebellion ran out of steam in June with the election of what they perceived to be a legislature more friendly toward them and a strong upswing in the economy which obviated much of their distress.[464] The rebellion ended when most of the men took oaths of

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[460] Gross, "A Yankee Rebellion?" 129. "It is often charged that the Bowdoin Administration took its own liberties with the law by raising a private army to suppress the uprising and financing it with loans from wealthy Boston merchants." (James Bowdoin II was Governor of Massachusetts during the rebellion.)
[461] Szatmary, 91. "By January 1787 many yeomen had abandoned reformist protests and consciously undertook rebellion…"
[462] Wink, 60.
[463] Dyer, 471-477.
[464] William Hogeland, The Whiskey Rebellion: George Washington, Alexander Hamilton and the Frontier Rebels Who Challenged America's Newfound Sovereignty (New York: Scribner and

allegiance to the government. There were trials and six were condemned to death but only two who had committed statutory crimes were hanged; the rest were eventually pardoned including Shays himself.[465]

In an odd twist, Alexander Hamilton, the whipping boy of the neo-antifederalists, seemingly sympathized with the Shaysites although he was an elitist who despised disorder created by the lower classes. He noted that the insurrection originated as a response to the crushing war debt that Massachusetts was unwisely attempting to retire through ruinous taxation of the poor. "If Shays had not been a desperate debtor," Hamilton wrote in *Federalist No. 6*, "it is much to be doubted whether Massachusetts would have been plunged into a civil war."[466] Hamilton would later convince congress to assume the war debts of the states and combine them with the congressional debt into one national debt.[467] That legislation would considerably strengthen the federal government – one of Hamilton's goals – by tying the commercial classes more directly to it.

Shays Rebellion occurred during the time the states were sending delegates to Philadelphia to revise the Articles of Confederation, an effort that ultimately resulted in the writing of a new constitution, and had a profound effect on the

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Sons, 2006), 53. "But after suppressing Shay's Rebellion, the Massachusetts legislature repealed the crushing tax laws."

[465] Dyer, 477.

[466] Alexander Hamilton, James Madison, John Jay, *The Federalist Papers* (New York: Mentor Books, 1961), 56.

[467] Hogeland, 61-62. Madison opposed the assumption of state debts and could have derailed the proposed law, and Hamilton wanted the capital of the new nation to be located in New York. Hamilton and Madison compromised. The federal government would assume the state debt and the capital would be on the Potomac.

delegates.[468] Washington and other delegates greatly feared the threat to private property as well as other possible rebellions that Shays and other libertarians represented. The 55 merchants, plantation owners, and lawyers who assembled in Philadelphia acted partly out of fear of a "rabble" energized by adherence to licentious liberty, and they advocated a stronger national government, in part, to be able to raise an army that would control such uprisings.[469]

Two instances of Confederation response to the rebellion underlined the essential weakness of the system – at least to wealthier Americans. First, certain that American national society was disintegrating, Confederation president Nathan Gorham wrote Prince Henry of Prussia, Frederick the Great's brother, in November, 1786, asking the Prince, "if he could be induced to accept regal powers on the failure of our free institutions." Prince Henry, however, had not forgotten the troubles America's last monarch had experienced with his unruly subjects and flatly refused. "Americans had shown so much determination against their old king that they would not readily submit to a new one."[470]

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[468] Joseph Parker Warren, "The Confederation and Shays Rebellion," *The American Historical Review*, Vol. 11, No. 1, (October 1905), 65. "Shays and Lincoln went their ways without the least regard for [the Confederation] Congress and its recruits. Shays Rebellion completed the proof that a real national government must be established. It was reserved for the Whiskey Insurrection of 1794 to show how a real national government would treat a rebellion."

[469] Schweikart & Allen, *A Patriot's History*, 110. "Shays' Rebellion, however, quickly...[became] a prime example of the Articles' weak governance. Only a stronger government, they argued, could prevent the anarchy of the Shaysites from infecting the American body politic."

[470] Szatmary, 82. The Boston elite evidenced a "monarchial attitude" toward the Shaysites. See also, Robert A Gross, Ed., "*In Debt to Shays: the Bicentennial of an Agrarian Rebellion*," 173. Adams, Franklin and Madison thought a return to monarchy was inevitable. The proposed monarch was Prince Henry of Prussia, brother of Frederick the Great.

Second, the Confederation Congress had also ordered a $530,000 requisition to send a special force of 1,340 national soldiers to help contain the insurrection, but every state except Virginia refused to contribute which left the Confederation completely ineffectual in the emergency and unable to act, something of which the delegates took careful note. Shays Rebellion made it obvious (to the centrists at any rate) that America needed a stronger national government. By the time the Philadelphia Convention first sat on May 25, 1787, while the rebellion was still underway, the Articles of Confederation were doomed.[471]

The Whiskey Rebellion

The new government under the Constitution had inherited a $54 million debt from the government of the Articles of Confederation. In addition, the states still owed an aggregate of $25 million, money they had borrowed to fight the revolution. Alexander Hamilton, first Secretary of the Treasury, saw retiring the national and state debts as his first priority, and he went to work on it immediately.[472] In 1791, Hamilton convinced Congress to consolidate both debts into one national debt and to assume responsibility for the entire amount. Congress did so in June and the following March it passed an excise tax on distilled spirits

[471] Dyer, 478. See also: Wink, 65.
[472] Donald Swanson and Andrew Trout, "Alexander Hamilton's Economic Policies After Two Centuries," *New York History*, Vol. 2, No. 73 (July 1991), 289-291.

commonly known as the *Distilled Spirits Tax* or *Whiskey Tax*. It was part of a plate of legislation Hamilton pushed in order to begin servicing the national debt.[473]

The tax did not much touch easterners but had serious consequences in the west, especially in Pennsylvania, where frontiersmen often converted excess corn into whiskey for easier transport and sale over the mountains.[474] It was a loathsome tax to frontiersmen because of the perceived class and regional prejudices built into it. The west did not balk at paying a land tax, a poll tax, and the like, but they objected to a luxury tax that was so injurious to them. They refused to pay.[475] Perhaps it was the recent example of Shays Rebellion that, in part, energized the westerners along the Appalachian Crest into almost immediate action. The situation quickly passed the point of a local agrarian insurrection, such as Shays had been, in both scope and in the challenge it presented to the federal government. The Whiskey Rebellion bordered on civil war.[476] In addition, it provided an opportunity for Federalists like Hamilton to assert the power of the new national government.

Many urban Federalists thought so poorly of the rural westerners that they saw them as being too ignorant to understand national affairs. Many easterners considered Antifederalists backwoodsmen, "narrow-minded ranters of political unrest," according to Thomas Slaughter, who seemed to be the tools of foreign

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[473] David O. Whitten, "An Economic Inquiry into the Whiskey Rebellion of 1794," *Agricultural History*, Vol. 49, No. 3 (July 1975), 494.
[474] Slaughter, 110-111.
[475] Ibid, 202.
[476] Richard H. Kohn, "The Washington Administration's Decision to Crush the Whiskey Rebellion," *The Journal of American History*, Vol. 9, No. 3 (Dec. 1972), 571.

interests inimical to the United States. British merchants received the onus for a while, then it was the French during the excesses of their revolution, and then it was both. The foreign interests initiated and encouraged "the 'grumblings' of the [anti-federalist] polemicists and the 'rabble' who shared such un-American views."[477]

Treason was rife. The westerners sent one delegation to the British Governor General of Canada asking for arms and supplies, and another group to New Spain seeking the same. Plans were afoot to declare a new nation, a rival republic, on the west side of the Appalachians.[478] Neither the British nor the Spanish made any promises, but both were very interested. Former Shaysites and even some remnants of the Paxton Boys busily stumped the west in support of a separate republic allied to England and Spain, and a majority of the people in twenty counties in four states agreed.[479] The Federalists, particularly Washington and Hamilton, were terrified that the rebellion represented an upsurge in homegrown "Jacobin" activity with the goal of importing the French Terror into the United States.[480]

Founded on the same radical libertarianism that had energized the revolutionaries of 1774 (as Robert Churchill argued), the political consensus of the whiskey rebels came together quickly in 1794. Also, just as the revolutionary

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[477] Slaughter, 134-135.
[478] Kohn, 578.
[479] Slaughter, 206.
[480] Rachel Hope Cleves, "Jacobins in This Country: The United States, Great Britain, and Trans-Atlantic Anti-Jacobism," *Journal of Early American Studies*, Vol. 8, No. 2 (Spring 2010), 410-445.

movement had been aided twenty years earlier by the residual spiritual ethic of the Great Awakening and the exhortations of New Light preachers, so too were the whiskey rebels. A number of Separatist ministers lent their authority to a public reconsideration by Christians of the relationship between the frontier west and the new federal union. Particularly successful in swaying public opinion was a backwoods prophet at the Forks of the Ohio named Herman Husband.[481]

Originally a Quaker, then a Presbyterian, and then neither, Husband had been aided by supernatural visions in developing a personal libertarian theology that blended spiritual purity with political purity. Once one of the leaders of the North Carolina Regulators, a frontier agricultural group similar to the Shaysites, Husband had fled north to the Forks of the Ohio (where a quarter of the whiskey stills in America were located) when the movement collapsed and the hangman came looking for him.[482]

Self-styled as the "Philosopher of the Allegheny," Husband had experienced a watershed apocalyptic vision during June 1780. The Forks of the Ohio, God told him, sat squarely in the middle of the New Jerusalem described by Daniel, Ezekiel, and the *Revelation*. Convinced that God wanted him to establish the New Jerusalem, Husband now had found his life's mission: preach separation from the political world. When the evil, worldly, money-driven republic in the east came into being in 1789, best represented by Alexander Hamilton, whom Husband

[481] Hogeland, 71.
[482] Ibid, 84.

loathed, the prophet began exhorting the people of the Ohio to political purification.[483]

The agent of this purification of the New Jerusalem, he believed, would be the militia, and he began preaching his charismatic message of secession and theocracy at militia musters.[484] Husband and other radicalized New Light preachers exerted a powerful influence on the western people and helped energize them politically. Their thundering messages from God to the westerners were an important element in the mix of the rebellion.

Tensions escalated over the next few months, and President Washington sent representatives to meet with the leaders of the rebellion. The commissioners were conciliatory and offered blanket amnesty for persons who would recant and submit to the authority of the government. Two primary meetings between peace commissioners sent by the government and the leaders of the rebellion occurred on August 14 at Parkinson's Ferry and on August 28 at Brownsville, both in western Pennsylvania. The federal representatives arrived at Parkinson's Ferry to find a rebel flag flying, liberty poles erected (just as in the American Revolution), and local militias drilling.[485] Herman Husband, an insurgent representative at both meetings, publicly advised both sides to find a peaceful solution, "but the militias he inspired were ready to fight the United States."[486] The delegates agreed to meet again at the end of August.

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[483] Ibid, 89, 94-95.
[484] Ibid, 117.
[485] Ibid, 192.
[486] Kohn, 582-584.

The second meeting occurred on August 28-29 at Redstone Old Fort near Brownsville.[487] The insurgents complained not only about the whiskey tax, stating that it mirrored the unfair taxation issue of the revolution, but also about the inability of the federal government to open the Mississippi River and the port of New Orleans to free navigation. The government had also failed to attack successfully the hostile Indians along the frontier and to open their lands to settlement by westerners. Indeed, the Ohio Indians recently defeated two federal armies. It was the habit of the westerners to refer derisively to the United States Army as the "Watermelon Army."[488] Like the Paxton Boys earlier, many of the western rebels hated Indians and advocated their eradication.

The response of the government was that the whiskey tax was not analogous to British taxation because the elected representatives of the people had imposed the tax, not a despotic foreign government. Negotiations with Spain were underway, they said, concerning navigation of the Mississippi, and the War Department was preparing to launch a violent attack on the Indians.[489]

The rebels voted by a factor of three to one to refuse the president's offer of restoration and amnesty. In October, a 12,950 man national army composed almost entirely of eastern militia units began marching toward the Appalachian passes. Washington initially led the army, but quickly rethought his decision. General Light Horse Harry Lee and Secretary of War (as well as Secretary of the Treasury)

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[487] Slaughter, 199-201.
[488] Jeffrey A. Davis, "Guarding the Republican Interest: The Western Pennsylvania Democratic Societies and the Excise Tax," *Pennsylvania History*, Vo. 67, No. 1 (Winter 2000), 56-57.
[489] Ibid.

Alexander Hamilton took command.[490] The army itself as well as the expedition it carried out (there was no real fighting) was, many westerners thought, a contemptible, reprehensible and shameful chapter in American history. They considered it less of a military force and more of a criminal mob. It was sometimes out of control (the New Jersey militia once voted to issue itself a four-day ration of whiskey), pillaged and looted indiscriminately, the soldiers taking whatever they wanted from homes and shops, continually brutalizing the local populace, and burning the homes of any who questioned them.[491]

Needing supplies, the army took food by force from local farmers without remuneration, wantonly burned what they did not take, and killed cattle and horses for pleasure and left them laying where they fell. As a result, many of the poor and subsistence level families suffered greatly and some starved to death over the winter. The rebellion immediately fizzled out as most of the disgruntled westerners took advantage of Washington's renewed offer of amnesty. The bulk of the army marched home before winter driving before it more than 150 half-naked prisoners, some of whom died on the way. General Daniel Morgan and 1,500 men remained as an occupying force. These men conducted themselves over the winter as reprehensibly as their comrades did during the previous summer.[492]

Of the prisoners who survived the march to Philadelphia, twenty stood trial resulting in only two convictions. Nevertheless, prisoners were held without cause

[490] Slaughter, 216.
[491] Ibid, 215, 217-219.
[492] Ibid, 215-220.

for four to six months in the Philadelphia city jail before being released. The two found guilty, both "simple in the head," were condemned to death and then pardoned by President Washington who characterized the entire episode in the brightest colors and adorned it in a number of speeches with the most glowing words.[493] Tried for sedition, not for treason, a jury found Herman Husband innocent. The prosecution focused on the Parkinson's Ferry conference and no one could testify that Husband had urged others to take up arms against the United States. The jury made short work of the lack of evidence and exonerated Husband. Released on May 12, 1795, he collapsed and died on the way home.[494]

Like the issues that had inspired Shays Rebellion, the issues that had prompted the Whiskey Rebellion dissipated by themselves. Once safely forced on the westerners, the government quickly discovered that the Whiskey Tax was impossible for the authorities to collect and they stopped trying. A treaty with the Spanish soon after opened the Mississippi to free navigation and opened the Port of New Orleans to the westerners for a nominal duty that was seldom paid. The westerners could now ship their goods and produce down the Mississippi, through New Orleans and out into the world markets. Also soon after, General Mad Anthony Wayne decisively defeated the Indians at the Battle of Fallen Timbers and coerced the British garrisons on American soil to withdraw into Canada. Although things turned out well for the federal government, many Americans considered the whole Whiskey Rebellion episode shameful. It generated a distrust of the federal

[493] Ibid, 220.
[494] Hogeland, 243.

government on the part of many and was far from the brightest moment in the history of the militia.[495]

Fries Rebellion

Fries Rebellion (1799-1800), also known as the Hot Water War because women dumped pails of boiling water on federal soldiers, occurred in the German areas of southeastern Pennsylvania, the third armed tax rebellion in less than fifteen years. "Fries Rebellion," Robert Churchill wrote, "marked the culmination of the Alien and Sedition Act Crisis of 1798-99."[496] Along with the willingness of both the protestors and the government quickly to frame their responses to each other around the militia, it was a strong symptom of the continuing divergence of political philosophy. Federalist President John Adams represented British interests to the insurgents while the insurgents were, according to historian Terry Bouton, "people acting in a manner consistent with the revolutionary struggles of the 1760s and 1770s."[497]

The most conservative federalists viewed the undeclared French Naval War of 1798-1799 as the opening bell of a larger conflict, something that would have happened had President John Adams agreed with his cabinet and officially declared

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[495] Gary Wills, *A Necessary Evil: A History of American Distrust of Government* (New York: Simon & Schuster, 1999), 198. See also: Slaughter, 221.

[496] Robert Churchill, 57-58. "The Alien and Sedition Act crisis demonstrates the continued resonance [of] Whig ideology, and particularly the libertarian commitment to armed resistance in the face of tyranny."

[497] Terry Bouton, "No Wonder the Times Were Troublesome:" The Origin of Fries Rebellion, 1783-1799," *Pennsylvania History*, Vol. 67, No. 1 (Winter 2000), 22. Bouton noted that modern historians have departed from the accepted orthodoxy of Fries Rebellion held during the past two centuries and are presently investigating it with a fresh eye.

war on the French. Adams pursued a policy of peace while preparing for war. In the midst of the crisis the United States, passed the *Alien* (three of them) and *Sedition Acts* (1798) which defined much dissent as treason, funded a large army to counter an expected French invasion that Adams commissioned George Washington to command, and strengthened the navy.[498] Adams sent a three-man commission to Paris that was able to forge a tenuous agreement with the French government. The *Convention of 1800* effectively ended the war, but not in time to avoid a tax revolt.[499]

The war preparations were expensive measures and Congress passed the *Direct House Tax* of 1798 to collect two million dollars to pay for it, which taxed every piece of land, each dwelling (at a progressive rate), and all adult slaves in the country.[500] This was the first and only apportioned tax ever passed by Congress, and Pennsylvania's share was $237,000. Houses were evaluated according to the number and size of their windows and treasury agents were soon riding around the country measuring and counting windows, assessing houses for the tax. The Dutch-German farmers viewed the agents as inquisitors and considered them unreasonable and arrogant, characteristics they also ascribed to the new national government.[501]

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[498] Dwight F. Henderson, "Treason, Sedition, and Fries Rebellion," *The American Journal of Legal History*, Vol. 1, No. 4 (Oct. 1970), 308-309.
[499] Nathan Perl-Rosenthal, "Private Letters and Public Diplomacy: The Adams Network and the Quasi-War, 1797-98," *Journal of the Early Republic*, Vol. 31, No. 2 (Summer 2011), 304. The American quest for peace was helped by the rise to power of Napoleon Bonaparte who recognized England as France's real enemy. A war with America would be a sideshow that would only drain off valuable military resources.
[500] Paul Douglas Newman, "Fries's Rebellion and American Political Culture," *The Pennsylvania Magazine of History and Biography*, Vol. 119. No. 1/2 (Jan-April 1995), 44.
[501] Ibid.

The trouble began in February, 1799, when an auctioneer from Charlestown (modern Trumbauersville) named John Fries, a respected Revolutionary War veteran, began holding public meetings among local farmers to discuss the Alien and Sedition Acts and the Direct House Tax, all of which he stringently opposed as did most of the people in that part of Pennsylvania. Many pledged themselves to refuse to pay the tax; others pointed out that resisting tyranny through force of arms was an American distinctive, a common law right of the sovereign citizen. They urged their fellow citizens to be ready to march if necessary, all of which was treason under the hated Sedition Act.[502] Words turned to action in Milford Township when members of the local community militia intimidated assessors attempting to collect the tax and forced them to leave town.[503] The government responded by calling a public meeting and sending representatives to rationally explain the need for the tax, but local militiamen, many of them armed and in Revolutionary War uniforms, shouted them down and turned the meeting into an anti-government rally.[504]

The assessors returned to Milltown a few days later and Fries led a company of local militia to harass and intimidate them and force them to leave town. The assessors visited Quakertown during the following month, March 1799, only a few miles away from Milltown. Leading about a hundred militiamen to Quakertown, Fries captured most of the assessors. He destroyed their records and the militiamen

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[502] Henderson, 308-318.
[503] Ibid, 309.
[504] Peter Levine, "The Fries Rebellion: Social Violence and the Politics of the New Nation," *Pennsylvania History*, Vol. 40, No. 3 (July 1973), 248-249.

verbally brutalized them and then allowed them to leave with the warning that a rope awaited them if they returned. The terrified assessors never returned.[505] A few days later, the dissidents learned that a U.S. Marshal had arrested thirty tax resisters at Northampton. The marshal took them to Macungie (modern Millerstown) where he attempted to arrest others but an angry crowd stopped him. Fries led militiamen from Montgomery, Lehigh, Bucks and Berks counties to intercept the marshal and his prisoners at Bethlehem. They forcefully freed the prisoners and sent the marshal on his way.[506] The marshal reported the incident to a federal judge who, in accord with the insurrection law, notified the President that the situation had grown beyond the ability of normal law enforcement to contain. President Adams immediately sent regular soldiers supplemented by militia who quickly put down the rebellion.[507]

Tragically, the conduct of these regulars was not much different from the militiamen who had participated in putting down the Whiskey Rebellion. William Duane, editor of the *Philadelphia Aurora*, observed the soldiers apprehend some of the dissidents. He "denounced these soldiers for their brutality, whereupon some of them dragged him into the street and flogged him."[508] There were other examples recorded as well. Of thirty men who went on trial, Fries and two others

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[505] Ibid, 250.
[506] Ibid, 249-250.
[507] Stephen L. Vladeck, "Emergency Powers and the Militia Acts," *Yale Law Journal*, Vol. 114, No. 1 (Oct. 2004), 164.
[508] John Bach McMaster, *History of the People of the United States* (New York, D. Appleton Co., 1902). See also: Mahon, *History of the Militia*, 55.

received death sentences. President Adams pardoned all three and they returned home.[509]

As in both Shays Rebellion and the Whiskey Rebellion, the issues behind Fries Rebellion resolved themselves. Elected president in 1800, Jefferson, often sympathetic to rebellions, imbued the government with his vision of America being a nation of strong and independent white yeoman farmers, each a militiaman, stretching across the continent from the Atlantic to the Pacific. Jefferson allowed the Sedition Act to expire, which removed a stick from the national eye. Adams had defused the crisis with France at the end of his term and the new administration stopped spending money on war preparations, which also made it possible to repeal the House Tax.[510]

America, Britain, France-- The Militia on the Road to War

The road to the second Anglo-American war was a complicated one and every incident, every social condition, every irksome act had its role in inciting the passions of the contenders and encouraging the advent of the war. However, it is beyond the scope of this investigation to examine every rock thrown. What follows is an overview of the major events that lead to war.

The causes of the War of 1812, like the causes of all wars, were complex and continue to be debated. Richard Stewart maintained that the immediate events

[509] Newman, 39. Newman maintained that the pardon of the three men pushed the Federalists to abandon Adams in the election of 1800, handing the presidency to Thomas Jefferson.
[510] Schweikart and Allen, 153.

that led to the war were the "seizure of American ships, insults and injuries to American seamen by the British Navy, and rapid expansion of the American frontier."[511] He discussed other causes as well, some of them smoldering since the American Revolution. Other historians frequently mention issues such as the widespread belief that British agents in Canada incited the Indians against the American frontier communities, and the standard complaint of "British arrogance".[512]

British historian Jon Latimer maintained that these were but a part of the story and that American scholars often fail to relate the entire spectrum. The root cause of the war, he argued "was America's desire to continue its overseas trade undisturbed by events in Europe," an aspiration which was, he stated, "unrealistic." Britain's interference with American commerce (and with the commerce of many other nations) was not a matter of arrogance, he maintained, but proof of desperation. The British Empire was in a twenty-two year worldwide death struggle with the French Empire, a conflict that created a poisonous international environment for the entire Atlantic community, and the future often did not seem to be very hopeful for the island nation.[513]

The antagonism that Americans exhibited toward the British was not one-sided, Latimer wrote. The wounds of the Revolution were still deep and fresh to

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[511] Stewart, 131.
[512] Carl Benn, *The War of 1812* (Oxford, UK: Osprey Publishing, 2002), 18.
[513] Jon Latimer, *1812: War With America* (Cambridge & London, Harvard University Press, 2007), 1-6. Latimer discussed how the war initiated legitimizing national myths for both Canada and the United States. Canadians mythologized their militia into a conquering host that defended the north with weapons captured from the Americans, and Americans mythologized the war into a great American victory. Both were profound overstatements.

the Englishman on the street as was America's perceived friendliness toward the French, a people that Britain and her former colonies had fought for more than a century, and toward the French emperor, Napoleon Bonaparte, whom many Britons thought was the antichrist. The British newspaper *Monthly Review* noted that the positive British dislike of "the former upstart colonists" often exceeded their dislike for the French. In the March 1808 issue, the *Review* recorded, "hatred of America seems a prevailing sentiment in this country."[514]

Perhaps the greatest source of American animosity toward Britain sprang from the Royal Navy's practice of impressment (see the Knowles Impressment Riots in Chapter Two). The British did not consider the flag of a neutral nation to protect the sailors on board a ship. When the Secretary of State complained about the impressment of American sailors in 1804, the British foreign secretary replied, "The Pretension advanced by Mr. Madison that the American Flag should protect every Individual sailing under it on board of a Merchant Ship is too extravagant to require any serious Refutation."[515]

The British justified impressment by making a distinction between a citizen and a subject. London maintained that anyone born a British subject was a subject for life. That person may immigrate to America and become an American citizen, but it did not change the fact that he was a British subject born, and they asserted a right to remove their subjects from any ship anywhere. "Britain's rulers insisted

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[514] Ibid.
[515] Alan Taylor, The Civil War of 1812: American Citizens, British Subjects, Irish Rebels & Indian Allies (New York: Vintage Books, 2011), 111.

that no one born a subject could renounce that identity and its duties," Alan Taylor wrote. "Allegiance began at birth and ended only in death. No…process of naturalization could alienate a subject."[516]

The exact number of Americans impressed is unknown, but in a state paper published in January 1812, President Madison claimed that 6,257 American citizens had been forced to join the Royal Navy between 1803 and 1812.[517] The fact was, however, that many British seamen actually were working on American ships. "By 1812 the Admiralty believed that no fewer than 20,000 Britons [subjects] were serving in the American merchant marine," Latimer wrote, "and even [Secretary of the Treasury] Gallatin estimated that at least 9,000 seamen…were British even by U.S. definition."[518] Many sailors born in Britain wanted to avoid serving in the Napoleonic wars and thus signed onto an American vessel.

The French were little better at respecting American sovereignty than the British. John Jay, sent by Washington to negotiate a treaty with the British concerning ship seizure and the impressment of sailors, signed a document in 1795 that nearly subordinated the former colonies to Great Britain, a treaty that infuriated a great many of the followers of Jefferson and Madison. The French Directory regarded the Jay Treaty as a formal alliance between the Americans and the British, and they began attacking and seizing American vessels after its ratification.[519]

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[516] Taylor, 102.
[517] Benn, 11.
[518] Latimer, 32.
[519] Stewart, 121.

During the summer of 1796, the Directory decreed that France would, "…treat neutral vessels, either as to confiscation, as to searches, as to capture, in the same manner as they shall suffer the English to treat them."[520] This resulted in the previously mentioned undeclared naval war with France at the end of the 1790s. Although Napoleon came to power in time to avert war with America, the depredations continued and France seized hundreds of American vessels in international waters. In 1810, the French actually took more American ships than the British did.[521]

Napoleon Bonaparte issued the *Berlin Decree* on November 21, 1806. The French emperor declared Great Britain to be under formal blockade and forbid the importation of any British goods into Europe. He also authorized the seizure of any ship trading with the British or any of their colonies. Napoleon did not begin enforcing the Berlin Decree until fall 1807, a year later. When he did, it worked a great hardship on American shipping interests.[522]

The British responded to Napoleon's initiative with a series of *Orders in Council* between January and November 1807. The most far reaching of the orders, and the most troublesome for Americans, was announced on November 11, 1807. It declared France under formal blockade and required any vessel trading on the continent to first stop at a British port, obtain a license, and pay duties. Otherwise,

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[520] Ian W. Toll, Six Frigates: The Epic History of the Founding of The U.S. Navy (New York: W.W. Norton, 2006), 70.
[521] Benn, 15. The British, French, and their allies took more than 900 American ships between 1803 and 1812.
[522] George Daughan, *1812: The Navy's War* (New York: Perseus Group, 2011), 14.

the ship was subject to seizure.[523] "As the Napoleonic War dragged on," George Daughan wrote, "the British ministry grew more reactionary, and its enmity toward America deepened. The animus Jefferson and Madison felt toward Britain naturally grew in equal measure."[524]

The British frigate *HMS Leopard* attacked a new American frigate whose guns were not yet mounted, *USS Chesapeake*, in international waters during June 1807 after *Chesapeake* refused permission for *Leopard* to remove British deserters.[525] Pressing sailors off civilian ships was injurious enough, but attacking a warship of another nation was an act of war. Anger ran high in the United States and the public demanded war. The British government recognized that *Leopard* had far overstepped its orders and recalled and punished the admiral who had authorized the action and the captain who had carried it out. Jefferson sent a grievance committee to London on board *USS Revenge* that received respectful attention and the war fever in America cooled.[526]

Napoleon responded to the Orders in Council by enacting the *Milan Decree* in December 1807, authorizing the seizure of any vessel that stopped at a British port and paid duties.[527] Buffeted between the two superpowers and struggling for a solution, President Thomas Jefferson asked Congress to enact the *Embargo Act*,

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[523] Winston Churchill, 108. See also: Benn, 13.
[524] Daughan, 15.
[525] Theodore Roosevelt, *The Naval War of 1812* (New York: The Modern Library, 1999), 6. See also: Winston Churchill, 108.
[526] Latimer, 21.
[527] Archibald H. Stockder, "The Legality of the Blockades Instituted by Napoleon's Decrees, and the British Orders in Council, 1806-1813," *The American Journal of International Law*, Vol. 10, No. 3 (July 1916), 501-502.

which it did in December 1807. This act essentially forbid all exports from the United States with the hope of putting pressure on both Britain and France to recognize American neutrality. However, it devastated the American economy and worked a tremendous hardship on New England, which relied heavily on its shipping trade.[528] When the Vermont militia refused to enforce the act, Jefferson sent regulars to block the border between Vermont and Canada.[529] Although most scholars consider the Embargo Act to have been a disaster, historian Jeffrey Frankel noted that it was a temporarily effective strategy that, "failed through a lack of the political will and perseverance to use it, rather than through a lack of economic power."[530]

The act also had a very negative impact on England. There were a series of violent strikes by workers in the Manchester cotton mills since they could not obtain American cotton (a harbinger of things to come during the American Civil War fifty years later). Yorkshire wool workers and Staffordshire, Birmingham, and Sheffield metals workers found their factories closed and themselves out of work.[531] Those who had written the Orders in Council, however, were untouched personally by the Embargo and refused to reconsider their policy. The unemployed Briton on the street firmly blamed the "money grubbing Americans" for his troubles which dramatically increased animosities.[532]

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[528] Roosevelt, 6. See also: Winston Churchill, 108.
[529] Benn, 65.
[530] Jeffrey A. Frankel, "The 1807-1809 Embargo Against Great Britain," *The Journal of Economic History*, Vol. 42, No. 2 (June 1982), 291-292.
[531] Latimer, 23.
[532] Ibid.

During March 1809, newly inaugurated president James Madison asked congress to replace the Embargo Act with the *Non-Intercourse Act*. It provided that American ships could trade with anyone other than Great Britain and France. If the belligerents would relax their shipping decrees, American ships would again conduct trade with them.[533] The Non-Intercourse Act coincided with severe economic troubles in Britain. "Lancashire was working a three day week," Jon Latimer wrote, "and in Nottinghamshire workers responded by smashing machinery. Unrest soon spread and could be controlled only by military repression."[534] None of this endeared America to the British.

Congress passed *Macon's Bill No. 2* in May 1810, effectively replacing the Non-Intercourse Act. This legislation reestablished trade with everyone but allowed the President to impose non-intercourse on either Britain or France if the other nation relaxed its trade policies. Whichever power was the first to recognize American rights would receive exclusive trading privileges.[535] Napoleon followed Macon's Bill No. 2 with a series of insulting and contradictory decrees (such as the *Bayonne Decree* and the *Rambouillet Decree*) and executive orders that seemed designed to infuriate Americans.[536]

American imperialism and expansion also played a role in causing the War of 1812. During Madison's presidency, a group of noisy young politicians, mostly from the west, began clamoring for war against Britain. Known as the War Hawks,

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[533] Schweikart and Allen, 172.
[534] Latimer, 27.
[535] Ibid, 172-173.
[536] Stockder, "Legality of the Blockades," 503-505.

they coveted Canada. Their nominal leader, Henry Clay of Kentucky, promised that the Kentucky militia by itself could conquer Canada. Elected Speaker of the U.S. House of Representatives during the summer of 1811, and supported by other prominent War Hawks such as Peter Porter of New York, John C. Calhoun of South Carolina, and Felix Grundy of Tennessee, Clay did his best to push Congress toward war and succeeded in the end.[537]

In addition to Canada, Americans also coveted Spanish Florida where settlers from the United States "formed a Committee of Safety headed by John Rhea, who asked the United States for annexation on July 25, 1810...When Madison refused… [The Committee of Safety] declared the Republic of West Florida and formally applied for statehood."[538] The situation remained unsettled until Andrew Jackson occupied parts of Florida during the War of 1812 without orders, and then all of it more formally during the Creek/Seminole War of 1818.[539] American settlers had flooded into Florida after the War of 1812, and the Spanish recognized they would never get it back. Madrid acquiesced to a treaty with America [*Adams-Onis Treaty*] and settled for a nominal payment legally to cede Florida to the United States in February 1819.[540]

The American frigate *President* attacked the British 20-gun corvette *Lille Belt* (commonly called *Little Belt*) by mistake in May 1811. The *President,* a powerful 44-gun frigate that actually carried 60 guns, mistook the *Little Belt* in the

[537] Ibid. See also: Toll, 324-325.
[538] Latimer, 27.
[539] Stewart, 162-163.
[540] Ibid.

darkness and fog for the British frigate *Guerriere*. The *Guerriere* had impressed several sailors from an American ship and the *President* went to retrieve them. There was one man slightly wounded on *President,* and nine killed and twenty-three wounded on *Little Belt*.[541] The United States apologized, but Madison publicly congratulated the captain of the *President* and Americans feted him as a hero throughout the United States.

Events escalated. In September 1811, the British forbid American-fishing interests from selling salt fish in their colonies in the West Indies, yet another serious blow against New England's economy that featured a huge fishing fleet that habitually fished the Grand Banks and sold the fish in the Caribbean. Additionally, the British imposed heavy duties on many other trade items.[542] Two months later, November 1811, American regulars and militiamen soundly defeated the Ohio Indians at the Battle of Tippecanoe and severely crippled the Indian intertribal alliance established and increased during the previous few years by Tecumseh and his brother, the Prophet.[543] This battle opened a huge tract of Indian land along the Ohio to American settlement. Not coincidentally, during that month Congress began debating a declaration of war against both England and France.[544]

During the summer of 1812, opposition to the Orders in Council among the British citizenry reached levels that prompted the Whigs in parliament to make a

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[541] Toll, 321-323. See also: Daughan, 26.
[542] Benn, 16.
[543] A.J. Langguth, *Union 1812: The Americans Who Fought The Second War of Independence* (New York: Simon & Schuster, 2006), 168-169. "British agents had seen to it that the Shawnee were well supplied."
[544] Ibid, 168-171.

concerted attempt to have them revoked. The effort failed, but centers of opposition to parliament on the "American Question" remained. Many of these were manufacturing centers most injured by the policy: Birmingham, Staffordshire, Sheffield, Yorkshire, Lancashire, Worcester, and Leicester in England; and Glasgow, Dunfermline, and Paisley in Scotland.[545] The ministry finally acquiesced to the pressure to revoke the Orders in Council on June 23, 1812, but it was too late.[546] On June 18, 1812, five days earlier, the United States declared war on the British Empire. A companion bill to declare war on France as well failed passage by only two votes.[547]

1812 - The Militia in the Second Anglo-American War

As in the section on the events leading to the War of 1812, this narration will touch lightly on the events of the war and will not refight every battle. The facts of the campaigns are sometimes confused and the sources habitually disagree, sometimes very widely, about the numbers of men engaged and the numbers of casualties suffered by each side. Several actions that displayed the character and utility of the militia will come under deeper scrutiny. That character and utility was a mixed bag. Overall, many (such as John Mahon) believe that the militiamen who served during the War of 1812 did not perform as well as the militiamen of the

[545] Latimer, 33.
[546] Ibid, 34.
[547] Stewart, 128. The French seized almost as many American vessels as the British did. Napoleon bore no love toward the United States.

American Revolution. Others, such as Richard Stewart, dispute that evaluation. The record of the war shows that sometimes militiamen were the poorest soldiers imaginable, and at other times, they served with a courage and loyalty that was almost sublime. One thing was undisputed. "The early months of the war," John Mahon wrote, "demonstrated that the militia could not be used as an offensive force."[548] This was in accord with the community nature of the militia. "The much maligned militia performed, on the whole," Richard Stewart wrote, "as well and as poorly as the regular army."[549]

"The militia is not culturally prepared to be an offensive force," present-day militiaman William Wolf said. Wolf believes that when used in its historic role as a local defensive force (as at Saratoga, Baltimore, and New Orleans) it will perform very well. When used offensively, a role for which it was not organized or trained, it does not.[550] That often seems to have been true during the War of 1812.

The conflict (June 18, 1812, to February 15, 1815) progressed along three distinct phases. Phase One, lasting until the spring of 1813, saw the British military forces completely committed to Europe, unable to reinforce either their fleet or army and barely able to successfully defend Canada. During Phase Two, lasting to the start of 1814, the British were able to reinforce their fleet in North American

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[548] Mahon, History of the Militia, 69.
[549] Stewart, 156.
[550] Gerald Van Slyke interview with William Wolf, January 29, 2015. Wolf was organizing a Committee of Safety in Gallatin County, Montana, during late 2014 and early 2015. He allegedly purchased an automatic shotgun from an FBI Agent and was arrested on March 25, 2015, and is incarcerated at the time of this writing. (More in Chapter Seven.)

waters but not their land forces. The Third Phase, lasting until the end of the war, found the British strongly reinforcing both their fleet and their army.[551]

Canada was the focus of American land operations as the War Hawks had intended, and had the Americans fielded competent leaders during the first two years of the war, the United States may well have stretched its borders north to the Arctic, at least temporarily. Aside from pride, Britain wanted to keep Canada because it recognized the enormous potential the colony enjoyed in natural resources and agriculture. It was quickly becoming the source of food, fur, timber, and other resources the American colonies had once been.[552] Having taken a lesson from the American Revolution, Parliament lavished preferential trade policies on Canada in an attempt to encourage the development of Canadian agriculture, industry and infrastructure, while enacting legislation to cripple American trade.[553] As always, there were some challenges.

The Maritime Provinces were solidly British and the Crown could trust them. French-speaking Catholics who had not shown much enthusiasm for the previous war against the Americans populated Lower Canada. Their loyalty was an issue. The Indians were nominally supportive of the Crown, but they always followed their own best interests, interests that often diverged from the policy of the Crown. The British expected many of the Indians living along the border to side with the Americans. Upper Canada was marginally more dependable than

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[551] Stewart, 136.
[552] John Whiteclay Chambers II, ed., *The Oxford Guide to American Military History* (New York: Oxford University Press, 1999), 784.
[553] Benn, 15-16.

Lower Canada. Although there were 40,000 Loyalists in Upper Canada who had fled America after the revolution (they could be trusted), recent arrivals from America considerably outnumbered them (they could not).[554] As it happened, the British need not have worried.

There were a little more than 7,000 British regulars in Canada on the day the war started. (See Appendix F for a list of British Army regiments serving in North America during the War of 1812.) There were 11,744 regulars in the U.S. Army, mostly spread along the western frontiers.[555] (The navy had 5,500 to 7,250 sailors and marines.)[556] Both sides also relied heavily on militia forces and here the Americans had an important edge. Americans embodied about 450,000 militiamen at various times during the war, or about the same number of people in all of British Canada. The Canadian militia could never match the American militia in numbers.[557]

The Royal Navy was a powerful force in being, but for how long? The American navy presented no serious threat with its harbor gunboats and its deep-water fleet of only twenty vessels.[558] One British newspaper expressed the contempt Britons felt for the United States Navy by calling it "a few fir built frigates with strips of bunting manned by sons-of-bitches and outlaws."[559] France posed the real danger to the Royal Navy. The French had lost thirty ships of the line

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[554] Ibid, 25-27.
[555] Stewart, 132. The Sources differ widely on the numbers of regulars.
[556] Benn, 20. The Sources differ widely on the numbers of sailors and marines.
[557] Stewart, 132.
[558] Ibid, 134. There were three large 44-gun frigates of the USS *Constitution* class, three smaller 38-gun frigates of the USS *Constellation* class, and fourteen lesser vessels.
[559] John K. Mahon, *The War of 1812* (Gainesville, FL: University of Florida Press, 1972), 9.

(capital battleships of seventy-four or more crew-served cannon) during the naval engagements of 1805-1806, leaving them with only thirty-four. That number increased to eighty ships of the line by 1813 with thirty-five more still under construction. During that time period, British ships of the line declined by fifteen for a total of ninety-eight.[560]

"In addition," British historian Carl Benn wrote, "the Royal Navy's global commitments forced it to send under-strength, ill-trained…crews to sea, often in badly built vessels." In 1812, the Royal Navy could spare only "eleven ships of the line," Benn continued, "thirty-four frigates, and about an equal number of smaller naval vessels [for] the western Atlantic."[561] Only twenty-five of these were available to serve on the American Station.[562] It was imperative for the British to defeat Napoleon before the naval balance shifted decisively in his favor.

The United States also had its challenges on the day the war began. First, it viewed almost all Indians as hostile, those along the frontier running down the length of the country, and especially those along the Canadian border. After two humiliating defeats by the Ohio Indians, Americans had finally defeated them at the Battle of Fallen Timbers in July 1794, and then at the Battle of Tippecanoe in November 1811, just months before the war began.[563] Understandably, the Indians harbored much animosity for the Americans who had defeated them and dispossessed them of their lands. Further, they sought and received help from the

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[560] Benn, 21.
[561] Ibid.
[562] Latimer, 87.
[563] Benn, 18.

British who supplied them with weapons, ammunition, and other war materials. Canadian trappers circulated freely among the tribal groups and most Americans were sure the British encouraged and supported Indian raids against frontier settlements in the United States.[564]

Second, the events surrounding the advent of the War of 1812 resulted in such bitter political conflict in the United States that disunion often lurked in the background as a distinct possibility, both prior to and after the commencement of hostilities. The New England states were so opposed to the war that they openly trafficked with the enemy throughout the conflict, providing the British with critical resources and intelligence. Had it not been for American food shipped from New England to the British armies in Canada and Spain during the war, the British forces would have been unable to feed themselves.[565] By 1814, the New Englanders had called a convention at Hartford, Connecticut, and were seriously discussing secession.[566] Cooler heads prevailed, but the damage was done and the later mid-century separatists would have a New England precedent to point to.

Third, the Jeffersonian military Madison had inherited was severely lacking in nearly everything. The navy and marine corps, never properly funded by Congress, would prove capable of scoring some heartening single ship victories,

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[564] Ibid.
[565] Latimer, 263-264. See also: Benn, 55.
[566] Taylor, *The Civil War of 1812*, 415. Taylor outlines the depth of the Federalist opposition to the war. "In August [1814] the islanders [Nantucket] accepted a separate peace from Admiral Alexander Cochrane, who lifted the blockade in return for their declaration of neutrality, including a cessation of paying taxes to the United States…In November 1814 the Federalist governor of Massachusetts, Caleb Strong, sent a secret emissary to Nova Scotia to seek military protection from the British."

but were too understrength to have a serious effect on the outcome of the war.[567] The regular army, also a victim of having been habitually underfunded, never reached its recruiting goal and began the war understrength, undertrained, and with astonishingly poor leadership.[568] At the start of the war, Americans outnumbered the British forces in Canada but could not match them in training and leadership. By the end of the war, British numbers and American training and leadership had both improved dramatically.[569]

Hostilities began immediately upon the declaration of war. "Most of the fighting…occurred along the upper St. Lawrence River and through the Great Lakes region," Carl Benn wrote, "because the conquest of British territory was the primary military objective of the United States."[570] American armies crossed the border into Canada eight times between 1812 and 1814. Only once did they successfully hold any substantial territory for more than a few days and were forced to return it under the terms of the peace treaty ending the war.[571]

Congress had declared war on June 18 and Madison called forth the militia to augment the regular army in the upcoming campaigns. The governors of Connecticut and Massachusetts refused to comply, denying the government the services of what John Mahon called "the best militias" in the United States. Their action also discouraged other Americans and prevented the cutting of the primary

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[567] Mahon, *The War of 1812*, 7-9. On the day the war started, there were 4,010 enlisted sailors, 1,523 enlisted marines, and 234 officers in the United States Navy.
[568] Benn, 21.
[569] Ibid.
[570] Ibid, 30.
[571] Ibid.

British supply line along the St. Lawrence River. Both states did call out their militias in 1813, but only to defend their own coasts.[572] Disagreements caused by the dual command structure built into the militia system would persist long after the War of 1812.

There were four invasions or attempted invasions of Canada during 1812 by understrength American armies, each composed of a small number of regulars and a large number of undisciplined, untrained militiamen. Each of these failed largely because militiamen refused to obey unpopular orders or to cross the Canadian boundary on statutory grounds.[573]

The first, under General William Hull was an unmitigated disaster and a national humiliation. Hull intended to invade Canada with a mixed army of roughly 2,200 regulars and militiamen. Things began to go wrong on the first day of the campaign when a number of the Ohio militia refused to march because they did not agree with the route Hull had selected.[574] After a series of small defeats, poorly managed skirmishes, and other mishaps, Hull fell into a serious depression and took counsel of his fears.[575] John Langguth wrote that Hull had been in a daze for hours, "[b]ut with his indecision ended, he seemed to recover his wits and promptly signed the articles of surrender."[576]

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[572] Mahon, History of the Militia, 67.
[573] Ibid, 68.
[574] John A. J. Langguth, Union 1812: The Americans Who Fought the Second War of Independence (New York: Simon & Schuster, 2006), 176,
[575] Ibid, 193.
[576] Ibid.

Hull surrendered his entire army to a numerically inferior British force commanded by General Isaac Brock on August 17, 1812. "To a [British] mixed force of 1,300 regulars, militia, and natives, Hull surrendered 2,200 men," Benn wrote, "large quantities of weapons and supplies, the USN brig on Lake Erie, and the whole of the Michigan Territory."[577]

The militia had refused Hull's orders to cross the international border and Brock had threatened to allow the Indians to massacre the Americans. Hull could see no alternative to surrender although all of his officers strenuously disagreed.[578] Led by Tecumseh, a chief of exceptional ability and character, the Indians did not massacre anyone. In his official report, Brock wrote that once the Americans surrendered, the Indians regarded the lives of their prisoners as sacred.[579] This had not been the case two days earlier, August 15, when some 500 Potawatomie warriors massacred about forty American prisoners, including four women and twelve children, after they had surrendered near Fort Dearborn. They did it, the Indians explained, because the British were buying American scalps.[580]

War Hawk Peter Porter (who also served as a general during the war) had often said that the militia was America's shield while the regulars were America's sword. Porter acknowledged the defensive nature of the militia that the government

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[577] Benn, 34. The sources disagree widely on American numbers.
[578] Langguth, 194-195. The British force was composed of 700 regulars and militia, and 600 Indians under Tecumseh. The American army (according to Langguth) was composed of a thousand regulars and militia from Ohio and Michigan, approximately 3,000 men. Brock had written to Hull, "It is far from my inclination to join in a war of extermination, but you must be aware that the numerous body of Indians who have attached themselves to my troops will be beyond my control the moment the contest commences."
[579] Ibid.
[580] Mahon, The War of 1812, 53.

would attempt to use as an offensive force throughout the war.[581] Jefferson's military policy of depending on the defensive community militia to conduct the nation's offensive war fighting duties at the expense of the regulars now would bear the fruit the centrists had all along warned that it would.

The second attempt on Canada began two months later. Major-General Van Rensselaer, a New York militia officer, sent 350 regulars and 250 volunteers across the Niagara River after dark on October 12.[582] The Americans attacked a British position on the high ground near Queenstown, drove them off and then drove off a counterattack. If properly augmented at the critical time, this force would have established a permanent American presence on Canadian soil. Plenty of reinforcements were available on the south side of the river, both regulars and militia, but Van Rensselaer could not convince many of them to cross. The militia refused to cross into foreign territory and the regulars refused to serve under the commander on the other side since he was a militia officer.[583] By the time Van Rensselaer had unsnarled the petty animosities and the remainder of his army was ready to cross, General Brock had arrived at the scene and led a British counterattack that forced the Americans north of the river to surrender.[584] Brock himself did not survive the battle.

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[581] Mahon, History of the Militia, 67.
[582] John R. Elting, *Amateurs To Arms! A Military History Of The War of 1812* (New York: Perseus Press, 1995), 43, 48. Elting cites a much higher number of Americans on the Canadian side of the River. He points out that 958 American prisoners were taken.
[583] Latimer, 81. "Equally, many among the militia were reluctant to cross, now remembering that they were liable only to serve in defence of their state…American command on the Heights was also in disarray, with militia and regular officers at odds."
[584] Elting, 48.

The third invasion attempt fizzled before it really started. Brigadier General Alexander Smyth planned to embody 3,000 militia and cross into Canada on December 1, 1812. Fewer than half the necessary number of men responded and Smyth publicly expressed his disgust with the militia. Threatened by the militiamen, Smyth abandoned his command, left the area, and disappeared from the army rolls.[585] Meanwhile, General Henry Dearborn marched a fourth force northward from Plattsburg, New York, but the New York and Vermont militia refused to cross the border forcing Dearborn to cancel the invasion.[586]

January 1813 dawned with the Americans still on the south side of the border but still determined to invade. "On land, the objects of the American plan of campaign for 1813," Stewart wrote, "were the recapture of Detroit [occupied by the British the previous year] and an attack on Canada across Lake Ontario." General William Henry Harrison would conduct the Detroit campaign and General Henry Dearborn would conduct the Lake Ontario campaign.[587] During January 18-23, a thousand-man force sent by Harrison to the vicinity of modern Monroe, Michigan, engaged a British force led by Colonel Henry Proctor several times at the Raisin River.[588] Proctor led 334 regulars and Fencibles, 212 Canadian militia, 28 Royal Marines, and about 600 Indians.[589] The Americans were soundly defeated losing 292 dead and 592 prisoners to British losses of 24 dead and 158 wounded.[590]

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[585] Mahon, History of the Militia, 69.
[586] Stewart, 139.
[587] Ibid.
[588] Elting, 60-62.
[589] Latimer, 118.
[590] Ibid, 120.

On the 23rd, Proctor's Indian allies massacred about 60 of the American prisoners, wounded men whom Proctor had secured in houses in a nearby town. "Remember the Raisin," became an American battle cry.[591]

The Ontario campaign started when General Dearborn moved his men from Plattsburg to Sacket's Harbor, New York. The Americans planned to cross Lake Ontario and attack Kingston first and then move against York (Toronto). The British reinforced Kingston so Dearborn bypassed it and attacked York on April 27.[592] Being ill, Dearborn ordered General Zebulon Pike to lead the attack. The Americans overcame the British garrison of 600 regulars and pushed into town. A gunpowder magazine blew up killing a large number of men on both sides including Pike. With both Dearborn and Pike both out of action, the soldiers got out of hand and looted and burned some private dwellings and public buildings, mistreated the townspeople, and stole almost everything of value.[593] The British army would remember York when it entered Washington, D.C., a little more than a year later.

With both the army and navy busy on the northern end of Lake Ontario, Sacket's harbor was largely defenseless. General George Prevost, royal governor of Canada, attacked it with 800 regulars and a force of Canadian militia on May 26.[594] The British were initially successful but General Jacob Brown counter-

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[591] Ibid, 118-119. See also: Elting, 63. "…a crowd of drunken, revenge-crazy warriors came down on Frenchtown, robbed the inhabitants, set fire to the houses used as hospitals, and fell upon the wounded with tomahawk and scalping knife. At least 30 were murdered or burned to death. Others were carried off [and] casually killed. In all, approximately 400 Americans died in action or by massacre."
[592] Stewart, 140.
[593] Ibid.
[594] Ibid. May 26 is the date offered by the official U.S. Army history. Almost all other sources cite May 28-29. Mahon cites May 20 as the date.

attacked with 400 regulars and 750 New York militia. Brown understood militiamen better than most and after the first skirmish circulated a false report of a great American victory. He simultaneously called forth the remainder of the militia that had not embodied on the first order and they responded in droves.[595] The outnumbered British retreated to their ships and returned to Canada after a sharp action that the Americans won.[596]

Leaders on both sides recognized that control of Lake Erie was essential to final victory and both began feverishly building ships on the lake. Commander Oliver Hazzard Perry built, trained, and gathered a small fleet on the American side of the lake as did the British on the Canadian side. On September 10, 1813, these two fleets collided at Put-In-Bay at the northern end of the lake near Fort Meigs. When the battle ended in a victory for Perry, American control of Lake Erie was complete.[597]

Forced to abandon Detroit and retreat into Canada after Perry's victory, General Proctor (recently promoted) and Tecumseh fought a battle on October 5, 1813, against elements of General Harrison's army.[598] Called the Battle of the Thames (or the Battle of Moraviantown), the action was fought about eighty-five miles northeast of Fort Malden, Harrison's objective. It was a decisive American victory with far reaching results, two of which were the death of Tecumseh and the

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[595] Mahon, History of the Militia, 71.
[596] Stewart, 140-141.
[597] Daughan, 216.
[598] Stewart, 142. See also: Elting, 113. Tecumseh was killed in this battle.

final destruction of his Indian Confederacy.[599] "The American position on the Detroit frontier was reestablished," Stewart wrote, "a portion of Canadian territory was brought under American control, and the enemy threat in that sector was eliminated."[600] The Americans now turned their attention eastward toward Montreal.

After the victory at the Battle of the Thames, Harrison led his 4,000-man army east to the Niagara frontier where it prepared to cooperate with General Wade Hampton's 6,000-man army in a two-pronged campaign against Montreal.[601] "The expedition against Montreal in the fall of 1813," Stewart wrote, "was one of the worst fiascoes of the war."[602] Harrison remained in Plattsburg and put General James Wilkinson in charge of his troops. It was an inauspicious move since Wilkinson and Hampton hated each other so fiercely that they were scarcely on speaking terms and proved unable to cooperate. Hampton was defeated at the Chateauguay River while Wilkinson was defeated at Ogdensburg and both retreated back to Plattsburg to the disgust of the entire nation.[603]

The final humiliation of 1813 along the Great Lakes occurred in December when the British recaptured Fort George, captured Fort Niagara, burned the towns of Buffalo and Black Rock in New York, and having met no resistance, turned their Indians loose to pillage the countryside around Buffalo. The militia had refused to

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[599] Elting, 111-113.
[600] Stewart, 144.
[601] Elting, 143.
[602] Stewart, 144.
[603] Elting, 151. "The Wilkinson/Hampton campaign…was a fit subject for a comic opera."

turn out leaving the Indians free to burn and loot as they pleased. "This fiasco shook faith in the belief that men would fight to the last to defend hearth and home," Mahon wrote, "and the Secretary of War announced that the New York militia had shamefully failed to do their duty."[604]

New theaters of operations had opened in the Chesapeake Bay and in the southeastern United States during 1813. During April, a small army of regulars under General James Wilkinson, the same officer who would suffer defeat at Ogdensburg a few months later, occupied an area on the Gulf coast of Spanish West Florida, including Mobile Bay, which had been in dispute between Spain and the United States since the Louisiana Purchase of 1803.[605] The few Spanish defenders surrendered and the occupation was peaceful.[606]

Inspired by Tecumseh's earlier successes, the Red-Stick faction of Creek Indians went to war against white settlers throughout the southeast that summer and on August 30 massacred more than 500 men, women, and children at Fort Mims about forty miles north of Mobile.[607] Many thought the Red Sticks were encouraged and supported by the Spanish and the possibility of a Spanish sponsored Indian coalition spread panic throughout the southeast. Militiamen from Tennessee, Georgia, and Mississippi were embodied to meet the threat.[608] General

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[604] Mahon, History of the Militia, 71.
[605] Stewart, 144.
[606] James Innerarity, "General Wilkinson's Occupation of Mobile, April 1813: A Letter of James Innerarity to John Forbes," *The Florida Historical Society Quarterly*, Vol. 11, No. 2 (Oct. 1932), 1-3.
[607] Stewart, 145. Sources disagree on the numbers of whites killed. They range from about 250 to about 600.
[608] Karl Davis, "Remember Ft. Mims: Reinterpreting the Origins of the Creek War," *Journal of the Early Republic*, Vol. 22, No. 4 (Winter 2002), 1.

Andrew Jackson, leading 2,000 Tennessee militia and several hundred friendly Indians, invaded Creek lands in the fall but was unable to bring the Indians to a decisive battle until 1814.[609]

A British army and naval force raided throughout the Chesapeake Bay during the summer of 1813 and attacked the Norfolk Navy Yard in Virginia with eight hundred soldiers on June 22.[610] The seven hundred American regulars, marines, and militia at the yard inflicted eighty-one casualties on the British before they withdrew while suffering no casualties themselves. The frustrated British pillaged and sacked Hampton, Virginia, and then spent the remainder of the year raiding coastal towns throughout the Chesapeake Bay.[611]

The American desire to conquer Canada was still strong as 1814 dawned. General Wilkinson led a 4,000-man army north from Plattsburg but only penetrated eight miles into Canada before a mere 200 British regulars and Canadian militia turned him back.[612] This first action of the new year was an even more humiliating defeat than Wilkinson's disaster of the previous year. Also in early 1814, Congress authorized an increase of 55 regiments in the size of the regular army: 45 infantry, four of riflemen, three of artillery, two of light dragoons, and one of light artillery.[613] Once again, these recruiting goals were fanciful, not realistic.

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[609] Ibid, 634.
[610] Stewart, 146.
[611] Ibid.
[612] Ibid, 148-149.
[613] Ibid, 149.

Andrew Jackson's army experienced a hard winter in the southeast. After quelling a militia mutiny, skirmishing with the Red Sticks throughout the winter, and then reinforced by 600 regulars, Jackson attacked the main Creek stronghold at Horseshoe Bend on the Tallapoosa River in central Alabama on March 27.[614] During the two-hour battle, the Americans destroyed the military power of the Red Sticks. Jackson's men killed more than 800 warriors out of a force of about 900 and forced the few survivors to flee into Spanish territory for safety.[615] Andrew Jackson's promotion to Major General in the regular army was one of the most important results of the Battle of Horseshoe Bend since it positioned him for command in the upcoming Battle of New Orleans.

General Jacob Brown invaded Canada on July 3, 1814, crossing the Niagara River with 3,500 men, taking Fort Erie, and advancing to the Chippewa River. On July 5, 1,500 British soldiers surprised the part of Brown's army that was commanded by General Winfield Scott. Scott's men decisively defeated the British and drove them across the river with 441 British casualties.[616] Brown then moved against Queenston and Ancaster. The American army passed through a crossroads called Lundy's Lane on the way to Ancaster and found there several thousand British regulars and close to a thousand Indians waiting for it.[617]

Brown ordered Scott to secure the road back to Queenston hoping to draw part of the British force after him. Scott's Brigade was moving along the road on

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[614] Mahon, History of the Militia, 76.
[615] Ibid. See also: Langguth, 286.
[616] Borneman, *1812*, 185, 188-189.
[617] Latimer, 289-296.

July 25 when it walked into an ambush by an undetected British force that had positioned itself behind the American army.[618] When faced with the same situation General Hull had surrendered and General Wilkinson had retreated, but Scott ordered an immediate attack and Brown brought reinforcements up to support him. Both sides then had about 3,000 men on the battlefield.[619] "The ensuing battle, most of which took place after nightfall," Stewart wrote, "was the hardest fought, most stubbornly contested engagement of the war."[620] The fighting ended in a draw after midnight, each army losing about 850 men, a casualty rate of almost one-third. Both Brown and Scott were severely wounded as were both British commanders (Generals Drummond and Riall), and Riall was taken prisoner as well.[621]

During the summer of 1814, the British army in North America received reinforcements from Europe in the way of veteran regiments fresh from the Napoleonic wars.[622] The Royal Navy also received reinforcements and tightened its blockade of the American coastline.[623] The Royal Navy now also quarantined friendly New England, which the British had not blockaded before since it was a source of sympathy and critical supplies.[624]

General Prevost began marching south on August 31 and a few days later appeared before Plattsburg, New York, with 11,000 men, both European veterans

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[618] Ibid.
[619] Stewart, 151.
[620] Ibid. See also: Latimer 297. "It was the bloodiest battle of the war…"
[621] Ibid.
[622] Borneman, *1812*, 178-179.
[623] Langguth, 292-293. "By May 1814…Britain had defeated Napoleon and could send more than one hundred ships to extend its blockade along the entire Atlantic coast."
[624] Benn, 55.

and Canadian militia, in early fall. The American commander in Plattsburg, General Alexander Macomb, had 1,500 regulars and 1,900 New York and Vermont militiamen.[625] The British soldiers could not attack until their fleet took control of Lake Champlain so they had to skirmish for a week waiting for the Royal Navy to defeat the American ships on the lake. A battle between the two well-matched fleets took place on September 11. Commodore Thomas Macdonough commanded the American fleet during the Battle of Lake Champlain and produced a crushing American victory. The Americans entirely controlled Lake Champlain after the battle, which made it impossible for Prevost to resupply his army. The general had no choice but to withdraw the British army into Canada.[626]

The Chesapeake Bay area also saw British troop strength dramatically increase during 1814. A sizable fleet harassed the coastal areas and worked in close concert with the army. General Robert Ross landed about 4,000 regulars on the banks of the Patuxent River on August 19.[627] Five days later, he attacked an American force of about 5,000, mostly raw militia, which had gathered at Bladensburg, just a few miles outside Washington, D.C.[628]

Because of a series of comic blunders on the part of the American high command, the American militia failed to embody in time to prepare adequately for the campaign. The result was the army that fought at Bladensburg was composed

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[625] Taylor, *The Civil War of 1812*, 402-403. See also: Mahon, *History of the Militia*, 74. Mahon maintained that Prevost had about 20,000 peninsula veterans.
[626] Ibid.
[627] Langguth, 298.
[628] Ibid, 303-304. See also: Mahon, *History of the Militia*, 73.

almost entirely of disparate, untrained, undisciplined militia units, some of which arrived on the battlefield with no ammunition and no bayonets.[629] The British regulars quickly broke the American force and the militiamen ran away leaving their capital exposed to the enemy. As poor as the American showing at Bladensburg had been, there was one bright point – the defense of a roadblock by U.S. Marines. "Oddly enough," Hill wrote, "a famous crack regiment of the British Army, the King's Own [4th Foot], rates Bladensburg as the bloodiest day of action in its history. It had the bad luck to run afoul of the…roadblock [manned by U.S. Marines]."[630] (See Appendix F for a list of British regiments serving in America during the War of 1812.)

Ross moved his army into Washington that evening, August 24, where they got out of control and burned a number of public buildings including, famously, the White House (known at that time as the President's Mansion).[631] Having destroyed much of the capital of the United States, the British marched north for Baltimore.

Not wanting to commit the errors that resulted in disaster on the Chesapeake, Baltimore had not sat idly by waiting for the British to arrive. Unlike at Bladensburg (and many other places) the American military leaders at Baltimore worked well together and cooperated to make extensive preparations to meet the expected attack.[632] A formidable line of entrenchments and redoubts covered the

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[629] Mahon, *1812*, 298-299.
[630] Hill, 13.
[631] Langguth, 308-309.
[632] Latimer, 326. The Baltimore Committee of Safety oversaw the defense of the city, not the state or national government.

land approach and Fort McHenry guarded the harbor approach. Blocked by sunken boats, the seaway entrance into the harbor was secure.[633] General Ross landed his men on the land approach and was repulsed after a spirited battle with the Maryland militia in which Ross was killed. These same militiamen had broken and run two weeks earlier under poor leadership at Bladensburg. Under good leadership at Baltimore, they fought well and successfully drove off the same British regulars who had humiliated them at Bladensburg.[634]

The fleet attempted to bombard Ft. McHenry into submission but failed and then withdrew.[635] Perhaps the most lasting result of the attack on Baltimore was a song written by Francis Scott Key, a lawyer who observed the bombardment, which later became the national anthem of the United States. Key wrote the original verses on the back of an envelope and gave it to local newspapers that printed it under the title, "*The Defence of Fort M'Henry*." It spread across the nation, was set to a popular tavern melody (*To Anacreon in Heaven*), and ultimately became known as the "*Star Spangled Banner*."[636]

Napoleon abdicated in April and had gone into exile, leaving the huge British army and navy mostly unoccupied. British public opinion had now strongly turned in favor of inflicting lasting harm on the Americans. America's turn for punishment, many Briton's felt, had come.[637] However, the ministry could see no

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[633] Benn, 61.
[634] Stewart, 152.
[635] Ibid.
[636] Mahon, History of the Militia, 310.
[637] Mahon, *1812*, 378.

advantage in continuing the war with the Americans. Even though Napoleon was out of the picture (only temporarily), France was still dangerous. Some of the Bourbon princes were rattling sabers, the British army occupying France was very unwelcome, and there were credible assassination threats against the Duke of Wellington, the British commander on the mainland.[638] American and British officials had been conducting informal discussions between intermediaries since spring and a peace commission began formally meeting in the neutral Belgian city of Ghent in August 1814.[639]

There was also the cost of the war, never a secondary consideration. Fighting the Americans had already added an estimated twenty-five million pounds to Britain's already enormous national debt with no end in sight. Lord Liverpool wrote to George Canning, "I do not believe it would have been possible to have continued [the income tax] for the purpose of an American War."[640] The war had cost America $105 million so far and had increased the national debt to $127 million.[641] Additionally, merchants on both side of the Atlantic were anxious to put away the guns and resume normal trading.

There was no consensus at the peace discussions. Americans would not relent on their demands nor the British on theirs. The one agreement was that it was time for the war to stop, so the delegates acquiesced to the principle of *status*

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[638] Latimer, 390.
[639] Taylor, *The Civil War of 1812*, 412. "In late 1813 the Madison administration accepted a British offer of negotiations."
[640] Ibid, 389. Canning was Foreign Minister and Liverpool was Prime Minister.
[641] Ibid.

quo ante bellum, a return to things as they were before the war.[642] The Royal Navy refused to budge on impressment so the written treaty said nothing about it and Americans acquiesced. At any rate, with the Napoleonic wars ended, everyone correctly assumed that impressment would end on its own as the Royal Navy "lay up" (decommissioned) many of its ships.[643] Signed in Ghent on Christmas Eve, 1814, and approved by the Prince Regent (the future King George IV) in London, the treaty took a month to cross the Atlantic where the Senate unanimously passed it on February 18; one month after Andrew Jackson had won the Battle of New Orleans.[644]

New Orleans sat at the mouth of the Mississippi River, which drained approximately two-thirds of what would later become the lower forty-eight states of the United States, making it a place of great strategic importance. General Sir Edward Pakenham arrived before the city on Christmas Day 1814 to find that his eight-thousand-man army was already there and had already fought an inconclusive engagement with the Louisiana militia on December 23.[645] Casualties had been high on both sides and the British army was now camped precariously on a narrow isthmus between the Mississippi River and a cypress swamp about ten miles below New Orleans.[646]

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[642] Elting, 322.
[643] Borneman, *1812*, 265.
[644] Benn, 65.
[645] Stewart, 153.
[646] Mahon, *1812*, 360.

General Andrew Jackson had arrived in New Orleans on December 1 and had immediately began to prepare its defenses.[647] Like Baltimore, New Orleans spared no effort in its defense. After the action on the twenty-third, the British had established a line on the isthmus facing in the direction of New Orleans. Jackson built substantial earthworks a few hundred yards north of the British line high enough to require scaling ladders [648] Jackson had about 3,500 men manning the earthworks and the twelve cannon emplaced on it, and another thousand held in reserve.[649] To top it off, a canal meandered across the battlefield that materially aided the American defense. On the opposite bank of the Mississippi, Jackson had placed about 800 militia (divided into two groups about a mile apart) and a battery of three heavy guns.[650]

Pakenham wanted to move on New Orleans along a tactically sound route that utilized available cover, but Admiral Alexander Cochrane, a more senior officer, overruled him. This battle would be little more than a reenactment of Bladensburg, Cochrane said. If the army would not do it, he would send his sailors and marines to do it. Constrained by Cochrane's guidance, Pakenham exercised his only real option and planned a direct frontal assault on Jackson's works.[651]

As noted, Pakenham's army was composed of experienced professional soldiers, veterans who had defeated Napoleon, boarded ship in France, and after

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[647] Ibid, 362.
[648] Elting, 299-300.
[649] Langguth, 302, 350. Stewart wrote twenty cannon.
[650] Ibid.
[651] Mahon, *1812*, 360. Mahon believes this story to be apocryphal. Naval officers had no authority over army officers once they were ashore.

mustering in Bermuda and the West Indies sailed directly for New Orleans.[652] The American army was much different. Jackson's men were a motley collection of disparate groups that had never worked together. There were two regiments of regulars, several dozen marines, two battalions of free African Americans, and a band of Choctaw Indians. There was a city militia of New Orleans sharpshooters, some Louisiana state militiamen, and a battalion of volunteers composed of New Orleans aristocrats dressed as though they were going to a ball. There was also a group of Baratarian pirates who not only took their place on line but also supplied much of the artillery and most of the ammunition with which the Americans fought the battle.[653]

Pakenham launched his main attack just prior to daylight during the early morning of January 8. About 5,300 men assaulted Jackson's earthworks while another 600 men were sent across the river to clear the Americans off the west bank. The British crossed the field fronting the earthworks under a hail of musketry and grapeshot. They came close to the American earthworks but, incredibly, the officer tasked with bringing the ladders to scale the wall had forgotten them.[654] The British army stood exposed in the field before the American works and was, as Stewart put it, "mowed down by the hundreds."[655] In fifteen minutes, the main battle was over and the British had suffered about 2,450 casualties to about 350 American

[652] Benn, 63.
[653] Stewart, 153. See also: Mahon, *History of the Militia*, 77.
[654] Langguth, 364-365.
[655] Stewart, 154.

casualties.[656] It was a very one-sided victory and a very important one. General Pakenham carried with him a commission appointing him governor of the Louisiana Territory. Peace treaty or not, if Pakenham had won the battle it is doubtful the British would have returned Louisiana to the United States.[657]

The British boarded their ships and appeared off Mobile on February 8. They quickly overwhelmed the 360 regulars manning Fort Boyer, which guarded Mobile Harbor, and prepared to attack the town but word of the peace treaty came before they had a chance to move against the town itself.[658] This was the last land action of the War of 1812.

America's Shield, Not Her Sword

Jackson's victory at New Orleans embedded three things into the American psyche. First, coming so close to the arrival of news from Europe that a peace treaty had been signed, many Americans assumed they had won the war when it was actually a draw. Second, the great victories won by Perry, Brown, Scott, and others, as well as the victorious deep-ocean naval engagements of ships like *USS Constitution*, broadened the legitimizing national mythology that had been born during the revolution. It did the same for Canadians who already chafed for a greater degree of independence. Legitimizing mythologies built around heroic deeds such as Laura Secord's perilous journey through the wilderness at night to

[656] Benn, 65.
[657] Ibid, 62-63.
[658] Ibid, 65.

warn Canadian militia of American plans for an attack, put them on the road to nationhood.[659] Andy Jackson, hero of New Orleans, took his place in the rarified patriot pantheon alongside other mythologized American heroes and later rode it into the White House. Third, despite the militia's unbroken record of dismal failures when used offensively, New Orleans encouraged the belief that the militia was more than adequate to wage America's wars.

John Mahon wrote that the myth of New Orleans (more so than the facts) helped Americans decide to continue to rely on the militia to get them out of trouble. American militiamen, the myth went, were able to whip seven times their number of regular soldiers.[660] "Moreover," he continued, "it confirmed what Americans wanted to believe, namely, that the nation could draw together a fighting force at a moment of need, not before, without elaborate and expensive pre-planning.[661]

As Mahon suggested, most Americans emerged from the War of 1812 believing that the militia had silenced its detractors at New Orleans. More thoughtful Americans (including James Monroe) cited the militia's humiliating shortcomings during the War of 1812 as proof that it was a failed system that either needed to actually become well-regulated and uniform from state to state, or else be abolished.[662] The militia had habitually disobeyed orders during the recent war, all of it or much of it had refused to cross the Canadian border each of the eight

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[659] Benn, 40-41. Secord's information resulted in the Americans losing a battle near Queenston on June 24, 1813. Canadian forces ambushed the 600 man American force, inflicted 100 casualties and captured the remaining 500.
[660] Mahon, History of the Militia, 77.
[661] Ibid.
[662] Ibid, 81.

times an invasion was attempted, and most regular army officers no longer wanted anything to do with militiamen. Many blamed the militia for America's failure to gain Canada. All of these were at least partially right, but in 1815, the militia remained enshrined in the hearts of Americans as Mahon maintained.

Nevertheless, the regular army and the navy were never again allowed to approach the point of extinction as they had during the presidency of Thomas Jefferson. The militia would play an ever-diminishing role in American society as it moved through the 19th Century. It would go into sharp decline after the War of 1812, and especially after the Second Civil War (1861-1865) until it would almost disappear, only to be resuscitated during the middle of the 20th Century.

As Pauline Maier and Saul Cornell amply demonstrated, the community militia is at its best when serving as a defensive force for a short period only, something early English leadership had understood and which had become embedded in the common law. When serving under poor leadership in offensive operations, the militia performed exceptionally poorly. Under good leadership and serving in a defensive posture, it performed well. Peter Porter's sword and shield imagery is probably the most accurate description of the regulars, of the militia, and of the relationship they bear one to another and to their country.

CHAPTER FOUR

THE MILITIA IN THE FIRST HALF OF THE NINETEENTH CENTURY: THE RISE OF THE VOLUNTEER MILITIA

The militia remained a viable military and cultural structure on the dangerous western frontier areas of the United States after the War of 1812. However, in the East, less threatened by the British or by Native Americans, the importance of the militia began to diminish after the ratification of the Treat of Ghent in 1815. There were understandable reasons for this.

First, with no immediate threat in sight, fewer men, especially lower level wage earners, were willing to purchase an expensive musket and accoutrements or to miss work for the traditional four muster days per year.[663] Second, the resentment of the poor at facing stiff fines or imprisonment for missing muster, while the wealthy could easily pay the fine or buy a substitute, also damaged the public perception of the militia.[664]

Third, later in the century, militiamen also sometimes found themselves aggressively policing labor union activities, a task many of them detested and which they could not support in good conscience.[665] Fourth, many thoughtful people

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[663] James B. Whisker, *The Rise and Decline of the American Militia System* (Selinsgrove, PA: Susquehanna University Press, 1999), 330-331.
[664] Joseph Rayback, *A History of American Labor* (New York: The Macmillan Company, 1959), 66. Through much of the century, unions attempted to have the militia system abolished.
[665] Hill, 126. At times, the militia refused to shoot into crowds of strikers, but took casualties themselves rather than use their weapons.

considered the militia's service during the War of 1812, other than at Baltimore and New Orleans, to have been grossly substandard. On numerous occasions since, the militia had also proven itself unwilling or unable to control civil disorders. Many Americans wanted the militia either completely reinvented along the lines of the old Von Steuben Plan or else completely abolished.[666]

Other issues also played into the mix and the trend continued throughout the century as "volunteer militias," often little more than uniformed social clubs attended mostly by the well-to-do, began steadily to replace the community militias.[667] By the end of the century, with Native Americans having been extirpated or forcibly confined to reservations, the former frontiers now covered by peaceful cities, farms and homes, the shield had fallen into disrepair and frequently seemed to be no more than a curio from a by-gone era.

"The militia that Americans had known so far was rapidly disappearing," James Whisker wrote. "In its place there was the volunteer militia…skilled in the use of firearms if not in discipline."[668] Volunteers were more useful to the federal government because they served outside of state laws that specified where, when, and how they could be used and for how long. Volunteers could also serve outside the United States which, after its experiences in the War of 1812, the government considered a strong positive.[669]

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[666] Paul Foos, A Short, Offhand, Killing Affair: Soldiers and Social Conflict During the Mexican-American War (Chapel Hill, NC: The University of North Carolina Press, 2002), 41.
[667] Whisker, 330.
[668] Ibid.
[669] Ibid.

This chapter will focus on the events and legislation that encouraged the morphing of the traditional militia into the volunteer militia. It will examine the various kinds of militia units that served alongside the regulars during the post-1815 era, the Mexican War, and the conflicts leading to the Civil War. Of the many Indian wars, it will touch on only the three Seminole Wars, each of which was substantially a militia war. It will briefly consider the role of the militia in containing labor strife. It will end on the eve of America's second Civil War. This chapter introduces many new terms associated with the militia. Journalists often invented the newer terms and through repeated use by the mass communications industry, these terms became accepted throughout society. (See Appendix A for military definitions.)

The Militia in the First Half of the Century

Early in the nineteenth century, frontier settlements still depended on the militia both to protect the community against Indian attack and to wage small-scale warfare on native peoples. The small numbers of regulars (who after 1815 did the bulk of the fighting against native peoples) supposedly constituted a thin protective line that could not always be everywhere and counted on citizen support.[670] Militia membership was also a crucial function of citizenship. In a frontier settlement, participation in the militia ensured a free man's position of respectability among his fellow citizens and united him to his neighbors in ways difficult to describe with

[670] Stewart, 160-161.

words. It secured his place in the identity-sustaining group whose interests and aspirations were his own, and into which he usually married.[671] The militia, the church, and public schools were often the only focus points for community-wide gatherings and social events. The militia was a ubiquitous organization that served in some ways as a leveler within the community as well as its shield and sword.[672]

In the well-populated East, the militia was usually oriented toward harbor defense and social unrest, in the south it intimidated slaves and fought Indians. In the west, the militia was often a leather-stocking frontier fighting organization that was seen as vital. So vital was the militia that Mississippi's first constitution (1817) stipulated that only white enrolled members of the militia could vote.[673] Local leaders often called forth community militias and state authorities could form select militias whenever the need arose. The need arose only three years past the War of 1812 when the First Seminole War (1818-1819) broke out in Spanish Florida.[674] There were many conflicts with Indians during the nineteenth century, but the regulars fought most of them once they reached the status of a "war." They are

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[671] Ed Gilbert & Catherine Gilbert, *Patriot Militiaman in the American Revolution 1775-1782* (Oxford, UK: Osprey Publishing, 2015), 12-14. This concerns Scot-Irish frontier militias during the revolution but is illustrative of militias in general during the time of the revolution and the early republic.

[672] Mahon, *Decade of Decision*, 41. "Training days for battalions and regiments…were like festivals. Local folk sold cold drinks and sweets, gingerbread was a muster day specialty. The men were apt to get quite drunk, disorderly and pugnacious. The training day started with a drill. Toward noon the adjutant general or even the governor might arrive…local folk often served a heavy repast accompanied by much imbibing. There would be more drill, and finally, the day's climax, a sham battle. The cavalry charged, the infantry rattled away with blank cartridges; even the artillery, wadding their guns with rags, blasted until their pieces were hot. With the thunderous noise and smoke, women screamed in terror and children yelled happily."

[673] Mahon, History of the Militia, 83.

[674] Catton, 188.

beyond the scope of this dissertation. The three Seminole Wars merit attention because of the widespread participation of militia and volunteers.

The Seminole were a group of natives and peoples of mixed race that came together during the American Revolution. The remnants of several defeated Indian nations (mostly speaking different languages), some outcasts and fugitives from white society, a scattering of Spaniards, and many escaped blacks formed the Seminole confederation.[675] They developed a hybrid language and organized a successful society under difficult circumstances. "They lived in cabins, herded cattle, rotated their crops," historian Ron Field wrote, "and actively conducted trade with Great Britain, Spain, and the USA."[676] In short, they had forged a respectable functioning society.

By 1818, firearms and metal pots had largely replaced bows and clay vessels, and the Seminoles, accurately predicting the future, had constructed strong fortifications in the swamps as defensible places of refuge. They knew that white Americans feared the presence of substantial numbers of armed black runaways as well as the tribe's close ties with the Spaniards. In addition, the existence of a nearby sanctuary for runaway slaves encouraged a steady stream of black fugitives from racial bondage.[677]

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[675] J. Leitich Wright, Jr., "A Note on the First Seminole War as Seen by the Indians, Negroes, and Their British Advisors," *The Journal of Southern History*, Vol. 34, No. 4 (Nov. 1968), 565-575. "The Seminoles – closely related to the Creeks and sometimes considered part of the Creek Confederacy – were still evolving as a nation around 1818, and there was confusion about exactly who was a Seminole."

[676] Ron Field, *The Seminole Wars 1818-1858* (Oxford, UK: Osprey Publishing, 2009), 3.

[677] Ibid, 7. "Meanwhile, the status of runaway slaves was a continuing irritation between Seminoles and whites, since new plantations established in Florida led to an increase in the number of slaves who could run away to join the Native Americans."

Supported by both the British and Spaniards, Seminole warriors began raiding southern American frontier settlements during the War of 1812. They continued these activities when the war ended. Brigadier General Edmund Gaines attacked and destroyed a Seminole fort on the Apalachicola River in the summer of 1816 and the Seminoles responded by increasing their own attacks. There was skirmishing back and forth during the following year until the Seminoles killed a large group of soldiers and camp followers, including four children, on November 21, 1817.[678]

The federal government and the State of Georgia were determined to defeat the Seminoles and take their land. Major General Andrew Jackson assumed command on the Florida border and assembled a small army at Nashville, including 500 regulars, 1,000 militiamen from Georgia, Kentucky, and Tennessee, and 2,000 Creek warriors under William McIntosh. Also known as Taskanugi Hatke (*White Warrior*), McIntosh subsequently ceded a great amount of the lands of the Creeks, illegally and against their will, to the United States.[679] Jackson ordered Gaines to seize "Negro Fort," where 320 runaway slaves had found freedom. Gaines decimated the fort, killing 250 men, women, and children.[680]

At the end of March 1818, Jackson illegally invaded Spanish Florida and launched the First Seminole War.[681] He first relieved Ft. Scott on the Florida

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[678] Ibid, 5-6.
[679] Andrew K. Frank, "The Rise and Fall of William McIntosh: Authority and Identity on The Early American Frontier," *The Georgia Historical Quarterly*, Vol. 86, No. 1 (Spring 2002), 1848.
[680] John K. Mahon, "The First Seminole War, November 21, 1817-May24, 1818," *The Florida Historical Quarterly*, Vol. 77, No. 1 (Summer 1998), 62-67.
[681] Field, 7.

border, which had been under siege, and then conducted a rapid two-month campaign and captured Spanish forts at St. Marks and Pensacola. Jackson then attacked the larger Seminole settlements along the Suwanee River, killing or capturing many of the inhabitants, as well as destroying Ft. Suwanee.[682] The first Seminole War was over, although the Seminoles were far from defeated completely and they fought successfully to protect their settlements during the ensuing decades.

The Spaniards were furious at Jackson's invasion of their sovereign territory. Secretary of State John Quincy Adams had been negotiating with Spain for the purchase of Florida, an unprofitable colony which had always been a drain on the Spanish treasury. With an American army now sitting in Florida, the Spaniards could see the inevitable on the horizon.[683] They accepted a promise from the United States to pay up to five million dollars for claims against the Spanish government and an adjustment to the boundary between the Louisiana Territory and New Spain (Mexico) resulting in the United States ceding a Florida-sized portion of present-day Texas to Spain. The parties signed the Adams-Onis Treaty in February 1819.[684]

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[682] Ibid, 6. Jackson also captured two British citizens who had been encouraging the Seminoles. He executed them causing a great amount of tension between England and the United States.
[683] Catton, 188-189.
[684] Ibid. Spain, Secretary of State John Quincy Adams told Madrid's Luis Onis, must both exercise control over Florida and prevent attacks from being launched into the American southeast, or it must cede Florida to the United States. See also: Timothy J. Henderson, *A Glorious Defeat: Mexico And Its War With The United States* (New York: Hill and Wang, 2007), 14. "Spain sold Florida to the United States and agreed to abandon all claims to lands in the Pacific Northwest, in exchange for a U.S. pledge to renounce its claim to Texas and to forgive $5 million worth of unpaid claims owed to U.S. citizens. The treaty set the boundary line at the Sabine River, the boundary between the modern states of Louisiana and Texas."

Militiamen continued to serve alongside volunteers and regulars in Indian wars all along the cusp of westward expansion, but in diminishing numbers.[685] As the century wore on and immediate danger no longer loomed over a community, many local people began to find participation in the militia burdensome and muster days onerous for reasons indicated above.

In addition, during the 1830's and 1840's, the emerging labor unions continuously attacked the militia system, not only because the militia was often used to quell the labor demonstrations and riots that were becoming common by that time, but also because militia participation placed a severe hardship on working class men.[686] Between 1815 and 1818, an anonymous document appeared and circulated widely throughout the country. Called *The Working Man's Platform*, it listed seven points which it said society must act on to guarantee the dignity of American laborers. These seven issues remained central to the labor movement's efforts throughout the nineteenth century. Point 4 called for the outright abolition of state militias.[687]

A military grade shoulder arm cost $14 during the 1830s (half a month's pay for a laborer) not to mention the accoutrements. The required muster days were unpaid and many men could not afford to lose a day's pay from their job. There

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[685] Hill, 19. "Meanwhile, the Indian wars after 1815 were fought [mostly] by the regulars, aided by [militia] contingents."
[686] Mahon, History of the Militia, 82.
[687] Joseph Rayback, *A History of American Labor* (New York: The Macmillan Company, 1959), 65. "Point 4 - *Abolition of the militia system*. The laws provided that there should be periodic militia drills at which all citizens of the proper age must appear. Failure to attend was punished by fine or imprisonment. Men who could, paid the fine. But the laboring man who had to work as much as ten days to earn the fine was forced to attend the drills, losing several days wages, or go to jail. This was another indication of degradation, of inferiority."

were also fines for not attending musters that were inconsequential for the well-to-do, but draconian for the working class. "And legal authorities had the power to distrain property of all sorts to collect those fines," Mahon wrote. "The unions [throughout the century] therefore strove to abolish the militia altogether."[688]

Jim Dan Hill wrote, "By 1840 these mustering days of the unorganized but enrolled Militia had become occasions for political speeches, picnics, and the consumption of much raw whiskey. Thus the musters fell into such disrepute that they gradually were discontinued in most states."[689]

Some of the states began taking steps in that direction. As early as 1831, Delaware abolished its militia. Maine, Ohio, and Vermont abandoned compulsory service in 1844, relying on the ever-increasing numbers of volunteer militias. Connecticut, New York, Missouri, and New Hampshire had followed suit by 1851. Indiana, New Jersey, Iowa, Michigan, and California had all made it illegal to imprison a man for failure to pay a militia fine by 1856.[690] The last vestiges of the compulsory militia disappeared after 1865.[691]

Militia diminishment did not occur in many other states, such as New York, South Carolina, Massachusetts, and Pennsylvania, where the unorganized militia remained the nation's military bulwark against federal tyranny in the opinion of

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[688] Mahon, History of the Militia, 82.
[689] Hill, 19. Hill uses the term "unorganized militia" here. This term did not come into existence until after the Militia Act of 1903, but it is current practice among historians to use it in reference to the statutory militia of previous times.
[690] Mahon, History of the Militia, 83.
[691] Jerry Cooper, *The Rise of the National Guard: the Evolution of the American Militia 1865-1920* (Lincoln, NB: University of Nebraska Press, 1997), 21. Cooper is not entirely correct. In the 20th Century (particularly the Cold War Era), men were drafted under the legal guise that they were members of the unorganized militia and were being called forth individually.

many.[692] "The best army we can have," said Congressman Edward Black from Georgia, "is the armed people --the citizens of this country who will fight for a great stake -- for their wives and children, for their homesteads and their honor."[693] Men like Black supported the militia because they feared federal control of the states. "In 1831," Mahon wrote, "a group of militia officers from Massachusetts expressed their belief [to the state legislature] that the states were already at the mercy of the United States."[694]

This was in the midst of the Nullification Crisis when South Carolina's officials claimed that they could nullify a federal law about the tariff.[695] President Andrew Jackson responded strongly, threatening the state legislators. "The power to annul a law of the United States, assumed by one state," Jackson asserted, was "incompatible with the existence of the Union."[696] South Carolina relented, though it subsequently used a similar argument to protect slavery, as its *Doctrine of Secession* asserted, and withdraw from the Union.[697]

A report submitted to Congress by the Secretary of War in 1836 illustrated one of the great benefits of the mass of citizens under arms that no one could deny -- numbers. The report compiled the numbers of armed militiamen ready for duty

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[692] Hill, 36-37.
[693] Mahon, History of the Militia, 79.
[694] Ibid.
[695] Schweikart & Allen, 211. "Claiming sovereign power for the state, Calhoun maintained that citizens of a state could hold special conventions to nullify and invalidate any national law, unless the federal government could obtain a constitutional amendment to remove all doubt about the validity of the law."
[696] Richard E. Ellis, The Union at Risk: Jacksonian Democracy, State's Rights, and the Nullification Crisis (New York: Oxford University Press, 1987), 83-84.
[697] Arthur C. Cole, "The South and the Right of Secession in the Early Fifties," *The Mississippi Valley Historical Review*, Vol. 1, No. 3 (December 1914), 376-399.

from nine seaport cities on the first and eleventh days of a war. The nine were Boston, Newport RI, New York, Philadelphia, Norfolk VA, Baltimore, Charleston, Savannah, and New Orleans. On the first day of the war, 69,497 militiamen would be ready to muster. On the eleventh day, 987,145 militiamen from these nine cities and their suburbs would be under arms. Many thousands more militiamen would muster from the remainder of the country.[698] This was undeniable strength.

Regardless, militia service lost its savor for working men when called forth to control labor and ethnic unrest, a duty for which militiamen had little enthusiasm and for which they were not trained. An example was the Broad Street Riot (1837) in New York. A number of Volunteer Fire Companies (there was no city fire department) attacked an Irish funeral procession during a serious labor dispute in which the firemen and Irish were at odds. The mayor called forth the militia (there was no city police department) but it failed to protect the Irish. About 15,000 anti-Catholic rioters burned every Irish home lining the street along which the procession was moving for blocks.[699] "The ineffectiveness of the militia in quelling the riot," historian Paul Foos wrote, "was widely remarked upon." The long-term result was the relief of the militia from police duties and the establishment of the New York Fire Department several months later.[700]

Andrew Jackson became the first Democrat president in 1828 and militantly pursued a policy of forcibly relocating Indians from the eastern United States into

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[698] Mahon, History of the Militia, 80.
[699] Foos, 37.
[700] Ibid.

Oklahoma and other areas in the western United States not desirable to white Americans, a policy that continued after Jackson left the presidency.[701] There were always white Americans who were uneasy about the moral implications of appropriating Indian lands, and between 1823 and 1832 three cases concerning the Cherokees alone ended in front of the Supreme Court of Chief Justice John Marshall. These cases established that the United States has a special trust relationship with Indian tribes; Indian tribes are domestic dependent nations; tribes are sovereign on reservations; and treaties are sacred.[702] (See Appendix G for a listing of significant court cases concerning Indians.) Even though the Supreme Court found in favor of the Cherokee, President Jackson refused to enforce their decision. In a tragedy known as the "Trail of Tears," the government forcibly relocated the Cherokee in 1838.[703]

A war waged against Indians broke out in the old Northwest in 1831-1832. More than ten thousand militiaman, 7,787 of them from Illinois, served during the Blackhawk War against the Sauk and Fox Indians in Iowa, Illinois, and Wisconsin.[704] These militiamen were completely undisciplined, even by lax militia standards. The commanding general resigned in disgust and the essentially leaderless mob, including Captain Abraham Lincoln, wandered around in southern

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[701] Zinn, *A People's History*, 137-138. See also: Getches, *Cases and Materials on Federal Indian Law* (St. Paul, MN: Thomson Reuters Publishing, 2011), 98, 100. "He [Jackson] had early decided that it was farcical to treat with the Indian tribes as thought they were sovereign and independent nations, and he could point to considerable evidence to show that treaties had never been a success."
[702] Getches, 105-107, 113-121.
[703] Ibid, 126.
[704] Mahon, History of the Militia, 86.

Illinois. An incident occurred at one point that caused Lincoln to stand out. His men witnessed unspeakable horrors when they came upon a site along the Fox River where white women, children, and old people had been tortured and massacred in ways that defied words. (Whites in an earlier engagement had slaughtered native peoples.) The men actually wept at the sight and left the river with a great desire for revenge.[705]

Their opportunity came quickly. An "old Indian" named Jack arrived in camp with letters from home. The militiamen were anxious to kill Jack but Lincoln prevented them from doing so, an act that earned him the rancor of some of the men.[706]

Chief Blackhawk of the Sauk watched the militiamen milling around apparently aimlessly and seized his opportunity. He crossed the Mississippi River with a small force to attack the militia at Sycamore Creek on May 15, 1832. The militiamen were soundly defeated and routed from the field pursued by Blackhawk's warriors.[707] Colonel Zachary Taylor watched the militia break and run from an inferior force and called it "unutterably shameful."[708] The militia would accrue yet more shame a few months later.

Brigadier General Henry Atkinson led 1,500 regulars and several thousand militia against Blackhawk and fought the Battle of the Bad Axe River in southern

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[705] Amy Greenberg, A Wicked War: Polk, Clay, Lincoln, and the 1846 Invasion of Mexico (New York: Vintage Books, 2013), 48-49.
[706] Douglas Wilson and Rodney Davis, *Herndon's Informants: Letters, Interviews, and Statements About Abraham Lincoln* (Urbana, IL: University of Illinois Press, 1989), 372.
[707] Cecil D. Eby, *"That Disgraceful Affair," The Blackhawk War* (New York: Norton, 1973), 264.
[708] Ibid, 100, 140.

Wisconsin on August 1-2, 1832. Blackhawk came forward under a white flag to surrender, but before Atkinson could ride out to accept his surrender, the militia opened fire. Out of control, militiamen killed many of the warriors and massacred the women and children who were with the party, laughing at them while they twisted and shook in their death throes.[709] On that day, the militia surrendered much of the moral high ground it once held over the Indians.

Many present day Americans believe that the same government that stole native lands under the guise of treaty agreements habitually treated the Indians abominably. Historian Sidney Lens agreed. "During [Andrew] Jackson's two terms alone the natives were forced to sign 94 treaties ceding territory." Then, during the three years between 1853 and 1856, another 52 treaties were made, ceding another 174 million acres to the United States. "Between 1887 and 1934," Lens concluded, "when the Indian problem was seemingly "solved," the red men were divested of another 90 million acres. Most of what remained was unfit for the agriculture that American leaders had told them was their salvation."[710]

War flared up again with the Seminole Indians of Florida between 1835 and 1842 after a surprise attack against a group of American soldiers on December 28, 1835. Of 115 regulars involved, only three survived to make their way back to the army.[711] The volunteers and militiamen who served alongside the regulars and marines during this Second Seminole War came from Georgia, Louisiana, South

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[709] Ibid, 174, 254. See also: Mahon, *History of the Militia*, 87.
[710] Sidney Lens, *The Forging of the American Empire* (New York: Thomas Crowell Company, 1971), 46.
[711] Zinn, A People's History, 145.

Carolina, Alabama, the District of Columbia, Pennsylvania, New York, Tennessee and Missouri.[712]

It was a grinding, savage war that saw a succession of eight of the most senior regular army officers fail to defeat the Seminoles in their swamps. Brigadier General Duncan Clinch (1835), Brigadier General Edmund Gaines (1836), and Major General Winfield Scott (1836) led the first three campaigns. Richard Call (Governor of the Florida Territory) led a campaign in 1836, followed by Major General Thomas Jessup (1837), Brigadier General Zachary Taylor (1838-1839), Brigadier General Walker Armistead (1839-1841), and Colonel William Worth (1841-1842). At one time or another, this war involved every major unit in the Army and Marine Corps and as many as 20,000 volunteers and militia.[713]

The war ended on August 14, 1842, when most of the Seminoles still alive agreed to accept a cash payment to relocate to Oklahoma. The second Seminole war had been bitterer than the first. It cost $40 million, required a total of 40,000 soldiers of all types, took the lives in combat of nearly 400 of them, and sacrificed 1,145 of them to disease. There is no record of the number of Seminoles killed, but authorities at the time estimated it to be the majority of their population.[714]

The next significant militia activity came about because of a bitter dispute between the United States and Mexico over Texas. Animosity between Mexico and the United States had simmered since the Texans had gained their

[712] Field, 41.
[713] Ibid, 10-19.
[714] Ibid, 19.

independence in 1836 and created a republic, albeit one which Mexico did not recognize as legal. Mexico never had much enthusiasm for the American immigrants who began pouring into their country beginning in 1820, but they had tolerated them. It was the kindly paternalism of the Mexican government, many Mexicans felt, that had enabled white Americans to build homes in Texas, purchase slaves (against Mexican law), and make decent lives for their families. Then, as soon as the ingrates were numerous enough, they successfully rebelled and Mexico lost a substantial part of its territory.[715]

To turn matters into an international insult, the United States annexed Texas on March 1, 1845, despite Mexico's warning to the contrary, and then admitted it to the union in the following December.[716] Washington aggressively asserted the Texan claim that the border between Texas and Mexico was the Rio Grande River, meanwhile Mexico claimed it was the Nueces River, 150 miles to the north of the Rio Grande.[717] During mid-June 1845, President James Polk sent Brigadier General Zachary Taylor to the Nueces River in preparation for occupation of the disputed territory. Taylor quickly gathered 3,500 men at the Nueces, regulars and militia, and marched to the north side of the Rio Grande opposite Matamoros on

[715] Henderson, 177. At the end of the war, Mexico ceded about 55% of its territory to the United States.
[716] Greenberg, 76-77. See also: Zinn, *A People's History*, 149-150.
[717] Catton, 283.

the Mexican side.[718] Illegally, the Americans invaded parts of Mexico. Scholars uniformly agree that this was a war of conquest initiated by the United States.[719]

Infuriated, the Mexican government declared a "defensive war" against the United States on April 23, 1846, and sent a 5,000-man army to Matamoros, commanded by General Mariano Arista, facing Taylor.[720] On the 25th, a large force of Mexican cavalry attacked a small reconnaissance party sent by Taylor to scout the riverbanks. The Mexicans killed eleven Americans, wounded six, and captured the rest.[721] The stage was set for a battle.

The Mexican and American armies collided at Palo Alto on May 8, about five miles from modern day Brownsville, Texas.[722] After a fierce struggle, the Mexican army retreated overnight to Resaca de la Palma. Taylor followed and attacked it the following day, soundly defeated it and scattered it.[723] Congress, meanwhile, having received notice of the April 25 reconnaissance party attack, passed a Declaration of War that President Polk signed on May 13, 1846, prior to learning of the battles at Palo Alto and Resaca de la Palma.[724] The same day, Congress increased the size of the regular army, and authorizing the president to

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[718] Zinn, *A People's History*, 150. "Taylor set up camp, began construction of a fort, and implanted his cannons facing the white houses of Matamoros."
[719] Robert W. Merry, A Country of Vast Designs: James K. Polk, the Mexican War and the Conquest of the American Continent (New York: Simon & Schuster, 2009).
[720] Jason Silverman, *American History Before 1877* (New York: McGraw-Hill, 1989), 273.
[721] Henderson, 155. Called "the Thornton Affair," it was named after Captain Seth Thornton who commanded the reconnaissance party.
[722] Stewart, 176-177.
[723] Ibid.
[724] Henderson, 155. Concerning the attack on Captain Thornton's men, Polk told Congress: "Mexico has passed the boundary of the United States, has invaded our territory and shed American blood on American soil." The statement was partly accurate and was *causus belli* for a Manifest Destiny war.

call forth the militia and to recruit 50,000 federal volunteers, the number to be apportioned among the states.[725]

The war was popular in the south, but largely unpopular in the north where abolitionists saw it as a ploy by the slave interests to gain more territory in which to expand. Many in both sections of the country (including Congressman Abraham Lincoln) considered it an immoral land grab fostered not only by a lust for new slave territory, but also by the concept of Manifest Destiny.[726] Both were largely accurate, and America exited the war possessing California and much of the southwestern part of the present day United States. "I do not think that there was ever a more wicked war than that waged by the United States on Mexico," Lieutenant General U.S. Grant wrote years later. "I thought so at the time, when I was a youngster, only I had not moral courage enough to resign."[727]

Only nineteen of the twenty-nine states answered President Polk's May 13 call for 50,000 volunteers, an indicator of the reservations many held about the goals of the war. In the judgement of one scholar, "The President went into the war with one object clearly in view -- to seize all Mexico north of the Rio Grande and the Gila River and westward to the Pacific."[728] There was tension between the

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[725] Philip Katcher, *The Mexican-American War 1846-1848* (Oxford, UK: Osprey Publishing, 1989), 6.
[726] Silverman, 271. John O'Sullivan provided the term "manifest destiny" in an 1845 issue of the *Democratic Review* newspaper. The idea was that the United States had a divine mission to settle all of north America from sea to sea. It was the mandate of heaven. "Its implicit theme that American civilization and "Anglo-American stock" were superior revealed a contempt for the non-white and Hispanic peoples and cultures of North America."
[727] Greenberg, frontispiece.
[728] Stewart, 178.

United States and Great Britain about the Canadian boundary at the time, and some of the northern states used that as an excuse to keep their militias home.[729]

Advised by General Winfield Scott, the hero of Chippewa, President Polk agreed to a strategy that featured a three-pronged assault on Mexico as well as operations in the far west to secure California. "Able to think beyond mere tactical maneuver, Scott was perhaps the finest strategic thinker in the American Army in the first half of the nineteenth century."[730] Colonel Stephen Kearny would move west to Sante Fe and San Diego to sever the present day southwestern United States and California from Mexico. Taylor would move west to Monterrey, and General John Wool would move south to Saltillo.[731] Each commanded an army composed of both regulars and volunteer militia.

The plan went smoothly. After a bitter five-day, house-to-house struggle, Taylor captured Monterrey on September 24, 1846.[732] He continued south to Saltillo where Wool's army merged with his in December. Kearny's expedition into the southwest was completely successful. He occupied Santa Fe in present day New Mexico on August 14, 1846, and continued west into California. American settlers there revolted against Mexico and Captain John Fremont assumed command of the California Militia. The small federal force and the California

[729] Mahon, *History of the Militia*, 91. Enacted in June 1846, a treaty settled the boundary disputes but there were still tensions.
[730] Stewart, 189.
[731] Ibid, 178.
[732] Ibid, 181.

Militia, aided by a small naval force, completed the conquest by mid-August. Mexican resistance ended in California as the American military occupied it.[733]

At this point Polk's war aims were realized and an attempt was made to initiate peace negotiations. Stung by their losses, the Mexican government refused to negotiate and American forces continued their assault.[734] In February 1846, Polk began secret negotiations with former Mexican President Santa Anna who was willing to once again seize power in Mexico and then end the war with a treaty favoring the Americans for a bribe of $30 million.[735] Meanwhile, Scott convinced Polk that only the capture of Mexico City would force the Mexicans to conclude a negotiated peace. The President agreed and Scott landed at Vera Cruz on March 9, 1847, with 12,000 regulars and volunteers whom he led westward toward Mexico City.[736]

Taylor, Scott, and other American commanders would lead regulars and volunteers through desperate fighting across Mexico during 1847 until U.S. Marines raised the American flag over Mexico City on September 13, and the consequent ratification of the peace treaty of Guadalupe Hidalgo on March 6, 1848.[737] Spanish names such as Palo Alto, Resaca del la Palma, Buena Vista, Cerro

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[733] Silverman, 274-275.
[734] Ibid, 275. "The Mexican government would not agree to a peace and cede the desired territory. Frustrated by this, Polk turned to…Winfield Scott for assistance."
[735] Henderson, 159. Santa Anna returned to Mexico with American help and almost immediately reneged on the agreement.
[736] Stewart, 185.
[737] Silverman, 276. Mexico ceded half its national territory including California and all of the present-day southwestern United States. The Rio Grande River became the accepted border between Texas and Mexico. Lincoln called the treaty a humiliation for both parties.

Gordo, Churubusco, Contreras, Molino Del Rey, and Chapultepec joined Saratoga, Yorktown, and Chippewa in American military history.

Fifty-nine thousand volunteer militia recruited from the enrolled militias of the nineteen participating states had served alongside 32,000 regulars and marines during the war.[738] Unorganized militia were called forth during the early months of the war, but were soon released. Their three-month term of service and the restrictions placed by state statutes on the kind of duty they could perform and where they could serve made them unusable in a foreign war. A few of them served in garrisoning sensitive areas in the United States near Mexican territory.[739] The volunteers were much more useful soldiers than were traditional militiamen. "Officials recognized a difference between militia and volunteers," Richard Winders wrote, "with the latter assigned a higher status…volunteers would serve for extended periods and could leave their state boundaries."[740]

Just the same, volunteers also elected their officers, a problematic practice from the military point of view, and when the enlistments of volunteers expired, they too left for home without regard to the tactical situation on the ground as militiamen had often done in previous conflicts. When Scott was half-way between Vera Cruz and Mexico City, his one-year volunteers abruptly left for home leaving him vulnerable in a foreign country with which the United States was at war. More

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[738] Richard B. Winders, *Polk's Army: The American Military Experience in the Mexican War* (College Station, TX: Texas A&M University Press, 1997), 69. See also: Mahon, *History of the Militia*, 90-91.
[739] Mahon, *History of the Militia*, 91. One would expect that the government would have remembered its experiences with the militia during the War of 1812.
[740] Winders, 68.

than half his army boarded ship for the United States. Stranded deep in Mexico with only 7,113 men, Scott established a defensive position and stayed in it until he was finally reinforced three tense months later, enabling him to continue the war."[741] The Mexicans had missed the best opportunity at victory they would have.

Many elected volunteer officers proved incompetent. Historian Philip Katcher wrote that a volunteer company elected a man captain after he gave a speech in which he claimed the men owed him the office because he had bought a barrel of whiskey and had killed an abolitionist. [742] He was elected.

The war had its dark side; many Americans acted viciously toward defenseless Mexican civilians. The well-disciplined regulars and marines were orderly, but many of the volunteers conducted themselves shamefully while in Mexico. There were literally tens of thousands of rapes, murders, and appalling atrocities committed against Mexican civilians. Regulars had to intervene numerous times to stop the mistreatment of Mexicans by volunteers. Mahon wrote that the volunteers considered the catholic Mexicans to be on a level with black slaves and Indians.[743]

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[741] Stewart, 186-187.

[742] Katcher, 7-8. The captain may have been speaking of Elijah P. Lovejoy, a Presbyterian minister and an abolitionist who was murdered by a pro-slavery mob on Nov. 7, 1837, in Alton, Illinois. Part of his speech was: "Fellow citizens! I am Peter Goff, the Butcher of Middletown! I am! I am the man that shot that sneaking, white livered Yankee abolitionist son-of-a-bitch, Lovejoy! I did! I want to be your Captain, I do! and I will serve the yellow-bellied Mexicans the same. I will! I have treated you to fifty dollars' worth of whiskey, I have! and when elected Captain, I will spend fifty more, I will!"

[743] Mahon, *History of the Militia*, 93. "The regular officers felt that the…volunteers were the wrong kind of troops to carry out the national purpose in a foreign land. Too many of them considered the Roman Catholic Mexican peasants as being on the low rung of the life ladder, no higher than [blacks and]…Indians. The testimony…of the First U.S. Dragoons [is typical]…More than once the First Dragoons saved native Mexicans from rape, pillage, and death at the hands of

There is no disagreement among the sources about the contemptible conduct of the volunteers in Mexico. Winfield Scott wrote to the Secretary of War stating, "Our militia and volunteers have committed atrocities - horrors - in Mexico, sufficient to make Heaven weep…Murder, robbery & rape of mothers & daughters, in the presence of the tied up males of their families, have been common all along the Rio Grande."[744]

One considers the heinous conduct of the volunteers toward the darker shaded Mexicans to be unsurprising. Most volunteers were southerners who were acclimated to ignore the sufferings and mistreatment of black slaves. It must have been but a very small leap for them to rationalized extending that to the Mexicans. The well-earned resentment toward Americans by some Mexicans that these crimes generated persists even to this day. [745]

The Militia at Mid-Century

On September 18, 1850, the 31st Congress passed, and President Millard Fillmore signed into law, an act that would ultimately foster large transformations in the world of the militia as well as the volunteers and regulars. The *Fugitive Slave Act* (an update of the 1793 Act), passed primarily at the urging of the Southern states, proved to be a harbinger of a series of impending disasters that led to the

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the volunteers [who fought] over their poor victims like dogs, and the place resounded with horrid oaths and the groans and shrieks of the raped."

[744] Katcher, 7-8.
[745] Greenberg, 134.

Civil War.[746] In this one particular event, the Southern states clearly supported a strong federal government over individual states' rights in order to regain people who had taken flight for their freedom.

The law required that *any person* accused by affidavit of being an escaped slave or descended from an escaped slave, should be detained and brought before a special commissioner who examined such claims. As political scientist Scott Basinger noted, "[The Fugitive Slave Act was biased] and stipulated that a Commissioner be paid $10 if he ruled in favor of the claimant (the slave owner), but only $5 if he opted to free the accused slave."[747]

The law denied the accused a trial by jury or even the right to testify on his or her own behalf. The legal authorities, including the militia, were required to apprehend fugitives on pain of a thousand dollar fine (about $28,000 in present day currency). The free states passed various laws to prevent the operation of the act within their borders, but these attempts were not always effective. The resulting horrors that were played out every day before the shocked eyes of people in the free states and in their newspapers, coupled with Harriet Beecher Stowe's *Uncle Tom's Cabin* (1852), brought the reality of human slavery home to many people who had known it before only in the abstract. The heart-rending atrocities encouraged by

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[746] Patricia McKissock, *Sojourner Truth: Ain't I A Woman?* (New York: Scholastic Inc., 1992), 97-100. "In 1850…Congress passed a more rigid version of the Fugitive Slave Act [of 1793]. In retrospect, it is easy to chart the events that led to the Civil War from this point." See also: Eric Foner, *Gateway to Freedom: The Hidden History of the Underground Railroad* (New York, Norton, 2015). Foner offers a similar interpretation.

[747] Scott J. Basinger, "Stacking the Deck: A Historical Model," *Journal of Law, Economics & Organization*, Vol. 19, No.2, (Oct., 2003), 308-309.

the Fugitive Slave Act made many northerners learn to hate "the slavers" and the slave hunters: it would prepare their hearts for war.[748]

An example of the contempt in which Northerners held the Fugitive Slave Act was the arrest and return of Bostonian Anthony Burns to slavery. A runaway from Virginia, Burns had been hiding in Boston until his apprehension in 1854. The city was so incensed by his imminent return to his owners that it took six companies of Marines and militiamen to escort him through the mob thronging the streets. A wooden casket, on which "Liberty" was painted, had been suspended over the street the fugitive and his guards passed along. They had passed close by the site of the Boston Massacre and the Bunker Hill monument when angry crowds broke their line of march and publicly cursed the militiamen by name. "The following year Massachusetts passed a personal liberty law," Robert Churchill wrote, "designed to render the Fugitive Slave Law unenforceable."[749]

Kansas and Nebraska not long after, were prepared to enter the Union, generating a bitter free-state/slave-state conflict. The result was the *Kansas-Nebraska Act* of 1854, a compromise crafted by Stephen A. Douglas, seeking southern support for his candidacy for the presidency.[750] The act divided Kansas and Nebraska into two territories and provided for a plebiscite in each of them at

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[748] Catton, 294-295. See also: Silverman, 295. "The law generated a great deal of hostility in the north and turned moderates into vehement antislavery advocates. Mob action often prevented the return of fugitive slaves to their masters, and fugitives were given shelter and food in many northern homes, while slave hunters were attacked."

[749] Robert Churchill, 103. "For the people of Massachusetts, the libertarian memory of the Revolution retained its power to move [them], both emotionally and violently."

[750] Silverman, 297. Douglas wanted to resolve the Kansas-Nebraska issue through legislation that would facilitate building a transcontinental railroad from his hometown, Chicago, to California.

the time of entry into the Union to determine whether they would enter as slave or free states, a process called "popular sovereignty."[751] The Missouri Compromise was gutted and Douglas' plan "opened the entire Louisiana Purchase to slavery."[752] The senate passed the act 37 to 14; the house113 to 100. President Franklin Pierce signed the Kansas-Nebraska Act into law on May 30, after an extremely volatile passage through congress.[753]

The geography, climate, and soil of neither Kansas nor Nebraska were conducive to plantation agriculture, and after six years of being open to slavery there were only two slaves in all of Kansas and none in Nebraska. Slavery itself was not as much an issue as the legal precedence the act established, the acknowledgement of "popular sovereignty," wherein the white male inhabitants of a territory decided whether they should enter the Union as either slave or free states. This westward expansion was the critical center of the matter for both sides of the slavery issue.[754]

The immediate result of the act was a bitter guerilla war in which local militias defended their communities against the depredations of raiders (criminal gangs, not militias) favoring slavery. "The Border Ruffians," pro-slavery raiders who mostly came from neighboring Missouri, attacked "Free State" towns, and burned the farms and homes of anti-slavery men. After completing their work, they

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[751] Schweikart and Allen, 272.
[752] Ibid.
[753] Catton, 322. "The debate over the Kansas-Nebraska Act marked the end of the uneasy truce of 1850 and set the tone for the rest of the decade."
[754] Silverman, 297.

faded back into Missouri with their loot until the next raid. Although there was great property destruction, human casualties were relatively light. Fewer than one hundred people died with about the same number wounded.[755] Still, civil war between opponents and supporters of slavery had come to Kansas. Events in "Bleeding Kansas" (1854-1861) also gave rise to a colorful group of leaders who came to national prominence during the upcoming Civil War as well as the troubled years preceding it. Two of the best known were anti-slavery leader John Brown and pro-slavery leader William "Bloody Bill" Anderson.[756]

One significant result of the Kansas-Nebraska Act was the tremendous increase in the number of supporters for the embryonic Republican Party. The interests that would come to be labeled "Republicans" began coalescing in 1852 when Democrat Franklin Pierce defeated the Whig candidate, Winfield Scott. The Whig Party began crumbling after the defeat and so many of them found solace among Republicans that some considered them as a reincarnation of the Whigs. Many Free Soilers, disenchanted Democrats, Know Nothings, Unionists, Libertarians, and certain others who defied labeling also found a safe haven within the new Republican Party.[757]

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[755] Thomas Goodrich, *War to the Knife: Bleeding Kansas 1854-1861* (Mechanicsburg, PA: Stackpole Books, 1998), 112.
[756] W. Wayne Smith, "An Experiment in Counterinsurgency: The Assessment of Confederate Sympathizers in Missouri," *The Journal of Southern History*, Vol. 35, No. 3 (August 1969), 375-376. See also: John J. McDonald, "Emerson and John Brown," *The New England Quarterly*, Vol. 44, No. 3 (Sept. 1971), 379. This is a fascinating article. See also: McKissock, 121.
[757] Michael W. Whalon, "The Republican Party in Its Early Stages: Some New Perspectives," *Social Science Quarterly*, Vol. 51, No. 1, (June 1970), 148-156.

Few early Republicans were radical abolitionists and some were completely indifferent to slavery, but the Kansas-Nebraska Act changed that. In only two years, the Republicans were strong enough to field a viable presidential candidate in the three-way 1856 election, John C. Fremont. The major commitment of the Republican Party was to non-expansion of slavery into the territories. The majority of Republicans were satisfied to co-exist with slavery in the South as long as the "peculiar institution" did not spread westward. The Know Nothings nominated former president Millard Fillmore. The Republican platform called for the end of the "twin abominations of polygamy and slavery" in the territories. Democrat James Buchanan won.[758]

Florida's Indians and Utah's Mormons

Meanwhile, in Florida, the Third Seminole War (1855-1858) ignited on December 19, 1855, when an artillery survey party discovered the destruction of a partly built fort in Big Cypress Swamp. The soldiers retaliated by burning a nearby Seminole banana plantation. The following morning 35 Seminole warriors led by Chief Billy Bowlegs attacked the survey party, killing two men and wounding four others.[759] News of the fighting reached Tampa a few days later and Governor James Broome immediately called forth the Florida militia to patrol the frontier.

[758] Silverman, 303.
[759] Field, 20.

Several skirmishes occurred (including a failed Indian attack on the well-defended Braden plantation) which caused widespread unease.[760]

Brigadier General William Harney arrived in Florida in September 1856 and took control of the situation. He had 2,200 regulars (13 percent of the entire regular army at the time) and twice that many militia. Harney determined to drive the Seminoles into Big Cypress Swamp and the Everglades expecting that they would be unable to survive there. There was bitter but inconclusive skirmishing, the burning of Seminole villages and camps, and the destruction of their food supplies and clothing.[761]

Both Harney and the Fifth Infantry Regiment were withdrawn from Florida at the end of April 1857 and sent to help control the Kansas-Nebraska conflict. Replaced by Colonel Gustavus Loomis, the war continued with fewer regulars and more militia until March 15, 1858, when almost all of the Seminoles agreed to accept a $500 bribe for each warrior and $100 for each woman to acquiesce to removal to the Indian Territory, modern Oklahoma. These people were sent west on May 4 leaving fewer than a hundred Seminoles at large. Many of these relocated in December 1858, leaving only a couple dozen Seminoles in Florida.[762]

American soldiers were again committed to battle when President James Buchanan sent 2,500 regulars under Colonel Albert Sidney Johnston to the Utah

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[760] Ibid.
[761] Jay Jennings, "Fort Denaud: Logistics Hub of the Third Seminole War," *The Florida Historical Quarterly*, Vol. 80, No.1 (Summer 2001), 38-39.
[762] Ibid, 39-40. See also: Field, 20.

Territory in May 1857 where they remained until July 1858.[763] The Mormon settlers in Utah had involuntarily become part of the United States, and they chafed under Washington's rule. They had lived independently under a theocracy until the Treaty of Guadalupe Hidalgo ceded Utah to the United States in 1848. Brigham Young was appointed Governor of the Utah Territory in 1850 by President Millard Fillmore, but the prophet proved not only uncooperative but also publicly defended polygamy which gave the administration a political black eye.[764] His tenure in office proved problematic for the government in a number of other ways as well and President James Buchanan replaced him with a "gentile" governor (Alfred Cumming) who arrived in Salt Lake City during April 1858.[765]

There was a tremendous amount of sabre rattling among the Mormons but no battles of which to speak. The non-war is chiefly remembered for the Mormon militia's brutal massacre of a California-bound wagon train at Mountain Meadows in Southern Utah on September 11, 1857.[766] Mormon militiamen, costumed as Indians, attacked the train. A five-day siege ensued after which some of the Mormons made an appearance dressed as white men and told the immigrants that if they would turn over their firearms, the Mormons would protect them from the

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[763] Denton, 184. The army occupied a deserted Salt Lake City on June 26, 1858. The Mormons had fled the city expecting the U.S. Army to sack it. On July 4, having arrived at an agreement with the government, Brigham Young invited his people to return.
[764] Ibid, 106-110. See also: Juanita Brooks, *The Mountain Meadows Massacre* (Norman, OK: University of Oklahoma Press, 1964), 15-20, 22. Young actually intended to secede from the United States and began preparing the Mormon militia to fight the U.S. Army.
[765] Ibid, 109. "President Buchanan…[told Congress that] Brigham Young had a despotic and absolute power over the dominion…Buchanan thought it his duty to 'restore the supremacy of the Constitution and the laws'."
[766] Stewart, 191. See also: Denton, 134-135.

Indians.[767] Once unarmed, the Mormons murdered more than 120 of the innocent, unarmed pioneers leaving no one to testify against them. The only survivors were fifteen (one source says seventeen) very young children who were placed with Mormon families.[768]

Once news of the Mountain Meadows Massacre appeared in eastern newspapers, the government abandoned its conciliatory attitude toward the Mormons and forced a settlement on them. This agreement held that the government would grant amnesty to Mormons (except those involved in the Mountain Meadows Massacre) who would accept the authority of the federal government and the presence of federal troops. This arrangement went into effect on April 12, 1858, when Brigadier General Johnston's army entered Salt Lake City unopposed.[769]

The Coming of the Second Civil War

The simmering pot of debates about slavery was edging closer to a boil as the fifth decade of the nineteenth century ended. Slavery was a flashpoint among Americans, dividing them into two camps. "In the final analysis," Silverman wrote, "it was slavery that defined the South."[770] Abolitionism (the abolition of slavery), or at least antislavery sentiment, came to define the North. Quakers had founded the first anti-slavery society in America as early as 1775. Pennsylvania became the

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[767] Denton, 134-135.
[768] Ibid, 137-141, 213.
[769] Ibid, 184. Johnston had been promoted to Brigadier General several months before.
[770] Silverman, 287.

first state gradually to abolish slavery in 1780 and all other northern states followed by 1804. William Lloyd Garrison founded *The Liberator* in 1831, a newspaper that promoted the abolition of slavery and continuously stirred the cause. The following year Garrison, Elijah Lovejoy, the Grimke sisters (Sarah and Angelina), and others founded the New England Anti-Slavery Society.[771] Slavery had emerged as the fundamental conflict point among Americans as early as the Missouri Compromise of 1820. It would continue to simmer until it finally resulted in disunion.[772]

The Mexican War of 1846 had added a huge swath of newly conquered territory to the national domain, the Fugitive Slave Law of 1850 encouraged slave catchers to "invade" the north, the Kansas-Nebraska Act of 1854 had opened the territories to slavery. Then on March 6, 1857, the Supreme Court of the United States initiated an uproar in the *Dred Scott vs Sanford* decision when it ruled that black slaves were essentially non-persons without any rights.[773] The issue revolved around Dred Scott, a slave from Missouri (a slave state) who traveled to free territory with his master, lived there for four years, then returned to Missouri with his master. Scott claimed that he was no longer a slave since he had resided on free soil. The case made its way to Chief Justice Roger Taney's Supreme Court.[774]

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[771] Ibid, 207-209.
[772] Ibid, 237. By 1860, 23.9% of southern families owned slaves. Only 17.2% owned as many as nine slaves, 6.6% owned 10-99 slaves, and fewer than 0.1% owned a hundred or more slaves and dwelled on plantations in great manor houses such as has been popularized in Margaret Mitchell's *Gone With the Wind*.
[773] Theodore Cross, ed., "Dred Scott 150 Years Ago", *The Journal of Blacks in Higher Education*, No. 55 (Spring 2007), 19.
[774] Silverman, 304.

"From the outset the odds were stacked against Scott," historian Larry Schweikart noted. "Seven of the nine justices had been appointed by southern presidents, and five came from slaveholding families."[775] Chief Justice Taney was himself an example of the confused dichotomy the American slave system imposed on many people. A Marylander who had married Francis Scott Key's sister, Taney became convinced that slavery was morally reprehensible and had freed his own slaves more than thirty years previously. Yet, the Constitution protected slavery, Taney believed, and he felt duty-bound to support the peculiar institution. Schweikart called him "the personification of a political hack," but this was a bit unfair, he was merely administering the constitution as it read at that time.[776] Taney seems to have been, as many were on the cusp of the Civil War, someone who was groping his way toward an uncertain and terrifying future.[777]

Writing the majority opinion, Taney struck down the shredded remnants of the Missouri Compromise, declared blacks to be essentially non-human, and made the Civil War a certainty as well as hastening its arrival.[778] Often called the worst decision in the history of the Court, modern day militiaman Sandro Bellinger said Taney used language somewhat similar to some of Justice Harry Blackmun's language in the majority opinion of *Roe v. Wade* (1973). "These are the only two

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[775] Schweikart, *7 Events*, 56.
[776] Ibid. See also: Frederick Voss, *Portraits of the American Law* (Seattle, WA: University of Washington Press, 1989), 94. "The response to these dictums was immediate and strong. In the South, apologists for slavery cheered wildly, while in the North abolitionists labeled the day of the Scott decision one of the darkest ever in the history of the republic…The opprobrium heaped on Taney in the wake of the Scott case was equal to the attacks on the decision itself."
[777] Ibid, 37.
[778] Cross, "Dred Scott 150 Years Ago," 19.

cases I am aware of in which an entire group of people within society was deemed subhuman," Bellinger said, "and the innocent children who are to be murdered today – this very day -- were deemed to be without even a right to live."[779]

Taney decided that blacks were "unfit to associate with the white race" and had no rights that "a white man was bound to respect."[780] Associate Justice Peter Daniel of Virginia was even more blunt, "The African negro race has never been acknowledged as belonging to the family of nations." He continued, "This race, has been by all the nations of Europe regarded as subjects of capture or purchase; as subjects of commerce or traffic."[781]

Frederick Douglass, an escaped slave, had a different perspective on the decision. He spoke before a national meeting of the American Abolition Society in New York on May 14, 1857, two months after the Dred Scott decision. He assured his listeners that, "This infamous decision of the slaveholding wing of the Supreme Court," would backfire and spell the end of slavery in the United States. He was correct, less than ten years later the 13th Amendment abolished slavery. "Such a decision cannot stand," he told them. "[I appeal] this hell-black

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[779] Sandro Bellinger interview by Gerald Van Slyke, January 2, 2014.
[780] Daniel A. Rezneck, "The Eye of the Hurricane," *Litigation*, Vol. 17, No. 4, (Summer 1991), 45-46. "They [blacks] had for more than a century before been regarded as beings of an inferior order, and altogether unfit to associate with the white race, either in social or political relations; and so far inferior, that they had no rights which the white man was bound to respect; and that the negro might justly and lawfully be reduced to slavery for his benefit. He was bought and sold, and treated as an ordinary article of merchandise and traffic, whenever a profit could be made by it…the right of property in a slave is distinctly and expressly affirmed in the Constitution."
[781] Ibid.

judgement…to the court of…common humanity. God will be true…If there is no justice on earth, yet there is justice in heaven."[782]

The Dred Scott decision further intensified sectional animosities concerning slavery. The Fugitive Slave Act, Stowe's *Uncle Tom's Cabin*, the Kansas-Nebraska Act, and the Dred Scott decision provided a framework on which abolitionist were able to encourage a consensus in the North that the unspeakably evil "slave power" was in control of the national government.[783] "Conflict was so close to the surface," Mahon wrote, "that people [now] paid more attention to the statutory militia [and] new volunteer units sprang up…expecting…war."[784] The national fabric began to tear and militias everywhere increased their training schedules. The year following the Dred Scott decision, John Brown surfaced in Virginia.

John Brown, often called "Osawatomie Brown," a name he acquired during the Kansas-Nebraska conflict where he committed multiple murders and acts of terror, was an ardent abolitionist who had shed blood in the cause.[785] In October 1859, Brown led eighteen men (Harriet Tubman had planned to come also but was taken ill) against the Federal Arsenal at Harper's Ferry, Virginia. They killed a number of townspeople and occupied the arsenal, seizing its store of weapons. Brown's intention was to arm the local slaves and create a black guerilla army that

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[782] Larry Schweikart and Michael Allen, *The Patriot's History Reader: Essential Documents For Every American* (New York, Penguin Books, 2011), 159-161.
[783] Schweikart and Allen, *A Patriot's History*, 280-281.
[784] Mahon, History of the Militia, 96.
[785] Goodrich, 135.

would operate out of the mountains and conduct raids against southern towns and cities to free more slaves.[786]

Northern abolitionists had encouraged Brown's venture and helped acquire weapons for his party. Immediately prior to the event, Brown had been a houseguest of Ralph Waldo Emerson and had spent days in conversation with Emerson, Henry David Thoreau, Henry Wadsworth Longfellow, Nathaniel Hawthorne, and other abolitionists and intellectuals in New England.[787]

"Emerson and Thoreau were in exactly the right frame of mind to embrace John Brown when he arrived in Concord," David Reynolds stated, "Brown did what they only talked about. He did not just theorize about fighting the government, he had actually fought government troops in Kansas." The Transcendentalists applauded Brown's violence, and both Emerson and Thoreau praised him as a natural man close to nature. Thoreau praised Brown as a "New England farmer."[788]

Brown's plan depended on slaves flocking to him at the armory; they would then fight an extended guerilla war in the mountains of Virginia. No slaves accepted the invitation, most likely because the plan seemed doomed to fail. The federal authorities quickly sent a detachment of U.S. Marines under, ironically, Colonel Robert E. Lee to retake the arsenal and arrest the perpetrators. Many of Brown's followers died at the hands of the marines and Brown himself suffered

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[786] Catton, 330-331. See also: McKissock, 130. "Since the Kansas border wars, Brown had become a radical who advocated an armed attack against the South to free the slaves and train them as soldiers to free other slaves. He often said slaveholders had forfeited their right to live."
[787] David S. Reynolds, *John Brown Abolitionist: The Man Who Killed Slavery, Sparked the Civil War, and Seeded Civil Rights* (New York: Vintage Books, 2005), 228. See also: McDonald, *Emerson and John Brown*, 379.
[788] Ibid.

wounds. Found guilty of treason against the State of Virginia, he met the hangman on December 2, 1859, surrounded by Virginia militia.[789]

On the morning he died he said, "I, John Brown, am now quite certain that the crimes of this guilty land will never be purged away but with blood." The words "...and until every drop of blood drawn by the slave master's whip has been matched by one drawn by the sword," were added later by overzealous editors.[790] Two weeks later two of Brown's white followers met their end on his scaffold, but cultural racism entered into the mix and a different, cheaper scaffold served to hang two black captives on the same day.[791]

A minority of northerners were abolitionists by 1859. The majority of northerners, especially Republicans, were antislavery, that is, they stood firmly against the expansion of slavery even if they were willing to tolerate slavery in the South for the sake of peace. A good many white northerners were contemptuous of the south and what they considered its depraved slaveholders. Brown's death soon morphed into a martyrdom, especially in New England where he had received so much encouragement.[792] "By the 1850s," Schweikart wrote, "slavery had

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[789] Ibid, 395. See also: Goodrich1-4.
[790] Catton, 331. Brown's raid on Harper's Ferry electrified the north and encouraged the abolitionists.
[791] Reynolds, 395.
[792] Franny Nudelman, "The Blood of Millions: John Brown's Body, Public Violence, and Political Community," *American Literary History*, Vol. 13, No. 4 (Winter 2001), 639-670. See also: McKissock, 130-131. "At first, more than a few moderate abolitionists tried to distance themselves from Brown's firebrand methods – but the grass-roots support for him was overwhelming. So, although Brown represented only a small faction in the movement during his life, all abolitionists embraced him in death. Brown became a martyred folk hero, a symbol of freedom."

managed to corrupt almost everything it touched."[793] Lincoln, now a national figure after his debates with Douglass (a year before the Harpers Ferry raid), perceived that slavery put at risk not only equality, but also liberty itself. "Lincoln, again nearly alone," Schweikart continued, "understood that the central threat to the republic posed by slavery lay in its corruption of the law."[794]

Southerners also had cause for anger, and they believed the Constitution was on their side. They had been outraged at the lack of support the Fugitive Slave Act received in northern states, most of which had passed laws that made the act almost unworkable.[795] They felt northern polemicists had unfairly questioned their public virtue in the fall out from the Kansas-Nebraska Act, they were angered that northerners could not see that the Dred Scott case was a simple property issue, and now southern blood had been shed on southern soil by an arch-abolitionist and murderer from Kansas. Not only that, but the perpetrator was being canonized as a saint by northern abolitionists who claimed, "He has joined the army of the Lord," and who were openly calling for more John Browns to take the field.[796] How, they wondered, could they obtain justice and the protection of their property?

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[793] Schweikart and Allen, *A Patriot's History*, 290-291.
[794] Ibid. Federal laws seen as contrary to slavery were quietly ignored in the South. Southern law enforcement winked at this widespread practice.
[795] Silverman, 295.
[796] Nudelman, "The Blood of Millions: John Brown's Body, Public Violence, and Political Community," 639-670.

CHAPTER FIVE

THE MILITIA DURING THE SECOND HALF OF THE NINETEENTH CENTURY: FROM 1860 TO 1903

The latter half of the twentieth century was a time of transformation for the Army of the United States, both for its regular and militia components. The regulars doubled in number during the Civil War and the competing Union and Confederate governments called forth the volunteer militia in unprecedented numbers. Reconstruction and labor unrest followed the civil war, each of which generated public animosity directed at the state militias. The National Rifle Association was formed in 1871 followed by the National Guard Association in 1879. The two groups shared interests and members and often worked together to facilitate legislation that saw the organized militia begin its journey toward becoming the National Guard. The Spanish-American War ended with the United States becoming a global power holding territories around the earth, a global power in need of a global-capable military system. First, before any of this could take place, Americans had finally to resolve once and for all the issue that had divided them since the ratification of the Constitution.

The Militia and the Volunteers in the Second Civil War

The issues between the northern and southern states came to an irrevocable point on November 6, 1860, when Abraham Lincoln, the Republican nominee, was elected President of the United States. South Carolina immediately called for a constitutional constituent assembly. Seven southern states, led by South Carolina, had seceded from the Union by March 4, Lincoln's inauguration, and four more would soon follow.[797] The breakaway states organized a new national government called the Confederate States of America on February 7, 1861, and elected Jefferson Davis as president.[798] The Civil War formally began two months later at 4:30 a.m. on April 12 when Confederate artillerymen opened fire on Fort Sumter, a Union military installation in Charleston Harbor, South Carolina.[799]

On the day the war started, the Union Army numbered 1,108 officers and 15,259 soldiers. There were also 2,471,377 men in the enrolled militia. The embryonic Confederate Provisional Army existed only on paper but began recruiting men almost immediately. The southern states counted 692,334 enrolled militiamen. By the end of the war, the Union had called forth 2.5 million men while the Confederacy had embodied about one million men.[800] "The conflict would [call forth] one man out of every 1.66 men of military age on the Union side, and one of

[797] McKissock, 134.
[798] Schweikart and Allen, *A Patriot's History*, 300-301.
[799] Stewart, 200.
[800] Mahon, History of the Militia, 97-99.

every 1.2 men in the Confederacy."[801] About 600,000 soldiers and an unknown number of civilians would die during the Civil War.

In addition, as previously noted, each of the 33 states on both sides had nervously began to cultivate (or reestablish) their militias as the ominous decade of the 1850s had worn on. By 1860, most of them could boast a substantial organized militia. "New York, alone and overnight," Hill wrote, "could turn out more armed, uniformed, voluntarily organized, well officered, drilling and marching units of Infantry, Cavalry and Artillery, than could the Federal Government." The authority to call upon citizens for military service remained in the hands of the states, as it had during the colonial era.[802]

Naval strength would be key in the war. While Congress had kept the army on short fiscal rations for years, the navy was pampered and expanded. In addition, the American navy was the most modern naval force in the world at the time, and certainly not the smallest. "The American Navy had ships, guns, and speed," Hill wrote, "that could give pause to any nation of Europe, including proud Britannia."[803] The U.S. Navy retained all its warships except for a few decommissioned, unmanned ships in southern naval yards that fell to local Confederate militias. The early Confederate Navy consisted of a few personnel who had left the U.S, Navy and gone south, and no ships. "The Confederacy had nothing but a law on the books and [321] officers."[804]

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[801] Ibid.
[802] Hill, 37.
[803] Ibid, 36, 43.
[804] Ibid, 43.

When the guns fell silent in Charleston, both presidents frantically began to mobilize. In November 1860, the Confederate Congress passed a law adopting all laws of the United States that were not in conflict with the new Confederate Constitution. This meant that both presidents found themselves operating under the same laws - the Militia Acts of 1792 and 1795, and their companion Calling Forth Acts of 1792 and 1795. These acts limited the time of the involuntary embodiment of the militia to three months in a year, the common law tradition since the medieval era.[805]

The two constitutions gave the two congresses, not the two presidents, the authority to call forth the militia. This posed no problems for Davis because the Confederate Congress was in session. It quickly enacted legislation on February 28, 1861, allowing Davis to accept volunteers as units into the Confederate Army for up to a year. Non-volunteering units embodied by the states and sent to the army would not be held in service for more than six months.[806] The Confederate Congress experienced the same misgivings about the possible misuse of power by the executive that the Founders had, and two days after Lincoln's inauguration it limited the number of troops Davis could raise to 100,000. Under the exigencies of the war, this restriction was later removed.[807]

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[805] Mahon, *History of the Militia*, 98-100. See also: Hill, 39. "This, of course, enacted for [Davis] the same, identical, legal framework and terms of reference under which President Lincoln necessarily would work…"
[806] Hill, 43-45.
[807] Ibid, 40, 43. See also: Stewart, 204-205.

Congress's role in calling forth the militia did pose a problem for Lincoln, however, because the U.S. Congress was not in session. Just the same, the war was upon him and he needed soldiers fast. The only legal way he had to get them was for state governors to send those militiamen who volunteered. On April 15, 1861, Lincoln called for 75,000 militiamen to volunteer for federal service, with the quotas of men required apportioned among the states according to population. The northern states actually sent 93,000 men, the border states only a very few, and four other slave states seceded upon receiving their quotas.[808]

State governors received a quota from the national government and then mustered the enrolled militia in various towns around the state. Recruited from these, the militiamen marched to Washington where they would serve for ninety days. Historian William Marvel wrote that 10,000 volunteers had reached Washington by the end of April. The President's calling forth would net 101 regiments of these short term troops, although many would remain in other regiments after their three-month enlistment was finished.[809]

Washington watched the Confederate forces south of the Potomac grow and on May 3, Lincoln called forth another 42,000 militia for three years' service (39 state infantry regiments). The regular army was increased by 23,000 men and

[808] Mahon, History of the Militia, 98.
[809] William Marvel, *Mr. Lincoln Goes to War* (New York, Houghton-Mifflin Company, 2006), 45.

18,000 additional sailors and marines were authorized for the navy.[810] The real surge came on July 22 when Lincoln called for 500,000 three-year volunteers.[811]

Lincoln's militiamen arrived in Washington in time to fortify it against imminent Confederate attack, to fight the Battle of Bull Run (July 21) and then to go home. They were short-term citizen soldiers who stood in the breach at an extremely critical moment just as their predecessors had often done. Many remained after their enlistments expired, however, and joined volunteer regiments.[812] It is not too much to say that the 90-day militia saved the Union during the opening months of the war. "Merely by giving the Union a stop-gap army and a breathing spell," historian Russell Weigley wrote, "the country's militia institutions amply justified themselves."[813]

Throughout the war both Union and Confederate governors called forth their militias when their state was threatened, sometimes to the detriment of the national military posture. Examples occurred in both 1862, when Confederate General Robert E. Lee invaded Maryland and met the Union Army at Antietam and in 1863 when he led his gray-clad legions into Pennsylvania near Gettysburg. Both times Governor Andrew Curtain called forth the entire Pennsylvania militia for thirty days. When Stonewall Jackson dominated the Shenandoah Valley in 1862 and threatened Washington, 15,000 short-term militia from New York, Ohio, and

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[810] Ibid, 47. See also: Hill, 83. "[The regulars] never reached their authorized strength during the four years of the war. Their peak strength was reached on or about January 1, 1863, for a total of 25,463 officers and men. Their average daily strength through the four years was only 22,929."
[811] Stewart, 213-214.
[812] Ibid.
[813] Russell Weigley, *History of the United States Army* (New York: Macmillan, 1967), 199.

Rhode Island rushed to the capital's defense.[814] These scenarios were often played out in both North and South, particularly in the South, which suffered from a continuous manpower shortage.

While northern governors were generally supportive of the military effort (unlike during the War of 1812), southern governors were more obstructive (also unlike the War of 1812). Perhaps the most infamous governor was Joseph E. Brown of Georgia who seemed to care not at all for the needs of the Confederacy, resisted Confederate military policy, and consistently denied the service of his militia (Home Guard) to the Confederate authorities. He kept them tightly under his own control even when they could have made a critical difference on the battlefield. Margaret Mitchel's novel *Gone With the Wind* accurately portrayed Brown in this respect. "Brown's actions," Mahon wrote, "even though the most extreme of all Confederate governors, were characteristic."[815]

Both armies had suffered staggering casualties by mid-1862. The Confederate Congress passed a draft law on May 16 that touched off a constitutional crisis among the eleven Confederate states, each of which was grounded on the principle of state sovereignty. They did not agree that a draft by the central government was either necessary or legal. Florida refused to conduct

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[814] Mahon, History of the Militia, 101.

[815] Ibid, 105. See also: Stewart, 236. "On the other hand, hampering the Southern buildup [in the west] were Southern governors whose states' rights doctrines led them to believe that defense of their respective states had higher priority than pushing forward the needed men and munitions to a Confederate commander, [Albert Sidney] Johnston, at the front." This statement referred in particular to the Battle of Shiloh, but was indicative of a persistent problem.

one and the other states did so only reluctantly, an attitude that was prevalent throughout the war.[816]

The North also drafted men. The *Militia Act* of July 2, 1862, allowed the recruitment of free blacks into the military but restricted them from combat. The U.S. Congress also authorized the president to call forth 300,000 white volunteers apportioned among the enrolled militias of the states. These men would serve for three years.[817] Hard pressed by the war, Congress took an unprecedented step that would resonate into the 21st Century. Marvin Kreidberg and Henry Merton noted that if the states fell short of their required number of volunteers, they were forced to draft men to fill the quota. These draftees served for an unprecedented three years rather than the normal three months when called forth into federal service. "Up to that moment," Kreidberg and Merton wrote, "the power to draft had belonged not to the nation but to the states.[818]

The Civil War was a volunteer's war. The three-year volunteers Congress called forth throughout the balance of the war were organized into volunteer militia regiments, 1,780 of them in all, and they did the fighting. The South fielded 764 volunteer militia regiments during the war, "…which constituted 99.71% of the South's fighting units."[819] During the bitter fighting of 1862, both armies became

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[816] Ibid, 102.
[817] Ibid, 100.
[818] Marvin Kreidberg & Henry Merton, *History of Military Mobilization in the U.S. Army* (Washington, D.C., U.S. Government Printing Office, 1956), 100ff. (Department of the Army Pamphlet 20-212-1956.) See also: Mahon, *History of the Militia*, 100. The 90-day rule was federal law, but it soon became apparent, as it had during the Mexican War, that soldiers enlisted for less than three years were a liability.
[819] Hill, 80, 82. Hill set the number of Union regiments at 2,080.
[819] Ibid.

very proficient in the military arts, leadership improved dramatically, and casualties climbed steeply. There were four major draft calls in the North during the war, which, limited to the enrolled militia, brought in only six percent of the Union force. "More important than the immediate impact on manpower," Mahon wrote, "was the precedent set [by the 1862 law] …that the [federal] government…[could order states to] draft…to raise an army."[820]

Congress had passed, and Abraham Lincoln had signed, *the First Confiscation Act* on August 6, 1861, giving the government the right to confiscate the property of anyone in rebellion against the United States if said property was used to support the Confederate war effort.[821] This included firearms, horses, slaves, and so forth. Runaway blacks soon became "contrabands" and could serve the Union army as laborers, which many did. *The Second Confiscation Act*, July 17, 1862, empowered the government to now confiscate the personal property of anyone in rebellion against the United States, whether the property was used by the Confederacy or not.[822] Blacks owned by rebels were forfeited to the Union army, and the president was authorized to use them in any military capacity by the Militia Act passed fifteen days earlier, although they were not committed to battle until 1864.[823]

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[820] Mahon, History of the Militia, 100, 103.
[821] James McPherson, *Battle Cry of Freedom* (New York, Oxford University Press, 1988), 354-356.
[822] Ibid, 500-502.
[823] Mahon, *History of the Militia*, 103. Blacks in the Border States remained under the control of their masters. The Militia Act of 1862 authorized the president to enroll persons of African descent into the army.

More than 186,000 blacks flooded into the army and navy, providing ten percent of the total Union force. The army organized the United States Colored Troops, the parent department in which the 175 black regiments served.[824] Some of the state governments had actually preceded the federal government in recruiting blacks. On the day the Second Confiscation Act was signed, there were already 31 black regiments embodied by various states. Many Indians and Latinos also found homes in black regiments.[825]

Manpower shortages pushed both the Union and Confederacy to recruit soldiers from among prisoners of war and Indian tribes. Washington recruited three regiments of Indians, and six regiments and one independent company of Confederate prisoners with the stipulation that their service would be limited to Indian control on the western frontier. The volunteers did not serve against their own side, only against the Indians.[826]

On March 3, 1863, Congress passed the *Enrollment Act*, a draft law that set the future course of military conscription in the United States. For the first time, it bypassed the state enrolled militias entirely and was directly administered to the general public by the regular army. It favored the wealthy who could escape the draft by paying a $300 commutation fee or by providing a substitute. This caused public anger and on July 4 Congress dropped the commutation fee (but reinstituted

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[824] Ibid. "All in all, 186,017 blacks entered Union service, 35,699 of them from northern states, 44,034 from border states, and 93,346 from the seceded states…But it was 1864 before blacks were allowed to do soldier's work" The Confederacy recruited black soldiers only during the last two months of the war.
[825] Hill, 86-87.
[826] Ibid, 88.

it later) as too obviously a rich man's dodge. It did retain substitution and the wealthy were easily able to find and pay a substitute.[827]

The Union army suffered more casualties than it could replace during General U.S. Grant's determined assault through the South in April 1864. The governors of nine states offered to send 100-day militiamen to Missouri and Kentucky to free up long-term volunteers from garrison duty in the border states so they could reinforce Grant's offensive. These totaled 83,652 militiamen from Kansas, Wisconsin, Massachusetts, New York, New Jersey, Ohio, Indiana, Illinois, and Iowa.[828] The federal government gratefully accepted the offer.

The final act of the Civil War occurred at Appomattox Court House on April 9, 1865. The Southern army under General Robert E. Lee, shoeless and starving, attacked the Union army under Grant and was soundly defeated. Seeing no reasonable alternative, Lee met with Grant that afternoon and surrendered the Army of Northern Virginia. The other three Confederate armies still extant quickly surrendered after being notified of Lee's surrender. The Civil War concluded but the follow-on reconstruction posed its own challenges.

It is beyond the scope of this dissertation to examine each of the many major engagements of the Civil War, but two battles stand out from the others: Shiloh in the west and Antietam in the east. Both were fought in 1862, the first during early April and the second during mid-September, and both were fought almost entirely

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[827] Stewart, 299-300. "This measure established firmly the principle that every citizen is obligated to defend the nation and that the Federal government can impose that obligation directly on the citizen without the mediation of the states."
[828] Mahon, History of the Militia, 104.

by the volunteer militia. They were, "…terrifying stand-up battle[s] between two civilian armies," according to historian James Arnold.[829] An overview of these two battles will be lightly touched on because they accurately display the degree to which each side depended on state volunteer militias.

The Union war plan (The Anaconda Plan), developed by Lieutenant General Winfield Scott, called for isolating the South from the rest of the world by occupying the Mississippi River Valley in the west, and blockading the coast in the east and south. "Scott proposed to 'envelop the insurgent States'… to seal off the Confederacy from the outside world and thus 'bring them to terms with less bloodshed than by any other plan'."[830]

Major General U.S. Grant initiated the opening moves of the plan by pushing south along the Tennessee River in November 1861, and conducted successful attacks on Confederate forces at Belmont, Missouri, on November 7, and at Forts Henry and Donelson during February 4-16, 1862.[831] A few brigades of Grant's Army of the Tennessee, commanded by Brigadier General William T. Sherman, began arriving at Pittsburg Landing, Mississippi, in mid-March. Three

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[829] James R. Arnold, *Shiloh 1862: The Death of Innocence* (Oxford, UK: Osprey Printing, 1998), 10-11, 19.

[830] James M. McPherson, *Tried By War: Abraham Lincoln As Commander In Chief* (New York: Penguin Press, 2008), 34-35. Scott felt that when the South was "cut off from the luxuries to which people are accustomed…the Union spirit will reassert itself; those who are on the fence will descend on the Union side, and I guarantee that in one year from this time all difficulties will be settled." Later modified, the plan included splitting the South into several sections and conquering each one in detail.

[831] Winston Groom, *Shiloh 1862* (Washington, D.C.: National Geographic Society, 2012), 116-122, 126-139. See also: Larry J. Daniel, *Shiloh: The Battle That Changed The Civil War* (New York: Simon & Schuster, 1997), 53-55.

weeks later this move led to the Battle of Shiloh, also called the Battle of Pittsburg Landing.[832]

Grant's move south alarmed the Southern high command and Major General Albert Sidney Johnston, commanding the Confederate Army of the Mississippi, ordered his forces quickly concentrated at Corinth, Mississippi. Confederate soldiers from five separate commands scattered throughout the Deep South began arriving at Corinth where Johnston organized them into a field army. Johnston would take 72 infantry regiments into the Shiloh campaign (April 3-7); of these 70 were state volunteer militia regiments and only two (the 2nd and 3rd Confederates) were regulars. In addition to his regiments, his 15 separate battalions (infantry and cavalry), and his 20 artillery batteries were all state volunteers.[833]

Grant would bring (including Buell's Army of the Ohio) 122 infantry regiments, all of them volunteers, 12 separate battalions (infantry and cavalry squadrons), and 25 artillery batteries to the battle. Of these, there was a total of three infantry battalions, two companies of cavalry, and two artillery batteries of regulars. The aggregate of regulars on both sides amounted to less than one percent of the soldiers engaged at Shiloh.[834] This would be a fight between state militias.

Grant committed a number of serious blunders, each of which could have easily cost him the battle (and almost did) except they were balanced by a host of

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[832] Stewart, 238. See also: Arnold, 8-9.
[833] Arnold, 20-21. There is always a wide disparity among sources concerning numbers of men engaged and killed or wounded. This section on Shiloh will use James Arnold's numbers and his report on where various regiments were recruited.
[834] Ibid, 21-22.

Confederate errors and bad luck. "The difference was," James Arnold wrote, "that his [Grant's] mistakes threatened his army's destruction."[835] Grant had positioned his men at Plattsburg without consideration of site defense, he had failed to fortify the camp or establish security, he placed his least experienced troops closest to the enemy, and he refused to consider that the Confederates, only twenty-three miles away, might attack him.[836] He was not yet the U.S. Grant of later campaigns.

Johnston's scouts reported the confused condition of the Union camp and, sensing an opportunity, the Confederate general began moving his regiments toward Grant's camp at Pittsburg on April 3. The entire force was in place near Pittsburg Landing by the night of April 5.[837] A skirmish erupted at Fraley Field near Shiloh during the early morning hours on the 6th between volunteer militiamen from Michigan and Mississippi. The Mississippians pushed the Union pickets back into their lines and the battle was on.[838]

The Confederates achieved complete surprise. Johnston attacked the sleeping Union right at daylight with Major General William Hardee's men and began rolling up Union regiments from Illinois, Iowa, and Wisconsin commanded by Sherman and Brigadier General Benjamin Prentiss.[839] Throughout most of the

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[835] Ibid, 26.
[836] Charles Bruce Catton, *The Army of the Potomac: Mr. Lincoln's Army* (New York: Doubleday & Company, 1962), 151. "Earlier that spring Grant had fought the Battle of Shiloh – fought it inexpertly, suffering a shameful surprise, losing many men who need not have been lost. There was a great clamor against him, he was denounced as an incompetent and a drunkard, and tremendous political pressure was put on Lincoln to remove him. [Lincoln replied] 'I can't spare this man; he fights'."
[837] Stewart, 238.
[838] Daniel, 143-144.
[839] Groom, 201.

day, the Southern line would punch hard and drive the Union soldiers off one position after another. Confederate volunteers from Tennessee, Kentucky, Alabama, Mississippi, Arkansas and Louisiana were on the verge of crushing the Union right and then making a flanking attack on the rest of Grant's men, but were stopped by murderous canister fire from several batteries of Illinois field artillery.[840]

By the time Grant arrived on the battlefield at 8:30 a.m. (he had spent the night nine miles away with troops at Savannah), Brigadier General Stephen Hurlbut and Major General John McClernand had established order and had stiffened the Union line with fresh infantry regiments from Illinois, Indiana, and Kentucky. The 33,000 northern militiamen were now fighting hard and when they did retreat, it was orderly and controlled.[841]

The Confederate attack spread to the center and the left until the entire Union line was engaged. Grant left Sherman in command of the right and rode to the center where he stopped his broken regiments from retreating and formed another line. "Amid the confusion," James Arnold wrote, "two themes began to emerge: in spite of the shock, enough of Grant's men were still going to fight and fight hard; in spite of his surprise, Grant was maintaining his balance."[842]

The battle moved to a sunken road at the center of the line that became the focus of both armies. About 18,000 Confederate infantry continuously assault

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[840] Arnold, 22. These units were the 1st and 2nd regiments of Illinois light artillery.
[841] Ibid, 20-22, 24-25.
[842] Ibid, 45.

1,000 Union troops throughout the afternoon. At one point, the Confederates were poised to overrun the Union position but rough treatment by the 14th Iowa and massed canister fire from 38 artillery pieces drove them back.[843] There were so many dead volunteers scattered along the ground before the sunken road that, "When the smoke cleared, the [Union] defenders saw their foe in torn and mangled heaps. One [Confederate] survivor said the stinging federal fire was like facing a swarm of hornets, so the Union position became known as the Hornet's Nest."[844]

A hundred yards to the east of the Hornet's Nest lay a Peach Orchard, which would also claim a place in history. Three regiments (54th Ohio, 71st Ohio, and 55th Illinois) had fought outnumbered all day in the Peach Orchard, a short distance to the east of the Hornet's Nest. The exhausted Union forces had been defending the position against superior numbers for six hours and they were running low on ammunition and had suffered severe losses. At 2:00 pm, Johnston personally led thousands of troops against the federal position in the Peach Orchard and broke the Union line.[845] Unfortunately for the South, a rifle bullet struck Johnston in the leg, severing an artery and killing him. Confederate forces fought leaderless, and fought very well, for the rest of the day.

At the time Johnston died, the Union Army was *in extremis*, at the point of collapse. The Confederates sensed this and continued to push forward hard. The Union Sixth Division under Prentiss, posted at the Hornet's Nest, had been engaged

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[843] Ibid 54
[844] Stewart, 240. See also: Ian Drury, *Confederate Infantryman 1861-1865* (Oxford, UK: Osprey Publishing, 1993), 26.
[845] Arnold 57-58

since before daylight. Ordered not to retreat for any reason, Prentiss held his ground until forced to surrender in the late afternoon. Prentiss had 7,545 volunteers at the start of the day. There were only 2,200 militiamen left to surrender at 5:00 p.m., and many of the survivors were wounded.[846]

The remainder of the Union Army fell back to a last ditch defensive line on the Tennessee River. The northern soldiers repulsed the last Confederates attack at 5:30 and the battle fizzed out to begin again in the morning. With the coming of darkness, the fortunes of war turned in Grant's favor. As the Confederate attackers retreated to their own lines for the night, Major General Lew Wallace arrived at Pittsburg Landing with about 8,000 men, the last element of Grant's Army of the Tennessee to arrive on the field. Concurrently, Brigadier General William Nelson (part of the Army of the Ohio) arrived as well with nine regiments from Kentucky, Ohio, and Indiana. The remainder of the Army of the Ohio, another 13,000 men under the command of Major General Don Carlos Buell, also arrived overnight in time to fight the next day.[847] A few independent units arrived with them, pushing the number of Grant's reinforcements to 25,000 fresh troops.

Major General P.G.T. Beauregard, the same man who commanded the Confederate forces that reduced Fort Sumter, took command of the Army of the Mississippi upon learning that Johnston was dead. Not knowing that Grant had been reinforced, he believed, along with the rest of his army, that the battle was won and little was left except to mop up a few pockets of resistance followed by

[846] Ibid, 22, 68.
[847] Daniel, 243, 248-250.

accepting the Union army's surrender.[848] The Confederates launched their attack at 5:00 the following morning, April 7, and were driven back at six. The two federal armies advanced all day, fighting for every inch of ground, securing the positions lost the previous day; the Hornet's Nest and Peach Orchard were fought over again. Finally, the Confederate army stopped retreating and coalesced at Shiloh Church where they began to crumble under Grant's attack. At 3:00 p.m., Beauregard ordered a general withdrawal. The Confederate army was off the field and in full retreat an hour later, but the Union army was too exhausted to pursue them.[849]

Shiloh established Grant's credentials as a fighting general who could defeat the Confederates; Lincoln had found his general. This victory, pyrrhic though it was, opened the door for his assault on Corinth and Vicksburg, and his subsequent transfer to command the Army of the Potomac. Casualties were high. Grant's army suffered 10,944 men killed, wounded, or captured. Buell took 2,103 casualties for a Union total of 13,047. Johnston took 10,649 casualties. The ferocious fighting and the combined casualty number of 23,741 Americans demonstrated that volunteer militia on both sides could and would perform the most terrifying duty courageously.[850] Union and Confederate forces in the east also fought a number of battles during 1862, and in September met each other at Antietam.

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[848] Arnold 93

[849] Stewart, 240. "The next morning Grant counterattacked to regain the lost ground, and the Confederates withdrew to Corinth. There was no pursuit. Shiloh was the bloodiest battle fought in North America up to that time."

[850] Arnold, 83.

The Battle of Antietam, fought along Antietam Creek near Sharpsburg, Maryland, on September 17, actually began a few days earlier at South Mountain near Boonsboro, Maryland. The 50,000-man Confederate army of Northern Virginia, commanded by General Robert E. Lee, surged northwards across the Potomac into Maryland on September 9.[851] Divided into two wings, three divisions under Major General James Longstreet marched for Hagerstown, Maryland, while six divisions under Major General Thomas "Stonewall" Jackson marched on Harper's Ferry, Virginia.[852]

The 70,000-man Army of the Potomac (only 50,000 played a part in the battle), commanded by Major General George McClellan, widely considered one of the poorest generals in the war, moved immediately to engage the advancing Confederates. Lee needed three passes in South Mountain (a mountain ridge in western Maryland) to be unblocked so the scattered elements of his army could reunite, and had posted sizeable forces in each of them.[853] Showing uncharacteristic alacrity, McClellan attacked all three (Crampton's Gap, Turner's Gap, and Fox's Gap) on September 14. Five regiments of Virginia infantry and two regiments of Virginia cavalry defended Crampton's Gap. Assaulted by the

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[851] Norman S. Stevens, *Antietam 1862: The Civil War's Bloodiest Day* (Oxford, UK: Osprey Publishers, 1994), 25, 91.
[852] Stevens, 25. There is, as usual, a wide disparity between numbers of troops involved and the numbers of casualties inflicted. This material on Antietam uses figures supplied by Stevens as well as his report of which states various units were recruited from.
[853] McPherson, *Antietam*, 126. "[Lee] would seek to buy time by holding the South Mountain passes…He told Longstreet to be prepared to march at dawn for Boonsboro to support [General] Harvey Hill."

Union VI Corps, the Virginians retreated and the federals were in control of the pass by 2:30 p.m.[854]

Major General D.H. Hill's division defended the two other passes against the Union I and IX Corps. The Confederates fought tenaciously but finally retreated at nightfall.[855] A Pennsylvania militia force of thirteen regiments, one of the toughest formations in the Union Army, called "The Pennsylvania Reserve" played a large part in the Union effort in the pass battles, at Antietam, and at many subsequent battles. Pennsylvania Governor Andrew Curtain had organized them, equipped them at state expense, and had sent them to the army as a gift in addition to his state's required quota of men. "State pride was as important to Northern men as it was to their opponents."[856]

McClellan's men had seized their objectives, but not in time to prevent Lee's army from consolidating. The following day Lee learned that Jackson had captured the Federal force and supplies at Harpers Ferry and was marching quickly to join him. Armed with this knowledge, Lee ordered all his divisions to gather along the west side of Antietam Creek near Sharpsburg and wait for the Yankees to attack.[857]

The Army of the Potomac arrived at Sharpsburg on the 16th and McClellan spent the remainder of the day scouting the Confederates and preparing his

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[854] Stevens, 33-35. "VI Corps claimed the capture of 400 prisoners…three colors, a field piece, and 700 discarded weapons. [VI Corps] buried 150 Confederate soldiers on the field."
[855] Ibid.
[856] Arnold, 39-40.
[857] Stephen W. Sears, *Landscape Turned Red: The Battle Of Antietam* (New York: Mariner Books, 1983), 150-151. Lee had considered retreating back to Virginia but decided to challenge the Union Army after learning of Jackson's victory.

positions while Lee's men watched. Once offered command of the Union Army by Abraham Lincoln, Lee had become universally recognized as the South's premier general after Johnston's death at Shiloh. Despite being heavily outnumbered, Lee was very much in control of the battlefield at Antietam.[858]

McClellan exhibited his usual timidity, issued his usual confused instructions, and initiated his usual sluggish troop movements at Antietam. He had commanded unusually well at the South Mountain passes, but then seemed completely to lose his energy. He sent his soldiers into battle in an uncoordinated, piecemeal fashion and committed only a part of his army to the action. He also remained on the east side of Antietam Creek throughout most of the battle, creating an impossible condition for his corps commanders who fought the battle largely without orders, a situation which prevented them from cooperating to the degree they should have. Worst of all, he would also fail to pursue the Confederates as they retreated to Virginia.[859]

Skirmishing began at sundown between Jackson's and Major General Joseph Hooker's men and continued until morning. Hooker's I Corps (mostly New Yorkers) launched a determined attack at daybreak on the 17th against Jackson's position in Miller's cornfield on the Confederate right (the Union left). "Hooker's plan," Stephen Sears wrote, "was to attack due south toward the Dunker church."[860]

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[858] Stevens, 86-87.
[859] McPherson, *Tried By War*, 125, 141, 268-269. Lincoln ordered McClellan to destroy the rebel army while it was in the north far from its support base. McClellan's slothfulness during the two days following Antietam allowed Lee to escape. Lincoln relieved him from command saying, "He has got the slows."
[860] Sears, 181.

The New Yorkers held nothing back in their assault. "Jackson's formations were nearly destroyed during the initial Federal assault," Norman Stevens wrote. "Lee realized that Jackson's position would collapse unless timely assistance was sent," so Lee sent in what few reserves he had.[861]

Two brigades of mostly Texans and South Carolinians, commanded by Brigadier General John B. Hood, counterattacked at 7:00 a.m. to retake Miller's cornfield. They were repulsed by a brigade composed of three regiments of Wisconsin militia (the 2nd, 6th, and 7th) and the 19th Indiana after 20 minutes of some of the most intense infantry close combat ever recorded. After Antietam, their enemies named them, "The Iron Brigade."[862] Hooker's men, despite the temporary respite purchased for them by the Iron Brigade, were played out and their center collapsed. Fortunately for the North, XII Corps arrived at the scene just as Hooker's New Yorkers were crumbling and took their place on the line.[863]

XII Corps, composed mostly of volunteer militia from Pennsylvania, New York, and New Jersey, and commanded by Major General Joseph Mansfield, passed through the remnants of the Union defenders of the cornfield and drove back the Confederates to the Dunkard Church. A determined counterattack by Confederate militia from North and South Carolina, and Virginia, drove the federals

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[861] Ibid, 46. See also: McPherson, *Antietam*, 131. "Nothing from the army," Gideon Wells wrote, "except that instead of following up the victory [at Antietam], attacking and capturing the Rebels, they…are rapidly escaping across the river…"
[862] Stevens, 48-49. "Hood's counter-attack had stabilized Jackson's position."
[863] Ibid, 52-53.

(I, II, and XII Corps) back 200 yards. VI Corps fortuitously arrived on the field at this point and stiffened the Union Line.[864]

The focus of the battle now swung to a sunken farm road that ran along the Confederate left fronting Longstreet's Corps. State regiments under D. H. Hill, mostly from the Deep South, reinforced by Virginians and South Carolinians, defended "Bloody Lane" as it was afterward called.[865] A II Corps infantry division under Brigadier General Nathan French assaulted Hill's position on the road. Mostly New Englanders, French's men could not force the Confederate line and Hill could not push French back. The line at Bloody Lane settled into place. "The struggle for the sunken road…lasted three and a half hours," historian Norman Stevens wrote. "There were charges…and counter charges launched by both sides…without either party giving way."[866] The Union I, II, and XII Corps finally seized Bloody Lane at about 1:00 p.m. and continued their assault through the peach orchard behind it. There was horrific fighting before the lines solidified in place.[867]

The focus shifted again, this time to the stone bridge spanning Antietam Creek. Pennsylvania and New York regiments of IX Corps under Major General Burnside forced their way across the bridge under heavy fire, taking severe casualties. IX Corps pushed to the edge of Sharpsburg along with XII Corps, its

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[864] Ibid, 53-59.
[865] William Frassanito, *Antietam: The Photographic Legacy of America's Bloodiest Day* (Gettysburg, PA: Thomas Publications, 1978), 202-203. D.H. Hill reinforced brigades from North Carolina and Alabama.
[866] Stevens, 64.
[867] Sears, 246-247. See also: Stevens, 64, 68-69.

numbers seriously depleted.[868] The fighting largely stopped in the late afternoon and both armies remained in place through the night and the following day, September 18. Lee moved his regiments south across the Potomac and retreated to the safety of Virginia during the night of the 18th.[869]

The citizen soldiers who fought on both sides at Antietam, like those who had fought at Shiloh, demonstrated that volunteer militiamen were just as capable of tough service and unspeakable sacrifice as any regular troops anywhere. McClellan suffered 14,756 casualties while Lee took 16,409 casualties for a total of 31,165 American soldiers killed or seriously wounded in a single day.[870]

The battle was a draw, but the South was unable to defeat the Union Army on northern soil, an outcome that had serious political ramifications for both sides. Jefferson Davis had hoped that a southern victory would encourage the European powers to recognize the Confederacy.[871] Abraham Lincoln was waiting for a victory (or at least a good showing) before announcing the Emancipation Proclamation.[872] Lincoln realized his hopes; Davis did not.[873]

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[868] Ibid, 267. "[McClellan's errors] took nothing away from the men who did the fighting there [at Antietam Creek Bridge]. No spot on the Antietam battlefield was assaulted – and defended – with more raw courage, and in proportion to the forces engaged, the 500 Yankees and 120 Rebels killed and wounded there rank it among the bloodier contests of that bloody day." See also: Catton, *Army of the Potomac*, 307-308. See also: Stevens, 80.
[869] Ibid, 307. See also: Stevens, 85.
[870] Stevens, 85.
[871] McPherson, *Tried By War*, 127. "[The press] was right about the long-term consequences of Antietam. Among other results it caused the British government to back away from a joint French-British project to recognize the Confederacy as an independent nation and to offer to mediate an end to the war."
[872] Ibid, 127-131.
[873] Ibid., 127.

Reconstruction and the Negro Militia

On the day Lee surrendered at Appomattox, the Union army numbered 1,100,516 men. Over the next six months, 800,963 volunteer militiamen mustered out and returned to their communities.[874] "One of the great virtues of the war volunteers," Mahon wrote, "was that…they merged back into the population when the war ended."[875] The Union militiamen, unlike Cromwell's New Model Army, did not remain embodied to become a political force.

The French had challenged the Monroe Doctrine in late 1861, while the United States military was completely committed to the Civil War, by establishing an Austrian emperor in Mexico supported by French troops. Intervention in Mexico to drive out the French was increasingly probable at war's end, so 200,000 soldiers remained on active duty from 1865 through 1867. The crisis fizzled. The French withdrew, the Mexicans executed their Austrian emperor and, in August 1867, Congress reduced the American army to 56,815 officers and men. This was its peak strength during the period from the end of the Civil War to the advent of the Spanish-American War.[876]

During the war, Abraham Lincoln had maintained the legal fiction that the southern states had never really seceded, that criminal gangs were occupying them.

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[874] Hill, 100.
[875] Mahon, History of the Militia, 107
[876] Hill, 101. The strength of the regular army in 1897 was 27,532 officers and men. See also: Stewart, 303-304. General Phil Sheridan was sent to the border between Mexico and Texas with 52,000 men to encourage the French to respond positively to American diplomatic efforts aimed at removing them from North America. Sheridan's presence on the border proved decisive.

Once ten percent of the number of voters in the 1860 election swore an oath of loyalty to the Union, Lincoln recognized the "ten percenters" as the true state government and appointed a governor. His plan of reconstruction was to send the defeated Confederate soldiers home to their farms, reseat their congressional representatives and have, "the Union as it was."[877] The Confederates were not traitors, Lincoln had always maintained, they were merely rebels and when the war was over it would be over.

Initiated during the war and lasting until late 1865, Lincoln's plan is remembered as presidential reconstruction. Under this moderate plan, the old power blocks that had founded the Confederacy returned to power in the states at the end of the war. In the elections late that year, those states readmitted to the Union elected former Confederate officers to Congress including Alexander Stephens, Vice-President of the Confederacy only a few months before.[878] The radical republicans in Congress were not in agreement with this level of moderation and pushed their own plan for reconstruction. Northern congressmen such as Benjamin Wade, Henry Davis, and Thaddeus Stevens were determined that the South would be punished.[879]

Assassinated on April 15, 1865, Lincoln's death had ushered Andrew Johnson into office. Johnson mirrored Lincoln's attitude toward the defeated states

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[877] Catton, National Experience, 375.
[878] Lawrence H. Gipsin, "The Statesmanship of President Johnson: A Study of the Presidential Reconstruction Policy," *The Mississippi Valley Historical Review*, Vol. 2, No. 3, (December 1915), 368-369. Stephens was elected to the United States Senate the year after the war ended.
[879] Martin Abbott, "James L. Orr on Congressional Reconstruction," *The South Carolina Historical Magazine*, Vol. 54, No. 3, (July 1953), 141-142. See also: Schweikart & Allen, *Patriot's History*, 373.

and wanted to continue Lincoln's conciliatory policy of reconstruction, but did not have the political acumen and influence of the deceased president and was unable to prevent the radicals from having their way.[880] Thaddeus Stevens proposed the appointment of fifteen members of Congress as a Joint Committee on Reconstruction, which first met on December 13, 1865. On that day presidential reconstruction ended, congressional reconstruction began and the South began its years of penance. Packed with radical republicans, the committee refused to seat the recently elected southern delegates, disenfranchised the former Confederates, and upgraded the position of blacks in southern society.[881]

The focus of Reconstruction (1865-1877), as it touches this dissertation, will limit itself to the organized state militias and not consider the many violent criminal gangs that called themselves militias. In the former Confederate states, there were two very different state-sponsored militias. From the end of the war until March 1867, the militia was filled with vindictive former Confederate soldiers who often used militia membership to intimidate and bully black freedmen. "Membership was restricted exclusively to whites," historian Otis Singletary wrote, "and was composed primarily of former rebel soldiers…Their activities were frankly terroristic and were aimed directly at Negroes."[882]

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[880] Catton, *National Experience*, 375-376.
[881] Silverman, 356-357. Reconstruction did not end until 1877.
[882] Otis Singletary, *Negro Militia and Reconstruction* (Westport, CT: Greenwood Publishers, 1957), 5. See also: Hill, 104. "Members of the Southern Organized Militia units immediately brought out their confederate gray uniforms and spent most of their drill periods in more-or-less terroristic activities calculated to keep the suddenly-effulgent Freedmen in a quiescent frame of mind. Disarming the Colored population, many of whom were themselves returned Union soldiers from the Union Colored Regiments, was a continuing operation."

Shocked at the level of violence in the South, Congress attached a rider to an appropriation act on March 2, 1867, which required the disbanding of all militia units in the South. Between 1867 and 1869, there were no organized militias to speak of and much of the South fell into worse turmoil than ever before or since. Further, the radical republican governments that had been imposed on those states needed more protection from the democrat majority than the thinly spread regulars could provide. State governors appealed to Congress to reverse their decision, promising that if the states raised their own militias, the national government could remove its expensive regulars from the South.[883]

Reacting favorably to the promised fiscal savings, Congress repealed its ban on southern militias on March 3, 1869.[884] State governors immediately began recruiting militias composed of "loyal Union men" to protect the new republican governments of the reconstruction from the democrat reactionaries. These units were called the Negro militia because only a few of the members were not blacks.[885]

From the very start, there was serious conflict between the republican governments, supported by the Negro militia, and the conservative democrats (former Confederates) supported by what amounted to a hybrid of the pre-war volunteer militias with criminal gangs. They could not legally call themselves militias so they went in the guise of rifle and sabre clubs, political discussion groups, musical and drama clubs, fraternal orders, even church sewing circles. The

[883] Hill, 108.
[884] Ibid.
[885] Singletary, 15.

largest and best-known groups included the Ku Klux Klan, White League, White Line, People's Club, Red Shirts, and the White Man's Party.[886] These were well-armed groups of veterans who represented the military power of the Democrat party in the defeated South.

The Negro militia proved as corrupt, highhanded, and violent as the white militia had been while performing its daily duties.[887] However, there were some events that stand out among the uncounted arsons, beatings, and murders that occurred prior to the end of reconstruction in 1877. The Negro militia and the democrat quasi-militias were in continuous, armed partisan conflict as an everyday matter, but there were also a few outright battles as Republicans and Democrats struggled for control of the conquered states.[888]

In Louisiana, there were separate large-scale military actions in 1872, 1873, and 1874. During the 1874 conflict, former Confederate General James Longstreet led the Negro militia against the White League in downtown New Orleans during a day long battle in which nearly 10,000 men were engaged with many deaths and injuries.[889] For this and for negative comments Longstreet made about Lee's miscalculations at the Battle of Gettysburg (which were reported in newspapers throughout the South), Longstreet was ostracized from polite southern society.[890]

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[886] Ibid, 129.
[887] Ibid, 42-45.
[888] Ibid, 50-66. Singletary's entire work is an outline of the political conflict of Reconstruction.
[889] Hill, 115. "The clash of arms on Monday, September 14, 1874, was precipitated by word that the steamer *Mississippi,* [secretly] loaded with arms for the White Leaguers, would be seized by the police and militia under Longstreet's command."
[890] Singletary, 122. "The most famous case of social ostracism involved General Longstreet…[he] assumed active command of the Negro militia [in New Orleans]. He was virtually eliminated

In South Carolina, where nearly every white male citizen belonged to either the Ku Klux Klan or the White League, there were battles every year from 1870 to 1877. In North Carolina, large-scale violence was limited to the latter half of 1870. Texas saw a battle in December 1873, and there was a full-scale civil war in Arkansas during April-May 1874. Mississippi tottered on the brink of a civil war during 1875, which was barely averted when the belligerents signed a "Peace Agreement" in Jackson in October.[891]

Historian Jerry Cooper observed, "From the end of the war until early 1867, Southern states organized forces composed largely of Confederate veterans to restore white control and to enforce the notorious Black Codes." The excesses of the white militias resulted in Congress abolishing them in March 1867, which paved the way for reconstruction governors to organize militias composed of their supporters. Congress authorized them to do so in 1869. The Republican reconstruction militias served from 1869 through 1875. "In the end, these soldiers were not sufficient to retain a Republican hold on the South."[892]

On June 18, 1878, Congress passed the *Posse Comitatus Act*, which forbid the use of federal military forces for domestic law enforcement purposes. With the enactment of this law, reconstruction was truly over. The slaves were free, but the

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from acceptable social circles and was pointedly ignored in public by persons whom he had known well."

[891] Ibid, 14, 66, 122. See also: Angela Y. Davis, *Women, Race & Class* (New York: Random House, 1983), 78-80. The cited part of Davis' book deals largely with the abolitionists and suffragists, but also touches on the violence of Reconstruction.

[892] Cooper, 24. See also: Catton, 377-378. The Black Codes "represented the initial southern effort to regulate the economic and social lives of the freed slaves." Congressional abolitionists watched as freedmen returned to something uncomfortably similar to slavery and took control of Reconstruction in order to prevent it.

Confederates had returned to power within their states.[893] Although slavery was now dead, the Democrats again took control of the southern states when reconstruction ended in 1877, and much of the old order survived intact.[894] The violence and terrorism of Reconstruction, sponsored by both whites and blacks, engendered the deep racial hatred and division that still characterizes American society in the present day.[895]

The Fourteenth Amendment

Perhaps the most important event of the Reconstruction Era as it affects Americans today was the ratification of the *Fourteenth Amendment* on July 9, 1868.[896] (See Appendix H for the text of both the Second and Fourteenth Amendments.) To most Americans the amendment is a cherished safeguard of individual liberties. The Bill of Rights lists liberties and protections that the federal government was constrained to observe, but not the states. The Fourteenth Amendment proclaimed dual citizenship, state and federal, for all persons and "nationalized" the Bill of Rights by subordinating the states to its precepts. It also

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[893] Schweikart & Allen, *Patriot's History*, 390-391. "Protection of blacks by the bayonet in the South had run its course…the army was stretched too thin to keep large numbers of troops in the South as civil-rights enforcers. [Congress hoped] that the Southerners would understand that they had entered a new era. Instead, the close election and the subsequent compromise meant that the South now acted as if it had defeated the North's legislature if not her armies."

[894] Catton, *National Experience*, 396-397.

[895] Thomas W. Chittum, *Civil War II: The Coming Breakup of America* (Las Vegas, NV: Geodesics Publishing, 1996), 37-45. Chittum offers a chilling future in which a number of issues, racial hatred prominent among them, will prompt a civil war resulting in the dismemberment of the United States.

[896] Schweikart & Allen, *Patriot's History Reader*, 71. This amendment was proposed in 1866 and ratified in 1868.

required any legislation at any level to apply equally to every citizen and not just a particular group.[897]

Most Americans consider equal protection under the law a positive guarantee of good government. However, to some in the present day "freedom movement," as opposed to the present day "militia movement," the amendment was never lawfully ratified and is not part of the Constitution.[898] Others consider it part of a calculated effort to replace true citizenship with a sort of secret corporation citizenship that leaves people dehumanized chattels.[899]

Widely viewed among members of the freedom movement as a veritable constitutional guru, Anna Maria Riezinger (also known as Anna Von Rietz) is perhaps the best known conspiracy theorist. She espouses a specious, confused, largely imagined Byzantine view of various kinds of American citizenship that have no readily apparent basis in fact and which she offers to the public through her books and essays.[900] Some of these are: American State Citizens, united States Citizens, UNITED STATES CITIZENS, U.S. Corporate Citizen – Debt Slave, Negro Citizen, Federal Citizen, and perhaps others.[901]

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[897] Schweikart & Allen, *Patriot's History*, 374. "This made citizenship national rather than subject to state authority, making a sea change in the understanding of the source of rights in the United States."

[898] Joseph B. James, "Is the Fourteenth Amendment Constitutional?," *Social Science*, Vol. 50, No. 1 (Winter 1975), 3-9. "First and repeatedly, opponents challenged the validity of an amendment proposed by a Congress which represented only 25 of the 36 states. This argument is of special importance because of the requirement…that three fourths of all the states were necessary for ratification." In addition, two of the states that had ratified the amendment subsequently rescinded their ratification (New Jersey and Ohio).

[899] Anna Marie Riezinger and James Clinton Belcher, *You Know Something Is Wrong When….An American Affidavit of Probable Cause"* (Colorado Springs, CO: Create Space Independent Publishing Platform, 2015), 41-52. Page 52 is a summary.

[900] Ibid.

[901] Ibid.

Those who agree with Riezinger are billed as enlightened, freethinking and intelligent citizens who can clearly see a worldwide conspiracy that has been building over the past seven centuries, a fantastic theory that one considers to be so bizarre and implausible as to be ridiculous. Those who disagree with her are held (by her and her disciples) to be uninformed, brainwashed, corporate-government slaves of the Pope, the Queen of England, and the King of Spain. Collectively these three are the "Trust." The Pope controls the Air Jurisdiction, Queen Elizabeth II controls the Sea Jurisdiction (her Admiralty Law is a source of great woe to Americans), and King Felipe VI of Spain controls the Land Jurisdiction. Together, the Trust controls everyone except the enlightened who have taken steps to disassociate themselves from the existing Social Contract.[902]

According to Von Rietz, the Fourteenth Amendment is talking about corporations belonging to the United States (Inc.), an illegal government (the one in power now) operating in the Jurisdiction of the Sea. "It is purposefully, maliciously deceitful in every respect," Von Rietz asserted, "designed to confuse anyone who wasn't in on the scam and aware of the 'federal' meaning of 'person'." The United States Government as most people know it, she argues, is a "group of crooks" who usurped the true government of the Constitution.[903]

The many constitutional militiamen one has spoken with over the past two years uniformly reject this opinion and claim to revere the Constitution along with its Fourteenth Amendment. "Some of those people over there in the freedom

[902] Ibid, 15. A clear account of the "Trust" is on 13-21.
[903] Ibid, 95-96.

movement aren't operating on all their cylinders," militiaman Bellinger said. "I don't know of any militiaman who believes that foolishness, except maybe for some of the millennials (see Chapter Seven)."[904]

The post-war southerners were forced to accept the military fact that their former slaves were now forever free, especially after the ratification of the *Thirteenth Amendment* on December 6, 1865.[905] However, they did not accept the idea of black equality, refused blacks many civil privileges, and imposed many burdens on them, justifying their actions by claiming that the newly freed blacks were not citizens. There was no mention of citizenship in the Thirteenth Amendment and the Dred Scott Decision, still in effect, stipulated that no person descended from blacks could ever be a citizen.[906]

The issue that surfaced immediately was gun control. Southern racism during reconstruction was the point of origin for the modern gun control movement.[907] Southerners did not want blacks to possess guns but many black soldiers had taken their rifles home with them after discharge from the Union army. In every southern state, there were thousands of black veterans with a Springfield rifle leaning against the wall.[908] Almost immediately, confiscation of these arms

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[904] Sandro Bellinger interview by Gerald Van Slyke, January 2, 2014. See also: Robert Churchill, 265. Bellinger makes reference to two distinct militia belief systems that emerged from the modern militia movement during the latter half of the Twentieth Century, the Constitutional Militia and the Millennial Militia. Each has a following. See Chapters Two and Seven.
[905] Schweikart & Allen, *Patriot's History Reader*, 71. The Amendment was both proposed and ratified in 1865.
[906] Catton, National Experience, 326.
[907] Cornell, 167-171.
[908] Hill, 111. See also: Winkler, xviii. "America's most notorious racists, the Klu Klux Klan, which was formed after the Civil War, made their first objective the confiscation of all guns from the newly freed blacks, who gained access to guns in service in the Union Army."

began while the white militia held legal control.[909] Confiscation continued both legally and illegally throughout reconstruction (and after) by groups such as the Klu Klux Klan and the White League.[910] Congress passed the *Civil Rights Act* of 1866 in February which undid the post-war Black Codes, but many in Congress felt more was necessary.[911] Their answer was to apply the Second Amendment to the states through constitutional amendment.[912]

Historian Stephen Halbrook argued that the Fourteenth Amendment grew out of a recognition among the abolitionist members of Congress of an important distinction between free men and slaves. Possession of arms, he wrote, was the hallmark of the free man throughout human history. Dispossession was an aspect of slavery. Abolitionist members of the Committee on Reconstruction wrote the amendment and forwarded it to Congress. "The framers of the Fourteenth Amendment," Halbrook wrote, "[accepted] the abolitionist theories of the Constitution [and] carried the libertarian ideal [of 1774] to its logical conclusion."[913]

The Joint Committee on Reconstruction forwarded to Congress the text of what was to become the Fourteenth Amendment. The House quickly passed it and

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[909] Singletary, 5. A Mississippi post-war militiaman wrote: "The militia of this county have seized every gun and pistol found in the hands of (so-called) freedmen of this section of the county. They claim that the statute laws of Mississippi do not recognize the Negro as having any right to carry arms."
[910] Ibid. .
[911] Cornell, 170-171. "Congress responded to the Southern black codes by expanding the authority of the Freedman's Bureau and passing the Civil Rights Act of 1866. The most important protection of Freedmen's rights passed by…Congress [in 1868] was the Fourteenth Amendment."
[912] Halbrook, 107.
[913] Ibid, 100-101.

sent it to the Senate, which passed it on June 8, 1866, and submitted it to the states for ratification, which they did on July 9, 1868.[914]

The above narration is somewhat defensive of the Fourteenth Amendment, however, the positive impact of the amendment on the democratic functioning of the American Republic is the nearly universally recognized interpretation of both scholars as well as the public at large. The Fourteenth Amendment overturned Dred Scot and allowed black citizenship. It definitively states that all people are citizens of both their state of residence and of the United States. The Fourteenth Amendment requires any local, state, or federal legislation to apply to all the people and not just a particular group. It requires states to exercise due process in the prosecution of all accused persons, in the confiscation of their property, and so forth. It also provides equal protection under the law by extending all the protections of the federal Bill of Rights to the states. The Fourteenth Amendment introduced the federal Constitution into every level of government in the United States.[915] One has difficulty imagining life in the United States today without the Fourteenth Amendment.

The Rise of the National Guard

The organized militia morphed into what today is known as the National Guard over a time roughly between the end of the Civil War and the start of the First World War. In 1865, the unorganized militia resembled colonial and early

[914] Ibid, 378-379.
[915] Schweikart & Allen, *A Patriot's History*, 374.

republican militias; the volunteers resembled select militias such as the trainbands. By 1916, when the nation called forth the National Guard for the Punitive Expedition to Mexico, the organized militia had undergone a partial makeover into a select militia under both state and federal control.[916]

"The National Guard…represented an evolutionary development," Jerry Cooper wrote, "rather than a new state institution."[917] It was organized, trained, equipped, and disciplined exactly as the regular army. A National Guard unit at any level from company to division would blend into a regular field army with a minimum of turbulence. It was very nearly the national militia the federalists had wanted a hundred years earlier.[918] The metamorphosis began when soldiers came home from the Civil War, but it would take another half-century before it would come to fruition.

Many Americans looked back on the staggering casualties suffered by both sides in the Civil War and became convinced that they were largely the result of untrained soldiers and inexperienced officers, men who did not know enough about their job to do it well. "Advocates of the militia," historian Barry Stentiford wrote, "saw the solution in organized companies of militia that trained regularly in peacetime and could then augment the Regular Army in war." Interested people

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[916] Hill, 242, 261. Upon America's entry into World War 1, there were 66,594 National Guardsmen still on active duty left over from the Punitive Expedition to Mexico, and 117,500 who were recently demobilized and had returned to their armories.
[917] Cooper, xiv.
[918] Halbrook, 69-72. "The contemporary argument that it is impractical to view the militia as the whole body of the people, and that the militia consists of the select corps now known as the National Guard, also existed during [Light Horse Harry] Lee's time." Lee convincingly demonstrated that a select federal militia was little more than a standing federal army.

began taking both the organized and unorganized militia more seriously than before. Community groups of both kinds gained new recruits and began drilling, often with financial support from local government. "Although still called militia in most states, these organizations constituted the real beginnings of the National Guard."[919]

The first important event in the metamorphosis of the militia was the establishment of the National Rifle Association (NRA) in 1871 by a group of former Union generals who had been shocked at the poor marksmanship of soldiers from urban areas. They felt that Union troops had expended far too many shots for the number of Confederates killed or wounded during the Civil War.[920]

The NRA had its genesis in Company A, 22nd Infantry Regiment, New York National Guard, and for years maintained a close association with the Organized Militia, by now interchangeably called the National Guard across the country. It was originally chartered by New York to: "…promote rifle practice…and to promote the introduction of a system of aiming drill and target firing among the National Guard of New York and the militia of other states."[921] National Guardsmen found support and encouragement from the NRA when they formed the

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[919] Barry N. Stentiford, *The American Home Guard: The State Militia In The Twentieth Century* (College Station, TX: Texas A&M University Press, 2002), 9.
[920] Mahon, History of the Militia, 119.
[921] James B. Trefethen, *Americans and Their Guns: The National Rifle Association Story through Nearly a Century of Service to the Nation* (Harrisburg, PA: Stackpole Co., 1967), 10, 32. The American NRA was a frank copy of the National Rifle Association of Great Britain. "In the face of this threat, the British War Ministry had organized a Volunteer Force of citizen-soldiers similar to our volunteer militia units of the several states…the lack of combat readiness of these militiamen was apparent. If the Volunteers were to be any use [for home defense] they had first to learn to shoot." The British NRA grew out of this need.

National Guard Association (NGA) in October 1879.[922] Both organizations often shared a similar leadership and membership.[923]

The role of the NRA was to train members of law enforcement agencies, the armed forces, the militia, and people of good repute in marksmanship and in the safe handling and efficient use of small arms. The NGA had two missions: "To secure federal assistance and a role as a front-line reserve to the Regular Army; and to retain legal status as a state military force in peace-time, which gives the Guard freedom from federal control."[924] With such complementary visions, it is no wonder that the early NRA and NGA closely supported one another's goals.[925]

The NGA moved into the political arena immediately. It sponsored the *Militia Reform Bill of 1880*, which failed. It supported another in 1886 that also failed because of congressional apathy in the absence of any overt military danger. Apathy was the first of three obstacles that plagued the NGA. "What is the necessity of having any fighting men now?" a congressman asked in 1886.[926] Apathy was coupled with, "explicit opposition from defenders of state's rights, who

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[922] Ibid. A parallel organization called the Interstate National Guard Association formed in 1897 but folded into the NGA in 1899.
[923] Martha Derthick, *The National Guard in Politics* (Cambridge, MA: Harvard University Press, 1965), 20. "Officers who shared an interest in strengthening the Guard met in Richmond in 1878, again in New York in January 1879, and a third time in St. Louis in October 1879. The NGA was founded at the third meeting…" See also: Hill, 322. General George Wingate was a founder of both the NRA and NGA. He was concurrently president of both organizations for some years.
[924] Derthick, 3.
[925] Mahon, *History of the Militia*, 119. "Eight years before the founding of the NGA, a group of New York Guard officers organized the National Rifle Association 1871. One of the founders was George W. Wingate, [who later became the] first president of the NGA…Wingate set out to draw the National Guard and regular army closer together. He achieved this by establishing a series of [NRA] rifle competitions in which the Guard and the regular army [and many civilians] competed vigorously against each other."
[926] Dethrick, 20.

objected to any new federal action regulating the militia."[927] In 1893 the southern states were able to block a lengthy and comprehensive militia reform act fearing that it gave the president too much control over the militia. The third obstacle in militia reform was antimilitarism. "A representative from New Jersey attacked the [militia reform] bill of 1894 on grounds that it was backed by [European inspired militarists]."[928]

The NGA and other backers did score one important victory early on. Since 1808, Congress had been contributing $200,000 per year to help arm the militias of the several states. The militia bill that failed in 1886 carried a rider doubling this amount. The bill died but the rider survived and became law in 1887 and the annual expenditure became $400,000.[929] However, it was tough going for the organized militia in its attempt to acquire sufficient funds to enable it to evolve into the front-line reserve of the army. Other than the three obstacles above, the militia also found itself used to control labor strife more and more often, which resulted in a considerable amount of rancor and loss of support from the public. Denounced by labor leaders and an unfriendly press as "industrial policemen" in the pockets of the big corporations, militiamen (National Guardsmen) were widely hated during this period. Yet, it was labor unrest that finally resulted in increased appropriations and in militia reform.[930]

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[927] Ibid, 21.
[928] Ibid.
[929] Mahon, *History of the Militia*, 119. "The first major legislation it [the NGA] pushed successfully was an act of 1887 that raised the annual federal appropriation to arm the Guard to $400,000…At least one hundred active Guardsmen [petitioned] every senator and congressman."
[930] Cooper, 44. "William H. Riker was the first to argue that the National Guard garnered state aid by serving as industrial policemen from 1877 on. Riker, however, ignores the use of antebellum

For organized militiamen in the North, the labor unrest between 1877 and 1897 was as challenging as the conflict in the southern states during Reconstruction. The Negro militias were the buffer between the reconstruction governments and reactionaries, and the northern militias served as the buffer between ruthless capital and incendiary labor unions.[931] The situation was made more complicated by the fact that the labor movement of that time had acquired parasitical elements of which most Americans disapproved: anarchists, nihilists, Marxists, and violent racists and other haters.[932]

The era began with the Great Railroad Strike of 1877 and did not end (and then not entirely) until the Spanish-American War. It was a time of severe strain for the military, particularly for the guardsmen/militiamen who often found themselves looking over their rifle sights at friends, neighbors, or relatives who might never forgive them. A second problem was that the regulars and the guardsmen often found themselves in sympathy with the laborers. "At times they were so sympathetic toward the strikers," Hill wrote, "as in the Great Railroad Strike of 1877, that they refused to use their weapons…[and took] casualties, rather than fire into the rioters."[933]

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uniformed militia to control civil disorder." See also: Hill, 125-131. [During this time period,] "Muckrakers and other self-appointed custodians of the American conscience have been quick to champion the rights of "free Americans" to picket and promote violence, but they have been reluctant to recognize the rights of other "free Americans" to volunteer in support of orderly, legal procedures and for the protection of property, liberty and life."

[931] Hill, 125.

[932] Ibid, 126.

[933] Ibid.

A third source of criticism came from industrial moneyed interests who felt the guard should act ruthlessly and kill or imprison the rioters. A fourth came from local law enforcement agencies who inevitably criticized the guard for acting without enough restraint or with too much restraint. These criticisms were made more bitter by the fact that both industrialists and law enforcement consistently offered their biased accounts of disagreements with the guard to the press.[934] The Great Railroad Strike of 1877 and the Pullman Strike in 1894 will be touched on since both illustrate the role of the militia in labor disputes.

Jay Gould & Company, the largest and wealthiest financiers in the United States (they had financed the Union war debt), went bankrupt and sent the economy into a free fall on September 18, 1873. In a financial cataclysm called the Panic of 1873, 89 railroads went bankrupt, 18,000 businesses failed, and the New York Stock Exchange closed for ten days.[935] "By 1877 it was estimated that one-fifth of the nation's workingmen were completely unemployed," Joseph Rayback wrote, "two-fifths worked no more than six or seven months a year, and only one-fifth worked regularly. By the winter of 1877-1878 the total unemployed had reached three million."[936] These economic conditions prompted the Great Railroad Strike of 1877.

The strike erupted when the owners of the Baltimore & Ohio Railroad cited the poor economy as a reason to curb their workers' wages even further. It began

[934] Ibid, 126-127.
[935] Rayback, 129.
[936] Ibid.

on June 17 in Martinsburg, West Virginia, when the B&O Railroad announced the third wage cut (this one was 10%) in a year. The workers barricaded the tracks and refused to allow any trains to move until the railroad rescinded the wage cut. The governor called forth local militiamen to break the strike, which quickly turned into an armed confrontation. When the local militia refused to fire into the crowd of strikers, the governor called forth state militiamen and petitioned Washington for federal regulars. The strike quickly spread throughout much of the industrial Midwest and full service was not restored to the B&O until July 22.[937]

Pennsylvania Railroad workers went on strike on July 19, occupying the yard at Pittsburg and refusing to allow any trains to move. The governor called forth the Alleghany County Militia, which not only refused to control the strikers but also joined them. "Here [Pittsburg] you had men with fathers, brothers, and relatives mingled in the crowd of rioters," said Major-General Alfred Pearson of the Pennsylvania National Guard. "The sympathy of the people, the sympathy of the troops, my own sympathy, was with the strikers. We all felt that these people were not receiving enough wages."[938]

The governor's response was to send 600 militia from Philadelphia to Pittsburg who killed twenty-six strikers soon after their arrival. A vengeful mob forced the militiamen to take refuge in the rail yard roundhouse, which was soon ablaze. The militia retreated from the city during the night and the mob took control

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[937] Rayback, 134.
[938] Robert V. Bruce, *1877: Year of Violence* (Indianapolis, IN: Bobbs-Merill Publishing, 1959), 135, 138, 143.

of the rail yard. They spent the next day burning and looting railroad property and committed five million dollars' worth of damage.[939]

The strikes at Martinsburg and Pittsburg were only the initial disturbances of 1877. A few of the others were in Scranton, Reading, Harrisburg, Toledo, Philadelphia, New York, St. Louis, Chicago, San Francisco, and Buffalo. Many workers in other industries (ironworkers, miners, press operators, etc.) supported the railroad men by throwing sympathy strikes across the region. It was not until August 2 that order was completely restored. Militiamen, and sometimes regulars, appeared at almost all of the disturbances. Property damage topped $10 million, hundreds had been killed (mostly by the militia), and many others were injured.[940]

Since the strikes had all been uncoordinated local affairs, the disturbances gained no lasting improvements for the laborers in wages or in working conditions, but they did uncover the deep level of fellow feeling among workers and generated a sense of labor solidarity that would make itself felt in the future. "The Railway Strike of 1877 was significant primarily because," Rayback wrote, "it gave workingmen a class consciousness on a national scale."[941]

Violent strikes continued to characterize labor relations during this time. The Haymarket Riot (1884) is the best remembered because there was a full house of nationally-known anarchist and socialist leaders in attendance. There was a bombing, followed by shootings, then an emotionally charged trial followed by

[939] Ibid, 134-135.
[940] Ibid.
[941] Ibid, 136.

hangings. It occurred in Chicago and the police there handled the matter, no National Guardsmen were involved.[942] The militia was involved, however, when the Pullman Company laborers went on strike near Chicago on June 26, 1894. The company had been struggling since another panic in 1893 and had reduced wages but had not reduced the rent on the company houses the workers lived in. The Pullman workers struck and, along with the railroad unions, staged a nation-wide boycott of Pullman cars. The National Guard was deeply involved in this strike.[943]

The 15th U.S. Infantry reached Chicago on July 3, much to the anger of Governor John Altgeld who protested that he had not asked for federal troops and they were not welcome. Altgeld called forth five regiments of National Guardsmen from Chicago and other units from around the state. In little more than a day, he had more than 4,000 militiamen in town.[944]

Soon after they arrived in Chicago, the 2nd Illinois Infantry (NG) fired into the crowd, "in self-defense, its commanders insisted -- killing twenty or thirty people and wounding many more." The strike fizzled out after that.[945] Like the Strike of 1877, the Pullman Strike swept across many places in the nation and severely disrupted railway travel, including the delivery of the U.S. Mail (the federal government's interest). California, Michigan, and Iowa, all called forth militiamen during the Pullman Strike in addition to Illinois. Militia/National

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[942] Catton, *National Experience*, 458. Eight anarchists were found guilty. Four were hanged, one committed suicide, and three went to prison.
[943] Mahon, History of the Militia, 117.
[944] Ibid.
[945] Ibid.

Guardsmen were called forth 481 times between 1865 and 1906. Of these, 156 embodiments were in reference to labor disputes.[946] As mentioned previously, the citizen soldiers (whether their state called them National Guardsmen or militiamen) were despised by a large sector of the public for being faithful to their oath of allegiance and for obeying the orders of the lawfully elected officials their fellow citizens had placed in authority over them. It was not the first time, nor would it be the last time, American soldiers faced such unreasonable antagonism from other Americans.

The Naval Militia

The naval militia had existed sporadically since the colonial era but never as an entity separate from the traditional militia until the decade prior to the Spanish-American War (1898). Militiamen who lived along coastal areas had often operated harbor craft to provide maritime security in ports and along the ocean coast, particularly after Thomas Jefferson dry-docked the ocean-going navy in favor of a force of harbor gunboats.[947] As events between the United States and Great Britain unfolded in the background of the Napoleonic wars, America's need for citizen sailors became more and more obvious. Jefferson's supporters were loath to increase military funding and defeated a bill to create a naval militia

[946] Ibid. National Guardsmen always loathed "strike duty" and never considered themselves law enforcement. Their spokesperson, the NGA, continuously stressed the fact to the public that their primary purpose should be to serve as a front line reserve for the army.
[947] Ibid, 64. "Jefferson kept the army small, dry-docked most of the ocean-going navy, and secured authority to build 263 gunboats, which, manned by naval militia, were to protect the coasts."

introduced in Congress by Federalists.[948] However, when war with France began looming on the horizon, the navy and marine corps were resuscitated and took center stage away from Jefferson's harbor navy. They never again atrophied to the point they had under Jefferson's administration.[949]

The Union Navy expanded tremendously with the advent of the Civil War. Most of its sailors came from the merchant marine, civilians who were expert in the sailing arts. "These Civil War veterans from the Union Navy," Hill wrote, brought back to civil life the concept that a civilian might well serve…in a naval rather than in a military capacity."[950] During the 1880s the "New Navy" movement swept the country at the same time the National Guard was beginning to gain momentum. Supporters unsuccessfully sought federal legislation to establish a naval militia in 1880 and in 1888. Abandoning the federal effort, they turned to their states where their efforts met with success.[951]

Massachusetts became the first state to recognize statutorily its naval militia as a force independent of the land force. On March 17, 1888, the General Court authorized a formation called The Naval Battalion of the Volunteer Militia, composed of four companies which were each capable of manning a modern warship. New York's legislature authorized The Provisional Naval Battalion of the New York National Guard on July 14, 1889.[952] By the time the Spanish-American

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[948] Hill, 140.
[949] Stewart, 121-122. In 1808, "Congress voted the U.S. Marine Corps into existence."
[950] Hill, 141.
[951] Ibid.
[952] Ibid. Twenty-six states eventually formed naval militias but only five still maintain active naval forces now. They are Alaska, New York, South Carolina, Texas, and Ohio.

War erupted, fifteen coastal and Great Lakes states had organized formal naval militias.[953]

Congress finally became interested in the naval militia and first appropriated money to support it in 1891. The Navy turned over several old warships for training purposes to the naval militia that year as well, and added an Office of Naval Militia to its headquarters staff. Federal support resulted in a steady increase in numbers of citizen sailors. They totaled 1,106 in 1891, 2,695 in 1895, and 4,445 when the Spanish-American War began.[954]

The Militia in the Spanish-American War and the Philippine Insurrection

Decades of unspeakable atrocities had characterized the Spanish administration of Cuba. In 1895, the native peons rebelled and conditions quickly became even worse. The American yellow press harped daily about Spanish brutalities (some were real, some were not, most were overstated) committed against defenseless peasants and many Americans came to feel a moral responsibility to stop such inhumanities only ninety miles from their shores.[955] The

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[953] Chambers, 485. See also Hill, 142. These states were California, Connecticut, Illinois, Louisiana, Maryland, Massachusetts, Michigan, New York, New Jersey, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, and Georgia. "Florida and Virginia belatedly organized and contributed units early enough in 1898 to get their personnel into active duty for the war."

[954] Hill, 145.

[955] George O'Toole, *The Spanish War* (New York, Norton & Co., 1984) 57-58. The Spanish commander in Cuba, General Valeriano Weyler, forced Cuban peasants into concentration camp where, during 1895 to 1898, more than 400,000 of them died miserably, "at least a third of the rural population" of the island. See also: Alejandro de Quesada, *The Spanish-American War and Philippine Insurrection 1898-1902* (Oxford, UK: Osprey Publishing, 2007), 5-6.

sentiment grew throughout the country that America must rescue the Cubans from the truly horrible condition to which the Spanish had reduced their lives, and that an American army conquering and occupying the island itself would best accomplish this.[956]

In addition, but not as important as the genuine sympathy for the oppressed Cubans, American business interests smelled the sweet savor of the substantial profits that would accrue through a conflict between Spain and the United States and the resulting increase in Caribbean trade unfettered by Spanish interference.[957] Spain was not the only colonial power in the region. Germany's meddling and hunger for a coaling station in the Caribbean began to threaten the dreams of those profits during the last half of the century. "Germany is the power with whom I look forward to serious difficulty…[and] shows a tendency to stretch out for colonial possessions," Theodore Roosevelt wrote to W.W. Kimball, "which may at any moment cause a conflict with us."[958]

Tensions escalated and Congress began to prepare for war by appropriating $50 million on March 9, 1898, to use in the acquisition of necessary supplies for the military. If war broke out, Congress wanted the army and navy to be ready. The congressmen realized they had waited too long for preparedness, however,

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[956] Harold Evans, *The American Century* (New York: Alfred Knopf, 1998), 52-54. "Most of the 800,000 whites and 600,000 blacks in Cuba lived lives that were short, brutish, and nasty."
[957] Julius W. Pratt, American Business and the Spanish-American War, *The Hispanic American Historical Review*, Vol. 14, No. 2 (May 1934), 163-201. Pratt notes that many American businessmen feared that a Spanish War would reignite the Panic of 1893. See also: Lens, 151-152. Lens argued that the profits American businesses stood to gain from a Spanish War was the true motivating factor for the war.
[958] David Traxel, 1898: The Tumultuous Year of Victory, Invention, Internal Strife, and Industrial Expansion That Saw The Birth of The American Century (New York: Alfred Knopf, 1998). 94.

when the battleship *Maine* blew up and sank in Havana harbor only a week later (March 15).[959] A Board of Inquiry determined that an underwater torpedo caused the explosion, and Americans had no reservations about embracing a leap of faith to blame Spain for the loss of the ship and for the deaths of 260 American sailors and marines. On April 25, 1898, the United States declared war on Spain.[960] Most Americans felt it was a moral crusade, but a few considered it a jingoistic war of aggression similar to the war with Mexico.[961]

Historian Jim Hill saw it as neither, or perhaps as both. The border areas between American and Spanish territories in the new world had always seethed with ill feeling, he wrote. The *Maine* was an already-obsolescent second-class battleship. "There would have been no war if it had it blown up in an English, French, or Italian port, only an investigation. But in a Spanish port," he wrote, "it was a hot blast of salt on an old, international canker sore that was blood-red raw from more than a hundred years of irritation."[962]

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[959] Hill, 151.

[960] Mahon, *History of the Militia*, 126-127. See also: O'Toole, 400. A subsequent Board of Inquiry agreed with the initial assessment in 1911 when the Maine was raised, towed out to sea, and allowed to sink. A 1976 Board of Inquiry overturned the external explosion explanation and definitively demonstrated that an internal explosion caused by heat and coal gas sank the Maine, not a Spanish mine or torpedo.

[961] Evans, 57. "The arguments for Manifest Destiny were not mere rhetoric. America became genuinely elated that it might civilize an alien people, a challenge and an adventure that appealed to Americans." See also: Hill, 152. "[Spain was] a constant threat to the Monroe Doctrine. Spain's tyranny and inhumane oppressions in Cuba more than once resulted in Americans facing firing squads before traditional stone walls. These medieval tyrannies in the remnants of a decadent empire became a stench in the nostrils of the New World." See also: Frank Freidel, "Dissent in the Spanish-American War and the Philippine Insurrection," *Proceedings of the Massachusetts Historical Society*, Third Series, Vol. 81 (1969), 167-184. There were some, however, who objected to the war. "And, as during the War of 1812 and the Mexican War, a focus of protest was New England."

[962] Hill, 151.

The Spanish were not the sole providers of irritation during the 1890s. The regular army and the guardsmen had bickered viciously over the role of the guard throughout the last decade of the nineteenth century. The guardsmen wanted to be a front line reserve for the regular army and when the Spanish war began they demanded the government call them forth first, ahead of anyone volunteering from civilian life with no military training or affiliation. The regular army, backed by Congressman A.T. Hull of Iowa, wanted to exclude the National Guard from the war and to increase the number of regulars to 104,000 men by creating more regiments and by adding 75 men to each of the existing regiments.[963] Hull believed an army of that size could fight the war by itself and do it better than the state militias. Any additional soldiers needed would be directly recruited as a federal militia bypassing the state structures. He introduced a bill to put this plan into effect on March 13, but Congress rejected it on April 7, 1898.[964]

The Guard's plan made more sense to both President McKinley and Congress and on April 22 the *Volunteer Act* was passed which allowed entire militia units (National Guard) to enlist as complete units by volunteering to enter the army together as federal volunteers. The soldiers could keep the officers they had elected up to regimental commanders (colonels). State governors appointed colonels to command the volunteer regiments (they mostly appointed National Guard colonels to those positions) and the War Department selected the generals.[965]

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[963] Cooper, 98.
[964] Mahon, History of the Militia, 126.
[965] Ibid.

This act also reaffirmed the military obligation of all men aged 18 to 45 and, to the chagrin of the regulars, it reconstituted the Army of the United States into two components: regulars and volunteers. Federal and State Volunteers had served throughout the century, particularly during the Civil War, without formal designation as a force within the army rather than as an adjunct to the army until the Volunteer Act. This action of Congress essentially recognized four lawful components within the Army of the United States: the regular army, the organized militia (National Guard), the U.S. Volunteers (drawn from the National Guard), and the unorganized or community militias.[966]

"As of April 1, 1898," historian George O'Toole wrote, "the U.S. Army consisted of 2,143 officers and 26,040 enlisted men."[967] This was not enough to fight a war against Spain so "…the nation called on its two traditional manpower sources: volunteers and the militia."[968] On April 23, one day after the enactment of the Volunteer Act and two days before the declaration of war, the president issued his "*Call to the States*" for 125,000 volunteers. More than 100,000 National Guardsmen responded during the following two weeks. McKinley called for an additional 75,000 men on May 26, a quota that was also quickly filled.[969] The army, since it now had to take these state militiamen, wanted to use them to garrison

[966] Ibid. See also: Hill, 154-155, 157-158.
[967] O'Toole, 197.
[968] Traxel, 124.
[969] Mahon, *History of the Militia*, 127. See also: Hill, 157-158.

coastal defense forts but the pressures of the war – political as well as tactical – forced them to include the citizen soldiers in operational matters.[970]

As one might anticipate, a conflict quickly developed over recruiting black volunteers. Only seven states did so: Alabama, North Carolina, Virginia, Illinois, Kansas, Indiana, and Ohio. These men were equipped and trained in the same manner as the white soldiers, but not many of them got to Cuba. The exceptions were the 8th Illinois and 6th Massachusetts. All four of the regular army's black regiments did serve on Cuba, but Company L of the 6th Massachusetts was the only black volunteer unit to see combat.[971]

Guard enrollment averaged 114,000 men on the day the war started, but an energetic Guard recruiting program quickly augmented that number. There was 100,000 infantry, 4,800 cavalry, and 5,900 artillery. State troops assigned in small support units scattered around the country accounted for the rest.[972] By war's end, 164,747 enlisted guardsmen and 8,207 officers had served. They provided: 139 infantry regiments, two cavalry regiments, one regiment of heavy artillery, 41 separate batteries of light artillery, 11 separate infantry battalions, 40 separate companies of infantry, and 16 separate troops of cavalry.[973]

Only two state regiments participated in the brief Cuban campaign. The large numbers of volunteers who answered the President's call, however, provided

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[970] Ibid.
[971] Marvin Fletcher, "The Black Volunteers in the Spanish-American War," *Military Affairs*, Vol. 38, No. 2 (April 1974), 48-53.
[972] Ibid, 125.
[973] Hill, 164-165.

the bulk of soldiers for the operations in Puerto Rico and the Philippine Islands. "The expeditionary force to Puerto Rico," Dan Hill wrote, "…included ten infantry regiments, eight of them state units. Before the end of May, state units were on their way to the Philippine Islands." Fifteen National Guard regiments were sent across the Pacific. These men were the majority of the land forces in the Pacific. "These volunteers remained well beyond the legal limits of their enlistments," Hill continued, "to fight the first months of the ensuing Insurrection. Most did not return to the United States until May or June 1899."[974]

The fledgling naval militia fought in the war as well as the land militia. Operating under the same laws as the land militia, and under naval regulations, the ships crews enlisted together into the navy and were allowed to serve together. Militiamen crewed six auxiliary cruisers (six-inch guns) and many served on other ships as well. Ship captains and executive officers of militia-crewed vessels were assigned by the regular navy.[975] The six cruisers were: USS *Yosemite* (Michigan), USS *Yankee* (New York), USS *Dixie* (Maryland), USS *Badger* (Maryland), USS *Prairie* (Massachusetts), and USS *Resolute* (New Jersey). These ships were crewed and made ready for sea in the weeks prior to the start of the war. Once it began, they reinforced the regular navy and all six came under fire at some point.[976]

Spain broke diplomatic relations with the United States on April 21 and declared war on April 23. The Americans responded on April 25, 1898, exactly

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[974] Ibid.
[975] Ibid, 142.
[976] Ibid.

fifty-two years after the Mexican War began, and for the next 113 days, the United States would engage a major European power in naval and land actions around the globe.[977] There were two theaters of operation, close-by Cuba and the far reaches of the Pacific Ocean area. The shooting started on May 1, 1898, on the other side of the world, when Commodore George Dewey destroyed the Spanish fleet at Manila Harbor in the Philippine Islands. Four American cruisers and two gunboats opened fire on a Spanish squadron of six cruisers and one gunboat at 5:41 a.m.; the Spanish fleet was completely destroyed by noon and Dewey began blockading Manila.[978]

U.S. Marines were sent ashore at Guantanamo Bay in Cuba on June 10, 1898, and established the first American presence on the island. USS *Yosemite* (Michigan) was part of the squadron that provided naval gunfire support to cover the marine landing. A few days later, USS *Prairie* (Massachusetts) and USS *Badger* (Maryland) overhauled the Spanish cruiser *Alfonso XII* and destroyed her with gunfire.[979]

Back in the Philippines, partisan leader Emilio Aguinaldo and his forces proclaimed Philippine Independence on June 12 and established the Philippine Republic. Aguinaldo expected that the Americans would drive out the Spanish and then depart, but at war's end the Americans merely replaced the Spanish colonial

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[977] Quesada, 6. The U.S. Congress voted to declare war on April 25 but backdated it to April 21, the day Spain broke diplomatic relations with the United States.
[978] Traxel, 136-138. There were ten American and 371 Spanish casualties during the battle. See also: Max Boot, *The Savage Wars of Peace: Small Wars and the Rise of American Power* (New York: Perseus, 2002), 103.
[979] Hill, 143.

government, a move that initiated a war between the Philippine nationalists and the Americans.[980]

The cruiser *Charleston*, accompanied by two (or perhaps three – sources differ) troop transports filled with National Guardsmen, was enroute to the Philippines when it stopped in the Mariana Islands on June 20 to shell a Spanish fortification on Guam. A handful of marines and two companies of Oregon militia swarmed ashore the following day and the Spanish garrison surrendered without loss of life on either side. Sixty Spanish soldiers were transported to the Philippines as prisoners of war and the Marianas became the first American possession in the Pacific.[981]

An American army of 16,888 men, commanded by Major General William R. Shafter, landed at Daiquiri, Cuba, on June 22. By the time of the capture of Santiago de Cuba, Shafter's command would grow to 14,412 regulars and 7,443 citizen soldiers.[982] On June 23, the invaders and defenders fought an inconclusive skirmish at Siboney and another more serious skirmish at Las Guasimas on the following day. Both armies suffered their first substantive casualties at Las Guasimas, 76 Americans and 37 Spaniards were killed.[983]

On June 28, 1898, USS *Yosemite* and its crew of Michigan militia engaged a Spanish ship, *Antonio Lopez*, off San Juan, Puerto Rico. *Yosemite* drove *Lopez*

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[980] Boot, 104-105.
[981] O'Toole, 252.
[982] Hill, 167. These were more regulars than any American officer had ever commanded in the field at one time.
[983] John Trebbel, America's Great Patriotic War With Spain: Mixed Motives, Lies and Racism in Cuba and the Philippines, 1898-1915 (Manchester Center, VT: William Manchester Co., 1996), 174-179.

ashore and destroyed her with gunfire. Two Spanish cruisers – *Isabel II* and *General Concha* – tried to help *Lopez* during the battle, but *Yosemite* exchanged brisk gunfire with them and with shore batteries on Puerto Rico and drove the two Spanish ships back into the safety of the harbor.[984]

Regulars and volunteers attacked Spanish positions on July 1, 1898, at Aguadores, El Caney, and at San Juan and Kettle Hills in the Santiago Heights on Cuba. The American attacking force that day was about twice the number of Spanish defenders, but American casualties numbered about twice those of the Spanish, a fact due largely to the military realities of attacking a fortified position uphill through open terrain with no cover. Another issue that aided the Spanish soldiers was that most of them were acclimated to the tropical Cuban heat and diseases. In addition, Spanish soldiers carried a much better rifle than the Americans, the excellent Model 1893 Mauser, a powerful, flat shooting modern repeating rifle that used smokeless powder. A few American regulars, and almost all the volunteers, were armed with single shot, black powder relics of the Indian Wars, the Model 1873 Springfield.[985]

Two days later, July 3, a Spanish naval squadron anchored at Santiago de Cuba attempted to break through the American ships blockading the harbor, including USS *Yankee* manned by New York militia. The Americans, commanded by Rear Admiral William Sampson, destroyed all six Spanish ships in one of the

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[984] Hill, 143. Another source cites a different vessel as the ship that fought alongside *Isabel II* instead of the *General Concha*.
[985] Boot, 108. See also: Hill, 167-168.

most lopsided naval victories in history. Spanish personnel loses number 151 killed, 323 wounded, and 1720 captured. The Spanish neither sank nor seriously damaged any American ships, and only one American died (of a heart attack) and one was wounded.[986]

Once the Spanish fleet no longer presented a threat, the American army invested the city while the navy blockaded it. Spanish resistance at Santiago ended on July 17 and the governor of Cuba surrendered the island and the Spanish soldiers on it.[987] American ships entered Nipe Bay on July 21 and sank a Spanish cruiser they found at anchor. Two infantry regiments (the 6th Illinois and 6th Massachusetts) and four light batteries rendezvoused at the Bay, and sailed for Guanica, Puerto Rico, where they went ashore on July 25. Four infantry regiments (16th Pennsylvania, 2nd Wisconsin, 3rd Wisconsin, and elements of the 6th Illinois) went ashore at Ponce three days later.[988]

A motley collection of state artillery companies and cavalry troops as well as one regiment of regulars (6th Cavalry) and a company of regular infantry went ashore at Arroyo on July 31. Reinforcements arrived at Arroyo on August 3 in the guise of three infantry regiments (3rd Illinois, 4th Ohio, and 4th Pennsylvania).[989] The USS *Dixie*, crewed by Maryland militia, received the surrender of the city and port of Ponce on July 27. The island was secured by the end of August.[990]

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986 Quesada, 6. See also: Trebbel, 227-236. See also: Chambers, 636.
987 Chambers, 195.
988 Hill, 168-169.
989 Ibid.
990 Ibid, 143.

In the huge Pacific theater, the navy, marines, and volunteers fought the war almost single handedly. The regulars were concentrated in Cuba and very few were available for duty in Asia. More than a month prior to the landings in Cuba, President McKinley had sent 5,000 troops to the Philippines. Eighty percent of them were National Guard volunteers from California, Oregon, Nebraska, Colorado, Wyoming, Utah, and Minnesota. Shortly after five thousand more arrived in a second increment, state militiamen from Kansas, South Dakota, North Dakota, Montana, Washington, Iowa, Tennessee, and New York.[991] An army of Philippine rebels under Aguinaldo supported these men.[992]

After a strenuous land campaign, the American Army captured Manila on August 13, 1898, the day after a ceasefire officially ended the fighting between Spain and the United States.[993] The Filipino rebels played an important, perhaps decisive, role in the campaign and had fought well, but the Americans would not allow Aguinaldo's army to enter the city before the Spaniards had a chance to evacuate. Americans feared the rebels would massacre the surrendered Spanish; the Spanish feared it also. American commanders had promised at the surrender talks to keep the rebels out of the city until the Spanish were gone. Aguinaldo was furious but camped his army outside the city and waited.[994]

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[991] Mahon, History of the Militia, 131-132.
[992] Boot, 108. The rebels numbered about 80,000 men, 20,000 of whom were present at the upcoming action at Manila.
[993] Trebbel, 288. The United States and Spain had agreed to a worldwide cease-fire on August 12, 1898.
[994] Boot, 104-105.

On February 4, 1899, Americans and rebels exchanged shots and what became known as the Second Battle of Manila was soon underway and continued into the following day. The First Philippine Republic declared war on the United States on June 2, 1899, a conflict that Americans called the Philippine Insurrection.[995] American soldiers began flooding into the Philippines. Volunteers fought the first half of the war, the second half saw the regulars replace the volunteers. "By June, 1899," Mahon write, "only half of the 120,151 soldiers in the Philippines were state volunteers…Last to leave were the 20th Kansas, 1st Washington, 51st Iowa, a troop of Nevada cavalry, and the 1st Tennessee."[996]

The war was a bitter stalemate until early 1902 when a frustrated U.S. Army, acting under the authority of General Orders 100, began quietly conducting officially sanctioned atrocities on a wide scale in an effort to destroy the rebels.[997] "Within a comparatively few weeks after this policy was inaugurated," a War Department report stated, "the guerilla warfare ended."[998]

Brigadier General Jacob Smith provided an example of General Orders 100 in operation. To pacify Samar Island, he ordered his men to kill everyone over the age of ten. "I wish you to kill and burn," he ordered his subordinate officers. "The more you kill and burn the better you will please me. I want all persons [capable

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[995] Ibid, 108-109.
[996] Mahon, History of the Militia, 133.
[997] Boot, 115-116.
[998] O'Toole, 395. "General Arthur MacArthur…on December 20, 1900…declared martial law over the islands and invoked General Orders 100. Issued by President Lincoln in 1863 and widely imitated by other countries since…GO 100 held that combatants not in uniform…could be subject to the death penalty."[998]

of bearing arms] killed…"[999] The new rules of engagement worked and on July 4, 1902, President Theodore Roosevelt announced the end of the Insurrection.[1000]

The war cost America 4,234 casualties while about 20,000 rebels were killed and 200,000 civilians. "A larger percentage of the Filipino population died in three years of organized resistance than did that of Vietnam in ten years of war."[1001] The Insurrection continued sporadically in the deep jungles until the remaining rebels, mostly Moro tribesmen, were killed at the Battle of Bud Bagsak on June 15, 1913.[1002]

Annexation of the Philippine Islands was not a war aim of the McKinley Administration and there was a tremendous amount of public resistance to the idea. Many did not want to see the United States become an empire. They saw such an aggrandizement as an inevitable death knell of republican government and could point to historical examples to prove their point.[1003] "The Filipinos cannot be

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[999] Ibid, 394. "He [Smith] told his men to turn the island of Samar into 'a howling wilderness.' And they did."

[1000] Ibid, 395. See also: Edmund Morris, *Theodore Rex* (New York: Modern Library Publishing, 2002), 127. General Smith was court martialed for the Samar Island incident. "Elihu Root delivered [to Roosevelt]…a transcript of General "Kill and Burn" Jake Smith's court-martial…[his] fellow officers predictably found him guilty only of excessive zeal, and they 'admonished' him to mend his ways. Roosevelt was tempted to accept the verdict…[because he] had no illusions about the nature of guerilla warfare. [But Smith] had condoned the killing of women and children. [Roosevelt] ordered his prompt dismissal from the army."

[1001] Evans, 57.

[1002] Chambers, 550. "Postwar disorders took years to suppress; sporadic military campaigns against bandits rebels, and Muslim tribesmen, or Moros, continued until 1913."

[1003] Evans, 55. "[Opponents] were especially vehement in their view that the Constitution could not follow the flag. 'Mongrel and semi-barbarous' tropical people could never be part of the Union, and since they were not ready for self-rule, either, the United States would be doomed to be a despotic colonizer." See also: O'Toole, 384. McKinley tried to reassure the people that annexation of the Philippines would not alter the character of the national government. "We want to preserve carefully the old life of the nation, -- the dear old life of the nation," he told a crowd in Iowa. "But we do not want to shirk a single responsibility that has been put upon us by the results of the war."

citizens without endangering our civilization," William Jennings Bryan said, "[and] they cannot be subjects without imperiling our form of government."[1004] They viewed annexation as a declaration of perpetual war with Filipino partisans and noted that the Spanish had spent enormous amounts of money on the islands over the centuries with very little return.[1005]

On the other hand, many saw the conquest of the Philippines as an opportunity to evangelize the Filipinos from the darkness of Catholicism and paganism into the light of Protestant Christianity.[1006] Further, the islands were paid for with American blood and returning them would be breaking faith with the fallen. In addition, the French, British, and Germans all wanted the Philippines. The islands would have provided raw materials, a solid commercial base for further trade expansion, and new naval coaling stations enabling the Europeans to project military power further into the orient.[1007]

Perhaps most telling was the belief among Americans, mostly correct, that the Filipinos were unable to govern themselves because they had no experience at it. Many believed that once American troops had withdrawn, the island would collapse into civil war, a war in which the great colonizing powers would

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[1004] Ibid.
[1005] Ibid, 57. The annexation passed the Senate by one vote. After the enactment, the Speaker of the House said, "We have bought ten million Malays at $2 a head unpicked, and nobody knows what it will cost to pick them." Evans added, "The answer was 4,234 Americans, along with 20,000 Filipino rebels, and 200,000 civilians dead."
[1006] O'Toole, 384. "The fact that they had already been Christianized most forcibly by Catholic Spain did not count." See also: Traxel, 114.
[1007] Ibid,

intervene.[1008] "That the Philippines could be self-governing was not a notion seriously entertained in Washington," Max Boot wrote. "…the archipelago would sink into chaos and conflict between competing ethnic groups."[1009]

A sincere American sense of responsibility toward the natives proved that the "White Man's Burden" was as significant a consideration in the decision to keep the Philippines as the need to keep the French, British, and Germans out.[1010] "…the Anglo-Saxon peoples…," David Traxel wrote, "so hated disorder that they were going to bring the whole array of barbaric or degenerate cultures in the world to a new level of civilization by taking on the burden of ruling them."[1011]

President McKinley himself initially called annexation a "criminal aggression," but he changed his mind after a dream in which God commanded him to annex the Philippine Islands.[1012]

The American delegation met with the Spanish diplomats at the Paris peace talks during autumn, 1898. The Americans demanded that Spain recognize Cuban

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[1008] Evans, 55. An influential English Social Darwinist named John Foreman wrote a persuasive essay read by many Americans. "…the Filipinos were incapable of anything except fighting racially among themselves. They had never known a day of self-government in 300 years of Spanish rule; and they were not Anglo-Saxons."
[1009] Boot, 105.
[1010] Traxel, 88-89.
[1011] Ibid, 89. Traxel was writing specifically of the Philippines.
[1012] Evans, 54-57. "I walked the floor of the White House night after night until midnight and I am not ashamed to tell you, gentlemen, I went down on my knees and prayed to Almighty God for light and guidance…I don't know how it was, but it came. One, that we could not give the Philippines back to Spain – that would be cowardly and dishonorable. Two, that we could not turn them over to France or Germany – our commercial rivals in the Orient – that would be bad business and discreditable. Three, that we could not leave them to themselves – they were unfit for self-government – and they would soon have anarchy and misrule…And four, that there was nothing left for us to do but take them all, and to educate the Filipinos, uplift them and civilize and Christianize them, and by God's grace do the very best we could for them, as our fellow-men for whom Christ also died."

independence as well as ceding the Philippine Islands, Guam, Puerto Rico, and parts of the Spanish West Indies to the United States. The Spaniards balked at ceding the Philippines noting that the surrender of Manila had actually taken place after the cessation of hostilities on August 12. "…the Americans announced the United States would pay Spain $20 million for the islands. That was their best offer…take it or leave it. The Spanish took it." The delegates signed the Treaty of Paris on December 10, 1898. It went into effect when an exchange of documents of ratification took place on April 11, 1899.[1013] The American Century had begun.

The Militia at the Dawn of the Twentieth Century

During the 19th Century, the American militia had undergone a startling evolutionary growth and development. The volunteers had appeared alongside the unorganized militia and then had merged into the growing National Guard, a newer version of the organized militia. What remained at the end of the nineteenth century was a select militia that was still evolving, the National Guard, as well as the unorganized militias which were (and are) the community militias of the United States. Now, as the new century arrived on stage, there was legislation on the immediate horizon that would more clearly define and redefine both of their roles for the twentieth century.

[1013] Ibid.

CHAPTER SIX

THE MILITIA IN THE AMERICAN CENTURY

The antagonism between the National Guard and the Regular Army concerning the place of the Guard in the national military structure did not fade into the mists of history along with the eighteenth century. The issue was not a new one; it was just rawer and more in need of resolution as the fruits of run-away industrialism – improved weapons, methods of transportation and communication, and tactics – began to make their way into the military.[1014] As the army officer corps became steadily more professional along European lines, it also became more estranged from the amateurs of the organized militia, by now called the National Guard almost everywhere. This archaic relict of the colonial era embarrassed the regulars.[1015]

The genesis of the ongoing conflict had always lain in the Constitution itself; the regular force fell under the "Army Clause" while the National Guard came under the "Militia Clause." Two separate clusters of laws and traditions had developed over the past century governing the activities of these two distinct types of soldiers within the American Army, a situation that had often compromised the

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[1014] Hill, 179-182. Hill recounted the efforts of both parties to sway Secretary of War Elihu Root to their respective positions. The Guardsmen won. Concerning the regulars, Hill wrote: "It is quite clear that [the regulars] who were creating the official position, had not yet gained the scope of horizon or evolved the necessary constructive imagination to view the National Guard as a national force in peace as well as war."

[1015] Stentiford, 11. "The increasingly professional Regular Army had little but contempt for state military forces. Many reformers in the army [believed] that state control of and influence on the militia would always make it unreliable as a reserve for the federal army."

militia's service during wartime.[1016] Those supporting the Regular Army wanted a substantial increase in its numbers to enhance its warfighting capability and a large federal reserve force to augment it during time of war. Supporters of the National Guard wanted formal federal recognition of the Guard as the only statutory battlefield reserve of the army.[1017] The National Guard Association (NGA), encouraged by its supporters in the National Rifle Association (NRA), was willing to accept a degree of greater federal control "as the price of an enhanced battlefield reserve status."[1018]

The National Guard was not (and is not) the only organized militia force in the United States. There were (and are) also the State Guards, a "state military force with no federal obligation whatsoever."[1019] They had been in evidence since before the Revolution. "When militiamen depart their homes on expeditionary missions," Stentiford wrote, "they leave their communities unprotected. Colonies

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[1016] R. B. Bernstein, The Constitution of the United States with the Declaration of Independence and the Articles of Confederation with an Introduction by R.B. Bernstein (New York: Fall River Press, 2012), 11. Article I, Section 8 provides for the regulars and the militia separately. Congress was empowered "To raise and support armies…" In a separate clause, Congress (not the president) was authorized "To provide for the calling forth of the Militia…" for three distinct reasons…"to execute the Laws of the Union, suppress Insurrections and repel Invasions." These are two separate authorizations for two separate forces.

[1017] Derthick, 23. ""Confronted with the problem of militia reform after the turn of the century, they [the NGA] favored giving the Guard the largest possible wartime role. They wanted it to fight as long as possible wherever possible, inside or outside of the country." See also: Hill, 182. "But the official position of the War Department careerists continued to be that the National Guard should never be more than a recruiting preserve [for a] Federal Organized Militia."

[1018] Cooper, xiv. "Guardsmen's desire for local control conflicted with their quest for increased national financial aid…Inevitably, the lure of federal dollars and an assured place in military policy eroded Guardsmen's efforts to remain semi-independent of the War Department."

[1019] Stentiford, xi. "Neither the states, the army, nor the National Guard seem to have considered the question of what would replace the National Guard in its state mission should it ever be called upon to fulfill its federal mission." One disputes Stentiford's assertion that State Guard forces have no federal obligation. The state guards are militia, and the Constitution gives the Congress authority to call forth the militia.

and states have either weathered wartime without an organized militia under their control, or they have created new militia units for home service during wartime.[1020]

This chapter will cover the watershed *Militia Act of 1903* along with the follow-on legislation of 1908, 1916, 1920, and 1933 that substantially amplified the original act. It will lightly touch on the militia and state guards during the Punitive Expedition in Mexico, the World Wars, Korea, Vietnam, and the various Persian Gulf wars. It will briefly examine the role of the National Guard in labor disputes, protests, and racial confrontations throughout the middle of the century.

It will discuss the federal theft of the National Guard, made glaringly obvious in 1963, and the subsequent increase in numbers of state guards and a new self-awareness of the unorganized militia. It will end with the increase and then diminishment of community militias, and the testimonies of some present day militiamen concerning what they consider the unconstitutional encroachments of government and the possibility of a government collapse resulting in a Third Civil War. This chapter will bring to completion the demonstration of the fact that the present day community militias are the lawful and cultural heirs of the colonial, revolutionary, and republican militias.

The Militia Act of 1903

Elihu Root became Secretary of War on August 1, 1899, and served until January 31, 1904, under Presidents William McKinley and Theodore Roosevelt.

[1020] Ibid, 5.

"He moved swiftly," Richard Leopold wrote, "to modernize an institution which, in some respects, was little changed from the days of George Washington or John C. Calhoun."[1021] Root was perhaps the ablest Secretary of War in American history and without a doubt the most liked by regular and National Guard officers and soldiers alike.[1022]

Richard Stewart outlined the challenges that faced the U.S. Army as it entered the American Century. It could no longer safely be an Indian fighting organization in a world of machine guns and mass armies. Time had done its work and now all of America's potential adversaries fielded modern, industrialized armies (and navies), something America would have to do as well if its army was to provide an adequate defense for the nation. In addition to the weapons upgrades and other high profile changes, the army effected a number of philosophical and intellectual changes that lay the foundation for even greater changes to come. "At the heart of these changes," Stewart wrote, "were the reforms undertaken by Secretary of War Root during his years in office…for the first time the Army would have some of the basic intellectual and procedural tools in hand to prepare and conduct contingency plans for a wide variety of operations."[1023]

A rider on the *Army Appropriations Act of 1903* signaled Root's continuing interest in the preparedness of the unorganized and organized militias as well as the regulars. Proposed by the NRA and enthusiastically supported by Root, the Act

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[1021] Richard W. Leopold, *Elihu Root and the Conservative Tradition* (Boston: Little, Brown & Company, 1954), 38.
[1022] Derthick, 26-27.
[1023] Stewart, 384.

established the National Board for the Promotion of Rifle Practice (NBPRP) within the War Department. Root appointed regular officers to the board, many of them members of the NRA, which first met on April 21, 1903. The Board considered that the best way to train the unorganized militia in "musketry" was through local rifle clubs across the country, almost all of which were NRA affiliates. The Act also provided for the NBPRP and the NRA to hold joint national rifle matches (marksmanship competitions) at government expense, a practice that continues to this day.[1024]

One of Root's objectives was to rehabilitate the militia system, which in the modern era of industrialization and smokeless powder strongly needed modernization.[1025] Few disagreed with that. Major General Leonard Wood spoke for the mass of regulars and their allies in Congress when he called the National Guard "an uncoordinated army of fifty allies." Major General Albert Mills told Congress the National Guard was "forty-eight little state armies, energized by a love of state's rights."[1026]

Wood felt the Guard was of limited value to the army for all of the standard reasons regulars habitually offered (lack of training, discipline, state restrictions on use, etc.), but also because he noted that soldiers elected their company officers with the exception of only two states. The company officers in turn elected the

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[1024] Trefethen, 128-129.
[1025] Leopold, 40. "Root…did not…urge the abolition of the dual system [regulars and militia] but rather closer integration." On January 21, 1903, Congress, acting on Roots strongly asserted recommendation, declared the National Guard to be the Organized Militia of the United States.
[1026] Mahon, History of the Militia, 142-143.

field grade officers while governors appointed their political allies to high command. This situation, Wood felt, made the development of a true military culture within the National Guard impossible.[1027]

Despite the continuing animosity of the regulars, the powerful supporters of the militia principle in and out of Congress planned legislation to correct the Guard's problems, problems that they saw as largely inflicted on the Guard either by history or by the War Department itself.[1028] Congressman Charles F. Dick was one of those supporters. Chairman of the House Committee on the Militia, president of the NGA, a member of the NRA Board of Governors (and past president), and the Major General commanding the Ohio National Guard, Dick began preparing legislation on January 23-24, 1902, to modernize the organized militia along lines suggested by National Guardsmen with welcome input from the NRA.[1029]

Once the regulars learned of the upcoming bill from Dick's committee, they hurried to get their congressional supporters to tone it down by putting riders on it. One of these, Section 24, would essentially replace the National Guard with a

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[1027] Ibid.

[1028] Hill, 241. The regulars treated the guard with contempt. Congress allocated sufficient funds for arming the Organized Militia with new Springfield magazine rifles in 1903, but when the Guard was called forth to the Mexican border in 1916, many guardsmen were carrying beat-up rifles with barrels marked "repaired" or "surveyed." The spiteful regulars for no defendable reason had withheld supplies of many kinds from the Guard. Newspapers made this public, and the War Department accrued much public censure. "The General Staff's errant chickens," Hill wrote, "had indeed come home to roost."

[1029] Stentiford, 12. "Dick [always] had been a strong force in favor of a war fighting role for the National Guard."

100,000-man federal reserve, a proposed "Continental Army."[1030] The various sections of the bill were discussed, argued over, and editorialized about throughout 1902. Despite stiff opposition from the increasingly important labor unions, Section 24 squeaked through the House, but militia supporters in the Senate deleted it from the bill. The Militia Act of 1903 (also widely called the Dick Act) passed through Congress much as Dick and the NGA had originally written it, incorporating suggestions from the NBPRP and the NRA. The President signed it on January 21, 1903.[1031] (See Appendix I for the text of the Militia Act of 1903.)

The American militia was reinvented and the regular forces reinvigorated by the Dick Act. This Act, often amplified by "appropriate legislation" between 1903 and 1916, replaced the militia acts of the Washington Administration as well as their follow-on legislation, and began the process of establishing something resembling the national militia that the early federalists first suggested under the Articles of Confederation.[1032] (See Chapter Three.) The Dick Act, the start point in modern American military history, "…sought to bring the National Guard in line with the Regular Army," Stentiford wrote, "[and] …recognized in federal law for the first time the distinction between the organized and unorganized militia," which had actually existed since the colonial era. The Militia Act of 1903 initiated the

[1030] Mahan, *History of the Militia*, 139. The War Department continually attempted (almost every year) to establish a federal militia replacing the National Guard until well into the 1920s.
[1031] Hill, 191. Hill does not assign a role to the NRA in the writing of the Dick Act.
[1032] Cooper, 109-110. See also: Hill, 186.

metamorphosis of the many disparate groups of state militias into the modern National Guard," he concluded.[1033]

The new law divided state soldiery into two groups within the Army of the United States: the organized militia or National Guard and the reserve militia. Men of military age (18 to 45), unaffiliated with any military structure, were now called the reserve militia but shortly after were renamed the unorganized militia.[1034] Congress authorized Guardsmen to attend army schools and 'camps of instruction' and to receive pay while doing so.[1035] The Act also provided for a formal Division of Militia Affairs at Army Headquarters headed by a regular officer.[1036] Militiamen were authorized federal uniforms and were to be rearmed with modern weapons: Springfield magazine rifles, the same field artillery as the regulars, and after John Moses Browning invented the Colt .45 in 1911, automatic pistols. There was a price for all this generosity.[1037]

Martha Derthick observed that the Militia Act of 1903 subjected the organized militia to more federal control than ever before. Within five years, the

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[1033] Stentiford, 12-13. "The Dick Act gave official recognition to the term 'National Guard' for the land forces of organized militia of the states."
[1034] Mahon, *History of the Militia*, 139. See also: Stewart, 373. "[The Dick Act] separated the militia into two classes – the Organized Militia, to be known as the National Guard, and the Reserve Militia – and provided that over a five-year period the Guard's organization and equipment would be patterned after that of the Regular Army."
[1035] Hill, 188.
[1036] Mahon, *History of the Militia*, 143. The regular officer appointed to head Militia Affairs, Colonel Erasmus Weaver, was opposed to granting the National Guard a federal role. He supported a federal reserve with no connection to the states. "Such a reserve, Weaver said, would operate not under the militia clauses of the Constitution but under the Army clause."
[1037] Ibid, 146. The *Militia Act of 1907* required the army to stockpile modern weapons for issue to the National Guard. "At the same time, however, the organized militia was drawing ahead of the regulars in machine guns. In 1915, thirty-four National Guard infantry regiments contained machine gun companies, whereas the regulars had none at all."

Guard had to become a clone of the army. Any state Guard hungry for federal dollars had to drill 24 times a year and attend a five-day encampment of instruction in order to qualify. "The Guard was made liable to nine months service," Derthick wrote, "for the purposes prescribed in the Constitution (repel invasions, suppress insurrections, and execute the laws of the Union). These provisions meant that the Guard would require more of the members' time and serious attention."[1038]

Although the Guard acquiesced to an increased amount of control by the federal army, "The National Guard remained legally militia."[1039] The Act of 1903 recognized that the Guard would remain within the borders of the United States, but it did extend the three-month service limit of the Common Law (and previous statute) to nine months. Under the new law, state governors retained the right to deny their troops to the federal government. Individual guardsmen could not be drafted against their will, but still had to volunteer for federal service, and "…no federal agency, including the army," Stentiford wrote, "had the authority to remove militia officers, even while in federal service, no matter how incompetent they were."[1040]

An amplification of the Militia Act of 1903, the *Militia Act of 1908* gave the President authority to call forth the National Guard for duty outside of the

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[1038] Derthick, 27.

[1039] Stentiford, 13.

[1040] Ibid. See also: Cooper, 106-107. "The individual's right to refuse to volunteer was implicit in the ethos of the…republican citizen-soldier. By its very definition, volunteering was an act of conscience and patriotism, not an obligation. To ask a man to feel *obligated* to volunteer contradicted the essential nature of the principle. The most ardent state soldiers saw no problem in this, for the regiment or battalion would turn out when called, and avid volunteers would rush to fill the vacancies left by men of conscience.[1040] (Italics in the original.)

United States as well as inside the country.[1041] However, that would change. "In February 1912," Mahon wrote, "George W. Wickersham, U.S. Attorney General…decided that the Militia Act of 1908 was unconstitutional and that the National Guard, which was the militia of the Constitution, could not be used outside the country."[1042]

The President could call forth the National Guard only for its constitutionally mandated functions, Wickersham ruled: suppressing insurrections, enforcing the law, and repelling invasions. The militia could leave American soil only if it were pursuing an invading army. "Attorney General Wickersham's opinion effectively meant," Jerry Cooper wrote, "that the president could not order state forces overseas while they remained in their status as militias.[1043] This was a body blow to the Guard's envisioned future as a national second line of defense.[1044]

The 1908 law also provided (once again) that the organized militia would be given the opportunity to volunteer for federal service prior to the recruitment of any other volunteers. The follow-on 1914 *National Volunteer Act* that "ensured the Guard's first-line reserve status by requiring that all Organized Militia units be given the opportunity to volunteer before any national volunteers could be organized" reiterated this.[1045] It also gave the President authority to appoint all

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[1041] Stentiford, 13.
[1042] Mahon, History of the Militia, 143.
[1043] Cooper, 114.
[1044] Hill, 205. "Wickersham…gave the Guardsmen of that era a severe jolt. Mr. Wickersham put them right back to 1902, and where they were before the Dick Act. However, it was not against Wickersham that the Guardsmen vented their bitterness. It was against Leonard Wood and his growing General Staff of palace soldiers."
[1045] Ibid, 110.

officers of the Guard when it was in federal service. As with Wickersham's ruling, this provision posed a distinct danger to the NGA, one that its supporters were able to eliminate in 1916.[1046]

The National Defense Act of 1916

A number of issues led Congress to readdress the militia status of the National Guard in 1916. First, World War I had begun in August 1914, and many Americans felt their country being irreversibly drawn into it.[1047] Second, Mexican revolutionaries habitually violated the southern border, and one group under Pancho Villa actually attacked an American town in Texas.[1048] Third, the sinking of unarmed passenger liners without warning resulted in soured relations with Germany.[1049] Fourth, the National Guard had accrued a tremendous amount of public and congressional support during a turbulent and uncertain time, and its leaders recognized that the moment was ripe to regain the ground they had lost to Wickersham and to achieve their other goals.[1050]

"Conflict between the Guard and the War Department," Martha Derthick wrote, "was seriously joined in the preparedness debate of 1915-16, after World War I began [in Europe]."[1051] The Guard recognized General Wood and his Army General Staff as the instigators of the Wickersham decision. They saw it as part of

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[1046] Stewart, 373.
[1047] Trefethen, 178.
[1048] Alejandro De Quesada, The Hunt For Pancho Villa: The Columbus Raid and Pershing's Punitive Expedition 1916-1917 (Oxford, UK: Osprey Publishing, 2012), 20.
[1049] Evans, 148.
[1050] Derthick, 32.
[1051] Ibid, 33.

the War Department's effort to render the Guard moot and to receive congressional approval for their anticipated federal reserve, the Continental Army.

"As [the Guard] approached a showdown," Jim Hill wrote, "with General Wood…[Secretary of War] Mr. Stimson's attitude convinced them that they were without a single civilian friend…The future of the National Guard could only be determined in Congress, with the concurrence of the President.[1052]

Although the regulars wasted no love on the National Guard, they were not acting solely out of self-interest; they believed they had good reason to want to replace the organized militias of the states with a federal force. The first two decades of the twentieth century were a tense time for Americans. Several powerful European states had interests out of line with American interests, and sabers had rattled more than once, particularly with imperial Germany. Further, the nation's prospective enemies had steam-powered warships in great numbers that made up fleets that could attack the United States and put armies ashore anywhere along its coasts.[1053]

America could expect to face a combined land and sea operation of "formidable strength" in the near future, the regulars argued, and needed a ready reserve able to mobilize and deploy rapidly along with the Regular Army. "The General Staff's efforts to improve the National Guard's efficiency," Cooper wrote,

[1052] Hill, 212.
[1053] Cooper, 121.

"and then replace it with the Continental Army…stemmed from these assumptions."[1054]

In June, Congress resolved the conflict by passing the *National Defense Act of 1916.* As in 1903, Congress gave the Guard much of what it wanted, derailing the War Department's attempt to destroy it, but also establishing greater federal control as the price of an enhanced existence.[1055] Democrat Woodrow Wilson, a leading light in the Progressive Movement, took office as the 28th President of the United States on March 4, 1913, and served until March 1921.[1056] Wilson observed the storm clouds gathering in Europe and wanted to keep America out of any European war. Many urged him to increase drastically the readiness of the army and National Guard in case there was no way to avoid becoming involved, advice that Wilson did not begin to act on until early 1916.[1057]

The various forces in Congress bickered and negotiated during the first half of 1916 on a preparedness bill. There were many issues delaying passage, but the primary causes of disagreement remained the same. The regulars wanted a Continental Army as well as a much-increased Regular Army and a National Guard with much-diminished independence and limited to state functions. The Continental Army would take over the Guard's role as the second line of defense; the Guard would concern itself with state duties only. They also wanted a federal

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[1054] Ibid.
[1055] Derthick, 47. However, it was not as much control as the Army wanted.
[1056] Catton, ed., 874.
[1057] Quesada, *Pancho Villa*, 26.

enlisted reserve and officer reserve separate from the Continental Army.[1058] The Guard wanted increased pay and a calling forth by unit in time of war without every man having to enlist separately into a federal volunteer regiment. The Guard also did not want to surrender any more control to the regulars than what was given up in previous acts. Both groups got most of what they wanted, but not all.[1059]

The Act of 1916 provided that there would be no Continental Army of volunteers, but it did establish the enlisted and officer reserves. Also, if the federal army needed additional soldiers to serve long periods overseas, the President would now have the authority to call forth individual National Guardsmen directly into federal service without the men having to first enlist in the volunteers.[1060] This was workable because Congress finally forged a solution for the persistent problems created by organizing the regulars and the militia under separate clauses in the Constitution. It was surprisingly simple: Congress directed that the Guard would come under both clauses in the future.[1061]

The constitutional relationship existing between the National Guard, its state, and the federal government, was changed by the Act of 1916. When called forth for federal service, the Guard could reinforce the Regular Army and accompany it beyond the national borders. "The constitutional objections" Stentiford wrote, "…were solved by requiring all officers and men to take a new oath swearing to defend the United States as well as their home state [and to obey

[1058] Hill, 220.
[1059] Ibid, 221-222.
[1060] Stentiford, 17.
[1061] Ibid, 17,19.

the orders of the President]." When called forth, National Guardsmen would be discharged from the National Guard and transferred to the federal army keeping their [state] unit designations.[1062]

This simple legislative device did much to resolve the confusion of the past century and a quarter. In time of peace, the Guard would fall under the Militia Clause and perform its state duty. When called forth for war, the Guard would fall under the Army Clause and serve as regular soldiers.[1063] Additionally, the national unorganized militia was statutorily defined as all abled-bodied male citizens between the ages of eighteen to forty-five who were not already members of the regular forces, National Guard, or Naval Militia. The Act of 1903 had declared them the unorganized militia of their state; now they were the unorganized militia of both the state and national governments. Each man was a member of two unorganized militias and was subject to calling forth by either government.[1064]

Further, the National Militia Board (previously created by the Act of 1908) was upgraded to the National Militia Bureau, which gave it an enhanced voice in the War Department concerning issues touching the militia.[1065] The Act provided

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[1062] Ibid.

[1063] Ibid, 18-19. "The National Guard, when brought into the Army of the United States, ceased to be the organized militia…[and] fell under the sections of the Constitution that gave the federal government the power to 'raise and support armies,' [the Army Clause]."

[1064] Ibid, 18. This is the statutory basis for the subsequent draft laws. The President may 'call forth' men from the unorganized militia into active duty with the regular forces. See also: Hill, 258. "It should be emphasized that Selective Service is historically a part of America's Militia Heritage with its arms-bearing responsibilities reaching back to English Common Law. [The 1917 Draft Law] was the first effective effort at gearing all the Unorganized Militia of all the States and coordinating these pools of obligated, military-age manpower to a simultaneous, National purpose."

[1065] Ibid, 18. The Militia Bureau Chiefs were regulars with no love for the Guard. The Guard recognized the Bureau as an enemy until 1920 when the Chiefs became National Guard officers. After 1920, the Guard Bureau was truly the Guard's voice at army headquarters.

for an increase in the Regular Army to 175,000 men and of the Guard to 400,000 men. It doubled the number of required drill days to 48 and lengthened the annual training camp to fifteen consecutive days.[1066] It authorized the President to determine under which branch of the service (infantry, artillery, cavalry, etc.) each National Guard company would be organized.[1067] It also dramatically increased the amount of federal money poured into both the Regular Army and the Guard.[1068]

Present day militiamen have mixed perceptions concerning a role for the organized militia under the Army Clause. Steve McNeil and Sandro Bellinger, both militia leaders, disagree with one another. "This bastard child of the federal government called the National Guard used to be state militias," McNeil said. "Now the feds own it. That was not what the Founders intended which is why it was put it under a different clause. All we have now is the unorganized militia."[1069]

Bellinger has no problem with an army role so long as there is a clear distinction between the National Guard and the unorganized militia. "I'm against people attacking and killing us," he said, "and if the government needs the Guard

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[1066] Stewart, 382.
[1067] Cooper, 155. In the past, unit members voted on what kind of unit it would be.
[1068] Jayne Aaron, Historical and Architectural Overview of Aircraft Hangers of the Reserve and National Guard Installations From World War I Through the Cold War (Washington, D.C.: U.S. Government Printing Office, 2011), 2.1, 3.1. Aaron succinctly summed up both Acts: "(T)he Militia Act of 1903 (also known as the Dick Act) gave federal status to the militia and required that they organize according to regular army standards. The law resulted in the elevated role of the militia as a reserve force for the U.S. Army. The National Defense Act of 1916 was the most comprehensive legislation dealing with the United States military to that date. Specifically, the law provided for a modest increase in the strength of the Regular Army…as well as an increase in funds for the National Guard, an increase in the level of National Guard personnel to over 400,000, and required federally stipulated training and organization while specifying that the National Guard answer the call of the President…The Act also created the Signal Corps Reserves, required all states to designate their militias as "National Guard," and allowed the Secretary of War to establish qualifications for officers." See also: Stewart, 382, 384.
[1069] Gerald Van Slyke interview with Steve McNeil, January 29, 2015.

to draw their weapons and head for the field, good – that's the Army Clause job they enlisted for."[1070] Bellinger also urges vigilance and caution in case there develops too close a marriage between the regulars and the Guard. "With the federal government paying the Guard's bills, this could sour quickly." Bellinger cites the Governor of Texas ordering his State Guard to keep an eye on a federal military exercise, Operation Jade Helm, held in Texas during 2015. "He used the State Guard and members of the unorganized militia," Bellinger said, "because he did not think he could trust the Texas National Guard whose members are paid by the federal government and which also provides their retirement benefits. He was probably right."[1071]

The Act of 1916 also "incorporated into government policy many of the ideas that the NRA had advocated for years."[1072] It authorized the War Department to continue distributing large quantities of arms and ammunition to NRA rifle clubs either free or at nominal cost, and $300,000 was set aside annually to fund civilian marksmanship training under the regulations of the National Board for the Promotion of Rifle Practice. It earmarked $60,000 annually in travel expenses for civilian rifle teams attending the annual National Matches. Finally, the Act opened all military rifle ranges to civilians.[1073]

[1070] Gerald Van Slyke interview with Sandro Bellinger, January 1, 2016.
[1071] Ibid. Governor Greg Abbott ordered Major General Gerald "Jake" Betty, commander of the Texas State Guard (*not* the National Guard) to monitor the activities of federal troops participating in the exercise (mid-July to mid-September 2015).
[1072] Trefethen, 180-181.
[1073] Ibid, 180-181, 183. "On May 9, 1917, an order signed by Adjutant General W.T. Johnson suspended the free issue and purchase of all rifles and ammunition to civilian clubs for the duration of the [World] [W]ar." The practice resumed at the end of the war.

The Punitive Expedition in Mexico

As previously noted, the readiness concerns of many Americans and the violence of the Mexican Revolution (which often intruded into the United States) spurred the passage of the Act of 1916. There were many border incidents resulting in much friction along the international boundary as various Mexican armies fought each other in close proximity to the United States.[1074] Things finally came to a head when a force of Mexican revolutionaries led by Jose Doroteo Arango Arambula, better known as Francisco (Pancho) Villa, crossed into American territory and attacked the town of Columbus, New Mexico, on the night of March 9, 1916.[1075]

Woodrow Wilson, 28th President of the United States, was a sincere moralist and national leader of the isolationists, people who wanted no entanglements with foreign nations. He struggled to keep the United States out of both the ongoing Mexican Revolution and the war in Europe, but was unsuccessful in both attempts.[1076] Three contending strongmen in Mexico competed for American recognition of their forces as the legitimate government during the civil war: Venustiano Carranza, President Victoriano Huerta, and Emiliano Zapata.[1077]

[1074] Quesada, *Pancho Villa*, 22. "From July 1915 to June 1916 [alone] there were 38 raids on the U.S. by Mexican bandits, which resulted in the death of 37 U.S. citizens, 26 of them soldiers."
[1075] Ibid, 34. See also: Catton, 581.
[1076] Evans, 136, 142-149. Evans offered a detailed account of the politics and events leading to the Punitive Expedition in Mexico and the First World War, as well as an analysis of Wilson's character.
[1077] Stewart, 377.

On April 21, 1914, Wilson ordered an occupation of the Mexican ports of Veracruz and Tampico and American marines occupied Veracruz on the 21st. Mexican national troops, attempting to drive out the invaders, were defeated.[1078] As an alternative to war, Wilson and Huerta agreed to binding arbitration which resulted in Huerta resigning in favor of Carranza.[1079] One of Carranza's commanders, Pancho Villa, saw his chance and rebelled, quickly gaining control of most of northern Mexico. Villa courted the United States for recognition and military assistance, but Wilson chose to support Carranza instead and at one point actually allowed Carranza's army to cross United States territory in order to attack and destroy a Villista force.[1080] An infuriated Villa decided to retaliate and attacked Columbus on March 9. Villa's men, numbering between 500 and 1500 (sources differ), burned much of the small border town, killing 18 Americans and wounding eight more.[1081]

Wilson took action immediately. On March 10, the day after the attack, the President ordered Brigadier General John J. "Black Jack" Pershing to pursue Villa into Mexico in order to "assist the Mexican government" in capturing him.[1082]

[1078] Quesada, *Pancho Villa*, 12. A German ship, the *Ypiranga*, was preparing to offload a cargo of weapons and other military equipment for Huerta's forces on the evening of the 21st. A force of 787 American marines and sailors went ashore during the afternoon, occupied the customs house, and refused to allow *Ypiranga* to unload. Mexican soldiers fired at the marines precipitating a struggle through the streets and alleys of Vera Cruz that continued into the following day. The Americans lost 17 killed and 61 wounded; the Mexicans lost 152-172 killed and 195-250 wounded. The Americans completed the occupation of the town on the 22nd.

[1079] Catton, 581. "Huerta abdicated in July, and Carranza marched into Mexico City in August 1914, angry with the United States and disdainful of Wilson's aid and advice."

[1080] Quesada, *Pancho Villa*, 9.

[1081] Ibid, 33.

[1082] Stewart, 378. Called "Black Jack" because of his well-known sympathy for blacks, Pershing taught children to read and write in a black school prior to joining the army. After graduation

Wilson tried to get Carranza's approval for what was called the Punitive Expedition in Mexico, but the Mexican president would not agree. Things quickly chilled between the United States and Mexico to the point that several times during the expedition, American and Mexican government soldiers exchanged gunfire on Mexican soil.[1083]

Pershing plunged into Mexico with about 12,000 regulars stripped from the border and soon found himself stretched thin and in need of additional troops. President Wilson called forth 5,260 National Guardsmen from Texas, New Mexico, and Arizona on May 9, 1916, to defend the now undefended border. On June 18, after several more incidents including attacks on two Texas border towns, Wilson called forth the entire National Guard of the United States to garrison the porous national boundary and deny entry to Mexican revolutionaries.[1084]

This was only 15 days after the passage of the National Defense Act of 1916, and the militiamen had not yet taken the dual oath required by the law in order to come under the Army Clause. Wilson activated them under authority of the Act of 1903 so they came into federal service under the Militia Clause of the Constitution. This required them to remain on the American side of the border in accord with Attorney General George Wickersham's 1912 decision.[1085] "The

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from West Point, he volunteered to serve in a black regiment, a posting that was normally punitive in nature.

[1083] Catton, 581. "Twice there were serious skirmishes between American and [Mexican] soldiers."

[1084] Hill, 230-232.

[1085] Stentiford, 16. Wickersham had ruled that the National Guard was the militia of the Constitution. The militia is a community based defensive organization and could not be used outside of the United States.

restriction," Barry Stentiford wrote, "led to such farces as…the Virginia National Guard [cavalry riding] their horses up to the Mexican bank of the Rio Grande by the town of Matamoros, but forbidding them to leave the river on the Mexican side."[1086]

Within two weeks there were 125,000 guardsmen on the border where they plugged the gaps left by the regulars who were now in Mexico and made it secure.[1087] Pershing chased the Villistas deep into Mexico for eleven months but could never bring Villa's main force to battle and, because of President Wilson's unprecedented strict rules of engagement, often could not fight them at all.[1088] Villa's army was scattered, however, and border incidents fell sharply. Pershing brought the expeditionary force back into American territory on February 5, 1917.[1089]

The greatest utility of the Punitive Expedition, Jim Hill maintained, was that it exercised both regular and militia land forces in mobilization and prepared them for entering the World War together a few months later. Also, the National Guard proved to its readiness detractors that it could mobilize rapidly enough to support the regulars. "As of April 1, 1917," Hill wrote, "…66,594 National Guardsmen were in Federal service. Back in civil life, but still suntanned by Border service, were 117,500 National Guardsmen immediately available [for the upcoming world

[1086] Ibid, 17.
[1087] Hill, 237.
[1088] Quesada, *Pancho Villa*, 58.
[1089] Ibid, 61.

war]."[1090] The decision in 1916 to call forth the entire National Guard for Mexican Border duty would prove to be of great benefit the following year as General Pershing organized the American Expeditionary Force to fight in Europe.

The Militia in the First World War

Reminiscent of the War of 1812, the United States travailed between two major European power blocs fighting to the death between 1914 and 1918. For Americans, it was a replay of the Napoleonic wars. This time it was the British and their allies versus the Germans and their allies. Beginning in 1914, American neutrality was regularly violated in international waters, and tempers were often at the boiling point. History has remembered Germany's role in this, but the Germans were far from being alone in their depredations against American shipping. In 1916, President Wilson told a meeting of the Federal Reserve Bank Board of Governors that the United States was as close to hostilities with the British as it was with the Germans.[1091] Historian Harold Evans identified one critical difference between the British and German violations. "The British interfered with American commercial rights," he wrote. "The Germans took American lives. They behaved recklessly."[1092]

The German government declared in February 1915, that any ship in the war zone around England could be sunk without warning. Wilson reacted strongly

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[1090] Hill, 242.
[1091] Evans, 147. "Relations with England, he [Wilson] told the bank, were more strained than with Germany."
[1092] Ibid.

to the announcement, but the Germans ignored him and sank the British passenger liner *Lusitania* without warning on May 7, 1915. A total of 1,198 passengers lost their lives including 128 Americans.[1093] American lives were lost in other sinkings as well over the next few months, each evoking an outpouring of public outrage. This prompted Wilson to send a very strong note of protest that finally got Germany's attention. It was so threatening that Secretary of State William Jennings Bryan resigned rather than sign it.[1094] In September 1915, the Germans announced they would no longer sink passenger liners without warning and without providing time for the evacuation of those on them. "[This] secured seven months without an incident at sea," Evans wrote.[1095] After more diplomatic wrangling, the Kaiser offered the "Sussex Pledge" on May 4, 1916, in which Germany would evacuate all captured ships – merchantmen as well as passenger liners – prior to sinking them.[1096]

Nevertheless, on February 1, 1917, Germany again began practicing unrestricted submarine warfare and preyed upon shipping around the British Isles. The United States responded by severing relations with Germany on February 3, and relations between the two nations soured dramatically.[1097] On January 16,

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[1093] Evans, 153. "The outrage in the country was the greatest since the *Maine*, and it was enflamed by public exultation in Germany." The Germans attacked the ship because they had intelligence it was carrying munitions to Britain. The British denied it, and Americans believed them, considering it an unprovoked attack on an ocean liner full of innocent passengers. Examined by undersea vehicles in 1980, the wreck's cargo was found to be almost entirely munitions.
[1094] Ibid, 145.
[1095] Ibid, 145, 153.
[1096] Ibid, 147.
[1097] Thomas A. Hoff, *US Doughboy 1916-19* (Oxford, UK: Osprey Publishing, 2005), 26. See also: Evans, 148. "He [the Kaiser] risked war with the United States because his admirals had

1917, Arthur Zimmerman, Germany's foreign minister, had offered the Mexicans a secret alliance. Mexico was to invade the United States if the Americans entered the war against Germany, and the Germans would ensure that the lands Mexico lost to the Americans during the Mexican American War (1846) would be returned in the follow-on peace treaty.[1098]

The British waited until an opportune moment seven weeks later (February 24) to release the Zimmerman telegram to the Americans. There was a roar of anger across the country to rival the sinking of the *Lusitania*. Wilson still did not want war but had become convinced that it was inevitable. He feared that a decisive military victory on the part of either side would result in a draconian peace imposed on the defeated that would further divide nations and eventually result in another world war. He believed that if America went to war against Germany, he would have a seat at the peace treaty table and could possibly prevent that.[1099] The President believed in "peace without victory." Wilson thought that the allies were no better than Germany, and he refused to sign treaties of alliance with them even after entering the war. America did not enter the war as the ally of Britain, France, and the other allied nations in World War I, but as their "associate."[1100]

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guaranteed that England would be on her knees within six months – before an American soldier could set foot on the mainland of Europe. It was a reckless gamble with a nation's destiny…"

[1098] Peter Hart, *The Great War: A Combat History of the First World War* (New York: Oxford University Press, 2013), 309. "Zimmermann wrote: "In the event [of the U.S. not remaining neutral] we make Mexico a proposal of alliance on the following basis: make war together, make peace together, generous financial support and an understanding on our part that Mexico is to reconquer the lost territory in Texas, New Mexico and Arizona."

[1099] Evans, 148-149. "So Wilson went to war to impose a peace without victory…It was a triumph for the notion of American Exceptionalism…"

[1100] Ibid.

Wilson was escorted to Capitol Hill by cavalry on April 2, 1917, where he addressed a joint session of Congress. The Peace President called for war. "The world must be made safe for democracy," he told the congressional representatives.[1101] It was a short but moving address and received a thunderous applause. By overwhelming majorities, both houses of congress voted to declare a state of war between the United States and Germany.[1102] Now it was up to the soldiers, sailors, and marines to do their work.

Secretary of War Newton Baker sent Pershing the following directive on May 26, 1917: "The President designates you to command all the land forces of the United States operating in Continental Europe and in the United Kingdom…"[1103] Officially born six weeks later on July 5, 1917, the American Expeditionary Force (AEF), Pershing's European Theater Army, actually began coming into existence the day Pershing was appointed Commanding General.[1104] It fought for more than a year, lost 50,300 of its soldiers killed in battle and another 210,196 wounded. It was the first time an American army carried the American flag onto a European battlefield.[1105]

[1101] Ibid, 149.
[1102] Ibid.
[1103] John Votaw, *The American Expeditionary Forces in World War I* (Oxford, UK: Osprey Publishing, 2005), 8. See also: Mark R. Henry, *The US Army of World War I* (Oxford, UK: Osprey Publishing, 2003), 10. "[T]he general left for France with the full support and backing of the President…The authority wielded by Pershing as Commander of the AEF was unprecedented in US military history; he had carte blanche from Wilson and Secretary of War Baker to act as senior diplomat to the allies, to administer the AEF and lead it into battle. He dealt with as an equal both the chiefs of staff of allied forces and their heads of government."
[1104] *National Archives*, "Records of the American Expeditionary Forces World War I." (Accessed October 20, 2015. http://www.archives.gov/research/guide-fed-records/groups/120.html#120.1
[1105] Henry, 4.

The AEF, in accord with statute, was composed of three different components. There was the Regular Army (RA), the National Army (NA) composed of draftees, and the Organized Militia, or National Guard (NG). The numbers 1-25 were reserved for RA divisions, as were 1-100 for regimental designations. The NA division numbers began at 76, and their regiments started at 301. The NG divisions were numbered 26-75, NG brigades 51-150, and NG regiments 101-300.[1106]

The organizational structure of army divisions evolved into a new formation in 1917. Pershing discarded the former "triangular division" (three infantry regiments) and replaced it with the heavy "square division" (four infantry regiments) structure.[1107] Driven by advances in weaponry and the industrialization of modern armies, the square divisions were tailor made for European battlefields. Each contained a paper strength of 991 officers and 27,114 men as well as 6,600 horses and mules and was designated with its component, such as, 2nd Infantry Division (RA), 42nd Infantry Division (NG), or 77th Infantry Division (NA).[1108] Maintained at about 25 percent over strength, they were the largest, most powerful divisions in the war. A standard European division averaged 10,000 men and pragmatic French and British generals counted each American division as a corps.[1109]

[1106] Mahon, *History of the Militia*, 157. See also: Hill, 266.
[1107] Hill, 263-264.
[1108] Hill, 344.
[1109] Votaw, 29-31. An AEF army corps contained six divisions in addition to thousands of supporting troops and attached units. The AEF field army consisted of six corps and thousands of supporting troops and attached units.

There were 199,705 soldiers in the Army of the United States on the day the war began: 127,588 regulars, 5,523 Philippine Scouts, and 66,594 guardsmen in federal service. "Back in civil life, but still sun-tanned by Border service," Hill wrote, "were 117,500 National Guardsmen immediately available in…drilling, seasoned units."[1110] It was not nearly enough. The government planned an army of millions, and the soldiers needed to start training immediately in order to be of use in Europe. The answer was simple, as it had been in the Civil War – a draft.

"A draft bill…went to Congress on April 7, "John Mahon wrote, "the day after the declaration of war, [and was] signed into law on May 18, 1917. It empowered the President to raise half a million men at once and another half million at his discretion." If the Regular Army and the National Guard could not recruit enough volunteers, the President could draft men for those two components as well.[1111]

The draft law required men 21 to 30 years of age to register with their local selective service boards (4,648 were established by the law). In accord with the Army Reserve provisions of the National Defense Act of 1916, the draft law also authorized the enlistment of four division of United States Volunteers.[1112] The volunteer units contained no draftees. The AEF that went to Europe was a display of the full sweep of American military component history. There were the

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[1110] Ibid, 242.

[1111] Mahon, *History of the Militia*, 155. See also: Henry, 6. Seventy-five percent of the AEF was drafted, many of whom were foreign born. Thirty-seven percent of the draftees could not read English, and ten percent were blacks. A German officer commented, "Only a few of the troops are of pure American origin: the majority are of German, Dutch, and Italian parentage. But these semi-Americans feel themselves to be true born sons of their country."

[1112] Hill, 255.

unorganized militia (which remained at home on guard duty), the State Guards (a select militia discussed below), the organized militia (the National Guard), federal volunteers, and the regular army. These Guard, Volunteer, and Regular Army formations had all served the nation during one era or another and now would serve together across the ocean.[1113]

As previously noted, there were many thousands of guardsmen still on active duty from the Mexican Punitive Expedition on April 6, 1917, the day the War Department began recalling guard units to active duty.[1114] President Wilson called forth the remainder of the National Guard of the United States under the Militia Clause on July 25 and then called them again under the Army Clause beginning on August 5, 1917.[1115] They were the first great influx of soldiers into the rapidly expanding US Army, and they came trained, experienced, and equipped.

"Fortunately, for all concerned," Thomas Hoff noted, "a good deal of the National Guard, some 110,000 men, had been active during the Pershing Expedition into Mexico. The Guard's duties along the Rio Grande had served as an excellent school for the soldier." The Mexico Expedition had provided the army with a well-trained and experienced manpower pool. "It was not uncommon for units in France," Hoff wrote, "to value these "Mexico men" as much as they valued a pre-war regular."[1116]

[1113] Ibid.
[1114] Ibid, 261. See also: Mahon, *History of the Militia*, 156. Mahon notes that the President began calling forth National Guard units as early as March 25.
[1115] Ibid, 156. By August 5, all the Guardsmen had taken the dual oath of allegiance.
[1116] Hoff, 15.

Jerry Cooper concisely described the entire mobilization. "[T]he War department announced that the Army would be recruited to three hundred thousand men by the end of June," he wrote. "The National Guard would be federalized in July and 'drafted' into federal service [under the Army Clause] two weeks later."[1117] The National Army would be drafted and enter active duty starting in early September. Recruits would be trained in the United States for four months (most got only three) and then receive further training in Europe prior to being committed to battle.[1118]

Recruit training camps in the United States were initially established at army bases around the country. Thirty-two more were quickly built, "16 each for the National Guard and the Regular Army…Each camp was designed for about 40,000 trainees."[1119] The plan was that a soldier would receive three months training in the United States, and once he reached France, he would receive another two months training followed by a month in a quiet sector on the front line. Soldiers were to be combat ready at the end of the seventh month.[1120] The plan worked well early in the war, but as it dragged on, training time on both sides of the ocean was cut dramatically. "Many of our soldiers had received but little training before going into battle," an AEF Major General reported, "a fact which swelled our casualties. Most of them were still, in large measure, untrained when the war ended."[1121]

[1117] Cooper, 167.
[1118] Ibid. See also: Hoff, 17. After three months training in the United States, soldiers received another three in France and sometimes more.
[1119] Votaw, 11.
[1120] Richard W. Stewart, American Military History Volume II: The United States Army in a Global Era, 1917-2003 (Washington, D.C.: Government Printing Office, 2004), 22.
[1121] Votaw, 10.

One very serious training issue surfaced almost immediately during the war, an issue that had deep roots running through the American army back to the American Revolution, and had occasionally surfaced over the decades. It was marksmanship training, and how much of it an American soldier needed. French and British officers, invited to America in 1917 to help organize recruit training for the war, held that modern soldiers did not need much marksmanship training; they shot the enemy at close range between the trench lines. Many American regular officers agreed with that assessment.[1122] Many other officers, including almost all of the National Guardsmen, maintained that accurate, individual rifle fire was essential to victory and had always won America's wars.

The disagreement originated in the fact that many American revolutionary soldiers were extremely independent-minded. Many were frontiersmen armed with rifles rather than muskets. (See Chapter Three: "Reenter William Pitt.") Historian Alexander Rose argues that the real controversy, both in 1776 and in 1917, was between the adherents of self-discipline and those of imposed discipline.[1123]

Some early military leaders, such as General Anthony Wayne and Colonel Alexander Hamilton to mention two, preferred soldiers to be little more than ciphers upon whom discipline was imposed. The best way to control soldiers, Anthony

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[1122] *National Archives*, "Records of the American Expeditionary Forces World War I." (Accessed October 20, 2015. http://www.archives.gov/research/guide-fed-records/groups/120.html#120.1 See Also: Timothy K. Nenninger, "Tactical Dysfunction in the AEF, 1917-1918," *Military Affairs*, Vol. 51, No. 4 (October 1987), 177-181. See Also: Votaw, 12. "[T]he French and British trainers had their own agenda. Instead of adhering to the US doctrine trenches."

[1123] Alexander Rose, *American Rifle: A Biography* (New York: Bantam Dell, 2008), 62. This was "a debate representative of the greater one raging between the apostles of individual liberty [licentious liberty] and the Pharisees [regulated liberty] upholding traditional governmental authority."

Wayne wrote, was to inflict "downright blows which, with the dread of being whipped through the small guts, keeps them in some awe."[1124] Hamilton wrote of the benefits of soldiers who did not think but who only obeyed. "[They believed] soldiers," Rose wrote, "were at best animals who, with stern mastership and up to two years training, could be taught to attack…The upshot was that frontiersmen were too independent-minded to be useful [in this way]."[1125]

These Europhile officers (later called Federalists) agreed with the British sentiment that a rifleman was little more than a murderer. A rifleman purposely aiming at officers (as at Bunker Hill) committed a criminal act worthy of death. The polite method of infantry fire (as practiced by the British and French) was for the soldiers on each side to line up facing each other. They had no sights on their smoothbore muskets (which were inaccurate by nature) and could fire only in the direction of the opposing line, not at individuals, followed up with a bayonet attack. "[Army training manuals required] the British soldier to *close his eyes* when he fired." (Italics in the original.) This was considered the proper way for a soldier representing a Christian nation to dispose of an enemy.[1126]

The independent nature of self-disciplined riflemen, as opposed to that of rigorously disciplined musket men, galled the authoritarian conservatives who wanted to run the American Army the way the British ran theirs. Riflemen might

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[1124] Ibid, 60-61.
[1125] Ibid, 59-62. "The assumption that fighting men were no better than beasts of burden drove Thomas Jefferson to apoplexy. He charged that their 'native courage and …animation in the cause' was their greatest asset, not a liability."
[1126] Ibid, 58-61. "Indeed, quite a few commanders were adamant that their men, even those armed with rifles, should *not aim at all* for fear of appearing unsporting." (Italics in the original.)

be murderers, but that was not the true point of friction. What offended Wayne and his allies the most was that the guerilla tactics used by the frontiersmen precluded the need for an officer. "To be a successful rifleman," Alexander Rose argued, "one needed coolness under fire, calm nerves, independence of mind…All these features were…the opposite of the martial values espoused by traditionalists like Wayne."[1127]

Other early military leaders, such as Generals Charles Lee, Daniel Morgan, and Horatio Gates, were partial to riflemen and self-disciplined soldiers who could think on their feet. Daniel Morgan, a frontier guerilla fighter, considered European niceties foolish. American officers who practiced them were wasting the lives of their men. "To him [Morgan]," Rose wrote, "killing [British] officers was like killing Indian troublemakers," hardly worth a second thought.[1128]

Both Gates and Lee wanted all the riflemen they could get. They valued their attitude of frontier independence and their irregular guerilla tactics. Morgan himself was a rifleman pure and simple and led rifle units. Thomas Jefferson, a Congressman at the time, was completely in favor of self-disciplined soldiers. "Following Jefferson," Rose wrote, "red-hot radicals like Generals Charles Lee and Horatio Gates…felt that fighting for independence along genteel European principles would result…only in the preservation of a 'royalist' social hierarchy." The Revolution, they believed, was a people's war of national liberation."[1129] This

[1127] Rose, 62. See also: Russell Gilmore, "The New Courage: Rifles and Soldier Individualism," *Military Affairs*, Vol. 40, No. 3 (Oct 1976), 97-102.
[1128] Ibid, 59.
[1129] Ibid, 61.

disagreement had occasionally reared its head during the century and a half following the revolution. Marksmanship in 1917 was not a new issue in the American army.

Pershing was shocked when he discovered that the training camps were overlooking a significant amount of standard army marksmanship training.[1130] The Europeans had destroyed much of their present generation of young men through unimaginative, static warfare, treating them like ciphers whose lives had little value. Pershing refused to fight a trench war like the one in which the British and French were enmeshed and planned an in-depth offense into Germany itself, an offense characterized by accurate fire and rapid movement and maneuver that had been pioneered by Sherman's march to the sea in 1864-65.[1131] For this, he needed riflemen, individualists who were thinking, contributing members of a team.

Once the NRA became aware that the European system had made its way into the training schedule of American soldiers, it launched a nationwide newspaper and public meeting campaign to put a stop to it. The issue came to a head when Pershing read a copy of *War Department Directive No. 656, Infantry Training*, which called for a too-generous amount of training time devoted to trench warfare.[1132] As previously noted, Pershing completely agreed with the association and immediately resolved the issue in favor of the NRA. Pershing was a

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[1130] Ibid, 285-286.
[1131] Votaw, 63-64. French General Henri Petain circulated a secret letter of instruction among the French Army's senior leadership suggesting that they pay lip service to Pershing's open warfare principle while training Americans for the realities of trench warfare.
[1132] Hoff, 14.

competitive shooter, member of the NRA, and son-in-law to a future NRA president. "Pershing quickly reinstated marksmanship as the most important part of a GI's education," Rose said. "While the men had many demands on their all-too-brief training time, nothing, he ordered, should 'be allowed to interfere with rifle practice'."[1133]

The NRA did not stop with the reintroduction of thorough marksmanship training; it decided that a permanent school for the training of rifle instructors was necessary to prevent a recurrence in future wars and that the military should establish one. NRA officials requested the officers on the National Board for the Promotion of Rifle Practice (many of whom were NRA members) to make a recommendation to Congress.[1134] The Board met in Washington on January 8, 1918, and discovered that the authority for a marksmanship instructors school already existed in the obscure Section 113 of the National Defense Act of 1916. The school was established at Camp Perry Ohio (home of the annual National Rifle Matches) on April 15, 1918.[1135]

The role of blacks was problematic in the AEF, as it has been often in American history. There were about 20,000 blacks in the organized militia of the

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[1133] Rose, 285-286, 291. Pershing was a pragmatist who also armed many soldiers with faster firing, shorter-range weapons. Pershing published a general order on April 9, 1918, that read, in part: "The rifle and bayonet are the principle weapons of the infantry soldier. He will be trained to a high degree of skill as a marksman both on the target range and in field firing. An aggressive spirit must be developed until the soldier feels himself, as a bayonet fighter, invincible in battle." Pershing wanted troops who could "shoot farther than any European soldier while outfighting him at close range." See also: Votaw, 6. Pershing's father-in-law was Chairman of the Senate Military Affairs Committee.
[1134] Trefethen, 185-186.
[1135] Ibid.

states at the start of World War I. "The War Department General Staff had [no] plans for these [men]," Hill wrote, "but, there they were…"[1136] The 8th Illinois (Colored) Infantry, 9th Ohio (Colored) Infantry, and 15th New York (Colored) Infantry quickly became a thorn in the War Department's side. These regiments were trained, equipped, and ready to deploy before most others but were left sitting in their camps, and newspapers began asking the General Staff why. The "black question" quickly became an embarrassment for the army. "War Department Policy," Mahon recorded, "[became] to keep the Negro units out of white divisions but to ship them overseas as fast as possible."[1137]

The General Staff, which was already in a mild conflict with the AEF Staff, hit upon a plan. Ship the blacks to Europe as they were and let Black Jack Pershing decide what to do with them. It would not do to put these three regiments in a white division for transfer to France, so the General Staff established the 93rd Provisional (Colored) Division (NG) with black soldiers and white officers. Additional black regiments quickly reported for duty, and a divisional formation soon stood ready to deploy.[1138]

The division arrived in France in early 1918 and immediately went to work as a labor unit. The hard-pressed French considered that a serious waste of manpower and petitioned Pershing to lend the 93rd Division (NG) to them. He lent

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[1136] Hill, 276.
[1137] Mahon, History of the Militia, 165.
[1138] Hill, 277. See also: Mahon, *History of the Militia*, 164-165. No artillery or any other supporting units were added to this strictly infantry division. There was also a 92nd Provisional (Colored) Division (NA) composed entirely of draftees. The 92nd was placed at the front in the American sector and performed "somewhat less than satisfactorily."

four regiments to what remained of the French 16th Infantry Division for the duration of the war. At one point, the 93rd tried to retrieve its four regiments from the French 16th Division, but with no luck. The French did not want to give them up.[1139]

These black Americans proved themselves exceptional soldiers, and the French frequently decorated them. "[T]he American high command," Mahon wrote, "warned it [the French high command] now and then not to show…consideration to American Negroes."[1140] The 93rd Infantry (Colored) Division (NG) sustained 3,534 casualties fighting under French command during World War I, of whom 591 were killed.[1141]

Pershing's men began arriving in France by the thousands and later by the millions. The first large American unit to arrive was the 28th Infantry Division (NG) closely followed by the 1st Infantry Division (RA). The 28th housed soldiers mostly from Pennsylvania, as well as some from other northeastern states, and became known as the "Yankee Division."[1142] Eighteen divisions of National Guardsmen would eventually serve in France during World War I. Of the 443,478 militiamen who served between April 1917 and January 1919, a total of 103,731 were either killed or seriously wounded.[1143]

[1139] Hill, 278. "The determination of the French to retain [them] is further evidence of the high esteem in which they held these troops."
[1140] Mahon, History of the Militia, 165.
[1141] Hill, 278.
[1142] Ibid, 266. This division was composed mostly of Pennsylvania National Guardsmen and was also called the "Keystone Division" or "Iron Division." By the time World War II had started, "Keystone Division" had prevailed.
[1143] Ibid, 283-285.

The President ordered Pershing not to allow the Europeans to use American soldiers as fillers in their depleted ranks. The American army, he told the general, would fight as a national army, not as individuals serving in British and French companies, nor as a piecemeal collection of regiments and brigades lent out here and there. Pershing agreed entirely with this directive and resisted enormous pressure from the allies to borrow his soldiers.[1144] However, in March 1918 the Germans unleashed an "all or nothing" offensive toward the English Channel to divide the British and French armies.[1145] The allies were *in extremis*, and Pershing offered the French the nine divisions already in France to bolster the allied defense. Four of the divisions were combat ready (including the nearly 60,000 organized militiamen of the 26th and 42nd Infantry Divisions (NG), with five more nearing the end of their training.[1146] They were soon committed to battle.

There was initially a question among the Europeans concerning the fighting efficiency of American soldiers. In a very short time, their doubts evaporated as Americans proved themselves capable and courageous. Names like the Somme, Aisne-Marne, Ypres-Lys, St. Mihiel, and Oise-Aisne took their places in American military history along with Saratoga, Antietam, and San Juan Hill. The Germans nicknamed the 32nd Division (NG), "The Terrible," and the 28th Division (NG),

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[1144] Hart, 411.
[1145] Ibid, 417. "The German attack began at 04:40 on 21 March 1918 with a devastating artillery bombardment."
[1146] Mahon, History of the Militia, 166.

"The Unmovable," and the U.S. Marines, "The Hounds of Hell," or, "The Dogs of War" (later shortened to "Devil Dogs").[1147]

During the Battle of the Marne in 1918, the 28th Keystone Division (NG), Pennsylvania National Guard, held its ground under a terrific German assault while the French retreated on both sides of them, leaving both American flanks exposed. The outnumbered Pennsylvanians refused to retreat and tenaciously held their ground against repeated assaults through the night until more French units advanced the following day to recapture their lost positions. "The gates to glory and to death swung wide," historian Harry Proctor wrote, "for many a Pennsylvania lad that night."[1148]

A group of allied and American senior officers watched the 102nd Infantry Regiment (Connecticut National Guard) of the 26th Infantry Division (NG) attack German positions on February 28, 1918. First organized as the New Haven Militia in 1672, the regiment had seen much service since then. The observing officers were surprised and greatly impressed with the professionalism and *élan* of the 102nd. "The American militiaman, when he is properly led," one of them said, "is the finest soldier who ever wore shoe leather."[1149]

American field armies were a hash of differing components – regulars, guardsmen, and conscripts - during World War I, making it difficult to discuss a "militia battle" as in previous conflicts. Aside from the 102nd's experience, militia

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[1147] Ibid, 168.
[1148] Harry Proctor, *The Iron Division: National Guard of Pennsylvania in the World War* (Philadelphia: John Winston Company, 1919), 51-53.
[1149] Mahon, History of the Militia, 168.

actions did occasionally occur, and one happened by mistake on July 4, 1918. Four infantry companies from the Illinois 33rd Infantry Division (NG) were observing an Australian assault on a German position near Hamel, France, when the Germans unexpectedly attacked forcing the Americans to fight contrary to orders.[1150]

The Illinois militia acquitted itself well and repulsed the Germans. One of the Americans was Corporal Tom Pope who destroyed a critical machine gun position single-handedly and bayoneted its crew. General Pershing was unhappy with American soldiers serving under foreign command and warned the corps commander not to let it happen again. "As for Corporal Pope," Mahon wrote, "he received from the British the Distinguished Conduct Medal, from the French the Croix de Guerre, and from his own country the Congressional Medal of Honor."[1151]

The Home Guard and United States Guard

The calling forth of the entire National Guard left the states with no military force available for state service. There were disorders of various sorts that were difficult for police to manage. There were also bridges, factories, and other critical points (338 of them) requiring guards. State Guards or Home Guards with no relationship to the federal government came into being in most states. They were organized and called forth by their state governors under the Militia Clause and not

[1150] Ibid.
[1151] Ibid, 167. Pershing ordered that no American unit smaller in size than a division would ever again fight under French or British command.

the Army Clause. By the end of the war, there were about 130,000 state guardsmen with no affiliation beyond their state government.[1152]

Each state that established a Home Guard did so according to its own needs as it had in previous times, but most states trained the men in guard duty and riot control.[1153] Some units were essentially a sheriff's posse, some were night watch forces at vulnerable points, and some were militia units that occupied National Guard armories while the Guard was in Europe. In this, the Home Guard resembled the components of the American colonial militias, demonstrating that modern militiamen had not forgotten their origins and had accurately plumbed the depths of what made a militia army workable. These forces still exist in many states during the present day.[1154]

On December 22, 1917, the War Department issued *General Orders 162* establishing the United States Guard in those states that had not organized a state guard, and promised to provide weapons and munitions according to availability. "The Chief of the Militia Bureau was made responsible for organizing it," Mahon wrote. "At its peak strength, the United States Guard included forty-eight battalions with 1,194 officers and 25,068 enlisted men."[1155]

[1152] Stentiford, 51-53.
[1153] Mahon, *History of the Militia*, 157. See also: Stentiford, 51. Twenty-seven states organized a state guard during the war with a total manpower between 79,000 and 130,000 soldiers (sources differ). The state guards were not associated with the United States Guards or with the National Guard.
[1154] Stentiford, 241. Present day State Guards "represent the latest chapter in a long struggle for the proper role for militia in the United States."
[1155] Mahon, *History of the Militia*, 157. See also: Stentiford, 51.

The Militia in the Interwar Period
and in the Second World War

The air had never cleared between the regulars and the guard. The pre-war animosities that culminated with the Militia Act of 1903 and the follow-on National Defense Act of 1916 did not expire even amid the unspeakable horrors of the battlefields in France, the battlefield that the regulars, guard, and draftees all shared. The comradeship of shared dangers and miseries did not extinguish the flames of selfish interest. The war was run by the regulars, and they seldom failed to seize an opportunity to diminish the National Guard.[1156]

When called forth in early 1917, guard regiments trained in squalid, unhealthy tent camps in the south while the regulars and federal reserves trained in northern camps with frame buildings. Regulars habitually relieved and replaced competent guard officers for no discernable reason.[1157] Many guardsmen "maintained over the years," Mahon wrote, "that the army general staff set out purposefully during this war to destroy the identity of the Guard units and in other ways to discredit the Guard."[1158]

General Pershing confirmed these suspicions during a congressional investigation into the issue in 1920 by admitting that the General Staff had not always cooperated with the Guard.[1159] The actions of the regulars during the war

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[1156] Hill, 294. "First and foremost were the transparent efforts of the General Staff after the Defense Act of 1916 to discredit the National Guard as a component of the Army of the United States."
[1157] Ibid, 295.
[1158] Mahon, History of the Militia, 158.
[1159] "Reorganization of the Army," Testimony before Senate Subcommittee on Military Affairs, 66 Cong., 1 sess., p. 1509. See also: Mahon, *History of the Militia*, 161. "None other than General

fostered bitterness and resentment that resulted in post-war legislation in 1933 that authorized the President to call forth the Guard by units rather than as individuals only, but which continued to persist into World War Two.[1160]

The regulars used the confusion of squaring the triangular divisions (configuring the divisions to AEF organizational tables) in 1917 to break up as many National Guard Regiments as possible in order to destroy their unit identity. The states lost many honored units with histories reaching back to the colonial era this way, the men scattered within the various brigades of their division, and sometimes scattered among different divisions.[1161] Nevertheless, Jim Hill wrote, "The Divisions of National Guard origins began to accentuate their regional background and historical military heritage…with shoulder patches, slogans and nicknames."[1162]

Congress had ordered that the Army of the United States would be composed of three components: the regulars, the guard, and the draftees (National Army). On July 31, 1917, completely ignoring federal statutes, General Peyton March, Army Chief of Staff, promulgated *General Orders 73*. March illegally declared that there was only one American army and that every American soldier was a member of it.[1163] March forced guardsmen to remove any state identification

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Pershing himself sided with the Guard…he admitted in a postwar hearing that the army had never during the conflict given the Guard its wholehearted support."
[1160] Mahon, History of the Militia, 175.
[1161] Hill, 266.
[1162] Ibid.
[1163] Ibid, 299.

(shoulder patches, collar ornaments, flags, etc.) and wear the Regular Army's "US" disc on their uniforms.[1164]

Once the units arrived back in the United States, most soldiers wanted to go home with the National Guard unit with which they had left and stage a hometown parade and celebration. "They had marched away [as neighborhood units]," Hill wrote. "They wanted to come marching home literally as well as figuratively."[1165] However, the guard units were purposefully mustered out in depots hundreds, perhaps thousands, of miles from their communities. Hill called this the "lowest blow of all" and cited it as a prime example of the petty meanness of the General Staff. "The Guardsmen straggled home," Hill continued, "each with uniform, barracks bag, terminal separation "bonus," and the stub from a one-way railroad ticket."[1166]

No sooner were the American troops back home, the regulars once again went on the offensive. The triggering event was the *National Defense Act of 1920*. General March and the General Staff were determined to destroy the organized state militias for good. They planned to reverse the Acts of 1903 and 1916 and replace the National Guard with a federal militia with no ties to the states. The force structure the regulars offered Congress was a Regular Army of 400,000 men (it settled for 300,000) and a federal organized militia of roughly twice that number. The guard would once again become strictly a state militia under the Militia Clause

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[1164] Mahon, History of the Militia, 161.
[1165] Hill, 299.
[1166] Ibid. New York's 27th Infantry Division (NG) was an exception. They got a ticker tape parade up Fifth Avenue.

with no federal role whatsoever under the Army Clause.[1167] It was a resurrection of the old Continental Army plan.

Jim Dan Hill outlined the controversy succinctly. He noted that both the Guard and the regulars expected a knife fight over the proposed bill and the future it painted for the National Guard such as had occurred both in 1903 and 1916, and they got it. The Act, when it took final shape, would forever institutionalize the militia in the army along with the already existing reserves. The National Guard of the several states, it said, consists of "members of the militia voluntarily enlisting therein…that portion of the organized militia…officered and trained under [the Militia Clause]."[1168]

March presented Secretary of War Baker with the General Staff's *Army Reorganization Bill* (the *Baker-March Bill*) in March 1919. Baker himself did not support the General Staff's plan to cut the Guard out of the force structure, but he did want a Continental Army. "There is no possible objection," Baker said, "to having a National Guard." Further, having a Regular Army, a National Guard, and a Federal Reserve was not necessarily an antagonistic situation, the Secretary said. Their three roles in national defense were specialized as well as clearly defined; there was no reason for conflict. In addition, the Guard received strong support from the states while the regulars received little. Also, state governors and legislatures had been looking at the Constitution and concluded that it was not

[1167] Stewart, *Vol. II*, 57.
[1168] Mahon, History of the Militia, 175.

lawful for the American militia to disappear into a federal reserve as March proposed, and they were determined that it would not happen.[1169]

The Guard had four specific objectives in this legislative effort. First, National Guardsmen should be Militia Bureau Chiefs in the future, not regulars; second, the Militia Bureau should be removed from the control of the General Staff; third, the President should order only National Guard units into active service, not individuals; and fourth, Congress must identify the National Guard as integral to the United States Army in peace and war. The regulars came away with few prizes in their conflict with the Guard, but the guardsmen won three of their four points, losing only the third point. There were now three permanent components of the Army of the United States: the regulars, the Guard, and the reserves. The President signed the bill into law on June 4, 1920.[1170]

Opponents of the National Guard identified a number of reasons for having lost the legislative battle of 1920. First, they cited the antipathy between Pershing and March, and second, the NGA's lobbying had been very effective. Community guardsmen had written or visited their state and federal legislators, and communities across the nation had supported their local guard in meaningful ways. Third, the state governments themselves had entered into the controversy on behalf of their militias.[1171] Both of these were partially true, but Jim Hill offered what he said was the real reason. "The real source of the triumph of the National Guard

[1169] Hill, 300-301.
[1170] Mahon, History of the Militia, 171.
[1171] Hill, 314-315.

over its detractors," he said, "…was the battlefield records of the 18 National Guard Divisions in Europe plus those of the 17 non-divisional regiments of Guardsmen, which made possible the prompt fielding of a great American Army in Europe."[1172]

"For the next twenty years after the passage of the *National Defense Act of 1920*," Barry Stentiford wrote, "…the National Guard…and the Naval Militia…[were unmolested by the Regulars] as the organized militias of the states." The regulars had finally acquiesced to the fact that the National Guard was here to stay -- Congress and the states were committed to the citizen soldier -- and gave up trying to abolish it…for the time being. Peace reigned between the Regular Army and the National Guard for the next twenty years.[1173]

The Guard, however, was now a powerful entity with grass roots support across America and proved impossible to control to a greater degree than the statutes already provided. In addition to the National Rifle Association (NRA), the Guard now had two new powerful friends, The Veterans of Foreign Wars (VFW) and the American Legion (AL). In 1933, the NGA, backed by its allies, decided that the time was ripe for preventing the future destruction of its units as happened in 1917. The NGA proposed, Congress passed, and on June 15, 1933, the President signed an *Amendment to the National Defense Act of 1916* constituting the National Guard of the United States under the Army Clause and authorizing the President to

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[1172] Ibid.

[1173] Cooper, 174. "Guard-Army wrangles so common in the years before World War I disappeared [temporarily]."

call forth the organized militia by units into service with the National Guard of the United States. The Guard had now won the third point it had lost in 1920.[1174]

This would prevent the General Staff from assigning individual guardsmen to duty with entirely different units than those with which they had trained during peacetime. From this time forward, Guard regiments and divisions were called forth as numbered units avoiding the disruption and despair that had reigned among dislocated guardsmen during World War I.[1175]

Often called forth during the interwar years between World War I and World War II to perform its most hated duty, the Guard was the primary force that quelled civil disturbances. The post-war focus remained on crowd control but also gave increased emphasis to the protection of property. Guardsmen found this duty particularly bitter when it dealt with mobs of hungry, homeless people during the Great Depression (1929-1938). At other times the disturbance was associated with labor unrest, and guardsmen found this duty onerous as well. As in the latter 19th century and early 20th century, guardsmen often sympathized with the laborers. Sometimes the soldiers who were called forth and ordered to perform the unsavory duty of facing their friends and relatives over a bayonet were union members themselves. Nevertheless, the Guard performed this unpleasant duty credibly.[1176]

[1174] Ibid.

[1175] Mahon, History of the Militia, 175.

[1176] Catton, 673-674. See also: Evans, 239. A well-known exception to the Guard's duties of civil disturbance control was the Regular Army's quelling of the Bonus Marchers during May-July 1932. A "Bonus Army" of 43,000 (17,000 veterans and 26,000 family members) homeless people camped out in Washington, D.C. Led by former army sergeant Walter W. Walters, the destitute marchers wanted the government to pay them a promised bonus for service in the AEF. Promised by the *World War Adjusted Compensation Act of 1924*, the bonus was not payable until 1945. The marchers and their families needed the money now. General Douglas McArthur led a brutal

The Guard was called forth not only for civil disturbances but for natural and man-made disasters as well. Several civil disturbances stand out. There were serious coalfield strikes in 1921 (West Virginia) and in 1922 (Utah). There were also many less serious strikes. The governor of Ohio called forth 4,000 guardsmen to quell a steel mill strike that had turned violent in 1932. In July 1934, dockworkers struck in San Francisco harbor, a strike that "developed into one of the most serious labor disputes of the twentieth century."[1177] The busiest year for National Guardsmen performing state duty occurred in 1936 when state authorities called forth the Guard for all purposes 28 times. On occasion, state governors also called forth their militias to stop New Deal projects. Texas and Oklahoma sent guardsmen to the oil fields to stop federal agents from harassing the producers, Arizona militiamen stopped the construction of a dam, and a detachment of Iowa guardsmen broke up a hearing by the National Labor Relations Board.[1178]

Storm clouds began gathering in Europe again in the middle and late 1930s. The nation found itself once again looking eastward across the Atlantic (and now westward across the Pacific) to political and social forces inimical to the interests of the United States and to the interests of humanity at large. After years of congressional neglect (because of the Great Depression), the U.S. Army found itself faced with the prospect of engaging large, state-of-the-art armies across both oceans

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sweep to scatter the bonus marchers and their families out of Washington (while spectators cried out "for shame,") using men from the 12th Infantry Regiment (RA) and the 3rd Cavalry Regiment (RA) as well as six tanks. McArthur's heinous tactics were effective.

[1177] Mahon, History of the Militia, 176.

[1178] Ibid. "In the end, these state-national controversies all became court cases in which judges denied the right of the states to interfere."

with undermanned units and obsolete weapons and equipment. As it had so often in the past, America would find itself depending on the militia.

The first shadow of a coming world war loomed darkly across Europe when three battalions of German soldiers occupied the Rhineland on March 7, 1936, a demilitarized buffer zone between Germany and France. The Treaty of Paris ending World War I excluded German armed forces from this strategically sensitive area. This violation of the treaty was a dangerous gamble for German Chancellor Adolf Hitler. "If the French had marched into the Rhineland," he later said, "we would have had to withdraw with our tail between our legs."[1179] The French did not act and neither did the British, nor did the Americans.

Events and angry passions accumulated throughout the late 1930s and a broad overview of the major issues are listed here: Italy invaded Ethiopia and completed the conquest in May 1936. Germany and Japan sign a treaty of alliance in November and Italy joined the following year. The Spanish Civil War began in July 1936 with Germany supporting the fascists and Russia supporting the communists. It ended in a fascist victory in April 1939. In July 1937, the Japanese invaded China, and in December 1937, they attacked the *USS Panay* while it was at anchor in a Chinese River, claiming they did not see the American flag.[1180]

In March 1938, Germany absorbed Austria. In September, England and France signed the disastrous Munich Agreement allowing Germany to occupy

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[1179] Evans, 282-283.
[1180] Ibid, 292. Pages 284-293 contain an excellent essay on the events drawing America into World War II.

Czechoslovakia's Sudetenland. The following year the Germans violated the treaty by occupying the remainder of Czechoslovakia. In April 1939, Italy invaded Albania followed by German-Polish difficulties over the Polish Corridor and the free city of Danzig. Germany invaded Poland on September 1, 1939, which provoked Britain and France to declare war on Germany. The Soviet Union invaded Finland in November and annexed part of it in March 1940. Fascist Italy entered the Second World War on the side of Germany in June 1940 and France capitulated the same month. Germany invaded Russia in June 1941, Japan entered the war on December 7, 1941, and the United States entered on the following day. Germany declared war on the United States three days later followed by Italy.[1181]

President Roosevelt was one of the few leaders not swept away by the powerful isolationist sentiment that had gripped the country since the early 1920s and had controlled government policy during this time.[1182] He recognized the danger posed by Mussolini and Hitler and believed that fascism had to be either contained or eradicated. Roosevelt increased the number of paid drills for the organized militia from 48 to 60 in 1937, and doubled summer training to 14 days. When Germany invaded Poland in 1939, the President asked Congress to increase the number of guardsmen paid to attend summer training to 280,000.[1183]

[1181] Robin Cross, H.P. Wilmott, and Charles Messenger, *World War II* (New York: D.K. Publishing, 2007), 108-109.
[1182] Evans, 284-293. This is an in-depth discussion of the phenomenon of American isolationism during the 1930s.
[1183] Mahon, History of the Militia, 178.

Informed by General George C. Marshall, Army Chief of Staff, that the army needed an additional 60,000 men just to defend the continental United States, a nervous Congress declared a national emergency on August 27, 1940. Congress authorized the President to call forth the federal reserves as well as the entire National Guard of the United States under the Army Clause. The authorization limited the guardsmen's service to the Western Hemisphere and their tour of duty to one year.[1184] The Guard was mobilized in 22 increments starting on September 16, 1940 and ending on June 21, 1941. At a time when America suffered a critical need for fighting men, the National Guard stood in the breach and provided 297,754 organized militiamen to defend the nation. Most of these men served through 1945 and some served into 1946.[1185]

The 68 army infantry divisions that served during World War II contained draftees, enlistees, and Guardsmen. Many of the men of the Guardsmen had signed up for one evening a week and summer camp. "[The men] had been told they would be on active duty for 12 months," historian Don Haines wrote. "Then came December 7, 1941, and 12 months became "for the duration." It would prove to be a very long weekend."[1186]

[1184] Hill, 373.
[1185] Ibid.
[1186] Don Haines, "The Legend of Lightning Joe," *World War II Magazine*, February 2016, 8. The 29th served from March 1941 until released from federal service on January 17, 1946. Sergeant Joe Farenholt of the division's 175th Infantry Regiment (Maryland National Guard) termed it, "A very long weekend." See also: Mahon, *History of the Militia*, 159, 192. See also: Hill, 463. The 29th Infantry Division (NG) served on the front line in Europe for 242 days, lost 3,887 men killed and sustained total casualties of 20,620.

On September 16, 1940, the same day the first Guard units were called forth, President Roosevelt signed the Selective Service Act requiring every male between 21 and 35 to register for the draft. Inductees would serve for one year with no geographic limitations. This was the first time in American history Congress initiated a draft during peacetime.[1187] Friends of the militia wrote clauses into the Selective Service Act protecting the Guard from the regulars who yet once again wanted to replace the citizen soldiers with draftees in a Continental Army kind of structure. It quickly become apparent that the breathing space the Guard had enjoyed with the regulars since the Act of 1920 was over.[1188]

The first increment of the Guard called forth consisted of four divisions, which went on duty on September 16, 1940. They were the 30th Infantry Division (NG) from the Carolinas, Tennessee and Georgia; the 41st Infantry Division (NG) from Montana, Idaho, Washington, Wyoming and Oregon; The 44th Infantry Division (NG) from New Jersey and New York; and the 45th Infantry Division (NG) from New Mexico, Arizona, Oklahoma, and Colorado. In addition, three battalions of coastal artillery (155mm) were called forth along with seven anti-aircraft units, eight harbor defense units, and four aerial observations squadrons (the 105th, 116th, 119th, and 254th). Called forth as units under the 1933 law and totaling 63,646 soldiers, these formations met General Marshall's request for 60,000 men. For the

[1187] Evans, 293.
[1188] Mahon, History of the Militia, 179.

first time since 1919, America was capable of confronting an enemy with a combined arms field army.[1189]

The old animosity the regulars harbored for citizen soldiers surfaced almost immediately with the calling forth. Unlike World War I, they could do nothing about individual soldiers called forth with their units, but like World War I they could reclassify units, harass, and relieve their leaders and replace them with regulars. Two of the bitterest critics of the National Guard were Lieutenant General Ben Lear and Lieutenant General Lesley McNair, Commanding General Second Army and Commanding General Army Ground Forces respectively. These men were in positions of great authority from which they could trouble the Guard, and they did. They both reclassified units and relieved commanders at will and McNair was able to postpone for a year the reconfiguration of National Guard divisions from the World War I square division into the old-new triangular divisions, a pre-World War I organizational structure readopted by the army in the late 1930s.[1190]

Black guardsmen faced the same kind of bigotry from their own chain of command as well as that of the Regular Army that they had faced during the previous war. After returning from France, the army reorganized the proud black infantry regiments into labor units. The single exception was the 369th Infantry Regiment (NG) that had performed so well as part of the French 16th Infantry Division. They were retained as infantry but were not allowed assignment to either of the all white 27th or 44th Infantry Divisions, New York National Guard. The

[1189] Hill, 373.
[1190] Ibid, 391-395.

369th was finally reorganized in 1940 and its honored lineage was lost to history. The World War II army did make one concession to racial equity, however, it no longer identified black units on paper as "colored, but distinguished them [from white units] by an asterisk only." Black guardsmen spent World War II in a much-diminished role compared to white soldiers. "Black Guard units…faced severe alterations," Mahon wrote, "but they were used to these."[1191]

The Japanese Navy ended isolationism in the United States when it attacked the Pearl Harbor naval base in the Hawaiian Islands on December 7, 1941. Seven battleships were sunk or severely damaged, three cruisers and three destroyers were damaged beyond repair, and hundreds of aircraft were destroyed. In addition, 2,335 military personnel and 68 civilians were killed. The Japanese failed to destroy the power station, repair docks, and fleet fuel depot. This failure left the Pearl Harbor naval base in operational condition. Also, the Pacific Fleet's three vital aircraft carriers were not at Pearl Harbor at the time of the attack and a new fleet emerged around them.[1192] The attack also united Americans like nothing before or since. From an American political perspective, the Japanese could not have done better.[1193]

The earth was divided into two major theaters of war: the Atlantic and the Pacific. Within these were subordinate theaters, such as North Africa and the

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[1191] Mahon, History of the Militia, 181.
[1192] Stewart, Vol. II, 77-78. See also: Hill, 440. "Pearl Harbor was one military disaster that could not be blamed on the Guard." (Italics in the original.) See also: Larry Schweikart and Dave Dougherty, *A Patriot's History of the Modern World: From America's Exceptional Ascent to the Atomic Bomb, 1898-1945* (New York: Penguin Publishing, 2012), 349-351.
[1193] Evans, 310-311.

Middle East in Europe and China-Burma in the Pacific. Fighting a war on two fronts had defeated the Germans in World War I, and now the Americans found themselves doing the same thing, but the Americans had many more resources than their enemies had.[1194]

Eighteen divisions of National Guardsmen (the 26th through 45th – there was no 39th or 42nd Division) served in combat around the world during the war, eight in Europe and ten in the Pacific. The first US division to arrive on foreign soil during the war was the 34th Infantry Division (NG) with soldiers from Minnesota, North Dakota, South Dakota, and Iowa. This unit arrived in Ireland during January 1942, the first of many American divisions that would stage and train in Great Britain until they crossed the channel on D-Day (June 6, 1944).[1195]

The eight Guard divisions serving in Europe all suffered casualty rates expressed in five figures. In order of most casualties to least, they were the: 45th Infantry Division (NG) from New Mexico, Arizona, Colorado, and Oklahoma; 29th Infantry Division (NG) from Maryland and Virginia; 36th Infantry Division (NG) from Texas; 30th Infantry Division (NG) from North and South Carolina, Georgia, and Tennessee; 28th Infantry Division (NG) from Pennsylvania; 34th Infantry Division (NG) described above; 35th Infantry Division (NG) from Missouri, Kansas, and Nebraska; and 26th Infantry Division (NG) from Massachusetts,

[1194] Stewart, *Vol. II*, 78. "For the first time in its history, the United States had embarked on an all-out, two-front war."
[1195] Hill, 448-449.

Maine, New Hampshire, and Vermont. These eight European divisions suffered a total of 26,314 men killed and 115,920 wounded.[1196]

The ten Guard divisions serving in the Pacific suffered fewer casualties than those serving in Europe. In numerical order, they were the: 27th Infantry Division (NG) from New York; 31st Infantry Division (NG) from Alabama, Mississippi, Florida, and Louisiana; 32nd Infantry Division (NG) from Michigan and Wisconsin; 33rd Infantry Division (NG) from Illinois; 37th Infantry Division (NG) from Ohio; 38th Infantry Division (NG) from West Virginia, Kentucky, and Indiana; 40th Infantry Division (NG) from California and Utah; 41st Infantry Division (NG) from Montana, Wyoming, Idaho, Oregon, and Washington; 43rd Infantry Division (NG) from Connecticut, Maine, Vermont, and Rhode Island; and the 44th Infantry Division (NG) from New Jersey and New York. These ten Pacific divisions lost a total of 11,215 soldiers killed and suffered 35,135 wounded.[1197]

The total dead from the eighteen National Guard divisions was 37,529 with another 151,055 wounded. This does not include the Guard's non-divisional artillery, cavalry, air corps, and support regiments that were scattered throughout the army in both theaters. These numbers bear testimony to the organized militia's faithful service during America's most demanding war. [1198]

As in World War I, American field armies were a mixture of components and it is difficult to identify a "National Guard battle" to examine as was done with

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[1196] Mahon, History of the Militia, 190-191.
[1197] Ibid, 190-191, 194. "During the first fourteen months of the war in the Pacific, precipitated by Pearl Harbor, the Guard and the Marines made up the bulk of the American fighting force."
[1198] Ibid.

wars prior to the twentieth century. This was particularly true in the Pacific Theater which was a conflict essentially built around the navy and will not be discussed here. One found regulars, guardsmen, reservists, and draftees in every action during World War II. However, four National Guard divisions did much to turn the tide during the Ardennes Counteroffensive, more often called the Battle of the Bulge. They were the 26th, 28th, 30th, and 35th Infantry Divisions (NG).[1199]

British, American, and Free French forces invaded continental Europe at two French locations in 1944: Normandy in June and Province in August. They liberated Paris on August 25, 1944, and continued pushing north and east toward Germany. By December 1944, the allied armies aligned along the German border prepared to deliver the coup de main to the German Reich when the German Army launched a completely unexpected attack with eight infantry and five armored divisions, later reinforced by twelve infantry and four armor divisions (and non-divisional brigades and regiments). American forces initially numbered four infantry and one armor divisions, later reinforced by twenty infantry and nine armor divisions (and non-divisional brigades and regiments).[1200]

The battle began on December 16, 1944, and ended on January 25, 1945. The German objective was to isolate the British and French armies from one another, which Adolph Hitler, German head of state, believed would put the

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[1199] Stewart, *Vol. II*, 156.

[1200] Brigadier Peter Young, *A Dictionary of Battles 1816-1976* (New York, Mayflower Books, 1977), 414-415. German Field Marshal Walther Model attacked with "250,000 men and 1,100 tanks." Facing him were small elements of British and French soldiers behind the line and American infantrymen on the line facing the Germans. See also: Stephen Ambrose, *The Victors: Eisenhower and His Boys – The Men of World War II* (New York: Simon & Schuster, 1998), 273.

German army in a position to destroy four allied armies in detail. After forcing peace terms on the allies favoring Germany, Hitler believed he would then be free to move his western armies eastward to deal with the Russians. The Germans had the very rough luck of having both their strategic and tactical planning directed by a paranoid maniac who suffered increasingly from denial.[1201]

The 30th Division (NG) was in the north near Malmedy, the 26th, 28th, and 35th Divisions (NG) in the south stretched between Bastogne and Luxembourg when the offensive opened on the 16th. The Germans were favored by very challenging winter weather that kept allied airpower grounded for most of the battle.[1202] German soldiers quickly broke the allied lines and moved rapidly east easily dispersing the surprised formations. Exceptions were the 2nd and 99th Infantry Divisions, which bitterly contested every inch of ground. Several days later, allied forces achieved a grasp of the situation and developed an understanding of the German intentions. They emerged from their confusion and on December 21, one battalion of the 119th Infantry Regiment, part of the 30th Infantry Division (NG), attacked German positions but were grossly outnumbered and forced to withdraw.[1203]

[1201] Crandal, William F., "Eisenhower the Strategist: The Battle of the Bulge and the Censure of Joe McCarthy," *Presidential Studies Quarterly*, Vol. 17, No. 3 (Summer 1987), 487-501.
[1202] Ibid. See Also: Steven J. Zaloga, *Battle of the Bulge 1944 (2): Bastogne* (Oxford, UK: Osprey Publishing, 2004), 24-25. "The 28th Division [Pennsylvania National Guard]…had been shattered by the fighting in the Hurtgen forest in early November and had suffered 6,184 casualties in two weeks of fighting, one of the most ferocious bloodlettings suffered by any US Army division in World War II." Considered a quiet area, the Pennsylvania militiamen moved into the Ardennes to rebuild.
[1203] Steven J. Zaloga, *Battle of the Bulge 1944 (1): St. Vith and the Northern Shoulder* (Oxford, UK: Osprey Publishing, 2003), 70.

The veteran 28th Infantry Division (NG) and the green 106th Infantry Division were understrength and spread over a large area near Schnee-Eifel when the 5th Panzer Army attacked in overwhelming numbers. Two full regiments of the 106th surrendered intact (about 7,000 men).[1204] The 28th and the one remaining regiment of the 106th consolidated at St. Vith where they were joined by the 7th and 9th Armored Divisions. They fought until the Germans crushed their flanks forcing them to retrograde to a position closer to St. Vith on December 23rd. The hard fighting militiamen of the 28th and their comrades from the other components slowed the German advance almost to a halt and seriously disrupted their timetable, a material factor in the later failure of the German offensive.[1205]

The 28th now moved eastward and was ordered posted centrally on the complex and critical road network connecting St. Vith and Bastogne (about 34 miles apart), and was again soon engaged by the 5th Panzer Army. The outnumbered Pennsylvanians held their position stubbornly, giving the 101st Airborne Division time to fortify Bastogne a few miles to the west, until ordered to retreat. With the 28th removed, the 101st was surrounded the following day and repulsed numerous attacks until rescued by the 4th Armor Division on December 26. The fighting swayed back and forth along the line until the Germans ended the offensive on January 25, 1945.[1206] The Battle for the Bulge resulted in more

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[1204] Stewart, 155. "Two inexperienced regiments of the 106th Infantry Division were forced to surrender in the largest mass surrender of U.S. troops during the course of the war in Europe." See also: Ambrose, *Victors,* 280. One of the men in the surrendered regiments was Private Kurt Vonnegut, who decided to escape through the woods rather than go to a German POW camp.
[1205] Zaloga, *(2),* 33-34. "…the determined defense by the badly outnumbered 28th Division had cost [the Germans] precious time [which they could not regain]."
[1206] Young, 415.

American casualties than any other action in the European Theater during the Second World War. The battle cost 80,987 American casualties (the 28th and 106th sustained a higher number of casualties than any other allied units in the battle) and approximately the same number of German casualties, mostly from the 5th Panzer Army.[1207]

This battle, and many others around the world, clearly demonstrated the loyalty, valor, and dependability of the citizen soldiers during World War II. The Ardennes earned a place alongside Saratoga, New Orleans, Antietam, and the Meuse-Argonne in American militia history.[1208] Nevertheless, in 1944 a cabal of regulars in the War Department yet once again began planning for a post war army without a National Guard. Several times since the Act of 1903, the Guard had been assured a permanent place in the Army of the United States. Most National Guard leaders were overseas fighting the war when the regulars made their move, but the NGA and NRA were vigilant and on hand in Washington. They did much to convince General Marshall to sign *War Department Circular 347* on August 25, 1944, which directed planners to structure a post war army with a small regular component and a large reserve component (both federal reserves and National Guard). The War Department's Joint Committee on Postwar Military Posture

[1207] Ambrose, *Victors*, 289.
[1208] Mahon, *History of the Militia*, 194. "Even critics [of the National Guard] never inferred that Guardsmen hung back in battle or were less effective than other types of soldiers."

promulgated the army's official postwar policy in October 1945: the Guard would remain the first line reserve.[1209]

Franklin Roosevelt died on April 12, 1945, thus promoting Vice President Harry Truman to Commander-in-Chief. Truman authorized the use of nuclear weapons and an Air Corps bomber destroyed Hiroshima, an industrial city in Japan, on August 6, 1945, and Nagasaki three days later. The Japanese surrendered unconditionally on August 15 and signed the instrument of surrender on board the USS Missouri (the new president's home state) in Tokyo Harbor on September 2, ending the Second World War. [1210]

The NRA Helps Arm the British Militia and Organizes Community Militias Across America

The NRA's contributions to the war effort will be touched on since it was so closely associated with the National Guard. At the NRA's 1941 annual meeting, Fiorello LaGuardia, U.S. Director of Civil Defense, made a speech in which he urged the membership to "enroll in and participate in the auxiliary police and other civilian defense forces now being established by local and state government."[1211] The NRA heeded LaGuardia's request and immediately began recruiting men from its membership to enter the security forces. This was the first of many services the NRA performed during the war.

[1209] Ibid, 196. "With the publication of this policy, coupled with Circular 347, any threat to the position of the Guard similar to that which occurred after World War I faded away."
[1210] Wilmont, 291-292.
[1211] Trefethen, 246-247.

Britain had followed what John Trochmann termed "a foolish civil disarmament policy" after World War I.[1212] As the menace of Fascist Germany and Italy grew during the 1930s, Britain continued enacting gun laws disarming even its law-abiding citizens. (Trochmann maintains that a disarmed person is a subject and not a citizen.)[1213] In late May 1940, the defeated British Army evacuated France leaving most of its weapons and equipment behind. Parliament had already disarmed British families and the militia, so Britain was now vulnerable to a German cross-channel attack, an event that the British could resist only with great difficulty given their lack of firearms.[1214]

"This should be a lesson for the anti-gun crowd," John Trochmann said. "World War II itself is a compelling lesson for them, but they won't learn. They could learn from history, but they don't want to."[1215]

The American Committee for the Defense of British Homes and the National Rifle Association immediately began collecting firearms to send to the British militia (the Home Guard) and British families residing along the coast. Each issue of the *American Rifleman*, official publication of the NRA, carried pleas for the donation of arms for Britain. In a very short time, they sent more than 8,500

[1212] John Trochmann interview by Gerald Van Slyke, April 13, 2015. Trochmann is a spokesperson for the Militia of Montana, one of the most active administrative components of the Unorganized Militia in the United States. The organization offers educational materials, advice, and encouragement to constitutional community militias around the nation.
[1213] Ibid.
[1214] Trefethen, 244.
[1215] John Trochmann interview by Gerald Van Slyke, April 13, 2015.

firearms donated by NRA members and 100,000 cartridges with much more to follow.[1216]

The U.S. Government also sent large quantities of arms to rearm the British army. "When the ships from America approached our shores," Winston Churchill remembered, "with their priceless arms, special trains were waiting in all the ports to receive their cargoes. The Home Guard in every county, in every town, in every village, sat up all through the night to receive them." [1217] By the end of July, Churchill wrote, England had become a hornet's nest.

In May 1942, the NRA launched a program to collect Model 1903 and 1917 military rifles purchased by civilians for donation to the army, which was critically short on rifles. In November 1942, the Provost Marshal General of the Army asked the NRA to mobilize its membership during an ammunition shortage to reload empty cartridge cases for use by the police, Home Guards, and local guard forces (usually militia) protecting sensitive locations. NRA members answered the call and kept civilian security agencies supplied with ammunition throughout the war.[1218]

The NRA performed other services during the Second World War to make the planet safe for democracy. Countless communities across America had organized militias beginning with the invasion scares of early World War II. "From the first days of American involvement in the war until the end," Stentiford wrote,

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[1216] Trefethen, 244.
[1217] Ibid, 244-245.
[1218] Ibid, 246.

"unknowable numbers of militia groups were formed with and without official support."[1219] The War Department took note of the countless militia groups forming "usually with local support, and…with the encouragement of [at least one] corps area commander."[1220] The NRA, VFW, and Legion all stirred the pot by urging their members to form local militias, which many did.[1221]

The War Department eventually became nervous at the idea of thousands of community militias existing in the country that were not under the control of a state adjutant general. Although it "did not want unaffiliated [with the War Department] militia groups loose in the nation…it had no desire to forbid or discourage their existence." In order to defuse the proliferation of militias with as little irritation as possible, the General Staff offered in 1942 to organize a "Reserve Militia" force out of men in the Unorganized Militia, almost a duplication of the State Guards. However, local communities in 1942 proved to be just as unreceptive to federal control of their militias as they had been throughout American history, and as many remain today. Very few militiamen came forward.[1222] "The Founders could have told the War Department," militia leader John Trochmann said, "that the militia is a creature of the states and not the nation."[1223]

The NRA stepped into the vacuum. Stentiford termed it "an organization perhaps more suited than the War Department to assist small, quasi-independent

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[1219] Stentiford, 130. Some unorganized militias still in existence are continuations of one of these World War II militias.
[1220] Ibid.
[1221] Ibid.
[1222] Ibid.
[1223] John Trochmann interview by Gerald Van Slyke, April 13, 2015.

militia units."[1224] The NRA published a booklet titled *Practical Home Guard Organization for Reserve Militia or "Minute Men"* in 1942. It outlined the organizational forms that colonial and early republican militias had taken and suggested that current militias follow them as the constitutional model. The NRA insisted that the militia was to be well regulated and in obedience to lawful county authorities. It also stipulated that militias were not to serve outside their own county. The NRA also published a variety of security manuals for civilians on subjects as varied as how to protect industrial plants and how to establish a firearms training school.[1225]

Vast numbers of American soldiers, many of them National Guard, were in training in the United States during the first year of American involvement in the war. However, they began a mass exodus overseas in early 1943. With the National Guard gone to war, the states faced the same dilemma they had during World War I: what to do about state security with the militia on the other side of the world. They answered it the same way in 1943 as they had in 1918; they organized State Guards from the unorganized militia. Some were already in existence when the war began, more came into being as the war progressed, some militias morphed into State Guards, and in 1943, the numbers of State Guard units proliferated rapidly after the departure of the troops for overseas theaters of war.[1226] Often these organized militias were filled with older men not subject to the draft.

[1224] Stentiford, 131.
[1225] Ibid, 132-134. See also Trefethen, 247.
[1226] Trefethen, 246. See also: Stentiford, 134.

They performed the same duties they had performed during the Great War, often this time with the help of community militias. A joint meeting of the Adjutants General Association (AGA) and the National Guard Association (NGA) occurred in early April at Harrisburg, Pennsylvania. Both the state guards and militias received much attention. The NGA and AGA recognized the reliance states would have to place on these two groups and suggested the Army provide weapons and training to them without any federal control. NRA representatives at the meeting added their voice to the suggestion as well. The War Department contributed a substantial amount of money and 180,000 weapons to the State Guards, but contributed nothing to the militias. The Army placed the State Guards under the control of the Militia Bureau (now called the National Guard Bureau), but most of the community militias opted out.[1227]

The Postwar Militia through the Troubled Sixties

With the Japanese surrender the nation was at peace and the active military forces underwent immediate and drastic reductions. This time the General Staff did not waste any effort in attempting to squeeze the Guard out of the scramble for funding and equipment as it normally did. It directed all its energy toward defending the army from the animosity of President Truman who, the army believed, hated and feared the professional military forces, the Regular Army and Navy, and especially the Marines. Truman professed to hold graduates of the

[1227] Stentiford, 134-137.

military academies in contempt and said he had never trusted them and never would. He planned to cut drastically the military budget and he did, so much so that he put the United States at serious risk.[1228]

America had scored a massive win in the recent war and the Soviets had not yet presented themselves as a threat. Most Americans believed that the United States was too powerful to every again be challenged by anyone and would support cuts in military spending. Truman, comfortable in being Commander-in-Chief of the only nuclear force on the earth, could see little use in large conventional forces and immediately began whittling at the U.S. military, but Truman's animosity did not seem to extend to the National Guard in which he had served during World War One.. Congress approved an extension of the wartime draft and Truman signed it on June 24, 1946. Legislation authorized a National Guard of the United States "of 682,000 members in twenty seven divisions," Mahon wrote, "twenty-one regimental combat teams (RCT), plus support units."[1229]

Congress passed the *National Security Act* on July 26, 1947, creating the National Military Establishment comprised of the Army, Navy (including the Marine Corps), and the newly birthed Air Force. It established the Central Intelligence Agency, the National Security Council, and the United States Air Force and Air National Guard. It moved the Defense Establishment into the Pentagon

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[1228] Clay Blair, *The Forgotten War: America in Korea 1950-1953* (New York: Doubleday, 1987), 3-12. Truman had been a National Guard Officer during World War I (Battery D, 129th Field Artillery, 35th Infantry Division – NG). He vividly remembered the Regular Army's treatment of the Guard during that war. General March's chickens had come home to roost. Blair's treatment of Truman's intelligence and character is polemical in nature and one must discount much of it.
[1229] Mahon, *History of the Militia*, 198-199. Congress authorized these units but voted funding for only a small part of it.

(built between 1941 and 1943) and changed the name of the War Department to the Department of the Army. It divided the National Guard of the United States into two components, the Army National Guard and the Air National Guard, both with dual representation by the National Guard Bureau and by their respective services. It also placed a civilian Secretary of Defense over the Military Establishment and gave statutory authority to the existence of the Joint Chiefs of Staff. In the summer of 1949, further legislation changed the name from Military Establishment to Department of Defense.[1230]

In June 1948, Truman signed the *Vitalization and Retirement Equalization Act* approving retirement pay for National Guardsmen after 20 years of service and after reaching the age of 60. Things were looking good for the Guard in 1948 when suddenly the regulars struck. The Secretary of Defense, James Forrestal, convened a board of regular officers to review the status of the reserves and National Guard. Predictably, the board recommended dissolving the National Guard of the United States and assigning its units to the federal reserves, another rendition of the Continental Army concept. Forrestal agreed and the Guard decided to fight back.[1231] "When the NGB [National Guard Bureau] especially needed to influence Congress, it turned to the NGA," John Mahan wrote. There is no doubt that enmity between Guard and regulars was there."[1232]

[1230] Stewart, 203. "[The Act] converted the National Military Establishment into an executive department, renamed the Department of Defense. The legislation reduced the Departments of the Army, Navy, and Air Force to military departments within the Department of Defense."
[1231] Hill, 500n. "The strain…drove the first Secretary of Defense, James V. Forrestal, to suicide, May 22, 1949. Among other things, there had been a bitter conflict occasioned by efforts, in the guise of advancing the cause of "unification," to federalize the Guard, both army and air."
[1232] Mahon, History of the Militia, 201.

The NGA could always count on Congress for support and for many years had been in the habit of enlisting congressional help in its efforts to hold off those who would molest the National Guard. Congress responds to the National Guard, both then and in the present day, first, because its foundation is in the Constitution. Second, state governments tenaciously defend their organized militias. Third, the Guard maintains a presence across the United States with roots and supporters in every community. Fourth, the Guard has a hometown patriotic character. Fifth, the Guard has proven repeatedly that it can destroy America's enemies. The regulars lost this fight as well.[1233]

The United States was shaken in August 1949 when the Soviet Union detonated its first atomic bomb. Truman had allowed the American nuclear stockpile to deteriorate to a sobering low level. The President, however, responded to the news by declaring that the Russians were too backward to build a bomb and this "atomic explosion" was likely a laboratory accident. On January 31, 1949, Truman authorized a "crash" program to develop a much more powerful hydrogen bomb but did not authorize an increase in nuclear weapons until October 17.[1234]

A second shock occurred on December 10, 1949, when the Communists had finally conquered China, forcing the republican government to flee to the island of Formosa and establish a government in exile.[1235] Americans now saw a monolithic communist giant, Russia, which had acted belligerently since the Berlin Blockade

[1233] Derthick, 145.
[1234] Blair, 21.
[1235] Stewart, *Vol. II*, 214-215.

(June 1948 to May 1949), and China, as an even greater threat than the fascists had been earlier in the decade. Clay Blair argued that on the day the Korean Conflict began, the U.S. military was a shambles that had been engineered by Truman. "By June 1950, Harry Truman had all but wrecked the conventional…forces of the United States," Blair wrote. "The fault was Truman's alone…he had allowed his obsessive fiscal conservatism to dominate his military thinking and decisions.[1236]

Squabbles between regulars and citizen soldiers, and between the President and the regular military, continued until a bigger issue rendered them moot. On June 25, 1950, the communist North Korean People's Army (NKPA) invaded South Korea with 90,000 men. They quickly overran the Republic of Korea (ROK) army units along the demarcation line and pushed south. The main cause of the disaster, according to Blair, was "Truman's inability to grasp grand strategy -- to back American foreign policy with adequate military power – and his…view that he was a victim of pentagon budget flimflams."[1237]

On the day the Korean Conflict opened, the regular army contained 591,000 soldiers in ten thinned-out divisions, five regimental combat teams, and a constabulary in Germany equaling an additional division. The navy had been cut to 377,000 sailors on 670 ships, and 4,300 aircraft. Cut to the bone, the Marines had only 74,279 men in two skeletonized divisions and two air wings, more than

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[1236] Blair, 29. Blair completely ignores the other policy and economic realities that helped shape the President's views.

[1237] Ibid, 61. See also: Stewart, *Vol. II*, 215. "The United States had responded to the emergence of a bi-polar world with a policy of containing the political ambitions of the Communist bloc while at the same time deterring general war. In the view of senior army leaders, by mid-1950 the United States had not yet backed that policy with a matching military establishment."

an 80% drop from their wartime strength.[1238] The new Air Force maintained 48 combat groups with 411,000 airmen. The U.S. military was only a shadow of what it had been five years before.[1239]

Two separate governments were established in Korea in 1945-46 when it was liberated from the Japanese. A communist regime sponsored by the Soviet Union controlled the North; a democratic regime existed in the south sponsored by the United States as the representative of the United Nations.[1240] A demarcation line at the 38th parallel separated them. By 1950 the United States had withdrawn nearly all of its units from Korea leaving only a token force and a handful of advisors. It would not be enough.[1241]

The United Nations Security Council condemned the invasion of South Korea on June 27 and called for member nations to contribute troops to a United Nations Command (UNC) which would drive the NKPA north across the border. Twenty-one member states contributed troops in varying numbers. The United States provided 88% of all forces and was granted command of the UNC in Korea.[1242] "President Truman," Fehrenbach wrote, "[immediately] called the militia of Minnesota and Mississippi, the Viking and Dixie Divisions, into federal

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[1238] Blair, 8. "In contrast with his predecessor Roosevelt, who favored the Navy, Truman held it and its stepchild, the Marine Corps, in utmost disdain and showed no inclination to soften his views or try to understand the role of sea power."
[1239] Stewart, 211. "…The Army underwent its drastic postwar reduction, from 8 million men and 89 divisions in 1945 to 591,000 men and 10 divisions in 1950..."
[1240] Ibid, 200. Fifty nations had founded the United Nations in San Francisco in 1945. Its mission was collectively to suppress aggression anywhere in the world. The United States was a member nation.
[1241] T.R. Fehrenbach, *This Kind of War* (London: Brassey's Publishing, 1994), 67-68, 164-165
[1242] Ibid, 129.

service, and induction calls soared."[1243] As described below, many other National Guard and Air National Guard units were also called forth.

The war itself was essentially a series of unsuccessful offensives by both sides. The initial NKPA invasion was repelled and the NKPA driven out of the country by October 1, 1950, after which the UN invaded the North. American soldiers over ran almost all of North Korea before the UN invasion was frustrated by a counter-invasion by 300,000 People's Republic of China (PRC) soldiers on November 25. UN forces were driven south of the 38th Parallel where they consolidated and then repulsed a Chinese invasion of the South. A stalemate, reminiscent of World War I, came into being and the Americans and Chinese fought pointless, bloody hill battles for the remainder of the conflict.[1244]

Both parties agreed to an armistice, signed on July 27, 1953, that stabilized the frontier at the forward positions of both armies. It also stipulated the establishment of a demilitarized zone along the frontier that still exists, is still a hostile frontier today, and is still guarded by American soldiers. American dead in Korea totaled 54,246 with 103,284 wounded.[1245]

Military historians often blame Truman for gutting the military until it was unprepared for war, for mismanaging the war, and for mismanaging foreign relations pursuant to the war. The result was a poorly managed conflict with an unnecessarily high casualty list. "A nation that does not prepare for all forms of

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[1243] Ibid, 305.
[1244] Blair, 903-923. This is a sketch of the hill battles leading to the armistice.
[1245] Ibid, 975.

war should then renounce the use of war in national policy," Fehrenbach wrote. "A people that does not prepare to fight should then be morally prepared to surrender. To fail to prepare soldiers and citizens for limited, bloody ground action, and then to engage in it, is folly verging on the criminal.[1246] Fehrenbach's opinion rings true and parallels that of almost every American soldier. Lyndon Johnson would be called a murderer (one agrees with that assessment) a few years after this because he fought in Vietnam but was unwilling to do what was necessary to win.

The Army Guard and Air Guard were both deeply involved in the conflict. Eight Army Guard infantry divisions were called forth for service: the 28th (Pennsylvania), 31st (Deep South), 37th (Ohio), 40th (California), 43rd (Northeast), 44th (Illinois), 45th (Oklahoma), and the 47th (Minnesota, North Dakota). The 31st, 37th, 44th, and 47th remained in the United States. The 28th and 43rd were sent as reinforcements to Europe and only the 40th and 45th went to Korea where both saw much combat. In addition, three regimental combat teams, 43 anti-aircraft units, and other don-divisional units were called forth. The number of Army Guardsmen who served was 138,600. [1247] Three-fourths of the Air Guard was called forth for the conflict. It provided 66 units and 45,594 airmen who performed critical missions for the Tactical Air Command, the Strategic Air Command, and the Air Defense Command.[1248]

[1246] Fehrenbach, 546.
[1247] Mahon, History of the Militia, 208-209.
[1248] Ibid.

Desegregation of the armed forces went into effect during the Korean Conflict. President Truman signed *Executive Order 9981* on July 26, 1948, forbidding racial discrimination within the U.S. military. Black soldiers began serving in previously all-white units and took part in the hill battles during the last two years of the war. In July 1948, there were 310,322 militiamen on the Army Guard's muster rolls of which 6,988 were black. There were 27 Guard divisions but blacks were assigned to only two, in Connecticut and New Jersey. After the order, Ohio relented and allowed a black battalion in its 37th Infantry Division (NG).[1249] The same exclusion of blacks was evident in the regular divisions as well, but the Korean Conflict would change that. The Korean Conflict sparked a civil rights movement that would grow through the 1950s and 1960s.

The National Guard stood poised as the first line reinforcement of the army during the Cold War, which began in 1947 when communists started a civil war in Greece (1946-1949), and the Soviet Union threatened Turkey's borders. The United States announced the Truman Doctrine guaranteeing the defense of Greece and Turkey against the Soviet Bloc in March 1947.[1250] War between the two powers almost broke out when the Russians closed the land route into Berlin, part of which the U.S. Army garrisoned. The Berlin airlift began and the Russians later reopened access to the city. The airlift provoked the formation of the North Atlantic Treaty Organization (NATO) on April 4, 1949. A mutual defense pact among the

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[1249] Ibid, 212.

[1250] Catton, 770. "I believe," Truman said, "that it must be the policy of the United States to support free peoples who are resisting attempted subjugation by armed minorities or outside pressures."

nations of Western Europe, the NATO armies were oriented toward containment of the Soviet Union. NATO is still in existence today and the United States is still a member.[1251]

There were various organizational threats to the National Guard throughout the 1950s and 1960s, threats which the NGA dealt with very easily. The most serious was the growing popularity of the federal reserves (organized under the Army Clause only). *The Reserve Forces Act of 1955* identified the federal reserve formations of all the services as well as the Army and Air National Guards as members of the "Ready Reserve." The Act authorized more than a million men for the Army Reserve and 422,000 for the Army Guard. Nevertheless, the number of Army Reserve divisions fell from 25 to 10, but the number of Army National Guard Divisions rose from 26 to 27.[1252] Congress took pains to treat both the Guard and the Reserves equitably and both the Eisenhower and Kennedy Administrations increased funding for both, although Eisenhower was more concerned about the expense than Kennedy.[1253]

By the spring of 1960 the Soviet Union had become more belligerent and had increased its support for wars of national liberation (communist revolts). President John F. Kennedy took office in January 1961 and immediately began

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[1251] Stewart, 214. "An armed attack against one or more of them…would be considered an attack against them all."
[1252] Ibid, 263.
[1253] Allan R. Millett & Peter Maslowski, *For the Common Defense: A Military History of the United States of America* (New York: Macmillan, 1994), 551. "The Eisenhower Administration argued that a robust reserve program would meet any likely conventional war contingency and at a more bearable cost, since ten reservists cost roughly the same as one full-time serviceman." See Also: Stewart, 263. At one point, "President Eisenhower tried to cut paid drill strength," to save money, but was prevented from doing so by Congress.

keeping his campaign promise of backing the nation's diplomacy with a powerful and credible military threat. He increased military spending across the board and sponsored a substantial increase in military pay. "Any potential aggressor contemplating an attack," he said, "on any part of the free world with any kind of weapons, conventional or nuclear, must know that our response will be suitable, selective, swift, and effective."[1254]

Kennedy met with Soviet Premier Nikita Khrushchev at Vienna in June 1961. The Soviet leader was belligerent and attempted to bully the former commander of PT 109. He threatened to make a separate peace with East Germany (no peace treaty had been signed even though the Second World War had been over for 16 years) which would give the Germans the right to close access to Berlin forcing the western powers to withdraw from the city. "We cannot permit," Kennedy said upon return to the United States, "the Communists to drive us out of Berlin."[1255]

In August 1961, the Soviets began building a wall across Berlin to segregate their sector from that of the western allies (Britain, France, and the United States). Kennedy's response was to prepare for hostilities. Part of his preparations was a partial mobilization of 148,000 Reserve and National Guardsmen.[1256] Twenty-five squadrons of the Air Guard (21,067 airmen) were called up of which 11 were in

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[1254] Stewart, 214. See Also: Millett & Maslowski, 560. "In June 1961 Kennedy met Khrushchev in Vienna for a heated debate on world politics, and the President returned dismayed that he had impressed the Soviets as a weak leader. Khrushchev strengthened this fear in August when he erected a wall to stop refugees from reaching West Berlin and then threatened Allied control of their part of the city.

[1255] Catton, 818.

[1256] Millett & Maslowski, 560.

Europe within weeks. The 32nd Infantry Division (NG), the 49th Armored Division (NG), and 264 smaller units were called forth. Army Guardsmen entering the service totaled 45,118 men, none of which went overseas. [1257] Guardsmen were released from federal service in August 1962.

The following month, October, a new crisis came into being. During the summer of 1962, Khrushchev had begun to rush intermediate and long-range missiles into Cuba despite a warning from Kennedy. "Khrushchev doubtless planned to reopen the Berlin question with half the United States…within range of…[his] missiles."[1258] On October 14 photographic intelligence revealed Soviet missile sites in Cuba under construction and nearing completion. On the 22nd Kennedy imposed a blockade on Cuba, demanded the Soviets dismantle the missile sites or the United States would destroy them, and promised that any Soviet attack would be met with overwhelming retaliation. The Soviets agreed and the crisis ended on October 28.[1259] This was the closest the United States and the Soviet Union came to thermonuclear war during the Cold War. The Air Guard transferred some forward bases to the Regular Air Force, but no guardsmen were mobilized for the crisis.

The 1960s was a decade in which the organized militia performed the strenuous and thankless duty of crowd control and property protection during the

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[1257] Mahon, *History of the Militia*, 228. See also: Hill, 548.
[1258] Ibid.
[1259] Millett & Maslowski, 562. "Kennedy decided to force the Russians to withdraw the missiles if he could, but to prepare for a conventional invasion of Cuba and a nuclear war with the Soviet Union if his crisis diplomacy failed."

concurrent civil rights movement and anti-war movement (Vietnam). It was also the decade in which the unorganized militia began to reawaken. The community militias of the Second World War were still respected and some were still in existence. The NRA, VFW, American Legion and others were all still in favor of armed citizens cooperating with one another in the lawful and moral defense of their communities, and many did. The motivations could be as bizarre as the fear of a Martian invasion (not uncommon at that time) or surviving a post-apocalyptic America after a nuclear war now that Russia also had nuclear weapons. Many states also still maintained a State Guard, an example of an organized militia with no federal ties.[1260]

Kennedy's Secretary of Defense was Robert McNamara whose goal concerning citizen soldiers, both reserve and National Guard, was economy through consolidation. McNamara viewed the various reserve components of the Army of the United States from a strictly utilitarian position. One common criticism is that McNamara often failed to grasp the intangibles that make a military unit successful or can spell disaster and defeat. McNamara wanted to quantify things mathematically and non-quantifiable issues such as unit loyalty, esprit, community roots, sense of history and pride, often escaped his calculations.[1261]

[1260] Stentiford, 192-193. "The loss of peacetime state missions for the National Guard would mean that the State Guard, or some other state defense force, would have to be created and maintained wholly with state funds if a state were to have an organized militia."

[1261] Clifton Rogers interview by Gerald Van Slyke, May 12, 2015. Rogers questions the claim that community militias are constitutional and somewhat opposes them.

Clifton Rogers, a former long-service infantryman and present day libertarian theorist, remembered that time period. "McNamara wanted to reduce military service to the level of just another job. That was completely ridiculous. Any occupation that rewards failure with death is more than just another job." Rogers has traced many of the woes the U.S. military suffered during the 1960s and 70s back to poor decisions made by McNamara. "An American warrior of any service," Rogers continued, "is a man whose mind has been emptied of cheap civilian crap. He is ready to kill or be killed for tangibles and intangibles he considers more important than his own well-being."[1262]

McNamara began by cutting four Army Guard divisions and four Army Reserve divisions from the total force. The Guard infantry divisions cut were the 34th (Iowa and Nebraska), 35th (Kansas and Missouri), 43rd (Connecticut, Rhode Island, and Vermont), and 51st (Florida and South Carolina). Each division was replaced by a separate (non-divisional) infantry brigade. After this reduction, the Army Guard consisted of 23 divisions (17 infantry and six armored), seven separate brigades, and 1,743 smaller units from battalions down to detachments. "Streamlining the Guard," Mahon wrote, "was part of the Kennedy Administration's turning away from [complete reliance] in nuclear weapons, and toward conventional forces that were more efficient and more ready."[1263]

Lyndon Johnson became president on November 22, 1963, following Kennedy's assassination. He retained McNamara as Secretary of Defense and

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[1262] Ibid.
[1263] Mahon, History of the Militia, 230-231.

supported him on economizing the reserve component. On December 12, 1964, McNamara made a startling proposal. He suggested folding Army Reserve *units* into the National Guard and changing the federal reserves into a holding tank for individuals. "Opposition to his project," Mahon wrote, "was fierce and immediate."[1264]

When challenged on his rationale for choosing the Guard over the Reserve, McNamara offered five reasons to do so. First, the constitutional basis of the Guard as the organized militia of the states could not be ignored. Second, the states would not give up their National Guard units and Congress would defeat any attempt to take them. Third, all the combat divisions in the wartime contingency plans were well-decorated, veteran National Guard divisions. Fourth, 24% of the guardsmen were careerists as opposed to only 12% of the reservists. Finally, the Guard already had in place five times the technicians (full-time soldiers) that the Army Reserve had.[1265]

"The Army Reserve by this time," Rogers said, "had the kind of grassroots support and unit pride that the National Guard had."[1266] American towns did not want to lose their reservists any more than they wanted to lose their guardsmen. The NGA itself had come to represent the reserves in a peripheral way over the years and remained aloof from the battle that McNamara's surprising plan provoked, even though it mildly supported it (the Guard stood to gain a significant

[1264] Ibid.
[1265] Ibid, 232
[1266] Clifton Rogers interview by Gerald Van Slyke, May 12, 2015.

force). The NGA admitted that the Guard was able to absorb the reserve formations but said no more and merely watched the situation play out. Congress eventually killed McNamara's merger plan in 1966 by refusing to fund it.[1267]

The Vietnam Conflict was heating up during the mid-1960s and President Lyndon Johnson erred in his political calculations with far reaching negative results. Both Secretary McNamara and the Joint Chiefs of Staff (JCS) urged him to call forth at least 200,000 Guard and Reserve soldiers for service in the war zone. Sending the home-town Guard, they pointed out, would secure a great amount of support for the war as it always had in the past, both in communities and in Congress. The President overruled them both and decided to depend on draftees. John Mahon suggests three reason for Johnson's refusal to call forth the Guard and Reserve. First, he wanted to hide the scope of the military adventure he was about to engage in. Second, he wanted to avoid sending belligerent vibrations to the Soviets and Chinese. Third, he wanted to leave the reserve component uncommitted in case Vietnam was no more than a diversion and the real objective was Berlin.[1268]

The Pentagon announced that all the cuts suggested in 1965 along with new ones were now planned for 1967. The Army Reserve lost six divisions that were not in the contingency plans. The Department of the Army also deactivated 15 National Guard divisions, for a total of 21 divisions cut from the force. The Guard divisions were: (infantry) the 27th, 29th, 31st, 32nd, 33rd, 36th, 37th, 39th, 41st, 45th,

[1267] Mahon, History of the Militia, 233.
[1268] Ibid, 242.

46th, and 49th; (armored) the 40th, 48th, and 49th. There were two 49th Divisions (NG), one infantry and one armor.[1269]

This left the Army National Guard with only eight divisions, six infantry and two armored. They were: the 26th Infantry Division (NG) Massachusetts and Connecticut, 28th Infantry Division (NG) Pennsylvania, Maryland, and Virginia, 30th Infantry Division (NG) North and South Carolina, Georgia, 38th Infantry Division (NG) Indiana and Pennsylvania, 42nd Infantry Division (NG) New York, Michigan and Ohio, 47th Infantry Division (NG) Minnesota, Iowa, and Illinois, 30th Armored Division (NG) Alabama and Mississippi, and 50th Armored Division (NG) New York, New Jersey, Vermont.[1270]

The civil rights movement and concurrent anti-war movement quickly focused the Guard's attention on controlling civil disturbances and protecting property. Throughout history the Guard had always hated this mission and was not trained or properly equipped to perform it. Between 1945 and 1967, the Guard was called forth 72 times in 28 states. It would be impossible to describe each of the numerous times governors called forth the Guard or to provide an account of the lives and property it saved. However, some incidents stand out from the others.

After a number of state and federal court battles, James Meredith was accepted at the segregated University of Mississippi in 1962. When the young black man tried to register for classes in September, the University was acquiescent but Governor Ross Barnett would not allow Meredith's registration. A federal

[1269] Ibid, 235.
[1270] Ibid.

appeals court ordered the governor to desist and President Kennedy sent 400 U.S. Marshals to force the issue. Angry townspeople and segregationists from around Mississippi resisted and violence erupted. When 400 marshals were not enough, Kennedy sent 12,000 regulars and called forth the entire Mississippi National Guard. Kennedy wanted to take it out of the governor's hands so Mississippi could not use it to block Meredith's admission. Finally admitted, U.S. Marshals guarded Meredith until he graduated on August 18, 1963.[1271]

There was a replay of the scenario in Alabama the following year. Two black students attempted to register at the University of Alabama in Montgomery. Alabama Governor George Wallace defied federal law and court orders and stood in the doorway of the building where registrations were taking place. Wallace called forth units of the Alabama National Guard to maintain order and enforce Alabama's segregation laws. President Kennedy's response was to federalize the Alabama National Guard, which then went on duty under its Army Clause role. Lieutenant General Henry Graham, Commanding General of the 31st Infantry Division (NG) approached Wallace as he stood in the university doorway. "Sir, it is my sad duty to ask you to step aside under orders from the President of the United States of America." Wallace objected to the use of the power of the federal government to undermine Alabama state law, then stepped aside allowing the two

[1271] Evans, 499. "Meredith…went on to pick up a law degree at Columbia." See also: Stewart, *Vol. II*, 270. President Eisenhower had federalized The Arkansas National Guard to control a civil disturbance in Little Rock in September 1957. "It was one of the few times in United States history that a Chief Executive had used…National Guard forces despite the opposition of the state's governor."

black students to register. The governor knew his actions would make him popular among white reactionaries on matters of race. He tried then and subsequently to use the tactics of states' rights to maintain racial segregation.[1272]

These two incidents marked a distinct turning point in the history of state organized militias. The President had federalized National Guard units that had already been called forth by their governors and were actively serving on state duty. The fact that there was no true partnership between the national government and the states concerning command of the National Guard was now starkly evident. The federal government dominated the relationship. Many militiamen today believe that the Guard now belongs to the federal government and the states can use it only when Washington allows them to.

John Mahon wrote,

> In 1933, the states' share [of National Guard expenses] was 33 percent; by 1963, it had dropped to 6 percent…the Guard was more secure as part of the first-line…reserve than ever before, but it also meant that the Guard would obey the [president] rather than the governor.[1273]

Money is power. When the federal government began to write Guard paychecks and to control Guard retirement, it began to control the Guard. This was the eventual culmination of a trend that originated in 1808 when Congress began disbursing funds to the state militias for weapons (see Chapter Three). "This is the way they [the federal government] gain control of everything," militiaman Phil

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[1272] Stephan Lesher, *George Wallace, American Populist* (Reading, MA: Addison-Wesley Publishing, 1994), 233. See Also: Harvard Sitkoff, *The Struggle for Black Equality* 1954-1992 (Cambridge: Harvard University Press, 1993), 29, 100, 139.
[1273] Mahon, History of the Militia, 246-247.

Johnson said. "Take the schools for example. When they were funded entirely by the states and communities, the states and communities controlled them." Johnson contends that student achievement levels were much higher at that time. "Then the feds offered to help fund public schools and the schools took the money. However, they discovered there were strings attached. 'Do this or that, or adopt this policy,' the feds said to the schools, 'or we cut off your money'."[1274]

Present day militia leaders often point back to 1962-1963 as the point at which people began to question the power of the federal government, having watched it steal an embodied state militia. Many began to question the integrity of the government, the lawfulness of its actions and the laws that it enacted. "Many people awoke with a shock," modern militiaman Sandro Bellinger said. "They realized that they had lost their organized militias and many of them began to consider replacing them with constitutional community militias drawn from the unorganized militia." Bellinger argues that local militias under the control of the community and sometimes the state, are the kind of militias that, "the founders were familiar with and spoke about. Mississippi and Alabama were the sparks that initiated a thin whisp of smoke which would grow into a fire that continues to this day."[1275]

There was a great number of civil disturbances during the decade of the 1960s, some motivated by racial tension, others by political unrest. To examine

[1274] Phil Johnson interview by Gerald Van Slyke June 20, 2015.
[1275] Sandro Bellinger interview by Gerald Van Slyke, January 1-2, 2016. Bellinger said that although many people woke up, "most didn't."

them in depth is beyond the scope of this dissertation. As with national wars in which the militia participated, a few disturbances will be touched on because they exemplify the others.

A riot in the predominately-black Watts District of Los Angeles between August 11 and August 17, 1965, resulted in California Governor Pat Brown calling forth 14,000 Guardsmen from the 40th Armored Division (NG) to aid police and sheriff's deputies.[1276] The conflict began when a white police officer arrested a black motorist for drunken driving. A crowd gathered and soon got out of hand, prompting a disturbance that ultimately spread over 46 square miles of the city. Thirty-five thousand blacks rioted and about 70,000 more were sympathetic but did not participate. Thirty-four deaths and more than a thousand injuries occurred during the six days of the riot. Rioters seriously damaged or destroyed 977 buildings as well as looting most of them. Property damages exceeded $40 million. There were nearly 3,500 arrests.[1277]

A riot occurred on the other side of the country in Newark, New Jersey, on July 12-17, 1967. Two white police officers stopped a black taxi driver and removed him to the precinct station on the 12th. A rumor swept the streets that police had killed the driver and the riot began in the city that had a population more than 50% black. Angry crowds assaulted police officers who then fired on them. Twenty-six people were killed, nearly a thousand injured, and more than a thousand arrested during the following six days. The New Jersey National Guard entered the

[1276] Mahon, *History of the Militia*, Another source cites the numbers of guardsmen as 4,000.
[1277] Evans, 547. See Also: Mahon, *History of the Militia*, 238.

fray on the 13th and supported the police in containing the violence and destruction. There was more than $10 million in property damages.[1278]

A riot broke out in Detroit, Michigan, in the early morning hours of July 23, 1967. A group of 82 blacks gathered at an illegal, after hours bar called "The Blind Pig" to celebrate the return of two men from the Vietnam War. The Detroit police arrested all the revelers and unwisely moved them outside the bar to wait for transportation. Once outside, a large, angry crowd assaulted and overwhelmed the police, freed the prisoners, and drove off the police who later came back with reinforcements.[1279] The disorder spread and Michigan Governor George Romney sent the State Police to help, but it was not enough and Romney ordered 10,000 Michigan National Guardsmen onto the streets to reinforce law enforcement.[1280]

Michigan asked for federal troops but President Johnson initially would not send them without Governor Romney first declaring an insurrection in accord with the *Insurrection Act* of 1807. Johnson sent 5,000 regulars from the 82nd and 101st Airborne Divisions on July 24. The task force commander, a federal officer, had 15,000 soldiers at his disposal and employed more than 10,000 of them. The soldiers, state and federal, ended the riot within 48 hours.[1281] Forty-three people died, more than 1,000 suffered injuries, more than 7,000 arrests took place, and property damage totaled more than $40 million.[1282]

[1278] Jeffrey Paige, "Political Orientation and Riot Participation," *American Sociological Review*, Vol. 36, No. 5 (October 1971), 810-820.
[1279] Nathan Glazer, "The Detroit Riots," *Economic and Political Weekly*, Vol. 2, No. 35 (August 1967), 1483-1488.
[1280] Mahon, History of the Militia, 241.
[1281] Stewart, *Vol. II*, 272.
[1282] Glazer, 1483-1488.

Disorders occurred with increasing frequency and on July 28, 1967, President Johnson appointed a National Advisory Committee on Civil Disorders to isolate the causes of the riots. The Kerner Commission's (as it was known) chilling report (released in 1968) was that "our nation is moving toward two societies, one black and one white."[1283] In light of this, Johnson ordered the military, particularly the organized militias of the states, to be prepared to occupy cities and quell riots.[1284] He further ordered that soldiers receive formal riot training and be given appropriate non-lethal crowd control weapons. The military quickly became more capable of controlling crowds without using lethal force.[1285]

Racially sparked riots began to diminish after 1968, to be replaced by campus riots. The most serious uprisings occurred after President Nixon decided to invade Cambodia, bombing military routes in that country that fed into Vietnam. Dismayed that Nixon was enlarging rather than ending the war, as he has promised in his campaign, anti-war protestors took to the streets. During May alone, the Guard was called forth 24 times in 16 states at 21 universities. The most notable disturbance occurred at Kent State University (Ohio) in early May. Students set fire to the ROTC building on campus and pelted the firemen who tried to put out the blaze with rocks, bricks, and bottles. The mayor of Kent asked the governor to send the Guard. The following day, May 2, elements of the 145th Infantry (NG)

[1283] Harlan Hahn, "Civic Responses to Riots: A Reappraisal of Kerner Commission Data," *Public Opinion Quarterly*, Vol. 34, No. 1 (Spring 1970), 101-107.
[1284] Stewart, *Vol. II*, 272.
[1285] Ibid.

and 107th Armored Cavalry (NG) regiments began arriving on campus. Major General Sylvester Del Corso personally assumed command of the situation.[1286]

On May 3 and 4, students throwing rocks, spitting, and chanting anti-war slogans continuously assaulted the guardsmen, none of whom were seriously injured . Exercising their free speech, some students burned an American flag and then raised a communist flag in its place and saluted it. Just as revolutionary Bostonians had done almost exactly 300 years earlier in what came to be known as the Boston Massacre, some demonstrators chanted "Shoot, shoot, shoot." The guardsmen were angry and under great pressure. Ohio was the only state in the union that required its militia to keep a live round in the chamber during civil disturbances, and their rifles were loaded. Students continued pressuring and harassing the soldiers, chanting, "Shoot." Like the British soldiers in Boston, they opened fire, but at a much more rapid pace given their modern weapons. They fired 59 shots in 13 seconds, killing four students, paralyzing another, and wounding eight others. The crowd dispersed. Some of the dead had not taken part in the disturbance but were instead killed while walking between classes. Most of the militiamen had fired their rifles up in the air.[1287]

The nation was dismayed at both the conduct of the students as well as the lethal behavior of the soldiers. Tempers grew hotter on both sides of the debate

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[1286] Christina Steidl, "Remembering May 4, 1970: Integrating the Commemorative Field at Kent State," *American Sociological Review*, Vol. 28, No.5 (October 2013), 749-772.
[1287] Evans, 557. "Campuses exploded everywhere. More than 400 shut down." See Also: Mahon, *History of the Militia*, 244-245.

about Vietnam. During the next weeks, 450 colleges closed down in protest and 100,000 anti-war protestors marched on Washington.[1288]

Despite the previously mentioned policy to keep the Guard out of Vietnam, the Air Guard almost immediately began flying missions to Southeast Asia. During a six-month period in 1966, the Air Guard completed 687 round trip missions to Vietnam. With the Air Force heavily committed in Vietnam, the Air Guard also assumed many of its stateside and European missions.[1289] Then, two events occurred in 1968 that led President Johnson to call forth selected units of the Army Guard. In January-February, the communists launched the Tet Offensive throughout South Vietnam. On January 23, North Korean naval units boarded and seized an American naval vessel, the *USS Pueblo*, and took it into harbor in the North.[1290] The President called forth 12,234 Army Guardsmen from 17 states for up to one year. None of these went to Korea and only 7,000 went to Vietnam.[1291]

"I remember the Pueblo incident very clearly," Clifton Rogers said. "Ass Ears [President Johnson] adamantly fought the wrong people, people who had never done anything to us, and wouldn't fight the right people who had seized one of our naval vessels in international waters. I just gave up on him." Rogers said that two Marine divisions were busy in Vietnam, but another was stateside and

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[1288] Howard Means, 67 Shots: Kent State and the End of American Innocence (N.Y.: Da Capo, 2016).
[1289] Mahon, History of the Militia, 242-243.
[1290] Ibid.
[1291] Ibid.

lusted to punish North Korea. He remembers well the anger that existed among the young war veterans in the barracks.[1292]

Defense Secretary Melvin Laird announced the Total Force Concept in August 1970 which resulted in reductions of the active forces and an increased reliance on reserve forces and increased federal control of them. Laird's successor, James Schlesinger, declared the concept to be official policy in 1973. Some in the Department of Defense believed that President Johnson's refusal to send the National Guard to Vietnam had materially contributed to the loss of the war.[1293]

As a way to prevent future presidents from making the same mistake, the army devised "round-out" divisions. Two of the three brigades in a division would be regulars while one was a designated National Guard Brigade called forth when the division deployed. Further, Regular Army divisions increased from 12 to 16, each with a Guard Brigade as an integral component. This put Guardsmen under Army regulations even when serving under the Militia Clause. At this point, the state militiamen of the constitution were almost regulars, an adjunct to the federal army that is sometimes loaned to the states.[1294]

Implemented throughout the remainder of the century, Schlesinger's policy became firmly fixed in place. It would work exactly as planned during the upcoming Persian Gulf and Afghan wars; National Guard units became part of

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[1292] Clifton Rogers interview by Gerald Van Slyke, May 12, 2014.
[1293] Stewart, *Vol. II*, 375-377.
[1294] Daniel Levitas, *The Terrorist Next Door: The Militia Movement and the Radical Right* (New York: St. Martin's Griffin, 2002), 305. "This federal government has rendered the several states defenseless by taking away their organized militia," John Trochmann told listeners at militia recruiting rallies, "and is now in the process of disarming the unorganized militia – that's you and men – by laws which are unconstitutional."

Regular Army divisions during peacetime. On August 2, 1990, the day Iraq invaded Kuwait, 728,000 active-duty personnel were in the regular U.S. military, another 458,000 in the Army and Air National Guard, and 335,000 in the reserves. The nation sent 297,000 combatants to the Middle East of which 37,000 were Guardsmen and 39,000 were reservists.[1295]

The government initially was reticent about calling forth the Guard, even those in round out divisions that were counting on them (six army divisions had a brigade of National Guardsmen assigned at this time although only three of those divisions went to the war zone). There had been questions about the legality of using National Guardsmen in this fashion as well as questions about whether or not the Guardsmen and reservists would actually come forth.[1296]

They did come forth. On August 22, President George H.W. Bush issued executive order 12727 authorizing the Secretary of Defense and the Secretary of Transportation (U.S. Coast Guard) to call forth the National Guard and reserves. A few days later, the first 27,000 men were activated under the Army Clause, and only three failed to report for duty. Many thousands more would be activated in the weeks ahead with the same level of participation.[1297] Operation Desert Saber (the actual name of the ground operation) began on February 24 and ended 100

[1295] Stewart, *Vol. II*, 425.
[1296] Stephen M. Duncan, *Citizen Warriors: America's National Guard and Reserve Forces & the politics of National Security* (Novato, CA: Presidio Press, 1997), 5. A number of state governors took the Department of Defense to court concerning its use of National Guard troops in overseas locations that the governors opposed. The court ruled that the governors had no authority over their state militias once they called forth for federal service. See: Perpich, et al. v Department of Defense, et al., U.S. 334, 110 S. Ct. 2418 (1990).
[1297] Ibid, 63.

hours later on February 28. Thirty-five thousand Iraqi soldiers had been killed, 75,000 wounded, and about 300,000 surrendered or deserted. Two-hundred ninety-two American soldiers were killed and 467 wounded in action. It was a stunning victory and Guardsmen played a large part. "This victory belongs," President Bush said, "to the regulars, to the reserves, to the National Guard. This victory belongs to the finest fighting force this nation has ever known in its history."[1298]

Eleven years later, September 11, 2001, Muslim terrorists destroyed the World Trade Center's Twin Towers in New York City by flying jet liners into them. Another jet liner flew into the pentagon, while passengers brought down another airplane in rural Pennsylvania. The terrorists murdered more than 4,000 people and the United States soon sent soldiers to Afghanistan. The enemy was the Taliban and Al Qaeda, both Muslim terrorist organizations. Two years later, President Bush organized a coalition of nations to invade Iraq, accusing Saddam Hussein of developing weapons of mass destruction. None were ever found. As violent resistance to the American occupation intensified, public opinion among Americans began to turn against the war. By 2014, more than three quarters of Americans believed that the war was "not worth it." The percentage of National Guardsmen in the force deployed to Southwest Asia was and is consistent with the percentage deployed to Kuwait in 1990.[1299]

[1298] Ibid, 109.

[1299] Stewart, 459, 495. The CBS poll is reported at http://www.cbsnews.com/news/most-americans-say-iraq-war-wasnt-worth-the-costs-poll/ (accessed Mar 30, 2016).

Since the war in Kuwait, the National Guard and reserves have consistently been integrated into the regular forces. Every major mission conducted overseas has employed sizeable numbers of Guardsmen and reservists. "By September 2003," Stewart wrote, "144,000 National Guardsmen and reservists were on duty, with 28,000 of these mobilized for homeland security…the operational tempo was muddying the distinction between…the active and reserve components." It was the last nail in the National Guard's coffin as a state militia force; Von Steuben's national militia had finally overtaken the organized militia of the states.[1300]

The Resurgence of the Community Militia

During the 20-year period from 1970 to 1990, some people—primarily living in rural areas in the West, mid-West, and south, and mostly Caucasian--grew uneasy with what they perceived as the increasing power of the federal government and its greater interference in the everyday lives of Americans. Some became more and more interested in colonial-style community militias. From their perspective, "reverse discrimination" and "political correctness" were a challenge to the Constitution, a harbinger of tyranny, and had undermined the "American Way." As wealth inequality intensified, many of them, although deeply conservative, found themselves agreeing with a critique of capitalism, believing that large corporations

[1300] Ibid, 495-496.

increasingly resembled criminal gangs. "The American Way," as they understood it, was threatened by multiculturalism and globalization.[1301]

They watched their traditional civic culture erode, and perceived that it was replaced by a perverted reiteration of British colonial government, a rule by moneyed elites. Many of them believed that issues like hiring minorities first, forced bussing of students to achieve integration, the denigration of the military, irresponsible environmental laws, the promotion of gay and lesbian life styles, the continuation of a welfare society, the government promotion of unlawful immigration, and a perceived attack on Christianity was not good for their country, their children, or themselves..[1302] Many other Americans either disagreed with them or were simply uninterested and uninformed about these issues, implying that they were surrounded in their own country. So, they began to discuss preparations for their self-defense.[1303]

Also during this time, a transformation of attitude, training, and equipment began to occur within the law enforcement community in the United States. It began in the federal realm when agents were decisively engaged in the War on Drugs, and has now spread widely throughout the states and local communities of America. Law enforcement agents began seeking a closer association with the

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[1301] Bill O'Reilly, *Culture Warrior* (New York: Broadway Books, 2006), 14-41. Journalist O'Reilly discussed at length the changes in society prompted by government that frighten Americans committed to the traditional values of American society.

[1302] Randy & Sara Weaver, *The Federal Siege at Ruby Ridge In Our Own Words* (Marion, MT: Ruby Ridge, Inc., 1998), 2. Randy Weaver wrote: "We are not anti-government. We are anti-bad government. At any given time there are portions of our government not acting in accord with the people's wishes. Sometimes they are even acting unlawfully. We want to trust the government, but we have learned that it is not always a good idea."

[1303] O'Reilly, 14-41.

military, which had the weapons and tactics they felt they needed to quell the heavily armed criminal gangs that began to appear at that time. This shift from warning, negotiating, reading rights and arrests resulted in a more violent law enforcement model ominously denominated the "war model" and acting under it became called "war framing."[1304]

The war model described the anti-drug operations the nation was committed to as a Low Intensity Conflict (LIC) and in 1987, legislation established a Deputy Assistant to the President for Low Intensity Conflict to facilitate the integration of the overlap between military and law enforcement missions. Federal agents began to train as soldiers and to use military weapons, tactics, and equipment in combatting the drug trade outside the United States. The *Posse Comitatus Act* (1878) forbid the use of military forces in law enforcement within the United States (see Chapter Six). The strictures required by the Posse Comitatus Act were removed by obscure (Clifton Rogers called them "hidden") riders to major legislation and the operational scope federal agents were committed to (no longer just drugs) was widened.[1305]

"LIC strategists have promoted a goal of *total integration* of police and military forces in a coordinated or unified command in order to achieve both military and political objective," sociologist Stuart Wright wrote. [1306] It was under

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[1304] Stuart A. Wright, *Patriots, Politics, and the Oklahoma City Bombing* (New York: Cambridge University Press, 2007), 19. Federal agents involved in the sieges at Ruby Ridge and Waco war framed their operations.
[1305] Ibid, 101. Low Intensity Conflict is military terminology from Army Field Manual FM 100-5 *Operations*.
[1306] Ibid, 101, 105. "The 1982 Defense Authorization Act…enacted amendments to the Posse Comitatus Act [that] gave formal approval to…military collaboration. The military model

"war framing" that federal officers planned and carried out their operations at Ruby Ridge in 1992 and at Waco six months later. In both cases, federal officers too often killed people as though they were enemy soldiers rather than criminal suspects. The persons in Randy Weaver's cabin and those at Mount Carmel were not militiamen, but the two events will be examined because of the impact they had on the American unorganized militia.

This new attitude on the part of federal law enforcement evoked distrust and concern in many citizens of all backgrounds and classes. In response to this distrust, militias began to form, largely in rural areas but also in urban centers. "There were already a number of militias around the country by the 1980s," present-day militiaman Steve McNeil said.[1307] These militias were essentially groups of neighbors who agreed to cooperate in a military capacity in the lawful and moral defense of their communities and families. Several events in the 1990s brought militias into the national view and caused rapid growth nationwide. The first to gain prominence was the federal killing of two members of the Randy Weaver family and the wounding of two others in the mountains of northern Idaho in August 1992.[1308]

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transposed the culture and identity of police by socializing officers to think of themselves as "soldiers" and treating citizens suspected of criminal violations as "enemies of the state." (Italics in the original.)

[1307] Steve McNeil interview by Gerald Van Slyke, January 29, 2015. McNeil asserted (Trochmann concurred as did the Old Montana Farmer who had been involved in both movements) that the resurgence of the community militia had little to do with the earlier Tax Rebellion and Posse Comitatus movements although there was some crossover of members. Those groups and others similar to them are beyond the scope of this investigation.

[1308] Wright, 141-142. Wright argues (as do many others) that enforcement agencies were angry with Weaver for refusing to cooperate when they tried to force him to gather intelligence for them

Scholars still debate this complex case, which became a symbol of government overreach. After losing his job at a tractor factory in Iowa, Weaver and his family moved West. They were apocalyptic Christians, believing that the world would soon end. Weaver and his family once attended a camp operated by the white supremacist Aryan Nations in nearby Hayden Lake, but never joined the Aryans. Weaver was a separatist, not a supremacist. There, he sold two sawed-off shotguns illegally to a man at the gathering, who turned out to be a federal informant. According to one reporter's account, the Bureau of Alcohol, Tobacco and Firearms hoped to recruit Weaver as an informant. Other accounts hold that a federal undercover agent spent three years trying to entrap Weaver by convincing him to shorten shotgun barrels for resale.[1309]

Money was tight in the Weaver household, and when unable to purchase food for his family, he committed an illegal act by cutting the barrels. An alternative interpretation sometimes offered by scholars is that people, whether poor or wealthy, should take responsibility for their own actions, although militiamen are quick to counter that the same scholars and politicians are only talking about them (the militiamen) being held responsible for their actions. "When is Hillary Clinton going to be indicted and held responsible for her actions?" they

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on John Trochmann who later founded the Militia of Montana (MOM). "The Agency (ATF) was less interested in prosecuting Weaver than in forcing him to gather intelligence on Aryan Nation leaders, particularly Chuck Howarth and John Trochmann."

[1309] Randy Weaver, *Vicki, Sam, and America: How the Government Killed all Three* (Provo, UT: W-M Books, 2003), xi. Sheriff Richard Mack wrote: "I admire Randy Weaver…Those who told you he was a bigot, a white supremacist, and a murderer or even worse, lied to you! He was and is none of these things." Jess Walter, *Ruby Ridge: The Truth and Tragedy of the Randy Weaver Family* (N.Y.: Harper, 2002).

often ask. "Is she above the law? You liberal hypocrites better get your act together before you preach to others about being responsible for their actions."[1310]

Arrested on federal firearms violations, Weaver mortgaged his cabin to make bail. During the next year, Weaver and his family retreated to their cabin and remained there, fearing the advent of the apocalypse brought on by federal treachery.[1311] The U.S. Marshall's Service responded by placing the Weaver home under surveillance by heavily armed and camouflaged paramilitary agents, setting the stage for conflict.[1312] Many wonder why the federal agents did not just knock on Weaver's door, show him a warrant, and take him to court. "It was the federals who acted irresponsible and paranoid, not Randy," Steve McNeil said.[1313]

The result of what today is known as the federal siege at Ruby Ridge convinced some Americans that federal law enforcement forces had become rogue agencies, operating outside the lawful parameters of their legal authority. It was at first difficult for many people to process the fact that the rehearsed atrocities practiced on the Weavers and the deaths suffered by two of them at the hands of hundreds of armed men, actually happened in America and not in some semi-civilized corner of the world. "Since that time," Steve McNeil said, "no one expects anything but the worst out of the government and no one has been disappointed.

[1310] Sandro Bellinger interview by Gerald Van Slyke, January 1-2, 2016.
[1311] Weaver, *Ruby Ridge*, 34. The Clerk of Court had sent a summons to Weaver with the wrong date on it. He was ordered to appear a full month after he was actually supposed to appear.
[1312] Wright, 144-145.
[1313] Steve McNeil interview with Gerald Van Slyke, January 29, 2015.

Men who did what was done at Ruby Ridge will do anything to anybody, and it's only gotten worse."[1314]

McNeil was present at the federal siege of Ruby Ridge and, along with John Trochmann, was an eyewitness to the actions of the Federal Bureau of Investigation (FBI) and Bureau of Alcohol, Tobacco, and Firearms (BATF). "Almost nothing the media reported actually happened or happened the way they said it did," McNeill observed. "Of course, they were spoon fed their lies and misinformation by the federal officers."[1315] Hundreds of protestors, both local and from around the country, harassed law enforcement officials and demanded they lift the siege. Many who were present at the siege considered the actions of the federal law enforcement personnel nothing less than criminal.[1316]

The U.S. Senate Subcommittee that later investigated the events that occurred at Ruby Ridge largely agreed that the FBI made numerous errors at Ruby Ridge. The subcommittee conducted its investigation between September 6 and October 19, 1995.[1317] The official findings begin by succinctly describing the events in sequence: "On August 21, 1992," according to the report, "during

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[1314] Ibid.
[1315] Ibid.
[1316] Ben Sonder, *The Militia Movement: Fighters of the Far Right* (New York: Grolier Publishing, 2000), 41. "Protestors holding placards that accused the "feds" of being tyrants assembled at the scene. What is more, a significant proportion of the townspeople were on Weaver's side and weren't afraid to talk about it to their neighbors or the press."
[1317] Arlen Specter, Chairman, *The Federal Raid on Ruby Ridge, Idaho: Report of the Subcommittee on Terrorism, Technology and Government Information of the Senate Committee on the Judiciary*, J-104-41 (Darby, PA: Diane Publishing, 1996), 3-10. This is a copy of the official report. Pages 3-10 contain a summary of the shortcomings and criminal actions taken by certain of the federal law enforcement agents at Ruby Ridge uncovered by the subcommittee's investigation. Pages 1-144 contain the in-depth investigative findings.

a…surveillance mission to the Weaver property a firefight broke out between several deputy marshals and Kevin Harris, a friend of Randy Weaver's, and Randy Weaver's 14-year-old son, Sammy." Harris was a young man from a broken home who had been welcomed into the family by the Weavers. Sam Weaver was 14 but was small for his age and looked like he was 10.[1318]

"When it was over," the findings continued, "Deputy United States Marshal William Degan and 14-year-old Sammy Weaver were dead…A week long siege of the Weaver family ensued." The Weavers believed the apocalypse described in the biblical book of the *Revelation* was upon their family and they refused to surrender to the encircling federal authorities. The findings continued: "[A] sniper fired two shots: the first hit Randy Weaver; the second killed Randy Weaver's wife, Vicki, and injured Kevin Harris. One week later, the Weavers surrendered.[1319]

The subcommittee's statement above is correct but, according to other accounts, somewhat incomplete. The marshals were hiding in the brush around the Weaver cabin when Sam and Kevin Harris followed the Weaver dog, Striker, into the woods to see why he was barking. The Weavers were unaware that armed men were hiding around their home, watching them. One of the hidden marshals shot Striker without warning while the dog was standing immediately in front of Sam. Shocked and frightened, Sam fired wildly in the general direction the shot had come from and turned and ran for the cabin with bullets flashing by him. One of the

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[1318] Gerry Spence, *From Freedom to Slavery: The Rebirth of Tyranny in America* (New York: St. Martin's Griffin, 1995), 8.
[1319] Specter, *Ruby Ridge*, 3.

marshals shot the fleeing Sam's arm almost completely off and then shot the boy in the back, killing him.[1320]

Unable to see their attackers, Harris fired one shot in the general direction the first shot had come from, and then turned and fled. Harris' shot killed Marshal William Degan. The marshals retreated, carrying Degan's body with them. The Weavers later recovered Sam's body and placed it in an outbuilding next to the cabin. The FBI now took control of the situation and sent to Idaho, among others, their Hostage Rescue Team (HRT), a paramilitary force commanded by Agent Dick Rogers.[1321]

The following day, August 22, Randy Weaver, his daughter Sara Weaver, and friend Kevin Harris went to the outbuilding to "be with Sam one more time." As Weaver was opening the outbuilding door, FBI sniper Lon Horiuchi shot him in the back with no warning. Harris and Sara Weaver helped drag Randy the few feet to the cabin where Vicki Weaver was shouting at them to hurry and was holding the door open. As they were going through the door into the cabin, Horiuchi fired again. The bullet went through Harris' upper arm, severing major blood vessels and nearly killing him. It then continued through Vicki Weaver's head, killing her instantly while she was holding her ten-month old baby.[1322]

[1320] Weaver, *Vicki, Sam*, 1. "[They] shot Sam in the back and left him to die in the dirt. No first aid was rendered, no one went to Sam's aid, no one even made a call for an ambulance."
[1321] Weaver, *Ruby Ridge*, 39, 50. Sam's sister, Sara Weaver, asked, "What kind of cowardly bastard does it take to shoot down a fourteen-year-old, eighty pound, adolescent little boy ***running away***?" (Emphasis in the original.) See also: Wright, 145.
[1322] Weaver, *Ruby Ridge*, 52-53. This is the personal recollection of sixteen-year-old Sara. See also: Spence, 8-9.

"Mom was in the doorway holding baby Elisheba and yelling for us to hurry and get inside," Sara Weaver wrote. "The sniper's bullet…hit my Mom in the head destroying half of her face…Mom dropped to the floor beside me still cradling Elisheba in her arms…She had died trying to save her family."[1323]

Modern militiamen were and continue to be outraged at the event. "What the hell was that?" militiaman Bellinger demanded. "The cops are supposed to yell at you to stick your hands in the air and don't move, not shoot you in the back while running away or while you are in your doorway, unarmed. Horiuchi got a medal for 'courage?' What the hell is going on with this country?"[1324]

The findings of Senator Arlen Specter's subcommittee agree with the opinion of many that the tragedies at both Ruby Ridge and Waco were prompted, at least in part, by the military mindset of the federal law enforcement leaders on the scene as evidenced by the rules of engagement. "These were virtual "shoot-on-sight orders," the subcommittee reported after reading the FBI rules of engagement that Horiuchi acted under.[1325] The federal officers "war framed" the events at both Ruby Ridge and later at the Waco stand-off. "War framing by the state," Wright wrote, "produced inflated perceptions of threat posed by the Weavers and the Branch Davidians. In turn, the sieges at Ruby Ridge and Waco, both based on

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[1323] Ibid.
[1324] Sandro Bellinger interview by Gerald Van Slyke, January 1-2, 2016.
[1325] Specter, *Ruby Ridge*, 61. See Also: Wright, 146. "The legal standard governing deadly force, as set forth by the Supreme Court in *Garner v. Tennessee*, permits officers to fire only in life threatening situations…But the FBI instituted shoot-on-sight orders, which were, in effect, *military* rules of engagement." (Italics in the original.)

weapons violations, aroused the deepest fears of the Patriot and gun rights groups."[1326]

After assurances of safety from Colonel Bo Gritz (see below), Harris surrendered on August 30 as did the Weavers the following day. The three children (Weaver's three underage daughters) were released into the custody of Vicki's parents, their grandparents, who happened to be on their way to Idaho from Iowa for a visit. Charged with murder, gun violations, failure to appear, and other crimes, Weaver and Harris went on trial in Boise, Idaho, from April to July 1993. Found innocent of all charges, Harris was released immediately. Weaver was found guilty of only one charge – failure to appear. Fined $10,000 and sentenced to eighteen months in prison, he was released four months later and his fine was paid by well-wishers.[1327]

A profile of Weaver compiled by the Marshal's Service prior to the siege was erroneous. It said that Weaver had fortified the cabin with heavy weapons mounted on tripods, that he was a Special Forces demolitions expert who had probably mined the area around the cabin, and that he had armed his children and would probably use them as the first line of defense. It said that he had turned the

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[1326] Wright, 139. The Ruby Ridge story began with an accusation against Weaver by the ATF of a firearms violation (later proven false by entrapment). After the siege, Weaver was also charged with murder, harboring a fugitive and other crime. The court found him innocent of all of them except for a failure to appear, even though the court order had the wrong appearance date on it. He was notified to appear a month after he was actually scheduled to appear.

[1327] Weavers, *Ruby Ridge*, 82. The court gave Weaver credit for 14 months already served. See Also: Levitas, 303. In 1995, the U.S. Department of Justice paid the Weaver family $3.1 million for the wrongful deaths of Vicki and Sam. Harris received $380,000 in a separate settlement. See Also: Sonder, 44. "During the trial the judge censured the FBI for obstructing justice and ignoring the basic rights of the defendants."

cabin into a blockhouse, had dug a series of interconnecting tunnels under the property, would probably shoot officers on sight, and had been involved in a number of bank robberies. None of this was true, although Weaver had given his children firearms and had taught them to hunt wild game.[1328]

This was the narrative that the FBI operated under after Marshal Degan was killed and they took control of the operation. It was also released to the press which painted Weaver as a dangerous kook in the eyes of the public, the kind of man the government should exterminate. As often happens, reporters relied on the information from official sources. Their reporting then, as now of course, is controversial. Many militia sympathizers believe that they purposefully and unfairly demonize the militia. Other Americans disagree in the continuing hot debate about the media. Some people still think that Weaver murdered Marshal Degan even though it was proven in court that Weaver never fired a single shot during the entire ordeal.[1329]

The power of the press can be an "unholy thing" according to Weaver's trial lawyer, Gerry Spence. "In the Randy Weaver case, the same pernicious dynamic has been in operation now for some time," Spence wrote. "Once smeared with the stink of guilt, the accused can rarely be cleansed, not even by a jury's verdict."[1330]

[1328] Wright, 142-143.
[1329] Gerry Spence, *From Freedom to Slavery: the Rebirth of Tyranny in America* (New York: St. Martin's Griffin, 1995), xv.
[1330] Ibid, xii-xiii, 35. "[T]he Weavers settled in and prayerfully waited…They attacked no one. They threatened no one"

Many militiamen today believe that the press often purposefully slants the news against community militias to create a negative public perception of it.

Some scholars have pointed out that Weaver had initiated the entire episode by breaking the law, modifying and selling a gun illegally, and then failing to show up for his court date. He also expressed ideas that are far outside the mainstream as did the patriots of 1774 before him. If assuming individual responsibility is a prime American value, some academics argue, then Weaver bore at least a measure of responsibility for the tragic events. Most militiamen disagree, citing the fact that there is no political or cultural orthodoxy in the United States. So long as a person is not violent, he is legally not out of the "mainstream," and legally is what matters, not another person's concept of the mainstream.

The Southern Poverty Law Center (SPLC) raised questions about the racial ideology of modern American community militias in 1996. Morris Dees, a lawyer who co-founded the SPLC, asserted that the modern militia was founded at Estes Park, Colorado, during a meeting of white supremacists adhering to Christian Identity theology and other counter-culture creeds such as the Doctrine of 14th Amendment Citizenship.[1331] (See Chapter Five for an examination of the 14th Amendment controversy, and Appendix G for the text of the 14th Amendment.) Dees claimed that because of these origins, militias should be suspect. Moreover, the militia had been an overwhelmingly white organization both historically and

[1331] Robert Churchill, 222. "An explicitly racist variant of this theory, dubbed the Theory of 14th Amendment Citizenship, argues that African Americans can only aspire to a lesser category of citizenship devoid of inalienable rights, and that Sovereign Citizenship is only available to Caucasians."

recently. Also, as discussed in Chapter Seven, a small sliver of radical Apocalyptic militiamen believe that blacks were brought to the earth by aliens to be the servants of whites.

Constitutional or Whig militiamen angrily deny this, instead claiming the heritage outlined in this dissertation. Among those attending the Estes Park meeting was John Trochmann, called "the guru of the American militia movement" by *The Washington Post.*[1332] Trochmann admits that people with religious beliefs outside of the commonly understood mainstream were present, but they did not dominate the conversation and there was nothing sinister about the meeting.

The labeling controversy continues unresolved. As of March 7, 2016, the SPLC national web site cited the existence of more than 1,600 potentially violent militias along with religious groups purported to have fostered their racism, as well as identifying some of the people interviewed for this work as militia extremists. Morris Dees of the SPLC estimates there are thousands more militias that are unknown. Many members of the patriot movement dispute the SPLC's definition of "violent and racist" with good reason. Certainly violent racist groups exist, and to the extent that they contain militia members, they raise questions about the racial ideology of the militia movement. Yet, violent racist "militias" are criminal gangs, not true militias. On the surface, the SPLC does not take sufficient care to distinguish carefully between criminals and legitimate militias.[1333]

[1332] Sonder, 75.

[1333] Morris Dees, *Gathering Storm: America's Militia Threat* (New York: Harper-Collins, 1996), 199. Dees wrote: "Assessing the magnitude of the threat posed by militia groups operating today

Ruby Ridge energized the American militia movement. Many people were shocked and frightened at what had happened on Ruby Ridge; some united with others in what they perceived as mutual defense of their homes.[1334] Colonel Bo Gritz was a highly decorated Special Forces operative, a well-known political figure, and at the time of the Ruby Ridge siege a serious presidential candidate, running on the Populist Party ticket, in part to oppose what he termed "global government." Four years earlier, he had flirted briefly with running for Vice President on the white nationalist America First party, which promoted a return to racial segregation in states that passed laws to allow it.

The FBI had allowed Gritz to act as a mediator with those inside the Weaver cabin. Gritz convinced Harris to surrender and then talked Weaver and his daughters into coming out the following day. Gritz likened Ruby Ridge to My Lai, even if the number of casualties differed enormously in the two events. After My Lai, Gritz argued, the commanding officer was imprisoned, while the FBI sniper Horiuchi received a medal. He wrote that he was, "appalled at the extremely vicious attitude of Dick Rogers [commanding the snipers]…The unit [had] a craving for no survivors." Gritz wrote that the FBI snipers displayed the same attitude that special operations groups he had led in combat displayed. "As further evidence of this craving for no survivors, Rogers informed me after…I had carried

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is a bit like gauging the risk to shipping posed by icebergs. The number that can be seen is important, but the real danger lies beneath the surface."

[1334] O'Reilly, 14-41.

Vicki's body from the cabin, that if Weaver and his three girls [all minors, one 10 months old] didn't surrender by noon the next day, they would be 'taken out.'"[1335]

With the siege over, some activists decided it was time to subordinate ideological differences and cooperate to face the threat of the *New World Order*.[1336] More than 150 activists attended a three-day conference at Estes Park, Colorado, two months after the Ruby Ridge operation concluded, prompted by the sufferings of the Weaver family. Writers critical of the militia often assign the genesis of the modern movement to this meeting, although its actual roots, as argued in this dissertation, reach back to pre-colonial times. Convened by Christian Identity leaders (some of whom believed that descendants of Adam and Eve were white and that other races may be a different species), the conference attracted a widely disparate group of patriots divided by religious and political beliefs, but united by the fear of government operating outside the law.[1337] "Men came together who in the past would not normally be caught together under the same roof," wrote Pete Peters, a Christian Identity leader, "who greatly disagree with each other on many

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[1335] Weavers, *Ruby Ridge*, xiii. Colonel Gritz wrote an introduction to Randy and Sara Weaver's book, *The Federal Siege at Ruby Ridge*. My Lai was a village in Vietnam which was attacked by U.S. forces in March 1968. Approximately 350 innocent people were massacred by American soldiers.

[1336] Robert L. Snow, *The Militia Threat: Terrorists Among Us* (New York: Plenum Publishing Company, 1999), 43. Many militiamen are certain that a worldwide cabal of UN officials and power blocs of the wealthy will attempt to establish a new world order, political and financial, whose primary goal is to diminish the United States to the point that it is just another third world nation. Many believe that this is Barak Obama's secret goal. A UN global sustainment policy titled *Agenda 21* is an important tool in this effort. The result, they fear, will be a disarmed and enslaved America ruled by a "Big Brother" style elite under control of the UN. Of course, Americans have a long history of believing conspiracy theories about foreigners trying to take over the United States, even if few of them have ever proved accurate.

[1337] Wright, 149;

theological and philosophical points, whose teachings contradict each other in many ways."[1338]

The meeting began with prayer followed by the reading of a letter from Sara Weaver thanking the attendees for their show of support of her family. Then they got to work. "The federals have by their murder of Samuel and Vicky Weaver," Louis Beam of the United Citizens for Justice told the crowd, "brought all of us here under the same roof for the same reason." Beam went on to say that for the first time, "we are all marching to the beat of the same drum."[1339] The attendees agreed that the national government was rapidly becoming a tyranny and that every citizen had a duty to resist. They left the conference having committed themselves to protecting their communities and organizing militias.[1340]

The militia greatly increased in numbers following Ruby Ridge and would increase more when, six months later, the same FBI and ATF agents who killed the two Weavers, lay siege to the Branch Davidian Sect at Mt. Carmel, near Waco, Texas. The FBI paramilitary chief at Ruby Ridge, Dick Rogers, performed the same job at Waco. The sniper who killed Vicki and Sam Weaver, Lon Horiuchi, was also present at Waco, as well as other "veterans" of Ruby Ridge.[1341]

The religious community besieged by federal law enforcement agents near Waco, Texas, between February 28 and April 19, 1993, was a millennial splinter

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[1338] Ibid, 150. Michael Barkun, *Religion and the Racist Right: The Origins of the Christian Identity Movement* (Chapel Hill, NC: The University of North Carolina Press, 1997).
[1339] Levitas, 303.
[1340] Sonder, 45-46. Pete Peters and Louis Beam were not constitutional militiamen. One considers both of them violent racists, criminals, and beyond the scope of this dissertation.
[1341] Ibid, 148.

group of the Seventh Day Adventist Church. The residents, who called themselves "Branch Davidians," had built a large communal building for religious services and living quarters for both individuals and families. The apocalyptic congregation had named it Mount Carmel. Led by a lay minister, David Koresh, the Davidians lived and worked quietly, some had jobs in town, and none presented a danger to society. One worked at the post office. The Media accused Koresh of all sorts of immoralities, including having sex with children. These allegations were carefully investigated and never proven, but Koresh did admit to being polygamous in accord with his religion.[1342]

Because the Davidians legally purchased many firearms and firearm parts, they eventually came under BATF scrutiny. The agent in charge, Davy Aguilera, interviewed local firearms dealers about Davidian purchasing habits. One, Henry McMahon, called Koresh while Aguilera was still sitting in McMahon's home. Koresh tried to invite McMahon to inspect the premises of Mount Carmel and each of the firearms there, but Aguilera refused to take the phone McMahon proffered him. "Aguilera refused to talk to Koresh on the phone," Stuart Wright wrote, "and the ATF never made an attempt to contact him or conduct an inspection of the weapons prior to the deadly raid on February 28, 1993."[1343]

[1342] David Kopel & Paul Blackman, *No More Wacos: What's Wrong with Federal Law Enforcement and How to Fix It* (New York: Prometheus Books, 1997), 94-96. The authors suggest that BATF knew the Davidians were not as dangerous as portrayed, but, "As noted above, BATF also had important financial reasons for wanting to execute a high-profile, massive raid on "heavily armed cultists" just before the March 1993 congressional budget hearings." See Also: David Thibideau, *A Place Called Waco: A Survivor's Story* (New York: Perseus Books, 1999). Thibideau was a resident at Mount Carmel and wrote that Koresh actually was a sexual predator, constantly fornicated with married women and had a child with a thirteen-year-old "bride."

[1343] Wright 152-153.

Aguilera filed an affidavit with federal magistrate Dennis Green on February 25, 1993, asking for a search warrant for Mount Carmel even though he had already been invited by Koresh to search Mount Carmel. Aguilera could not cite any examples of criminal activity, but told the judge that in his experience firearms of the kind the Davidians were purchasing were easily turned into fully automatic weapons. On the basis of what was possible, not on a criminal complaint, Green granted the search warrant.[1344]

BATF rehearsed the raid on Mount Carmel at Fort Hood, Texas, during most of February. Special Forces soldiers trained the agents in the use of flash-bang grenades and the like. David Kopel and Paul Blackman, who wrote a book about the events, observed that there were reports of "after hours" training as well: close quarter combat, building takedown, and fire and maneuver. It is illegal for military personnel to teach these techniques to law enforcement personnel. "These are techniques," they wrote, "for house-to-house urban combat, not for service of a search warrant under the constitution."[1345] The simple process of serving an unnecessary search warrant was war framed from the moment of inception.

BATF's attack plan required surprising the Davidians at the church complex, but Koresh became aware of the government's intention to conduct the raid. One of the Davidians was a BATF undercover agent who left Mount Carmel and informed his superiors that the Davidians were prepared. The BATF supervisors knew their surprise was blown, but decided to continue as planned even

[1344] Kopel & Blackman, 52, 64-66.
[1345] Ibid, 89.

though the operation depended on surprise. At 8:45 on Sunday morning, February 28, 76 heavily armed agents attacked the Davidians at Mount Carmel. A firefight began which lasted until 11:30 am. During that time, four BATF agents were killed while another 16 were wounded. Initially, five Davidians were killed, but six hours later, Davidian Michael Schroder was killed when he came home from work and stumbled into the conflict. BATF agents shot him five times in the back. Federal agents surrounded Mount Carmel and the siege began; it would last for 51 days.[1346]

The FBI's Hostage Rescue Team was sent to Waco "to add some professionalism to a law enforcement disaster."[1347] The Davidians were treated to the same kind of tortures that the Weavers had suffered (loud rap music blared all night, the screaming of animals being slaughtered, provocative taunts from a bull horn, and the like) but they refused to surrender. For 51 days federal agents tried to get Koresh and his congregation to come out peacefully. On April 19, 1993, coincidentally the 218th anniversary of the battles of Lexington and Concord, the FBI and BATF assaulted the building with automatic weapons and tanks, spraying CS gas into the building.[1348]

CS gas is a harsh agent used by the military for open-air crowd control. Since there were children among the Davidians, Attorney General Janet Reno initially ordered that no chemical agents be used, but permission was finally granted on the 50th day of the siege. Chemical agents can easily start fires and the building

[1346] Snow, 20-21.
[1347] Kopel & Blackman, 130.
[1348] Levitas, 303-304.

was soon blazing, although the exact cause of the fire is still under dispute. Seventy-six Davidians perished in the fire, including 17 children, but no one was ever prosecuted. When CS gas is combined with fire, it forms Hydrogen Cyanide which was the active agent in Zykon B, the gas Hitler used in his death camps. Hydrogen Cyanide is used by some states to execute criminals and its effect has been likened to "breathing burning gasoline." Many inside and outside of government speculated about whether the FBI mounted the assault because its image was beginning to suffer from the extended media coverage of the siege.[1349]

Once again, as at Ruby Ridge, some federal law enforcement officials apparently lied about what had transpired and tampered with evidence, escaped prosecution, and then were rewarded with a flurry of medals and promotions.[1350] Attorney General Janet Reno had finally given permission for the CS attack only grudgingly after she had been assured by the FBI that it could not start a fire, nor would it harm pregnant women or children, and that Koresh was abusing the children inside the building. Reno was told that Koresh was "slapping babies around." All three of these factors in the decision making process are questionable. In addition, when Agent Dick Rogers told her the HRT was exhausted, Reno gave approval for the CS-tank attack. "Throughout the siege," Kopel and Blackman reported, "Attorney General Reno's predominant concern had been the children still

[1349] Snow, 20. Snow reported the number of children killed at 25. Spence said it was 19.
[1350] Kopel & Blackman, 224-272. This heavily documented chapter (5) is titled "The Cover Up." It minutely examines the unlawful actions of the federal agents and the attempt to hide them from the public and Congress.

inside." Federal officers had lied to Reno, the authors contend, but she never punished men whose actions killed the 70-plus Davidians including 17 children.[1351]

Between April 1995 and May 1996, a joint congressional committee conducted an investigation into the *Activities of Federal Law Enforcement Agencies Toward the Branch Davidians*. Just as with Ruby Ridge, Congress found fault with a great many of the actions taken by federal agents. The Secretary of the Treasury was cited for dereliction of duty. Koresh had invited a BATF agent to inspect the church and could have been peacefully arrested any time prior to the unnecessary initial assault by BATF on February 18. Both BATF and the FBI were censured for conducting the operation below the, "…minimum [level of] professionalism expected of a federal law enforcement agency." There was much more censure, but the gist was that the federal agents were shown to have acted incompetently and to have employed deadly force unnecessarily.[1352]

Gerry Spence, the lawyer who successfully defended Randy Weaver, cited a number of attitudinal shortcomings of federal officers at both Ruby Ridge and Waco. He advocated that many of the federal enforcement agencies be disbanded because they perform functions that are the responsibility of the states. He advocated that the remaining agencies be thoroughly briefed on their responsibility to obey the law themselves, as well as on what they cannot do to suspects. He wants to see their arrogance and cavalier attitude toward the law extinguished.

[1351] Ibid, 163-164.

[1352] Joint Committee on Government Reform Report 104-749, "Investigation of Activities of Federal Law Enforcement Agencies Toward the Branch Davidians." (Accessed February 18, 2016.) https://www.congress.gov/congressional-report/104th-congress/house-report/749/1

Spence commented on the tragedy that occurred at Waco. "Innocent children had been burned alive," he said, "like baby lambs on fiery spits. No one spoke, not Ms. Reno, the Attorney General, not anyone, about how you could hear the screams of the little children through the flames, and how the smell of burning children had stifled the air and spoiled American history."[1353]

"Do all them dead kids make you proud of your government?" The militiaman dubbed the Old Montana Farmer asked in response to Waco. "This thing with the feds isn't over. There are lots of people who still lay awake at night, clench their fists, and grit their teeth thinking about little Sammy, Vicki Weaver, and the mass murder at Waco. God damn it, it ain't over."[1354]

Like Ruby Ridge, the aftermath of Waco brought about two things, further criticism and growing fear of the militia on the one hand, and a tremendous growth in community militias around the country on the other. Neither Weaver nor the victims at Mount Carmel were militiamen, but reporters often lump every kind of what they consider "kooks" together. "The average 'low-information' couch potato perched in front of his TV set could see little difference," militiaman Sandro Bellinger said, "between David Koresh and Randy Weaver, or between Timothy McVeigh and Bo Gritz. That is what both the government and the media wanted."[1355]

[1353] Spence, xvii-xviii.
[1354] Old Montana Farmer interview by Gerald Van Slyke, January 2, 2016.
[1355] Sandro Bellinger interview by Gerald Van Slyke, January 1-2, 2016.

Nevertheless, the militia mushroomed. The stupidities and blunders committed by federal officers at Waco were seen by many as a deliberate extermination of the Davidians, and there was some evidence to support that belief. "The government's actions at Waco," author Robert Snow wrote, "solidified the [renewal] of the modern militia…in America…The [renewed interest] was conceived at Ruby Ridge in 1992 and given birth at Waco on April 19, 1993."[1356] Many thought that the federal authorities purposefully conducted the killings on April 19 (Lexington and Concord day) as a pointed threat at present day minutemen.

Two additional events occurred at that time which greatly troubled militiamen and contributed to even more people joining the militia. First, President Bill Clinton signed the *Brady Handgun Violence Prevention Act* in November, 1993, to take effect on February 28, 1994, one year after the initial raid on Mount Carmel. Another pointed threat, many militiamen believed. The act expanded the required background check for anyone purchasing a firearm." Second, *The Violent Crime Control and Law Enforcement Act* was passed in 1994. This act, among many other things, banned 19 popular semi-automatic firearms as "assault rifles" and required that newly manufactured firearms magazines be limited to ten rounds.[1357] "[T]hese events," Snow wrote, "have made some people come to see the federal government as a large, unfeeling entity that intends eventually to take

[1356] Snow, 21.
[1357] Ibid, 22.

away all constitutional rights, particularly the Second Amendment right to own and bear firearms."[1358]

The militia's distrust of the federal government is not mere unsubstantiated paranoia, Snow wrote. "There are some logical reasons behind it. Both Ruby Ridge and Waco are examples of law enforcement officials running amuck. But there is more. As with its law enforcement agencies, there is also unquestionably a certain amount of abuse of power within other agencies of the federal government."[1359]

One of the people for whom Ruby Ridge and Waco were life-changing events, was a Gulf War veteran named Timothy McVeigh. An examination of McVeigh, a criminal, is beyond the scope of this dissertation but will be briefly commented on only because of the serious impact of his actions on the unorganized militia. It must be noted that, despite the reports of the media, McVeigh was not a militiaman. He is known to have attended one militia meeting only (in Michigan), and was told to leave for suggesting and promoting violence.[1360]

Apparently radicalized as a young boy, McVeigh served as an army infantryman during the invasion of Kuwait and was decorated with a bronze star for valor. Following an honorable discharge, McVeigh worked as a private security guard and became increasingly transient. He was depressed and angered by the events at Ruby Ridge and Waco. McVeigh had traveled to Waco during the siege

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[1358] Ibid.

[1359] Ibid.

[1360] Sonder, 94. ""McVeigh and the Nichols brothers formed a paramilitary cell when McVeigh came for [a] visit in the spring of 1993. They made bombs on [the] Nichols farm and trained for combat. The three were developing a militia mentality so radical that they no longer fit in with…the established militia organizations." One of the Nichols brothers, Terry, had served in the army with McVeigh.

and passed out anti-gun control literature. He was deeply moved by the deaths of the Davidians and the poor treatment of the survivors by the government afterward.[1361]

At some point, McVeigh decided that he had to take action to right these wrongs and to spark an uprising against the federal government with the purpose of ending its lawlessness and its murder of its citizens. Originally, he considered tracking down and killing Lon Horiuchi, the Ruby Ridge sniper, or a member of his family, but blowing up the Murrah Federal Building in Oklahoma City was the action that he settled on. On the morning of April 19, 1995, two years to the day after the sacking of Mount Carmel, McVeigh parked a truck loaded with an explosive fertilizer mixture in front of the Murrah Federal Building in Oklahoma City and walked away. At 9:02 an explosion destroyed the building killing 168 innocent people and injuring more than 500 more. A great many of the dead were children. McVeigh committed one of the most brutal terrorist acts in American history, believing, irrationally, that it was part of the revenge for Waco.[1362]

Timothy McVeigh was tried for eight murders and other charges and found guilty of them all. Executed on June 11, 2001, McVeigh never achieved a hero status among militiamen similar to that of Randy Weaver. "McVeigh was a killer, not a militiaman," Sandro Bellinger stated. "The militia never commits murder and

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[1361] Ibid, 90-94. "Wherever he went, McVeigh preached his personal gospel, a diatribe of resentment against the federal government and the one-world conspiracy and a hymn of martyrdom for the Branch Davidians."

[1362] Ibid, 86. Many believe that McVeigh was a patsy for the government, or that he was an agent, was never really executed, and was hidden and taken out of the country. They believe the federals wanted the building destroyed to use it to demonize and cripple the militia movement. Many believe that explosives placed on the inside by government agents destroyed the building.

never spills innocent blood. I can't imagine how he justified that to himself. Just the same, I have to wonder what the government is lying about and covering up. That's just their nature."[1363]

The immediate result for the militia was two-edged. First, the demonization of the militia by the media went through the ceiling and many interested people, but peripheral to the movement, stopped attending meetings. Some in the media immediately denominated McVeigh a "militiaman" and loudly imagined a link between what McVeigh did and militia activity. "In the end," Stuart Wright wrote, "state actors and their allies were successful in making McVeigh the public face of the Patriot movement."[1364] Part of the problem is that it is very difficult to identify exactly who is a militiaman and who is not, especially since some who call themselves members of the militia engage in violent acts toward both property and people.

Second, many others who believed that the government itself blew up the Murrah building and blamed it on McVey, united with a local militia. Many people in the militia movement believe deeply in various conspiracy theories. Conspiracy theories did not seem far-fetched to many given the savagery of federal enforcement at Ruby Ridge and Waco, and the public exposure of the lying and cover-ups that occurred afterward. "Most of us think that the government will do

[1363] Sandro Bellinger interview by Gerald Van Slyke, January 1-2, 2016. See also: Sonder, 100. Sonder wrote that McVeigh was tried for 11 murders.
[1364] Wright, 214.

anything to anyone that it wants to do," militiaman Phil Johnson said. "They seem to think they are above the law.[1365]

Another event that did not concern a militia but had an impact on them was the federal siege of "Justus" township near Jordan, Montana, a site occupied by a group calling itself the Montana Freemen. It was the last major occurrence that affected the militia during the 20th Century. A group of several dozen self-described "freemen" moved onto the 960-acre Clark Ranch a few miles outside of the village of Jordan, Montana. For 81 days in 1996 (late March to June 14) the Freemen engaged in an armed standoff with the FBI.[1366]

The FBIs interest in the Freemen was justified; the Freemen denied the authority of the state and national government over them, occupied the Garfield County Courthouse where they held a meeting in which they created their own county government, drew fraudulent notices of lien against the property of government officials they objected to and then sold them. They also produced, "their own very realistic counterfeit checks and money orders, sometimes ordering items and deliberately overpaying so they could demand refunds. The president of one bank reported that over an 18-month period his bank received two to five complaints a week about Freemen checks."[1367]

The Freemen had little support from anyone except for a few radicalized millennial militiamen. "[T]here were 1,000 militia…from Montana," journalist

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[1365] Phil Johnson interview by Gerald Van Slyke, June 20, 2015.
[1366] Levitas, 325. See also: Schlatter, 146-150.
[1367] Tom Kenworthy and Serge F. Kovaleski "`Freemen' Finally Taxed the Patience of Federal Government" *Washington Post* March 31, 1996

Patrick Shannon recorded, "Another 2,000 from Michigan, Ohio, and Missouri were bivouacked only four hours away, ready to retaliate in the event that the government attacked, as at Ruby Ridge and Waco.[1368]

The residents of Garfield County were sick and tired of the Freemen's troublesome fraudulent liens and were angry that the FBI took so long to end the siege and effect the arrests. The FBI procrastinated because it was extremely sensitive to widespread public perceptions of its mismanagement of Ruby Ridge and Waco, and was determined not to let it happen again. To its credit, it took every precaution to avoid violence and ended the siege after almost three months of patiently waiting for the Freemen to surrender. Eight of the Freemen were sentenced to prison, and two years later, the Clark Ranch itself was turned into a pheasant hatchery.[1369]

The events that unfolded at Ruby Ridge and Waco may have taught the FBI, the BATF, and the US Marshal's Service a lesson about public relations, but they learned nothing about integrity, at least according to some militiamen, although clearly those agencies would disagree. "They made promises to the Freemen, some of them written, then ignored them," said Steve McNeil, a member of the Freemen who was not present at Jordan.[1370] Historian J. Patrick Shannon substantiated a litany of falsehoods that federal officers perpetrated at Ruby Ridge and at Waco,

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[1368] Patrick Shannon, The Montana Freemen: The Untold Story of Government Suppression and The News Media Cover-Up (Jackson, MS: Center For Historical Analysis, no date), 57.
[1369] Levitas, 325. See also: Schlatter, 146-150.
[1370] Steve McNeil interview by Gerald Van Slyke, January 29, 2015.

including actions that resulted in numerous violations of federal and state laws and common decency.[1371]

Standing at the end of the American Century, many militiamen felt that the final days of America truly were in sight. The organized militia of the states had become what was essentially an organ of the federal government that was occasionally loaned to the states. The unorganized militia was held in low regard by most of its fellow citizens and seen as a fringe group of demented kooks rather than as patriots in their traditional role of providing a community shield. Government agencies had begun to stretch the law to the limit or else break it without penalty. Militiamen saw their country enter what John Trochmann called, "a post-constitutional era with a government to match."[1372]

[1371] Shannon, 61-65.
[1372] John Trochmann interview by Gerald Van Slyke, March 13, 2015.

CHAPTER SEVEN

THE COMMUNITY MILITIA IN THE TWENTY-FIRST CENTURY: THE COMING THIRD CIVIL WAR

This dissertation has called upon various witnesses – the written historical record, constitutional law, federal and state statutory law, and established cultural norms -- to demonstrate that modern American community militias are the lawful and cultural heirs of the colonial, revolutionary and republican militias. Since the first British intrusion into North America, militias always have been integral to American society and law and are still so in the present day in accord with the Constitution, current statutes, and court decisions. This dissertation argues that people who engage in extralegal violence, against either property or people, are not true militiamen in the historical tradition. Instead, they are criminals and criminal gangs that attempt to dignify themselves by denominating themselves as militias. They bear a major responsibility for the low regard in which most citizens, not supporting violence, hold them.

This chapter explores the present condition of citizen militias in America, their objectives and goals, and the ways in which they function within the larger "Freedom Movement." There is a caveat to offer: it is difficult to gather information on the present-day militia and extremist right-wing groups, in part since so many avoid are fearful of the federal government and therefore will not reveal much to people outside their insulated groups. In addition, their organization

in small “cells” containing between from 5 to 15 members makes an accounting of every group virtually impossible.

The author of this dissertation is known to and operated within many of these circles, and a number of militiamen consequently and politely consented to be interviewed. Much of the remainder of the chapter is based on the author’s impressions of various groups, especially those in Montana, who might term themselves militia. Insofar as possible, the remained of this chapter attempts to portray the ideas and behavior of the militia from their own perspective.

Whigs and Apocalyptics

The “freedom movement” is an umbrella term that encompasses present day militias, constitutional discussion groups and ad-hoc think tanks, and various individual activists, all of whom are concerned that America has strayed far from the Founders’ Constitution and the libertarian character of the government it established. Four primary sub-groups exist within the present day freedom movement. These are usually known as constitutional militias, millennial militias, freedom movement groups (not militias) of various hues and shapes, and individual activists who often are not connected to any militia or other group.[1373]

These widely accepted terms were formalized initially by social historian Robert Churchill and popularized in his 2009 work *To Shake Their Guns in the*

[1373] Robert Churchill, 265. "By early 1995, two distinct belief systems could be discerned within the emerging militia movement." Churchill sporadically referred to "Libertarian Militias" and "Whig Militias," but chose "Constitutional" and Millennial" as formal terms.

Tyrant's Face, often quoted in this dissertation. However, the author of this dissertation disagrees with the present day accuracy of these terms, since conditions within the movement have undergone a mild metamorphosis since 2009. Instead, the following terms are now more appropriate: millennial militias become apocalyptic militias, constitutional militias become Whig militias, freedom movement groups become libertarian groups (both apocalyptic and Whig), and individual activists become libertarians (both apocalyptic and Whig).

Both kinds of militias, Whig and apocalyptic, are constitutional militias and both fall within freedom movement groups, hence the more accurate and more descriptive names. Further, the freedom movement itself is now denominated in its own terms as the "patriot movement." Persons involved call themselves "patriots" because they believe that their own opinions mirror those of some of the men and women of 1774. While the great majority of other Americans remain skeptical of these terms, this dissertation uses them in an effort to respect what various groups call themselves.

These four groupings within the patriot movement share a number of commonalities. They all believe that both the federal government and many state governments have exceeded their constitutional mandate to govern, which causes them great distrust and angst. A statement often heard from any of them is, "I love my country but fear my government." They also agree that it is their duty as citizens to restore lawfulness, integrity, and public trust to government, and they believe "the militia [is] a legitimate agent of resistance against a corrupt and violent state,"

as did previous generations of Americans.[1374] Many make enormous personal sacrifices to achieve those goals. They deeply believe that their motives are pure and beyond reproach.

Those who question the integrity and constitutionality of government cite the supposed glaring inconsistencies between the guarantees of the Constitution and existing statutes and operation of the government. They note atrocities such as Ruby Ridge, Waco and, many of them believe, the government's acquiescence to the destruction of the Murrah Building in Oklahoma City and the Twin Towers in New York. Conspiracy theories abound in the movement.

Generally, the Whig militias are non-violent community groups, usually five to 15 persons, composed of friends and neighbors (men and women) who have agreed to cooperate in a military capacity in what they perceive as the moral and lawful defense of their communities. These groups do not advertise themselves and attempt to avoid any recognition, but, although it is almost impossible to measure, they are present, especially in the Rocky Mountain West, the upper Mid-West, and in parts of the South. They revere the Constitution as they interpret it, and they wish to both live under and obey the rule of just and lawful statutes, and they insist the government behave similarly.

Whig militiamen make house payments, save money to send their children to college, attend Christian churches, and adhere to mainstream religious beliefs. They are politically active; they join the National Rifle Association or the Gun

[1374] Ibid, 42.

Owners of America or both; they are members of the conservative wing of the Republican Party or of the Tea Party or both. Found among them is a significant group of "Christian Monarchists," Christians waiting for the return of Christ to reign as absolute monarch on the earth.[1375] Until He returns, they will support the Tea Party or conservative Republicans. Whigs contribute meaningfully to society and they often vote. They believe that the system is salvageable, and they view the possibility of a civil war with absolute dread. They are the true heirs of (loosely) regulated liberty.

Apocalyptic militias are similar to Whigs in most ways, but with some crucial twists in philosophy and expectations of the future. They believe that the existing system of government in the United States is not salvageable, and they predict a total collapse of the government and of present society. The Apocalyptics see the present government as hopelessly corrupt and expect it to disappear in the flames of a horrific civil war. "The coming civil war will be a multi-dimensional conflict," according to The Old Montana Farmer (a person of protected identity). He believes that there will be "a race war, a religious war, a class war, and a war for the Constitution and the American way of life. It will be a bitter war of hatred and atrocities, and when it is over, regardless of who wins, the reborn United States that emerges from the wreckage will be a creature that we do not recognize."[1376]

[1375] Christian Monarchists are found in various denominations with widely divergent doctrinal positions. They all agree, however, on the basic assumption that Christ is the only lawful law Giver in heaven or on earth and will personally rule the earth as absolute monarch.

[1376] Old Montana Farmer (a person of protected identity) interview by Gerald Van Slyke, January 2, 2015.

Many Apocalyptics have abandoned society and they attempt to maintain a low profile. They do not participate in mainstream political activity. They refuse to vote since, they contend, both political parties are owned by the same hidden, moneyed power bloc with little difference between them. Many do not pay taxes, have dropped out of Social Security, and have tried to erase every government record of themselves. Many of them object to government licensing and will not apply for a driver's, marriage, or other license. They avoid contact with all banks, which they consider an important cog in the "New World Order," a coming world government they view as fostered by the United Nations *Agenda 21* policy and by, many believe, the Antichrist.

Apocalyptics prepare for the expected collapse. Often, family life centers around militia meetings and training sessions, as well as on doomsday preparations. Apocalyptics hoard everything they think they will need when the distribution system collapses, including food, clothing, medicine, ammunition, and the like. One family in Montana's Bitterroot Valley researched shortages in revolutionary Russia and post-World War I Germany. They discovered that small but critical items (toilet paper, scissors, shoelaces, toothbrushes, soap) became the most difficult to acquire, not larger, more commonly hoarded items. The family currently is hoarding a larder of these sorts of items to use for barter when there is no more spendable currency. This family is not alone.

Many Apocalyptics see the expected collapse as something more than just "hard times." They believe that it will be so terrible as to be an historical epoch in

itself. The blood-chilling works of former soldier and adventurer Thomas Chittum are widely considered authoritative among Apocalyptics. He enjoys a stature as a strategist and a prophet of the coming conflict among Apocalyptics similar to the stature Anna Von Reitz enjoys among Libertarians. Chittum described the coming civil war as one that develops into nothing short of a war for civilization itself.

"America was born in blood…suckled on blood…and America will drown in blood," Chittum believes. "This specter is haunting America…civil war that will shatter America into several new ethnically based nations. America will explode in tribal warfare in our lifetime." Chittum believes the war will begin in the congested inner cities where ethnic or racial mobs will sack National Guard armories for their weapons and loot stores and homes unhindered by law enforcement. "Artillery will blast our cities to flaming waste lands," he continued. "Packs of feral dogs will tear at charred corpses…Doomed refugees will clog our highways. Guerrillas will stalk the countryside - raping, looting, murdering, and clashing with each other."[1377] He has a vivid imagination.

The ultimate result of the collapse, he wrote, is a situation similar to that in Western Europe, especially Germany, during the last months of the Second World War. The land had been ravaged, the crops not planted, and only huge shipments of American food had prevented mass starvation. However, there will be no rescue for America in the near future. "Food production will all but cease. The hungry

[1377] Thomas W. Chittum, *Civil War Two: The Coming Breakup of America* (Las Vegas, NV: Geodesics Publishing, 1996), 1.

will fight to the death over scraps of garbage. Millions will starve, and millions more will die from infectious diseases."[1378]

Tragedy on a Biblical scale is now inevitable, Chittum asserted, because America stopped being a racially and culturally unified nation primarily controlled by white people, where minority racial subcultures existed but wielded little power. Instead, the United States has become a multiracial empire without a white dominated identity-sustaining culture.[1379] Obviously, globalization and the shrinking proportion of Americans who are white underlays Chittum's ideas.

The Whig militias often disagree with Chittum's analysis as well as with his predictions, but remain concerned at his words and keep them in mind. Whigs like to believe that race is unimportant and that they have few biases. Constitutional originalism is a Whig's decisive test of fellowship, not racial background. Whig militiamen expect that the response of blacks and other minorities to any social conflict will mirror the response of whites; individual members of the various races (and ethnic groups) will support either side in accord with their spiritual and political beliefs, their vision of the future, and their immediate necessity. Still, the militia movement has not to date caught on among African Americans nor among various ethnic groups.

Whig militias hope that good government will be restored at the ballot box, but they are preparing to defend themselves if they feel that violence is forced upon

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[1378] Ibid. See Also: Charles McBaine, *The Kindness of Strangers* (New York: Harper Rowe, 1962), 18. Between July 1945 and June 1946, the U.S. sent 1/6 of its total annual food production to Europe and Japan, both of which faced imminent starvation.
[1379] Chittum, 1.

them. Most militias, at least in Montana, are Whig militias. The Apocalyptic Militias are a smaller splinter group that receives the great majority of publicity. These are the two general groupings of militias, but every community militia is unique and one will certainly find militias that are not a good fit for either the Whigs or the Apocalyptics, as well as militias that combine elements of both groups.

Both the Whig Spirit of 1774 and the apocalyptic radicalism of the Whiskey Rebellion of 1793 burn hotly in the blood of Apocalyptic Libertarians, a non-militia school of activists who exert considerable influence on militiamen. Both groups often participate in libertarian discussion circles of various kinds, although their focus is always centered on the militia. The philosophies of the two militias described above are mirrored in both the libertarian groups and among individual libertarians.

A small number of apocalyptic libertarians tend to entertain religious beliefs that persons attached to one of the mainstream western European traditions might find bizarre. Many believe in reincarnation and that a "death planet" called "Nibiru" (which is undetectable by humans) is about to pass through the solar system. Satan lives on Venus, and he and his minions will do battle with "JC the Savior" for control of the earth when Nibiru shows up. Nibiru will exude life-giving vapors that will replenish the Earth to the pristine condition that existed at the time of Eden.

Moreover, aliens brought African Americans to earth from another planet, a few apocalyptics believe, to be servants of the white race. Jews living in Israel are not really Jews, but are "Kazars" or "Kasarians," a group of people who

purportedly populated the southern Caucasus during the ninth to eleventh centuries and have no connection to the "true" Jews. They migrated to Palestine centuries ago and developed into a criminal people known today as Zionists. Most Whigs find the neo-Nazi attitude of these few apocalyptic libertarians toward blacks and Jews highly disturbing.

Apocalyptic libertarians declare and sincerely believe that they are not anti-Semitic. They dislike the people of Israel and support Muslims against them in any conflict. Since they believe that the Israelites are not Semites, they consider their animosity is not anti-Semitic. Many Apocalyptics see Israel as an outlaw nation of thieves and killers and support its destruction. Most apocalyptic libertarians are seldom welcome among Whig militias, although they do sometimes attend meetings.

A good example of the previously mentioned crossover groups is the Posterity United Montana Assembly (PUMA) located at Churchill, Montana. This libertarian discussion group has about 15 regular attendees and another 15 peripheral attendees and is chaired by a woman. PUMA is not a militia but many attendees are militiamen. Most of the group are Whig libertarians; a few are apocalyptic libertarians. A question that once arose among the PUMA attendees illustrates the more responsible nature of Whig libertarians.

In mid-2014, it was moved that PUMA organize a militia, which would include inviting the county sheriff to sit at the leadership table. The attendees discussed the proposal for several meetings before rejecting it. The Whig

militiamen argued that sponsoring a militia was a function of community government, and that a private group such as PUMA had no mandate to organize a militia. PUMA suggested instead that the attendees unite with community militias in their own towns under local authorities. (See Appendix J.)

Local Rejection and the Anticipated Muslim Uprising

Often the local authorities want to have little or no interaction with community militias. As an example, the 1990s-era Bozeman, Montana, militia used to advertise its meetings in the local newspaper, record the meetings, and leave the recordings at the public library so anyone could listen to them. They invited the County Sheriff to attend and assume a leadership role. He refused. This militia enjoyed some community support although not the support of law enforcement agencies until the brutal bombing of the Murrah Building in Oklahoma. In Bozeman, as elsewhere, the association of the militia in the public mind with that act undermined their membership. As the militia became less respectable, the remaining militiamen removed themselves from the public eye.[1380]

The present day Bozeman militias, while not entirely secretive, are much more circumspect. That takes its toll. What happens to the historical "well regulated" militia in those circumstances? A militia that is not subject to some authoritative higher power is in danger of becoming a private militia, which is without a sound, lawful basis. Militiamen are embittered by being shunned by the

[1380] Steve McNeil and William Sullivan interview by Gerald Van Slyke, January 29, 2015.

larger society. One mechanism they employ to find some regulation is to emulate earlier Americans by establishing Committees of Safety.

Committees of Safety and Committees of Correspondence were found throughout the colonies by 1774. The correspondence committee handled transfer of propaganda and information while the safety committee oversaw the militias. Often the members of one committee were also members of the other, but they were careful to keep the military sphere separate from the political sphere. Some present day militias have accepted these ad hoc committees (where they exist) as substitutes for the elected officials who refuse to recognize them. Where there are no such committees, most militiamen yearn for acceptance and continue to go quietly about their everyday lives.

Many militiamen expect that the public perception of militias will change dramatically in the near future for a number of reasons. They despise what they believe is a militarily weaken nation during the recent past, and they are fearful of immigration, particularly by Muslims. Somewhat ironically, militiamen consider what they perceive as a widespread hatred by Muslims for America and for Christianity as a possible boon to the militia.

Militia leaders fully expect that atrocities committed by Muslims will become a common occurrence in the streets of America, and it will quickly restore the militia to its historic place of prominence. "Obummer [President Obama] will turn America into another Beirut within two years," Sandro Bellinger predicted in January of 2016. "Everyone in the military and intelligence communities is telling

the fool [the president] that he is creating a disaster, but he's bringing ISIS into our country free of charge just the same. Why doesn't he send them to Kenya? Obama hates America."[1381] These feelings appear common in the militia movement.

When there are bombings in churches and malls every day, when Americans are afraid to speak their minds publicly, when they have their heads cut off in their own streets, Americans will no longer despise the militia, according to Bellinger as well as many other militia leaders. They will see the militia defend them when the police cannot. There are not enough police and they cannot be everywhere at once, Bellinger contends, particularly in the necessary numbers to fight Muslim guerilla street gangs. Presently, there are not enough militiamen either, militia leaders believe, but when people see a need for it, the unorganized militia will mushroom overnight.

"The first year," the Old Montana Farmer predicted in early 2016, "Muslims will threaten young American women with beatings and rape for dressing in American fashions and not in the stupid garbage bag they require their women to wear." The Farmer pointed to a supposed news report from Germany that some Syrian refugees are raping European women soon after having been given sanctuary. "The second year, they'll start praying in the streets, blocking traffic, and blowing up things and people. Eventually, they will kill all of us or we will kill all of them."[1382]

[1381] Sandro Bellinger interview by Gerald Van Slyke, January 1-2, 2016.
[1382] Old Montana Farmer interview by Gerald Van Slyke, January 2, 2016.

A good many militiamen are military veterans, having served in Kuwait, Iraq, and Afghanistan during the past few decades. Some have returned from overseas with a grudge against the federal government and have swelled the ranks of the militia. Some believe that President Bush waged an illegal war and then signed a treaty that committed the U.S. to withdrawing from Iraq prematurely. Others feel betrayed by President Obama's administration, claiming that it relinquished victory in the Mideast. Their reasoning is that General Petraeus had achieved victory, downplaying the importance of the treaty crafted during the Bush administration.

Moreover, they argue, the Obama's unrealistic rules-of-engagement exposed American soldiers to unacceptably high levels of risk. Unlike the vast majority of Americans, a great many militia members believe that President Obama lies about his faith as a Christian even if he regularly attends a Protestant church. A good many militia members do not accept that the validity of President Obama's birth certificate. Instead, they fear, he is a secret Muslim with an agenda to weaken the United States. Interestingly, few presidents in American history have been accused of such traitorous behavior.

How do these people typically become interested in the militia? Some of these veterans initially join peripheral groups, usually libertarian discussion assemblies, where they can express their complaints, find support and understanding for their angst, discover reassurance of the validity of their opinions and feelings, and socialize with people with compatible political perspectives. Over

time, the older men socialize the younger men, and often their families, completely into the “Patriot Movement.”

From many militiamen’s perspective, one crucial event in our present century was the 2008 Supreme Court Decision in *Heller vs District of Columbia*; the court ruled that the right to keep and bear arms is both an individual right as well as a collective right.[1383] However, they still fear that their armaments will be confiscated. "Sadly," Clifton Rogers said, "despite a definitive statement from the Court, Democrats still threaten to take away our guns. This is an important plank in Bitch [Senator] Clinton’s platform. When you write my words in your paper, make sure to call it [her] Bitch Clinton."[1384] The anger and contempt is palpable.

At least a few men who claim to be part of the militia clearly are breaking the law. Apocalyptic militiaman William Kristofer Wolf, for example, attempted to start a Committee of Safety in Gallatin County, Montana during early 2015. Wolf seemed to be less interested in finding an authority to shelter under and more

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[1383] Cornell University Law School, *"Majority and Minority Opinions in Heller vs. the District of Columbia, 2008*." Cornell University Law School Legal Information Institute, http://www.law.cornell.edu/supct/html/07-290.ZS.html (Accessed Jan. 19, 2014). Justice Scalia, writing the majority opinion (with Justices Stevens and Breyer writing minority opinions) ruled that American citizens have a right to keep and bear arms both as members of militias and as private citizens. Of militias, Scalia wrote on page 23 of the opinion: "Unlike armies and navies, which Congress is given the power to create...the militia is assumed by Article I *already to be in existence*...This is fully consistent with the ordinary definition of the militia as all able bodied men." On page 24, Scalia then quotes an earlier authority, "The militia is the natural defense of a free country" Of the individual right he said on page 22: "There seems to us no doubt, on the basis of both text and history, that the Second Amendment conferred an individual right to keep and bear arms." In addition, on page 19: "This meaning is strongly confirmed by the historical background of the Second Amendment. We look to this because it has always been widely understood that the Second Amendment, like the First and Fourth Amendments, codified *a pre-existing right*. The very text of the second amendment implicitly recognizes the pre-existence of the right and declares only that it "shall not be infringed"." (Italics are in the original text.) This was the first time in the 219 years since the adoption of the Constitution that the Supreme Court had heard a case on the Second Amendment.

[1384] Clifton Rogers interview by Gerald Van Slyke, May 12, 2015.

interested in generating police confrontations. A Bozeman resident, Wolf hosted a weekly internet webcast since 2013 and often wrote incendiary remarks. He spoke of burning the Gallatin County Courthouse and demanding the arrest of certain judges. During an impassioned lecture (dealing with organizing a Committee of Safety) at the King Tool Building in Bozeman on January 29, Wolf became overly enthused in his oratory, suggesting that shooting law enforcement personnel was like killing gophers. Shooting gophers, he added, was good marksmanship practice. He also made a number of other outrageous statements.[1385] No one among the shocked listeners volunteered to be on his suggested Committee of Safety. One man muttered, "There already is one, a normal one."[1386]

Several months later, while in Livingston, Montana, Wolf bought a Russian Siaga-12 automatic 12-gauge shotgun without the class five license required for automatic weapons. He is reputed to have said, "One of those or a few of those on the street, and those cops aren't going to know what's coming." Unfortunately for him, though perhaps fortunate for the police, the person who sold it to him was a federal agent. Arrested a few seconds later, Wolf was incarcerated in Billings.[1387]

Indicted in federal court on April 17, 2015, arraigned on April 22, found guilty after a three-day trial, Wolf was sentenced on March 3, 2015. Presently, there is no discernable public record of what his sentence was or where he is. That set off conspiracy theorists among many militiamen. "What does that mean? There

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[1385] Peter J. Ryan, "Local FBI Sting Arrests William Krisstofer Wolf: Feds Set Up Anarchy-Talking Webcaster at Livingston Truck Stop," *The Montana Pioneer*, May 2015.
[1386] Committee of Safety meeting attended by Gerald Van Slyke, January 29, 2015.
[1387] Ryan, "Local FBI Sting."

are two possibilities," according to Dawn Lemieux, spokesperson for Posterity United Montana Assembly (PUMA), a libertarian discussion group. "Either they've done something terrible to him, or else he was an agent provocateur and they removed him from this area."[1388]

Benjamin Franklin Revisited: Join or Die

Many militiamen see the upcoming November 2016 election as America's last chance. "If a decent man doesn't win the White House this time," Bellinger said, "We are finished. We will be beyond a point at which we can still recover."[1389] Some militiamen believe the point of no return has already been passed and question whether there will even be an election. (At the time of the writing of this dissertation, the election is well under way). "We're way past the tipping point," said freedom movement theoretician Scott Wind. "Too many complacent people have sat on the sidelines for too long and now the train wreck is on the immediate horizon. Get ready."[1390]

Many militiamen are dismayed and question if the present generation of Americans is even concerned about the erosion of liberty. "Does the butt-crack generation care enough for the legacy of Freedom they inherited from their betters," a Christian Monarchist from Billings, Montana, asked, "to endanger their

[1388] Dawn Lemieux interview by Gerald Van Slyke, November 26, 2015.
[1389] Sandro Bellinger interview by Gerald Van Slyke, January 1-2, 2016.
[1390] Scott Wind lecture attended by Gerald Van Slyke, April 6, 2015.

entitlements? Not a chance. Will they unite to defend America from the Muslim invasion Obama is unleashing on us? Well…possibly…I sure hope so."[1391]

"Benjamin Franklin published a drawing of a truncated snake, each part representing a state, in 1754 at the Start of the French and Indian War, and then later during the Revolution," said Steve Wagner of Whitehall, Montana.[1392] The lesson of the cartoon, by Wagner's interpretation, was that the people of the states, more so than the states themselves, must unite to survive. The ignorant, complacent, low-information Americans of the present day, according to Wagner, must shed their lethargy and begin participating in the conversation or the gains of the Patriot Founders will be lost.

Some Christian Monarchists believe that the collapse of the "American Experiment" is natural, is unstoppable, and is almost complete, but they do not think there will be a civil war. "I'm not convinced of the conflagration scenario," Monarchist Tim Martin said. "The experiment will fail and people will carry on as they always do." Wagner agrees with Martin. "I don't see a war scenario like the 1860s," he said, "more of a slowdown and break down, although there will probably be violence in the cities." Monarchists like Martin believe the experiment has been failing since the presidency of Abraham Lincoln, and first became glaringly apparent with America's defeat in Vietnam. "It mirrored the growing impotence of the Roman legions in the fourth century as the empire was crumbling."[1393]

[1391] Whitehall Leadership interview by Gerald Van Slyke, August 2, 2015.
[1392] Ibid.
[1393] Ibid.

Militiaman Phil Johnson, a Christian Monarchist, believes Senator Clinton will be elected because he believes that God's hand of judgement is on America. "We have murdered millions of innocent, unborn children," he said, "have penalized Christianity while promoting Islam, and have glorified and institutionalized sodomy as an acceptable way of life in our society. Our sure destruction is looming." Johnson believes that Clinton is a dupe of Satan. "Electing that woman," he continued, "will be the final humiliation, a total reversal of Almighty God's social order. She will be the last President of the United States as we know the United States."[1394] Many militiamen adhere to traditional roles for women but many do not.

Almost everyone in the Patriot movement in Montana shares Johnson's opinion. Few of them foresee a positive outcome to the issues in the future. Whig militiamen believe the system is fixable if Senator Cruz (or perhaps Donald Trump) is elected. The Apocalyptics see no ray of hope anywhere. They just want their families to survive the upcoming holocaust, and if possible their country as well. Perhaps the Old Montana Farmer best summarized the present condition of the present day unorganized militia.

"We don't make a lot of noise, but America's militia is still here, I think millions of us" he said. "We are armed, we hate the traitors who have nearly destroyed our country, and we know what to do about it when the time comes." The Old Montana Farmer stated that he is glad he is at the end of his long life and

[1394] Phil Johnson interview by Gerald Van Slyke, June 20, 2015.

not at the beginning, and expresses dismay for what his grandchildren's generation is going to experience if patriotic men and women of good will and their militias cannot reverse the trend to destruction. "Yeah," he continued, "they'll keep smirking at those of us who want the government to do right and obey the law. Yeah, they'll keep laughing and hating, and they will maintain their treason right up to the moment there is a spark. Then they are going to get theirs."[1395] Clifton Rogers agrees. "It will be a cleaner and better country."[1396] These sorts of comments offend and scare a good many Americans not favorable to a militia perspective.

As this dissertation has argued, the militia, both unorganized and organized, is woven tightly into the fabric of American government and society. The militia, along with trial by jury, is arguably the oldest surviving civic institution in western society, with roots running through the English militia deep into the Middle Ages and beyond. This dissertation further argues that the law acknowledges the militia, both organized and unorganized, as a foundational structure in western society. Recognized by the Common Law, by the Constitution, by federal statutes, by state constitutions and statutes, the militia is America's senior partner in the Army of the United States. The modern citizen militia is alive and well.

[1395] The Old Montana interview by Gerald Van Slyke, January 1-2, 2016.
[1396] Clifton Rogers interview by Gerald Van Slyke, May 12, 2015.

APPENDICES

APPENDIX A

COMMON DEFINITIONS CONCERNING THE REGULAR AND MILITIA FORCES OF THE UNITED STATES AND GREAT BRITAIN

DEFINITIONS

The following terms were gathered in a general sense from many passages written by historians John Mahon, Jim Dan Hill, James Whisker, Martha Derthick, John Shy, Saul Cornell, Richard Stewart, Barry Stentiford, and many others. Journalists often invented the newer terms and through repeated use by the mass communications industry, these terms became accepted throughout society.

ARMY: Any armed land force of any nation.

MILITIA: A Latin word meaning "a body of soldiers," *miles* meaning a single soldier. This term replaced FYRD during the War of the Spanish Armada. Every able-bodied man was (and is) born into the militia and the term embodies the concept of universal military obligation. "Hence it early came to mean," Hill wrote, "all the able-bodied adult males within [common law] or statutory ages who were obligated to perform military duties on call."[1397]

THE MILITIA: The GENERAL or UNORGANIZED MILITIA, STATUTORY MILITIA, TRADITIONAL MILITIA, or MILITIA-AT-LARGE, of a colony, county, state or other geographic area, such as the Texas Militia, the Massachusetts Bay Militia, the Jefferson County Militia, or the American Militia. Although "Unorganized Militia" came into being only with the Militia Act of 1903, it is universally used today to also describe the traditional or statutory militia of previous times.[1398]

SELECT MILITIA: A "standing militia" with roots going back to King Alfred's HUS CARLS. These formations were better trained and equipped than the unorganized militias and normally served for a longer period and for a specific purpose. Examples are the TRAINED BANDS or TRAINBANDS of various times and the PROVINCIAL VOLUNTEERS recruited in the North American colonies for service during the French and Indian War (1754-1763).[1399] Select militias have continually existed alongside the Fyrd or Unorganized Militia since earliest times. They are represented today by the NATIONAL GUARD OF THE UNITED

[1397] Hill, 27.
[1398] Stewart, 373. The Militia Act of 1903 referred to the National Guard as the "Organized Militia" and the community militias as the "Reserve Militia." Within two years, the term "Unorganized Militia" replaced Reserve Militia.
[1399] Ibid, 34-35.

STATES and various STATE GUARDS such as the South Carolina State Guard.

ENROLLED MILITIA: A roll of area men eligible for muster and for calling forth. This concept began with Henry II's Assize of Arms in 1181. Among Americans it was a local implementation of the Militia Acts of 1792 and 1795.

FEDERAL MILITIA or FEDERAL VOLUNTEER MILITIA: A select militia of men directly entering federal service outside normal state channels but who often were not held to regular army discipline and frequent elected their company officers. The first example under the Constitution was an Act of Congress in February 1812, which authorized the president directly to recruit 50,000 Federal Volunteer Militia.[1400] This kind of formation was often used throughout the century.

NAVAL MILITIA: A term used to identify coastal militiamen who manned defensive, shallow water gunboats, and sometimes used to describe privately owned ships operating under letters of marque. "There was no [formal] naval militia [established by law]," Hill wrote, "until 1889, when [the] Massachusetts State legislature authorized the Massachusetts ORGANIZED NAVAL MILITIA, [becoming the first state to do so]."[1401] During the Spanish-American War, naval militia operated powerful warships as large as cruisers and, just prior to World War I, became the federal navy's trained reserve force.[1402]

TRAINBANDS: Select militias that served either a political entity (such as the Sheffield Trainband) or even a corporation (The Massachusetts Bay Company Trainband). Both Hill and Mahon erroneously cite the reign of James I as being the point of origin for the term, but Paul Hammer (and other sources) has shown that it had been in use since the time of Elizabeth I, James' predecessor, and possibly much earlier.[1403]

[1400] Stewart, 134. See also: Barry Stentiford, *The American Home Guard: The State Militia In The Twentieth Century* (College Station, TX: Texas A&M University Press, 2002), 7. Stentiford cites 1806 as the first year Volunteer units were authorized by Congress.

[1401] Hill, 141.

[1402] Ibid, 142.

[1403] Hammer, 99. ""The Privy Council's solution…was to direct the county militias to focus their limited resources on equipping and training only a small proportion of their men. These so-called 'trained bands' would include the best potential soldiers…The scheme was first tested in London in March 1572…The success of this experiment led to its nation-wide adoption in 1573." This was prior to the ascension of James to the throne (1603). See also: Whisker, 8. Whisker suggested that, "Trained Bands are found primarily in Elizabethan and Stuart England. The…term may be found as early as the reign of Alfred the Great (849-899)."

ORGANIZED MILITIA: Select or enrolled militias of any type. Hill wrote that this term began replacing Trainbands when the North American colonies began fielding militia units of regimental size during the War of Jenkins' Ear (1739-1740).[1404]

MINUTE MEN: Colonial and early republican militiamen voluntarily associated with Trainbands or other Unorganized or Select Militias who agreed to prepare themselves for instant service in the face of threatened attack. Although found everywhere throughout colonial history, the Massachusetts Minute Man companies are the best known. This term, "became [so] enshrined in the rich traditions and heritage of the Massachusetts Volunteer Militia," Hill wrote, "that [Massachusetts] was the last of the states to accept the comparatively new-fangled term NATIONAL GUARD."[1405]

NATIONAL GUARD: A name for the French revolutionary militia commanded by Lafayette. During his 1824 visit to the United States, Lafayette frequently referred to all American militia formations as National Guard units.[1406] The press popularized the term and some states began renaming their militias "National Guards" as early as the Civil War. Other states followed suit during the remainder of the century until Congress suggested the name for all state militias in the Militia Act of 1903.[1407] In 1933 the national government required all state National Guards to join the National Guard of the United States, a hybrid select militia under both state and federal control.

VOLUNTEERS: Men in units of the Organized Militia made available to the federal government by the states. Until World War I (1917-1918), these regiments were usually coupled with the name of their state, such as the 44th Pennsylvania VETERAN VOLUNTEERS, or 29th Ohio VOLUNTEER INFANTRY.

US VOLUNTEERS: A federal militia directly recruited by federal authority outside of state channels. Unlike the Federal Militia itself, these regiments were officered and disciplined under regular army regulations.[1408] "Unlike the militia…the U.S. Volunteers were enlisted for

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[1404] Hill, 28.
[1405] Ibid, 29.
[1406] Stentiford, 8. "The first use of the term "National Guard"…came in 1824 when certain units from New York adopted the title as a mark of respect for the Marquis de Lafayette on the occasion of his return to the United States…By the end of the century, few states and territories had not adopted the term for their militia units."
[1407] Hill, 74. "Indeed, the term 'National Guard' received statutory recognition as being identical with 'State Volunteers' and 'Organized Militia' during this [Civil) War."
[1408] Stewart, 134. See also: Chambers, 771.

[as much as] three years…[and] fought outside the country."[1409] The volunteers were a "hybrid of militia and the regulars."[1410]

[1409] Chambers, 771.
[1410] Richard Bruce Winders, *Polk's Army: The American Military Experience in the Mexican War* (College Station, TX: Texas A&M University Press, 1997), 68.

APPENDIX B

BACKGROUND INFORMATION:

THE DEVELOPMENT OF THE ENGLISH MILITIA

FROM KING ALFRED TO THE START

OF THE SEVEN YEARS' WAR

Genesis of the English Militia

The Vikings sowed the seeds of the English Militia and its offspring, the American Militia, when they attacked the monastery at Lindisfarne during January 793 of the Common Era. Lindisfarne, founded by the Irish monk St. Aiden in 635, was renowned throughout Europe as a center of learning. Staffed by monks who were linguists, translators, illustrators, and teachers, it was the center of a thriving monastic community built around Christian scholarship. Left unmolested, it may well have developed into England's first university. The Danish invaders so thoroughly destroyed the monastery, its substantial library, and the town around it that the few survivors moved away and the place was an uninhabited ruin for three hundred years.[1411] Such was the Viking way of making war.

The immediate result of the attack on Lindisfarne was the initiation of a two-century war between the Danes and the British kingdoms, but much more significantly it set in motion a chain of events that bore results no one in 793 could even comprehend much less foresee. It eventually gave rise to the complete reorganization of the Anglo-Saxon community militia, which ultimately left an enduring impact on the history of the western world. Alfred the Great, a king who ruled Wessex a century later, modified the militia into an efficient peasant army

[1411] Anonymous, *The Anglo-Saxon Chronicle* (El Paso, TX: El Norte Press, 2005), 55. Translated from the Old English by Rev. James Ingram. It is on the basis of this passage in the *Chronicle* that 793 is considered the beginning of the Viking Wars in England: "...and not long after, on the sixth day before the ides of January in the same year, the harrowing inroads of heathen men made lamentable havoc in the church of God in Holy Island [Lindisfarne] by rapine and slaughter." The Normans reestablished the site in 1093, building a castle on it.

able to fight and win, an army that played a major role during the following centuries in the development of England and its political and cultural institutions, and remained integral to English society until after the Second World War.[1412] The Great-Man historians often cited Alfred as a prime example of their theory, and in Alfred's case, it was a convincing argument. If ever a crisis met the man made for it, it was Alfred and the Danish wars.

However, the British militiamen fighting the Vikings had no time to waste on political philosophy or whimsical contemplations of the far future. They were intimately involved in a war of survival against Viking berserkers, some of the most brutal warriors found anywhere in the pages of history. Anglo-Saxon England was ripe for the sickle during the eighth and ninth centuries, and the Vikings hungered for a harvest. The fierce Saxons had invaded Romano-Britain during the fifth century exactly as the Vikings were now doing three hundred years later. They fought courageously, but the Danish warriors soon began to push inland. During the following seventy years, the Danes enjoyed almost continuous victory with few reverses until they carved out more than a quarter of the island as their domain.[1413]

[1412] J.R. Western, *The English Militia in the Eighteenth Century: The Story of a Political Issue 1660-1802* (London: Routledge and Kegan Paul, 1965), 436. Following Sir Winston Churchill, Western maintained that, "[The history of]...the development of both British political life and of the nation's military resources is revealed in the history of this one institution [the militia]."

[1413] James Campbell, Eric John and Patrick Wormald, *The Anglo-Saxons* (London: Penguin Books, 1991), 162. Campbell et al. provide an anthropological map of Scandinavian settlement. There is also a political-territorial map. See also: Sir Winston Churchill, *The Birth of Britain: A History of the English Speaking Peoples, Vol. I* (New York: Barnes and Noble, 2005), 91. Note the position of Danelaw and of Guthrum's kingdom in East Anglia.

The private ownership of weapons in Britain began as a public duty and later developed into both an obligation and an individual right of citizenship.[1414] The Anglo-Saxon army that faced the Vikings was an array of community militias collectively called the *Fryd*. Every able-bodied Anglo-Saxon man was born into the fryd and was required to possess weapons appropriate to his economic position in society and to present them before the magistrates each year to prove that he in fact owned them. Men not in possession of the required weapons, or who failed to report for duty when the fyrd was embodied, paid stiff fines. If he was a landowner, the crown could confiscate his property.[1415]

Historians refer to this general mass of Anglo-Saxon warriors as the "General Fyrd" or "Great Fyrd." Its social composition directly corresponds to the current "Unorganized Militia" of the United States as established under federal statute, which consists of all able-bodied men between the ages of 17 and 45 with very few exceptions. This universal civic responsibility to provide military service to one's country did not originate with the United States Constitution, but was American law long before the founding of the present national government. It stretches back through antiquity to King Alfred and beyond.[1416]

[1414] Joyce Lee Malcom, *To Keep and Bear Arms: The Origins of an Anglo-American Right* (Cambridge: Harvard University Press, 1994), 1. "The right of citizens to be armed is not only unusual, but evolved in England in an unusual manner: it began as a duty. From the proverbial "time out of mind" Englishmen had a duty to be armed...It was during the seventeenth century that this transformation of a duty to have arms into a right took place."

[1415] Mark Harrison, *Anglo-Saxon Thegn AD 449-1066* (Oxford: Osprey Printing1993) 8. "The fyrd, or levy of the common people, grew out of the old Germanic custom that all fit men had to be ready to serve in war when the need arose...This required all men between the ages of 15 and 60 to take part in military service when summoned."

[1416] John K. Mahon, *History of the Militia and the National Guard* (New York: MacMillan Publishing Company, 1983), 139. The *Militia Act of 1903*, also known as the *Dick Act*, replaced

Danish success lay not in a lack of military virtue on the part of the Anglo-Saxon warriors, as they were to prove repeatedly, but was a function of their cultural military history. The Anglo-Saxons were agriculturalists who "embodied" (mustered) only when necessary. Prior to the reforms of King Alfred, the fyrd's first serious constraint was that under the traditional system, it took a few days to a few weeks for it to gather. This operational detractor resulted in the inability of the fyrd to react quickly enough to engage decisively the swift moving Vikings. This fueled the Viking success; the Viking army moved rapidly, inflicted its damage, and then either moved away or fortified their new holdings long before they were threatened, and it was impossible to predict where they would attack next.[1417] "The men of the ninth century raiding party," Benjamin Merkle noted, "could leave their Scandinavian homes after the crops had been planted and the ice on the seas had melted...[and] their ships would reach British shores in a matter of weeks...They could begin plundering along the coastline or could...[follow] larger rivers..." deep into the interior of England. "The Vikings then returned triumphant, laden down with booty and plunder, just in time to harvest their now fully grown crops."[1418]

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the *Militia Act of 1792* that had provided the legal basis for the regulation of the militia for 111 years. It restated the universality of the citizen militia, called by the Act the "Reserve Militia" and later the "Unorganized Militia", identifying it as all able-bodied male citizens between the ages of 17 and 45. It excluded the members of the active forces, elected officials, clergy, and very few others. Mahon notes on 272, according to 10 United States Code, sec. 311 (a), 1970: "The militia of the United States consists of all able-bodied males at least 17 years of age and...under 45 years of age who are, or have made a declaration of intention to become, citizens of the United States..."

[1417] Justin Pollard, *Alfred the Great: The Man Who Made England* (London: John Murray Publishers, 2005), 211. "A Viking army appeared quickly, often in the heart of the shire, having swept past whatever defences were mounted along its edge and worked quickly to wring as much plunder and food as possible out of an area before rapidly evacuating, only to reappear sometime later at another surprise location."

[1418] Benjamin Merkle, *The White Horse King: The Life of Alfred the Great* (Nashville: Thomas Nelson, 2009), 15-16.

The fact that the fyrdmen never served for longer than three months at a time was the second and culminating issue (and another cultural tradition) that tended to negate the fyrd's operational effectiveness in the field when fighting the Danes. On occasion, the fyrdmen were pursuing an enemy army when their three-month time of service expired. Ignoring the tactical situation, they simply left and went home. (This was not strictly an Anglo-Saxon peculiarity. It also occurred occasionally among the American militia from George Washington's time through the Civil War.) Third, the pre-Alfred Fyrd was unreliable. "When the levy had fought once," historian Grant Allen wrote,

> …it melted away immediately, every man going back again of necessity to his own home. If it won the battle, it went home to drink over its success; if it lost it dissolved, demoralized, and left the burghers to fight for their own walls...[1419]

Reorganization of the English Militia

These three issues crippled the British defensive military effort but also represented deep-rooted cultural folkways. To change "the way things have always been done" among the Anglo-Saxons would require a bold, farsighted, and strong leader. Fortunately for the

Britons, such a man became King of Wessex in 871 AD. Aelfred (Alfred) was the son of King Aethelwulf and Queen Osburh, and the younger brother of King Aethelred.[1420] Alfred and Aethelred had inflicted a defeat on a Viking army in the

[1419] Grant Allen, *Anglo-Saxon Britain* (San Bernardino: El Paso Norte Press, 2013), 75.
[1420] Simon Keynes and Michael Lapidge, Alfred the Great: Asser's Life of King Alfred and Other Contemporary Sources (London: Penguin Books, 2004), 13.

field just the year previously, a victory due to the twenty-one-year-old Alfred taking command of the army and attacking while Aethelred was still busy with his pre-battle prayers. Mercia, East Anglia, North Umbria, and others had fallen and Wessex was now the last remaining independent Anglo-Saxon kingdom in Britain. The Vikings meant to have it. Since the new king had inherited a kingdom fatigued with years of warfare and, in the opinion of many, on the verge of collapse, it was unlikely that any of the Saxon noble houses envied Alfred his new throne or seriously considered challenging him for it. Doubtless, few of them expected either him or Wessex to last for very long.[1421]

Alfred, however, was to prove that he was unlike any Anglo-Saxon king who had preceded him. The warrior ethic of his family heritage, his life-long thirst for learning, his ability to learn from the strengths and weaknesses of both himself and his enemy (and from the successes and failures of both), his unfeigned faith in God, his tenacity in the face of adversity, his raw courage (he habitually fought on the front line), and the tremendous loyalty toward him that his many personal virtues evoked among the common Britons, forged him into the one man who could organize the Anglo-Saxons, Welshmen, Romano-Britons, and the rest of the south into one people, Englishmen, fighting under one king, Alfred of England.[1422]

[1421] Pollard, 132. "It is probable, however, that few could have wanted the throne at this moment. Whilst Alfred may have celebrated his coronation there (Wimborne), such as it was, the overwhelming mood must have been funereal, in fact, no mention is made of any official coronation, Asser simply telling us that Alfred now took over the government... "

[1422] Churchill, 105.

Alfred was a rough and tumble Anglo-Saxon warrior who grew up in camp and on the march, as well as a scholar who encouraged literacy among all classes throughout his realm.[1423] He had visited both Rome and Paris and had traveled through much of Europe. He was intelligent, widely read, intensely devout and, perhaps most importantly, he carefully examined the military histories of Alexander, Caesar, and Charlemagne. During his reign, he translated many Latin works into the Anglo-Saxon language, ordered the compiling of the corpus of Anglo-Saxon poetry, established the jury system, founded Oxford University and the Royal Navy, and initiated the *Anglo-Saxon Chronicle*. Many scholars also claim him as the progenitor of much of the English Common Law.[1424]

Alfred faced a great many domestic challenges caused by the continuous disruptions of society resulting from persistent Danish invasions. However, the pressing strategic military position and the need to adjust the fyrd's organization quickly attracted his attention. Historian Ryan Lavelle wrote:

> Busy however as Alfred was with the restoration of order and good government, his main efforts were directed to the military organization of his people. He had learned...how unsuited the military system of the country had become to the needs of war as the Danes practiced it. The one national army was the

[1423] Keynes and Lapidge, 26. A decline in English scholarship greatly concerned Alfred. "The quality of learning in England had also declined," Keynes and Lapidge noted. "Alfred seems to have regarded the Viking invasions as a form of divine punishment for the decline, and his endeavors to revive religion and learning can thus be seen as an attempt on his part to strike at the heart of the problem..."

[1424] Allen, 81. Allen warns against the attempts of modern historians to paint Alfred as an urbane sophisticate. "As a lad he had visited Rome...and a genuine desire to civilize himself and his subjects, so far as his limited light could carry him. But his character was simply that of a practical, common sense, fighting West-Saxon who loved battle, brought up in the war camp of his father and brothers, and doing his rough work in life with the honest straightforwardness of a simple, hard-headed, religious, but only half-educated barbaric soldier." However, this stands in stark disagreement with all other accounts of Alfred's life and character, particularly that of Bishop Asser, a contemporary biographer.

> fyrd...composed of the whole mass of free landowners who formed the 'folk,' [this land ownership requirement had broken down somewhat and became] a levy of every freeman.[1425]

Alfred began by addressing the cultural tradition of short service. Fighting the Danes required a year-round military structure, not a temporary force that required a week or two to muster. As previously noted, this was a cultural tradition that persisted in nations rooted in English Common Law until well after the American Civil War (1861-1865). A thousand years after Alfred, for example, President Abraham Lincoln called up state militias for a period not to exceed three months, and this only with the agreement of the state governors, at a time when powerful Confederate armies threatened the national capital.[1426] "The early defenders of the capital remained to take part in the First Battle of Bull Run in July 1861," John Mahon wrote, "after which their ninety days were up and they went home."[1427]

Alfred initially overcame this tradition without increasing the three-month time of service by establishing a year-round rotation schedule, which provided a constant source of soldiers without becoming onerous for the militiamen. As the years of warfare dragged on and the fighting intensified and became more bitter, and as the numbers of Viking warriors steadily increased, it eventually became

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[1425] Ryan Lavelle, *Alfred's Wars: Sources and Interpretations of Anglo-Saxon Warfare in the Viking Age* (Woodbridge, UK: the Boydell Press, 2010), 49. "The fact that every Anglo-Saxon freeman participated in the defence of the kingdom," Lavelle observed a page earlier, "was an endorsement of its constitutional continuity in the form of the very history which gave the state its legitimacy."

[1426] James M. McPherson, *Tried by War: Abraham Lincoln as Commander in Chief* (New York: the Penguin Press, 2008), 23. "The federalization of state militias was limited to ninety days under the Militia Act of 1795."

[1427] Mahon, 99.

necessary for Alfred to keep half his fyrdmen in the field continually. The time of service for the men of the general fyrd lengthened to six months.[1428] This gave Alfred a force of about 27,000 militia, of whom about 10,000 would be on duty at any one time. Those on duty could be quickly reinforced by thousands more fyrdmen when necessary.[1429] The system worked well. The men taking their turn on active duty defended the kingdom from enemy armies while those taking their turn at home raised the all-important food crops and were on hand to defend the community from surprise attack by the far-ranging Danish raiding parties.[1430]

Alfred also established two new formations within the general fyrd to answer the special challenges of the Danes. "The Dane in fact had changed the whole conditions of existing warfare," Lavelle wrote. "His militia forces were really standing armies, and a standing army of some sort was needed to meet them."[1431] Working within the cultural traditions of his people, Alfred first began modifying and professionalizing the fyrd while maintaining it intact as a militia force. He established a body of troops within the fyrd who agreed to serve for a longer time, initially six months although this eventually lengthened to a year or

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[1428] Paul Hill, *The Anglo Saxons at War* (Barnsley, South Yorkshire: Pen and Sword Publishers, 2012), 42. "...the most important point of the reforms was that the fyrd was reorganized into a three-part system...The king had separated his army into two so that there was always half at home and half out, (also) those men who had to hold the fortresses."

[1429] Lavelle, 60. Lavelle estimated the population of Wessex at 450,000 with 27,000 men available for military duty. He posits that Alfred's rotation system would provide him with ten-thousand militiamen on duty at any one time, ten-thousand at home, and seven thousand in the burhs. The ratio of population to soldiers mirrored that of the early modern era.

[1430] Ibid, 94. "The fyrdmen who waited 'their turn' at home also filled a necessary defensive function. It was essential that some...remained behind to guard their lands and those of their neighbors on campaign against sudden raids, if for no other reason than the obvious one that (fyrdmen) would have been reluctant to leave their (farms) and families totally undefended."

[1431] Ibid, 50.

more. Called "*Hus Carls*" by Alfred, and "select fyrd" by current historians, they were better armed and better trained men who often clustered around the king on the battlefield.[1432]

Alfred's select fyrd corresponds to the "trained bands" that first made their appearance in England under Queen Elizabeth in 1573 and to the select militias (known by the British government as "Provincial Forces") of the British North American colonies. Some believe that the current National Guard of the several states is also a select militia when under the control of the governor and not the president. Others strongly disagree with this assessment.[1433] Over the centuries, the British continued to embody select militias when needed even after the establishment of a permanent standing royal army in the seventeenth century. British regulars, for example, served both with and against a number of select militias during the North American Wars (1754-1783) of the latter half of the eighteenth century.

After making initial reforms in the fyrd, Alfred subsequently established a network of fortifications along England's frontiers with Danish lands. Drawing on

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[1432] Harrison, 8-9.

[1433] Edwin Vieira Jr., *Thirteen Words* (Ashland, Ohio: Bookmasters Publishing, 2013), 20. "The National Guard (is) neither (a) well-regulated militia, as the Second Amendment uses that term, nor one or part of 'the Militia of the several States,' as the original Constitution uses that term; nor any form of 'militia' whatsoever." To paraphrase Vieira's argument, the National Guard is distinct from the militia in that: 1) It is composed of volunteers who sign enlistment *contracts* whereas the militia is a compulsory enrollment of nearly every able bodied man; 2) National Guardsmen do not provide their own weapons and do not maintain them at home whereas militiamen do; 3) The National Guard may be called into service for other than the three constitutional reasons provided for calling out the militia and can be sent overseas which the community constitutional militia may not; 4) The National Guard may be incorporated into regular units of the armed forces which the militia may not since they and the regular armed forces are constitutionally distinct; 5) Officers of the regular armed forces may command the National Guard but can never command militia forces.

his knowledge of history, he decided to build a wall between himself and the Danes much as the Roman Emperor Hadrian had done seven centuries earlier to contain the Picts and Scots in the north. Alfred's wall would be a series of "burghs" (forts) located about twenty miles apart, which would serve as nodes of militia activity. Alfred's men could be more easily resupplied from the line of burghs than they could from the interior as well as respond more quickly to a Viking threat. Not surprisingly, many of the burghs developed into important commercial centers such as Winchester, Southampton, Worcester, Malmesbury, Wallingford, Chichester, and others.[1434]

The second new formation was a body of men especially trained to defend Alfred's newly constructed line of fortifications, a duty that required a number of specialized engineering skills on the part of militiamen as well as common infantry skills. The construction of these fortifications was meticulously recorded in the *Burghal Hidage*, an administrative document that listed each fortification, the numbers of men staffing it and how it was paid for. These militiamen, specially trained to maintain, defend and improve fortifications, would today be called "sappers, combat engineers, pioneers, site defense forces," and so on. The Anglo-Saxons called them "*burhmenn*."[1435]

[1434] Pollard, 212-213. "Not only was this a revolution in ...defence, it was actually a revolution in the whole English way of life. Before Alfred, urban living in Anglo-Saxon England barely existed." Originally called "burhs," by the Saxons, the term quickly was mispronounced by non-Saxons and then cast into stone as "burghs."

[1435] Lavelle, 58-60. Lavelle discusses at length the Anglo-Saxon "hide" which is thought to be an indeterminate amount of land that would support a single family, which served as the yardstick for how much each freeholder had to contribute to the war effort. A general rule was that five hides sponsored an infantryman or burhmenn by outfitting and paying him.

Alfred's fyrdmen fought many desperate and decisive battles against the Danes during his reign, winning most and losing a few, but always maintaining a credible field force as well as engaging in continuous skirmishing.[1436] One such battle that demonstrated what the reorganized fyrd could do occurred at Rochester in 884. A large force of Danes landed but after repeated attempts could not breach Alfred's new fortifications and gain access to the town to sack it. Past experience with Anglo-Saxons made the Vikings believe that they had a week before an army could show up to oppose them, so they confidently rested that night in camp. Alfred's militiamen surprised them when they attacked in force a day later, killed most of the Danes and burned their ships.[1437]

Under Alfred, the Britons found they finally had reason to hope for a better future. Not only was their king able to protect them by defeating and driving off what had been an unbeatable and terrifying enemy, he had made inroads into the kingdom's social conditions and was beginning noticeably to improve his people's everyday lives. Further, the old legal distinctions between English, Midlanders, Welsh, Cornish, and others who had settled in Wessex faded.[1438] Despite the

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[1436] Hill, 42. "This...did not count the expeditions that the king's brother, ealdormen and thegns often rode on. The message here is clear: senior noblemen, ealdormen and king's thegns were each capable of mounting their own military expeditions outside of the activities of the royal host." Ryan Lavelle (150-163) holds that much of the harassment operations against the Danes were seaborne. His discussion of it leads one to believe that if many consider Alfred to be the father of the Royal Navy, then he should also be considered the father of the Royal Marines.

[1437] Paul Hill, *The Viking Wars of Alfred the Great* (Yardly, PA: Westholme Publishing, 2009), 104-105.

[1438] Allen, 83. "The common danger seems to have firmly welded together Welshman and Saxon into a single nationality. The most faithful part of Alfred's dominions were the west Welsh shires of Somerset and Devon, with the half-Celtic folk of Dorset and Wilts. The result is in the change that comes over the relations between the two races. In King Ine's laws the distinction between Welshmen and Englishmen is strongly marked...in Alfred's laws the distinction has died out...West Saxons and West Welsh were equally Englishmen."

continuing local frictions between the various peoples of Alfred's kingdom, most people welcomed this new unity. They were now all Englishmen (at least when dealing with the Danes) led by their intensely devout English King, Alfred, a king whom men now began calling "the Great" (the only English king ever so named by his people) after a popular heroic ballad about him from the hand of an unknown minstrel (possibly John the Old Saxon).[1439]

The Viking wars continued long after Alfred's death and ultimately ended in a Danish conquest of England and the coronation of a Danish King of England during the tenth century, the result of the shortcomings of subsequent, weaker kings who lacked Alfred's character and determination. (In 1066, the Normans conquered the Danes in their turn.) Buried at Winchester in 899 CE, Alfred left the British land and naval forces on a solid organizational footing.[1440]

Every British king and queen from Alfred until modern times has depended on the militia. The defense of the kingdom rested partially on feudal knights but largely on the militia. Duke William left the fyrd unchanged after being crowned King of England in London on Christmas Day, 1066. He embodied it on a number of occasions, as did succeeding Norman kings.

[1439] Reinhold Pauli, *The Life of King Alfred* (London: William Clowes and Sons, 1853), 99-100. Concerning a militia fostering unity among a people as it did among the English of Alfred's time, Pauli paraphrased Machiavelli and wrote: "...tyranny and usurpation are not the result of arming the citizens, but arise in part from the failure to arm them...the institution of the militia transforms factions into a unified people...by establishing a good and well-ordered militia, divisions are extinguished, peace restored and...people...become united and turn against the enemies of their country..."

[1440] Merkle, 232. "By the summer of 896, the Vikings had entirely ended their attack on the Anglo-Saxons...The remainder of the Vikings, who still longed for a life of plunder and theft, banded together and returned to Northern Europe..." (However, the peace did not long survive Alfred's death.)

More Adjustments to the Militia

Henry II promulgated *The Assize of Arms* in 1181, streamlining and codifying the militia traditions that had accrued and the previous militia laws. This legislation defined his requirements for the organization of the national militia. This included in part:

* Also, let every free layman...have a hauberk, a helmet, a shield, and a lance. Also, let every free layman who holds chattels or rent worth ten marks have an aubergel and a headpiece of iron and a lance.

* Also, let all burgesses and the whole body of freemen have quilted doublets and a headpiece of iron and a lance.

* Moreover, let each and every one of them swear that before the feast of St. Hilary he will possess these arms and will bear allegiance to the lord king, Henry namely the son of the Empress Maud, and that he will bear these arms in his service...And let none of those who hold these arms sell them...

* If anyone bearing these arms shall have died, let his arms remain for his heir.[1441]

The *Assize* thus restated the ancient duty of every Englishman to be armed. It was a crucial point in the development of a right about which modern scholars disagree. Historian Steven Halbrook, for instance, argues that at this point the private possession of arms became a right as well as a duty.[1442] Malcolm disagrees, citing the civil wars of the seventeenth century as the point at which a right to bear

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[1441] Stephen P. Halbrook, *That Every Man Be Armed: the Evolution of a Constitutional Right* (Albuquerque, NM: the University of New Mexico Press, 1984), 38.

[1442] Ibid, 39. "Despite its limitations, The *Assize of Arms* of Henry II not only recognized as a legal right, but imposed as a legal duty, the individual possession of arms by English subjects." It had actually been a duty long prior to the *Assize of Arms* as has been shown.

arms came into being to balance the duty to bear arms.[1443] Saul Cornell strikes out in yet a different direction. Speaking of American militiamen, he asserts that in America bearing arms began as both a duty and as an individual right but over time and by custom, it morphed into a collective right until legislation in 1916 abolished it almost entirely.[1444] Cornell's view that cultural metamorphosis (in America, the "living constitution") can obviate a right without constitutional amendment is not a new one; the Stuart kings championed a form of it during the tumultuous seventeenth century. Indeed, it helped to generate the tumult.[1445]

The *Assize* laid the groundwork for King Edward I's *Statute of Winchester* (1285) which amplified the original provisions of the *Assize* and further organized the military might of the kingdom. The monarchs were keen to extend the requirement for the lower classes to possess weapons. For the great bulk of English history, the government attempted to fix and extend the obligation of every able-

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[1443] Malcolm, 1, 9. Malcolm begins her argument with, "It was during the seventeenth century that this transformation of a duty to have arms into a right took place." She also wrote: "...one must address the distinction between a duty and a right. In brief, a duty is an obligation, a right is an entitlement...The Englishman's peacekeeping obligations required him to own and use weapons. But he had no explicit *right* to have weapons either for peacekeeping or self-defense. Five hundred years of performing a duty did not automatically transform that obligation into a right...No claim was made for a right for Englishmen to be armed either in Magna Charta or in subsequent listing of English liberties before 1689." (Italics are in the original text.)

[1444] Saul Cornell, *A Well Regulated Militia: The Founding Fathers and the Origins of Gun Control in America* (New York: Oxford University Press, 2006), 6. Cornell writes that after the enactment of the *National Defense Act of 1916*, "Ordinary citizens could no longer keep and bear private arms to meet their public obligation to participate in the militia. The connection between arms bearing and civic participation had been effectively severed."

[1445] Richard Ollard, *This War Without an Enemy: A History of the English Civil Wars* (New York: Antheneum Printers, 1976), 53, 61. "Control of the militia was the point at which all attempts at compromise broke down…He [King Charles I] met the challenge of Parliament's increasing power (over the militia) by issuing Commissions of Array, calling on his loyal subjects to meet him in arms at Nottingham where on 22 August 1642, he raised his standard. The [civil] war had officially begun."

bodied man to keep and maintain weapons.[1446] Not until the twentieth century did the British government begin to disarm its people in a way that paralleled events in the United States. During the eighteenth and nineteenth centuries, the U.S. government actively promoted rifle marksmanship and the widespread possession of arms by individual citizens. Since the latter half of the twentieth century, strong political forces within the United States have attempted to limit the possession of firearms to the military and police.[1447]

Many militiamen had a pike, almost all of them carried a blade of some sort, but the longbow became the weapon of choice for the medieval militia. Originally a Welsh weapon, it was feared by all of England's enemies and with good reason. English armies composed largely of peasants armed with their privately owned weapons imposed significant defeats on the king's foes -- Crecy, Poitiers, and Agincourt -- French armies built around upper class armored knights. A peasant armed with a longbow could kill the more heavily armed and more powerful knight at a distance, before the equestrian could get close enough to use his weapons to injure the archer. This was the peasant's edge and eventually led to his citizenship.

So compelling was the importance of the longbow in English history, that a special act of parliament in 1571 (during the reign of Queen Elizabeth) declared the

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[1446] Malcolm, 4-6. See also: F.W. Maitland, *The Constitutional History of England* (Cambridge: Cambridge University Press, 1968), 162.

[1447] Adam Winkler, *Gun Fight: The Battle Over The Right To Bear Arms in America* (New York: Norton and Company, 2013), 35. Nelson 'Pete' Shields III, one of the founders of Handgun Control, Inc. - later renamed the Brady Center to Prevent Gun Violence - argued for elimination of all guns. "Our ultimate goal - total control of all guns - is going to take time. [The initial goal] is to make the possession of all handguns and all handgun ammunition [for ordinary citizens] totally illegal." Read the entire Shields interview at, Richard Harris, "A Reporter at Large: Handguns," *The New Yorker*, July 26, 1976, p 53.

longbow to have been "God's Special Gift to the English Nation." The official militia muster records of the County of Kent contain this almost anachronistic Elizabethan entry in the Government of Kent *Feet of Fines* Archives:

> Captains and officers should be skilful of that most noble weapon; and to see that their soldiers, according to their draught and strength, have good bows, well knocked, well strynged, every stryng whippe in their knock, and in the myddes rubbed with wax-braser, and with shutting glove - some spare stryngs trymed as aforesaid; every man one sheaf of arrows, with a case of leather, defensible against the rayne, and in the same fower and twentie arrows; whereof eight of them should be lighter than the residue to gall or astoyne the enemy with hail shot of light arrows, before they come within danger of the harquebus shot.[1448]

The *Statute of Winchester* (1285) not only reiterated the philosophy behind the *Assize of Arms*, but also required every Englishman able to afford to do so to provide himself with a longbow and arrows and to practice with them frequently. The statute also made every armed militiaman responsible for helping to keep the peace and provided for penalties if they did not.[1449] "People living in the district shall answer for robberies and felonies committed in the district," the law stated. "In great towns which are walled the gates shall be closed from sunset to sunrise...[anyone] harbouring or otherwise lodging persons suspected of being...violators of the peace," would be considered as guilty as the person who committed the crime.[1450]

[1448] KentArchaeology.ac, *Kent Feet of Fines Archives*, County of Kent Government, http://www.kentarchaeology.ac/Records/KRNS4-4.pdf, 560-561, accessed May 1, 2014. An unnamed shire clerk recorded this primary source material in the Feet of Fines.
[1449] Dan Jones, *The Plantagenets: The Warrior Kings and Queens Who Made England* (New York: Penguin Books, 2012), 267-269. This far ranging statute strengthened the militia and required it to better control criminal activity. When a criminal was spotted, the "hue and cry" was raised and every armed man was expected to pursue and help capture the felon.
[1450] Jones, 267-268.

Subsequent legislation further strengthened the *Statute of Winchester*. Edward III established regular practice days for bowmen that magistrates monitored to enforce participation. Richard II decreed that every town would set aside land for an archery range as well as ordering that every Englishman and every Irishman residing in England provide himself with a longbow of his own height. Henry VII, the first Tudor king, passed legislation in 1503 against hunting deer with a crossbow but there was no prohibition against traditional longbows. His son, Henry VIII, signed legislation in 1511, which required every family to provide each son with a bow and two arrows once he became seven years old. The family was responsible to make sure that the boy knew how to use them. Other monarchs enacted similar laws as time went on.[1451]

The Tudor Militia

Henry (the second Tudor) had peacefully ruled England for only eight years when in 1517 an Augustinian monk, a troublesome professor at the far away University of Wittenberg, sparked the Protestant Reformation. Martin Luther's ninety-five theses evoked a time of bloodshed and misery perhaps unparalleled in the West since the destruction of the Roman Empire. The Catholic Counter Reformation, which introduced its own laundry list of terror and tragedies, followed a quarter century later. The history of Europe during this time, whatever the issue

[1451] Malcolm, 6. See also: Halbrook, 40-41.

under examination, was rooted in, or at least strongly influenced by, the religious controversy. Religious wars in Europe characterized the next few centuries.[1452]

England was not spared. From the time of Henry VIII (1509-1547) to William and Mary (1689-1702), England's religious community was a pot that often boiled over. The atrocities committed on behalf of the Christian faith were extreme and horrifying. Torture, murder and the shedding of innocent blood seemed to be the primary characteristics of sectarian disagreement. In England, it began as a conflict between Catholics and Protestants that, upon the suppression of the Catholics, grew into a conflict between the various Protestant sects. Of course, the struggle for secular political power also played a role, as Henry VIII separated from the Catholic Church for his own interests.[1453]

The Tudors, more so than any previous British monarchs, meddled in continental affairs and participated in continental wars. The normal players were the Spanish, French, Germans, Portuguese, Dutch, and whoever served as a proxy for the Pope at the time, often the Holy Roman Emperor but sometimes not. Henry VIII inherited several footholds in France where he kept armies, particularly the Pale of Calais. These forward bases (originally established by the Plantagenets) along with a strengthened and more numerous Royal Navy, made England a "power in being" on the continent. These men, mostly infantrymen and some cavalry, were

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[1452] Barbara Tuchman, *The March of Folly: From Troy to Vietnam* (New York: Albert Knopf Inc., 1984), 125-126. Tuchman wrote of the foolish actions taken by the Papacy that led to the Protestant Reformation.

[1453] Blair Worden, *The English Civil Wars 1640-1660*, (London: Weidenfeld and Nicolson, 2009), 8. "England's civil wars, though a number of Catholics enlisted in them, were fought between alternative versions of the Protestant faith." The three primary antagonists were the Anglicans, Presbyterians, and Puritans.

volunteers and mercenaries since the king was unable legally to send the English militia overseas. This was another folkway that found its way westward across the ocean. It was not until passage of the *National Defense Act of 1908* that the president acquired the authority to use militiamen overseas. United States Attorney-General George Wickersham objected, citing the common law as authority that the constitutional militia was a defensive community organization, and the government abandoned the issue.[1454]

Initially, the geographic restrictions of the militia were a barrier for Henry VIII. As historian Paul Hammer wrote:

> Armies for defending the realm were raised by calling out the militia of individual counties. By law, all men aged 16 to 60 were required to possess various pieces of military equipment according to their wealth and were supposed to practice with it, although many did not. This universal service requirement was the theoretical basis for the militia, although in reality county officials only designated a pool of able-bodied men for active service if the militia were called out. The county militia could serve outside its own county borders 'where necessity requireth', but could not legally be forced to serve overseas.[1455]

This was in accord with the community nature of the militia, but events were pressing on Henry and like Alfred before him, he made a dramatic change. "When

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[1454] Mahon, 142. "On May 27, 1908, Congress...reaffirmed the right of the United States to use the Guardsmen within or without the country for Constitutional purposes. A simple call from the President would accomplish the transition from state to federal control. Moreover, the act made the commander-in-chief the exclusive judge of the need to call militia into federal service, leaving a governor no grounds to withhold his troops...the Act of 1908 was not the final word. In February, 1912, George W. Wickersham, U.S. Attorney General, with the concurrence of Enoch H. Crowder, Judge Advocate General of the Army, decided that the Act of 1908 was unconstitutional, and that the National Guard could not be used outside of the country since the National Guard, the militia of the Constitution, was a defense force only."

[1455] Paul E.J. Hammer, *Elizabeth's Wars* (Houndmills in Hampshire, UK: Palgrave-MacMillian, 2003), 28-29.

Henry needed fresh troops in a hurry to defend Boulogne in September 1544," Hammer wrote,

> ...in desperation, the government abandoned custom and ordered the muster commissioners of 12 counties to select a total of 4,000 militiamen for immediate dispatch to France...Henceforth, it would be the militia system which would provide most of the troops for service overseas.[1456]

Henry VIII died on January 28, 1547, his throne passing to nine-year-old Edward VI, Henry's son by Jane Seymour, his third wife. Edward inherited a stable kingdom, a moderate treasury, and a full plate of wars and rumors of wars, particularly with Scotland and France. The Scots and French continually nibbled at England's northern frontier during this time and annual campaigns along the permanently hostile border ended with no lasting results either way. As during his father's reign, there were also a number of "risings" (rebellions), mostly the result of the enclosure movement that threw peasants off the land and of continuing religious animosities.[1457] These issues resulted in the frequent embodiment of militias during Edward's reign. Since Henry VIII's break with the Roman Church (1534), the process of de-Catholicization of the English Church had proceeded

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[1456] Ibid. See also, 246. Sources show that between 105,810 and 117,525 militiamen volunteered for overseas service from 1585 through 1602.

[1457] Hammer, 39. The enclosure movement began in the twelfth century but gained strength during the seventeenth and eighteenth centuries. Common lands, which peasants had farmed, were now enclosed and used as pasturage for sheep. The gentry came to own the lands and took all the profits from it which caused a great amount of friction between the classes. "This spawned a moral crusade for agrarian reform which dovetailed with the government's broader reform agenda of instituting Protestantism in England [after Elizabeth's accession]. Enclosures and excessive sheep rearing [for the wool market] were publicly blamed for unsettling rural society and denuding the land of men fit for military service by forcing rural workers off the land." The religious conflict began when Henry VIII left the Roman Church in 1534 with the *Act of Supremacy* and ended, more or less, with the *Settlement Act* of 1701 [which came a decade after the English *Bill of Rights*] that forbid any Roman Catholic from ascending the throne of England.

unhindered. As part of the quest to construct a nation, the Crown nationalized monasteries and their valuable properties (1536-1541).

Edward was a stout Protestant himself and these trends accelerated under his short rule. An important aspect of Protestant policy was to rid the Common Prayer Book of every remaining vestige of Catholicism. Edward issued a new Protestant prayer book in 1549 to be used in all churches and then an even more thoroughly Protestant prayer book in 1552.[1458] Unfortunately for English Protestants, Edward died after ruling only six years. When his sister, Mary I, became queen upon his death on July 6, 1553, Edward's religious policies were abruptly reversed.

Raised an ardent Catholic by her mother, Catherine of Aragon, Mary returned the Church of England to the authority of the Pope and burned more than three hundred Protestant heretics at Smithfield during her five-year reign. The English called her "Bloody Mary."[1459] She also married Philip II of Spain, a man so ardently Catholic that he was popularly called "Philip the Catholic" (as a tribute in some places, not so in others) and they ruled England jointly. Their primary focus was to return England completely to Catholicism.[1460]

[1458] G. J. Meyer, *The Tudors: The Complete Story of England's Most Notorious Dynasty* (New York: Bantam Books, 2011), 363. Edward was under the influence of the Puritans who wanted to rid the Church of England of every shred of Romanism. "Having been raised and educated by passionate anti-Catholics who scorned tradition...he was a firm believer in justification by faith, in predestination, and in other things that his father never ceased to abominate...England's second reformation was thus now fully underway and it had no advocate more enthusiastic than the king himself."

[1459] Benton Rain Patterson, With the Heart of a King: Elizabeth I of England, Philip II of Spain, and The Fight For A Nation's Soul And Crown (New York: St. Martin's Press, 2007), 58.

[1460] Meyer, 414. "During Mary's reign (as in the time of her father and brother) much of the population retained its attachment to the old church and was prepared to welcome its

Mary inherited a debt from her brother of 185,000 pounds and immediately began to make across-the-board cuts in military expenditures, a policy that would result in tragic consequences. There were wars with the French and Scots as well as a number of Protestant risings, and Mary felt that too much of the Crown's revenue went to these. The Royal Navy likewise was pared. The British stronghold in France, the Pale of Calais, scaled back to 500 soldiers and 200 local militia, stood no chance at all when the Duke of Guise attacked with 30,000 men on January 1, 1558. The English people were shocked; they had lost their base in France and knew they would never get it back.[1461] "After two hundred years," Benton Patterson explained, "England no longer had a French entrance onto the Continent. Its foothold had been lost, its pride severely wounded."[1462]

Mary could see that the time for a reversal of policy had come. She restored and increased funds for the military, enacted a new militia law in mid-1558, strengthened the financing of the military establishment, and upgraded the weapons that militiamen were required to possess and maintain, the first such upgrade since

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return...Parliament ...convened in August, 1554...a committee representing both houses drafted, and the Lords and Commons approved, a kind of omnibus bill reversing every piece of legislation passed since the end of the 1520s for the purpose of destroying the authority of the Pope in England. At the same time Parliament restored heresy laws that dated back to the reigns of Richard II, Henry IV, and Henry V…"

[1461] Ibid, 430. "January 1558 brought the crowning calamity of Mary's reign: the loss of Calais, the last of England's once vast holdings on the European mainland...it came as a shock to England's nascent national pride and a humiliation for Mary." Hammer noted the depth of the military disaster, 50-51. "The sudden loss of Calais Pale shocked England...In strategic terms, the fall of Calais meant that England had lost its most heavily fortified base, which had served as both its gateway into France and its chief bastion against French aggression. Only the Tower of London was more important - barely - for national security and the business of government. The vast stocks of arms and munitions at Calais, together with its mint, harbour and wool market, were now gone."

[1462] Patterson, 99.

the *Statute of Winchester* in 1285. Gone was the lone primacy of the long bow, now to be supplemented and ultimately replaced by firearms and pikes. Other weapons that advancing technology had passed by were dropped from the requirements and the entire force modernized.[1463] According to Hammer:

> [I]n the last year of the reign of Mary Tudor...the Crown attempted to make some sort of army out of the mass of potential citizen soldiers. The new regulations specifically repealed the Statute of Winchester. As far as they could, considering the diversity of English society, they sought to make the county the basis of militia organization [as opposed to the community]. To that end, the office of lord lieutenant was created; it was filled in each county by an important member of the local gentry. Under the lord lieutenant was a hierarchy of deputies, who worked without pay, among them sheriffs, who from the time of the fyrd had dealt with citizens as soldiers, constables of the hundreds, justices of the peace, and commissioners of musters...The attempt to build a citizen army rested on the muster - a mandatory gathering of free males aged 16 to 60...[1464]

Militia numbers declined during Mary's reign due to a plague (probably influenza) which killed one out of fifteen Englishmen and incapacitated many more.[1465]

> God, it seemed, was punishing England and the loss of Calais was merely another sign of divine displeasure. With the demands of work and food production taking immediate priority, local communities were unwilling to release any of their healthy men for military service. When the government did raise men to serve at sea or on the Scottish borders, an alarming number of them promptly deserted.[1466]

[1463] Hammer, 51-52. "In many ways, therefore, the Marian reforms were distinctly unsatisfactory and would cause serious difficulties during the reign of Elizabeth. Nonetheless, the acts did insure that the realm retained an irreducible minimum level of military capability and marked an improvement on the former arms requirements which dated back to 1285."
[1464] Mahon, 8-9.
[1465] Meyer, 429. "After three consecutive crop failures and widespread hunger, a weakened population was being ravaged by an influenza epidemic that would in a few years claim hundreds of thousands of lives."
[1466] Hammer, 53.

Elizabeth's Militia

The winds of religious confusion blew contrary yet again when Mary died and her younger sister, Elizabeth, became queen at Westminster in November 1558. Like many who had served her sister, Elizabeth had protested to Mary and Philip repeatedly that she was a devout Catholic, but it was a subterfuge.[1467] She was no kind of Catholic, devout or otherwise. Garrett Mattingly wrote:

> When Elizabeth Tudor inherited the kingdom from her half-sister Mary I, in November 1558, England was on the brink of ruin. The feeling of despair among the nobles can only be imagined: not only had the country been torn between the ultra-Protestant reign of Elizabeth's half-brother, Edward VI, followed by the fanatically Catholic Mary, but the crown was now proffered to the daughter of the reviled Queen Anne Boleyn. Elizabeth, who had lived her life as an unwelcome reminder of the union of Henry VIII and her mother, would have most assuredly been burned at the stake by Mary without the intervention of the Queen's absentee husband, Philip II of Spain. If there was one thing Elizabeth Tudor understood intuitively, it was life on the edge.[1468]

On the day that Elizabeth first sat on her throne, England was still reeling from the unmitigated disaster at Calais. It was at war with Scotland and France (which fielded an army in Scotland). The nation maintained very strained relationships with the Spanish Empire and the Holy Roman Emperor, and dangerous uprisings had occurred at home. Social unrest continued for another

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[1467] Meyer, 441. "The regime that Elizabeth inherited was Roman Catholic nevertheless, with the Marian state and church tightly intertwined...Elizabeth herself had, albeit without great success, tried continually to convince her sister that she was a faithful daughter of Holy Mother Church...and she had been careful to maintain contact with the evangelical community all through the years when many of its members were pretending, for the sake of their positions and possibly their lives, to be orthodox Catholics."

[1468] Susan Ronald, The Pirate Queen: Queen Elizabeth I, Her Pirate Adventurers, and the Dawn of Empire (New York: Harper-Collins, 2007), 3.

three months with thousands of people rioting in the streets in cities around the kingdom. England was also embroiled politically, militarily and financially with any number of other states. It had many enemies and no friends and, in addition, the treasury was empty.[1469] One of Elizabeth's first orders of business was to begin upgrading the militia beyond what Mary's legislation had provided for just a few months previously. A slow but steady process took place over a number of years until Elizabeth codified her accumulated reforms in the *Militia Act of 1573*, an amplification of Mary's militia act.[1470]

The Queen, like British monarchs since Alfred's time, depended on her militia for land power. Garrett Mattingly wrote, "She never had any standing army other than a handful of ornamental guards, or any police beyond what was furnished by her practically independent local magistrates..."[1471] She did, however, have a militia and the legislation of 1573 required the general militia, what used to be called the fyrd, to now muster four times a year.

[1469] Garrett Mattingly, *The Armada* (New York: Houghton-Mifflin Company, 1987), 10. "She [Elizabeth] had mounted a throne already tottering. The treasury was empty, the currency debased, the people impoverished, dismayed and divided against themselves. The Kingdom had just lost its last foothold on the continent, Calais, the last relic of Plantagenet glory, and could not pretend that the French had not beaten it. All the symptoms of disintegration and despair which in a few years were to send the neighboring kingdom of France sliding down into anarchy seemed to be present in England in more acute form; less serious foreign humiliations and internal stresses had heralded, a century before, the Wars of the Roses. England had not a friend or ally in Europe, only a ring of watchful enemies waiting to pounce at the first sign of weakness, restrained only by their distrust of each other."

[1470] Hammer, 246-248. Elizabeth's militia statute was effective is proven by the numbers of militiamen she was able to muster. From 1585 to 1602, between 105,810 and 117,525 militia volunteered for her overseas campaigns. During the invasion scare of 1588, she had 92,000 men in the trained bands. Elizabeth had a total of 385,000 men under arms in 1588 (including the navy and privateers) at a time when the entire population of England and Wales is estimated to have been 3.8 million in 1586 and 4.1 million in 1601.

[1471] Mattingly, 10.

Elizabeth built her militia around pike men integrated with musket men supported by generous numbers of cannon and cavalry. Success depended on each element working smoothly with one another on the battlefield and this called for a greatly increased level of training which called for the increased frequency of musters. In addition, militiamen were to now muster and train in larger groups in order to field units of more formidable size.[1472] However, these improvements were expensive. Hammer wrote:

> In short, the new weapons simply could not be used in a militarily useful way without regular training and demanded a strong emphasis upon unit coordination and discipline. The Privy Council's solution to the training problem was to direct the county militias to focus their limited resources on equipping and training only a small proportion of their men. These so called 'trained bands' would include the best potential soldiers, leaving the rest of the militia to supplement the trained men...[1473]

The trained bands were a select militia and at the height of the Spanish invasion danger, 1588, they contained 92,000 men.[1474]

England was a heavily militarized country throughout Elizabeth's reign. The centerpiece of this era of conflict was the Anglo-Spanish War, a nineteen-year undeclared war between Spain and England, a war with direct connections to the Dutch Revolt, the French Wars of Religion, and the Nine Years War in Ireland. The violence began in earnest in 1585 with English intervention in the war between

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[1472] Mahon, 9.
[1473] Hammer, 99. See also: Mahan, 9. "Training as a regular adjunct of peacetime musters was virtually unknown before Elizabeth's statute of 1573. That statute required musters four times a year and authorized payment for the attenders...the gatherings were carried out by local officials...Militia musters were brought into the English colonies without much modification from the Elizabethan practice...What did not migrate across the ocean was the practice of paying militiamen for appearing at musters...or the office of commissioner of musters."
[1474] Ibid, 248.

the Netherlands and Spain. The execution of Mary, Queen of Scotland, by the English in February 1587, irreparably exacerbated hostilities to such a degree that they could not be resolved while Elizabeth and Philip were alive. Hostilities ended only in 1604 when the ambassadors of a new English king and a new Spanish king met and established peace with the *Treaty of London*.[1475]

The wars were brutal even by the pre-Geneva Convention standards of the day. Highlighted by the defeat of the Spanish Armada in 1588, the major events of the wars included the defeat of the English Armada the following year, the collapse of the Second Spanish Armada in 1596-1597, and the defeat of the Third Spanish Armada when it landed troops and supplies in Ireland to aid the Catholic rebels in 1601.[1476] The preceding sentences are generalizations about the conflict and are not truly representative of the hundreds of invasions, major battles, raiding, sacking, and burning of English, Spanish, Dutch and New World towns and cities. It does not do justice to Elizabeth's Sea Dogs and their incredibly cheeky piracies and murders or to the many desperate sea battles in European and New World waters. It ignores the Byzantine interplay of shifting alliances and secret agreements, the diplomatic warfare as nations played one off against the others, and huge armies

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[1475] Patterson, 229. "The weighty evidence being contrary to Mary's protestations (of innocence), the court...found her guilty. Parliament sentenced her to death, and...Elizabeth at last and reluctantly on February 1, 1587, signed the warrant ordering Mary's execution. At a little past eight in the morning of Wednesday, February 8, 1587, Mary Queen of Scots was beheaded in the great hall of Fotheringhay castle, her last words, spoken in Latin being those of Christ's final utterance on the cross..."

[1476] Hammer, 121-235. A thorough but succinct account of those years is contained in Hammer's *Elizabeth's Wars,* often quoted in this first chapter. It begins on 121 where he writes, "By September, 1585, England was effectively at war with Spain." It ends on 235 where he writes, "Although the human and material cost had been very high, Elizabeth's wars had finally delivered a successful and honourable conclusion."

smashing into each other in improbable places. It was history larger and more colorful than anything any novelist could possibly write.

England lived under threat of invasion during the entire period and the government depended on the militia, particularly the trained bands, to defend the soil of the homeland. The militiamen, who now numbered all able-bodied Protestant males between the ages of 16 and 60, never let their Queen or their country down. Embodied a number of times during the years of threatened invasion, each time they answered quickly and in good order. One example of this occurred in 1601 when an enemy fleet threatened to sail up the Thames River and sack London. Elizabeth embodied the militia from the counties around the capital and within two days, 25,000 armed and trained militiamen had left their farms and towns and were serving under royal officers in defensive positions around the city.[1477]

By the time Elizabeth died in 1603, she had surpassed all other English monarchs since the time of King Alfred. If a second English monarch deserves the title "the Great," it was Elizabeth Tudor. Within her pivotal reign lay the genesis of the English Civil War, the emerging British Empire, and modern England.[1478]

[1477] Oxford Scholarship on Line, Oxford University Press, "The Return of the Armadas: The Last Years of the Elizabethan War Against Spain, 1595-1603," http://www.oxfordscholarship.com/view/10.1093/acprof:oso/9780198204435.001.0001/acprof-9780198204435-chapter-10, (accessed May 1, 2014). The English thought this third Spanish Armada was going to attack London but it sailed instead to Ireland where it and the land army it carried were defeated.

[1478] Ronald, 370. "Where Tudor statecraft had raised England from little more than a tribal community in her grandfather's time, Elizabeth's talent, perseverance, and skill had honed England into the beginnings of the nation state we recognize today." Also, by appointing as her heir "...James Stuart, an intelligent but untrustworthy (man), Elizabeth had inadvertently sown the seeds of the English Civil War and a century of upheaval."

Her militia was a beacon on the road toward an American colonial militia. As historian John Mahon noted:

> A...powerful heritage to come to North America from Tudor England was a belief in the invincibility of citizen soldiers when fighting for home and family. At least one responsible historian claimed that this conviction stemmed from the desperate era, 1585-1599, when England, for the first time since 1066, was once again threatened with invasion. The militia swarmed to defend the island. They manned a chain of beacon lights along the coast to warn of imminent landings, while the trained bands drilled with unaccustomed fervor...[T]he mass of the people...were convinced that it [the militia] could drive any invader back into the sea...[N]o evidence appeared to change the prevalent opinion of the militia as an efficient bulwark against invasion. That opinion traveled with the settlers into the North American colonies.[1479]

The Stuarts, Parliament, and Control of the Militia

James Stuart, the son of Mary, Queen of Scotland, whom Elizabeth had executed in 1587, followed Elizabeth to the throne of England in 1603. Elizabeth's cousin, he was already James VI of Scotland and now became James I of England as well. This *Union of the Crowns* (1603) would ultimately result in the two *Acts of Union* uniting Ireland, Scotland, and England/Wales into one kingdom a century later.[1480] Thus began the reign of the Scottish Stuarts, foreign kings who originated in a country with which the English were habitually at war. Nevertheless, most Englishmen were initially relieved at the elevation of James since it prevented a

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[1479] Mahon, 10-11. This sentiment was still strong two centuries later among the framers of the U.S. Constitution.

[1480] Ned C. Landsman, *From Colonials to Provincials: American Thought and Culture 1680 -1760* (Ithaca, Cornell University Press, 1997), 20-21. In 1700 an *Act of Union* united England and Ireland. In 1707, the parliaments of England and Scotland united after both passed an *Act of Union*, leaving only their churches and legal systems intact.

civil war among the ambitious nobles who would have been circling the throne like buzzards had Elizabeth died without a clear-cut heir.[1481]

James I became King of England on March 24, 1603. Unlike his predecessor, he inherited an England that was powerful, a treasury that was full, and a seasoned, veteran militia. He ruled twenty-two years and three days and was followed to the throne by his son, Charles I. King James is remembered today primarily for personally supervising the torture of women accused of witchcraft and for writing in Latin a number of scholarly papers, one of which dealt with the identification of witches. More importantly, he granted charters to begin the English colonization of North America and of Ulster, and he ordered the translation of the *Authorized Bible of 1611*. Commonly known as the *King James Bible* or the *Authorized Version of 1611*, it became the worldwide Protestant Bible and exerted an incalculable influence on the cultural literature of the English-speaking world. He made no changes in the county militias that were required during his rule to continue mustering under the reforms of Queen Elizabeth. He became unpopular toward the end of his rule, the result of disagreements with parliament about certain royal prerogatives, almost a dress rehearsal for the troubles of the 1640s. James I

[1481] Will and Ariel Durant, *The Story Of Civilization VII: The Age of Reason Begins* (New York: Simon & Schuster, 1961), 136. "After James had pledged himself to Protestantism, the leaders of Elizabeth's Privy Council recognized him as heir...to the English crown...James began...a festive progress from Edinburg to London; he stopped leisurely enroute to be feted by the English nobility...he reached London which was all decked out to welcome him-crowds genuflecting before him, lords kissing his hands. After a millennium of useless strife, the two nations united under one king. So fruitful had been Elizabeth's barren womb. "

did not rule with the brilliance of Elizabeth, but few have. However, he ruled competently until his death in 1625 and England prospered during his reign.[1482]

James had inherited an England which, while officially Protestant, also contained a great many Catholics, people who constituted a despised minority. The Catholics had been mostly an oppressed and controlled group in society since the death of Mary I and the start of Elizabeth's reign. The feared and expected nation-wide rising of Catholics never occurred, for the most part they peacefully endured their second-class status. However, things were in turmoil among the Protestants. A century after Martin Luther had nailed the ninety-five theses to the church door in Wittenberg, serious schisms had arisen among Protestants, mostly dealing with the controversial doctrine of predestination versus the doctrine of works. The two contending groups were the Calvinists (Puritans, Presbyterians, and others) who believed in predestination and the many Arminian sects that did not but believed that men must perform good works for salvation.[1483]

[1482] Durant, 160-161. "Despite his vanity and coarseness, he was a better king than some who excelled him in vigor, courage, and enterprise. His absolutism was mainly a theory, tempered with a timidity that often yielded to a powerful Parliament. His pretensions to theology did not impede a will to tolerance far more generous than that of his predecessors. His brave love of peace gave England prosperity, and checked the venal bellicosity of his Parliament and the vicarious ardor of his people. His flatterers called him the British Solomon because of his worldly wisdom, and Sully, failing to embroil him in Continental strife, termed him 'the wisest fool in Christendom.' But he was neither philosopher or fool. He was only a scholar miscast as a ruler, a man of peace in an age mad with mythology and war. Better the King James Bible than a conqueror's crown."

[1483] Worden, 9. The strongest Calvinists were the Puritans who believed that before God created the world, He had foreordained some people to heaven and some to hell, and there was nothing anyone could do to change his or her destination. People were actors on a stage, playing their assigned part. Arminians (after James Arminius, a Dutch theologian) believed that God had a purpose when He created man with the ability to reason. Man was a thinking, choice-making entity who by his own decision could follow the road to heaven or the road to hell.

These divisions had deepened and sharpened in England since the days of the Spanish Armada. By the time Charles ascended the throne the Protestant extremists despised one another almost as much as they despised Catholicism. The main groups were Congregationalists, Presbyterians (regular and covenanters), Anglicans (high, middle, and low), a few scattered Lutherans (both Calvinist and Arminian), Puritans of various degrees of fanaticism, and a loose grouping of disparate peoples collectively called Dissenters. Among the Dissenters were Quakers, Baptists (mostly Calvinist), Ranters, Fifth Monarchy Men and other Millenialists, Stewartist Separatists, Seekers, Levelers, a few courageous Jews, and others. Within the political realm, the three primary antagonists were the Anglicans who wanted to control the Church of England, the Puritans who wanted to purify the Church of England of any remaining vestige of Catholicism, and the Presbyterians who wanted to isolate the Church of England in England. Each of these groups was willing to fight for its beliefs and maintained field armies at various times. The upcoming civil war of the 1640s found its origins in the intransigence of both king and parliament, but deep religious division and animosity energized it.[1484]

Charles I took control upon the death of his father on March 27, 1625. He ruled until his shortcomings both as a man and as a king resulted in his head rolling

[1484] Glenn Burgess, "Was the English Civil War a War of Religion? The Evidence of Political Propaganda." *Huntington Library Quarterly*, Vol. 61, No. 2 (1998), 175. "...the striking fact is that there seems good evidence to support the view that religion was the key determinant to civil war allegiance, suggesting in turn that it motivated many in their decision to fight for or against the king."

on the boards of a scaffold in front of Banqueting House in Westminster on January 30, 1649. He was the only English king to be tried and executed by his subjects. Worden wrote,

> Unfortunately, he [Charles I] brought to his rule three qualities which...were fatal in combination. First, he had alarming policies that he pursued with alarming methods. Secondly, he was incorrigibly deficient in political judgment...Thirdly, no one could trust him. Behind his duplicity there lay failings of political imagination and of personal presence and authority.[1485]

The fact that his reign followed that of a great monarch (Elizabeth) and a very good one (James I) did not improve the public perception of his shortcomings.

Charles lacked the wisdom and political acumen of his predecessor. He made no secret of the fact that he believed strongly in the Divine Right of Kings and considered Parliament to be an irritation and an unnatural restraint on the mandate to rule which God had given him.[1486] This boded ill for the peace of the realm considering the group of strong willed Protestant parliamentarians (men like John Pym, John Hampden, John Eliot, and Oliver Cromwell) who would hold chairs in the Commons during the tumultuous days of the mid-century. He also brought with him to the throne a French Princess who became his Catholic queen, Henrietta Maria, the pretty daughter of the King of France and Catherine de Medici.[1487]

[1485] Worden, 7. "He sought self-certainty through a ruthless determination to be obeyed. When he bargained or compromised, it was only while secretly plotting the destruction of those with whom he negotiated."
[1486] Ollard, 18. "[For] Charles...the divine right of kings...was as clear as daylight, as palpable as the force of gravity. God, the creator of the world, had instituted the Church which threw its mantle of divine authority over the Crown...[and] Charles was supreme governor of the Church."
[1487] Ibid.

Henrietta proved to be a strong ally to English Catholics and tirelessly lobbied on their behalf. The result was a growing Catholic presence at court with a growing influence during the 1630s, a turn of events that caused alarm among all the Protestant and Dissenter groups. The Queen, who allowed the celebration of the mass in her chapel, protected them. The London embassies of Catholic countries now openly admitted Englishmen to their religious services.[1488] Further, it was widely reported from the continent that the new queen had led a promiscuous past in France, something that agonized Puritans.[1489]

The disagreements between parliament and the new king began almost immediately. During the late 1620s, they grew progressively more bitter until there was little room for negotiation by either party. Charles dismissed parliament in June 1628, when it would not vote him the taxes he wanted, an absence of a national legislature that lasted for eleven years. The slide toward outright civil war accelerated in 1637 when Charles imposed a new Anglican prayer book on the Presbyterian Scots. The Earl of Montrose described the new prayer book as "brood of the bowels of the whore of Babel." The Scottish Church, he believed, was under attack with a Catholic-leaning prayer book forced upon it.[1490] Charles rubbed salt into Scot wounds by revoking all grants of church lands to individuals made since the reign of Mary Stuart. He appointed five bishops to the Privy Council of

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[1488] Worden, 22-23.

[1489] Durant, 394. "When his [Henry IV's] daughter Henrietta Maria of France, aged seventeen, married Charles I, she had had so many liaisons that her confessor advised her to take the Magdalen as her model and England as her penance."

[1490] Michael Braddick, *God's Fury, England's Fire: A New History of the English Civil Wars* (New York: Penguin Books, 2009), 3. The "Whore of Babylon" (from Revelations Chapter 17) is the name many Protestants still use to denominate the Catholic Church.

Scotland and appointed an archbishop as its chancellor. Historian Blair Worden wrote, "It was in Scotland that Charles committed political suicide."[1491]

What follows is an outline of the high points of the role of the militia in the seventeenth-century civil wars along with certain pieces of necessary background information. It is a much-abbreviated history.

Charles sent a militia army to force the Scots to use his new prayer book, an army largely filled with English Calvinists who agreed with many of the principles of the Scottish Calvinists. Further, the Scots raised a much larger force, in the face of which Charles postponed his invasion. A wave of anger at the king swept the country and Englishmen withheld their taxes. They could not rationalize paying a Scottish king to enforce a Catholicized liturgy on the Presbyterian Scots, a liturgy the Scots refused to use and which many of the English did not want either. Maintaining the militia on the Scottish border proved expensive forcing Charles to call parliament into session (the Short Parliament) for the first time in eleven years to ask for money. When the Puritan Calvinists refused to fund his war against the Presbyterian Calvinists, he again dismissed parliament after it had sat for only three weeks.[1492]

[1491] Worden, 29.

[1492] Diane Purkiss, *The English Civil War: Papists, Gentlewomen, Soldiers, and Witchfinders in the Birth of Modern Britain* (New York: Basic Books, 2006), 78. The Queen was able to make things more difficult for her husband. "When Henrietta called for English Catholics to fast on Saturdays and to contribute money for the army sent against the unwholesomely Protestant Scots, she linked the expedition in the mind of the public with her own faction. She was also known to be contemplating a Spanish match for her daughter, who was seen attending mass as the army marched."

The Scots invaded England in August 1640, routed the British army at Newburn and occupied Northumberland and Durham almost unopposed. They coerced Charles into a humiliating peace; he was forced to withdraw the offending prayer book and promised to pay the Scots for the costs they had incurred invading England. In order to do so, he had to convene parliament again because parliament was the only national taxing authority. Parliament sat on November 3, 1640, (the Long Parliament) and remained in session for many years, the exact number depends on the criteria one uses, but it soon became apparent to the king that parliament's agenda was not his agenda.[1493] One member, John Pym, led a faction that intended to steer parliament into substantially trimming the king's prerogatives.[1494]

The king and parliament bitterly opposed each other. In June 1640, Pym proposed a new militia act that would put the county militias under officers appointed by parliament, not the king. It passed but the king refused to sign. In October of the following year, Irish Catholics in Ulster rebelled, tortured, and murdered approximately 20% of the English Protestant settlers, irrespective of age or sex.[1495] This brought parliamentary demands to disarm all Catholics in England.

[1493] Worden, 30. This parliament was the "Long Parliament" which sat for thirteen years. "Charles had reached an agreement with the Scots that...obliged him to meet the high costs incurred by the occupying Scottish army in the north of England, which was to remain until the treaty was signed...He was at his subjects' mercy."

[1494] Prukiss, 105. "Pym...was not a radical; he believed that the Elizabethan constitution was being undermined by a Popish conspiracy. In the Church...all he wanted was the Elizabethan black-and-white simplicity...[H]is own paranoia about Papists was widely shared...It was he more than anyone else who persuaded the men of the House of Commons that a Popish conspiracy had entangled the king and his chief ministers, and posed an immediate threat."

[1495] Worden, 37. "As a result the country [Ireland] escaped English control until 1649. In its place, it suffered a devastating civil war, during which the contending parties divided and

It also raised the issue that sparked the civil war in England: the control of the militia.

The English Militia and Civil War

Following the elections of December 1641, Parliament ignored the king's list of appointees and gave command of London's trained bands to its supporters. The following month, January 1642, Charles led eighty armed men into the House of Commons while it was sitting and demanded the arrest of five members for treason. Warned just minutes before, none of the five was present when the king entered. It was awkward and humiliating for Charles and some parliamentarians chuckled as the king left. "Less than a week after his attempted coup," historian Blair Worden wrote, "Charles, having lost control of the capital, abjectly departed from it. When he returned in 1649 it was after defeat in civil war and as a prisoner facing execution."[1496] Will and Ariel Durant wrote:

> When Charles left London for Hampton Court, Queen Henrietta fled secretly to France with the crown jewels to buy aid for the king, a quest that was successful. Charles fled for the north with the Great Seal. He tried to enter Hull and secure the military supplies there, the town refused to admit him; he moved on to York. Parliament ordered all armed forces to obey only Parliament. On June 2, Parliament transmitted to Charles nineteen propositions whose acceptance it held to be essential to peace. He was to turn over to Parliament control of the army and all fortified places. Parliament was to revise the liturgy and the government of the Church. It was to appoint and dismiss all ministers of the crown...On August 27,

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regrouped in an array of allegiances so complex and mutable that no narrator has succeeded in making them more than momentarily intelligible."

[1496] Worden 38.

> 1642, Charles unfurled his standard at Nottingham and began the Civil War.[1497]

In late February 1642, parliament had assigned command of the militia to itself. Called the *Militia Ordnance* (not an Act since the king would not sign it), this legislation was the flashpoint that started the war.[1498] Control of the militia was the point on which all attempts at compromise broke down. The Earl of Pembroke suggested to Charles in March 1642, that he should accept the parliament's militia ordnance for a trial period. The king flatly refused.[1499] Historian Lois Schwoerer explained the depth of the issue:

> The struggle between King and Parliament 1641-1642 for command of the militia...was not just a contest for control of military power. The fundamental issue was a change in England's government, a shift in sovereignty from King or King-in-Parliament to Parliament alone. As Charles explained, "Kingly power is but a shadow without the command of the militia." His contemporaries, representing various political allegiances, also testified to the significance of the contest over the militia. They described it as the "avowed foundation" of the Civil War, the "greatest concernment" ever faced by the House of Commons, and the "great quarrel" between the King and his critics. [1500]

The Royal Navy declared for parliament, as did a large portion of the militia.[1501] A large share of militiamen also served the king. The war raged inconclusively for several years until 1645 when parliament reorganized part of its

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[1497] Durant, 212.
[1498] Braddick, 142-143. This demand of parliament, the control of the militia, flew in the face of traditions established in the common law by King Alfred, but had become more strident since it was first voiced in 1641, the result of parliament's experiences with what was probably the worst king in English history. The war began the following year.
[1499] Ollard, 53.
[1500] Lois Schwoerer, "The Fittest Subject for a King's Quarrel: An Essay on the Militia Controversy 1641-1642," *Journal of British Studies*, Vol. 11, No. 1, (November 1971), 45-76.
[1501] Worden, 46. Parliament put the Earl of Warwick in command of its naval forces.

forces into the "New Model Army."[1502] Central to the reorganization was the morphing of some of the best trained bands into "regiments," a military formation of about a thousand men pioneered by the Spanish, Swiss, and French, but now a recent addition to the English table of organization.

This army was active from 1645 until 1660, serving as England's first professional, standing army; it was not part of the English militia although it often fought alongside the militia. The New Model Army was well trained and equipped and was extremely efficient. It scored victory after victory and ended the war in May 1646. The soldiers of the New Model Army had come to recognize their own political power and played a large part in the unsettled, turbulent, religiously militant, violent, and confusing hurricane that was the political world of England. The New Model Army seized control of parliament and forced it to put Charles on trial and execute him in 1649, oversaw the establishment of the Commonwealth (1649-1653), and the establishment of the Protectorate (1653-1659).[1503]

Lieutenant-General Oliver Cromwell was in charge of cavalry and second in command of the New Model Army under Sir Thomas Fairfax, the commanding lord-general. Both were sincere Puritans of great integrity and great ability, both participated in carefully training and disciplining the army (22,000 men), a fact which played strongly into the success of the New Model Army. With no prior military service, Cromwell surprised everyone by becoming a talented field

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[1502] Worden, 61-62.

[1503] Purkiss, 550. "...the House of Commons was transformed [by an army coup] into a kind of kangaroo court. Its purpose was to emerge almost at once: try the king for high treason."

commander and was a voice of the army in parliament.[1504] (Some years later when Fairfax and parliament disagreed over policy, Fairfax acquiesced to the sentiments of the soldiers and resigned. Parliament gave command of the New Model Army to Cromwell in 1650.)[1505]

Charles escaped from custody in November 1647, hiding in Carisbrooke Castle on the Isle of Wright. He convinced some Scots to invade England and return him to his throne, which they were preparing to do. Though grossly outnumbered, Fairfax and Cromwell led the New Model Army against them and made short, bloody work of the Scots. Some of the senior officers vowed that it was their "...duty...to call Charles Stuart, that man of blood, to account for the blood that he had shed."[1506] While the army engaged the Scots in the north, Parliament began to consider secret negotiations with the king. The army heard of it and on December 6, 1648, Colonel Thomas Pride led his soldiers into the House of Commons and forcibly expelled 140 members who had been willing to temporize. The remaining members (the Rump Parliament) ordered the king brought to trial

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[1504] Durant, 215. "He had no military experience before the war, but his force of character, his steadiness of purpose and will, his skill in playing on the religious and political feelings of men, enabled him to mold his regiments into a unique discipline and loyalty. The Puritan faith equaled the Spartan ethic in making invincible soldiers...no oaths were heard in their camp but many sermons and prayers. They stole not, nor raped, but they invaded churches to rid them of religious images and 'prelatical' or 'papistical' clergymen. They shouted with joy or fury when they encountered the enemy. And they were never beaten. "

[1505] Worden, 112. "The republic resolved [in 1650] on a preemptive invasion [of Scotland]." Fairfax, believing it unnecessary and therefore an immoral shedding of blood, resigned.

[1506] Durant, 218. The New Model Army fought the second civil war severely outnumbered and won stunning victories that decided the war. The angry and disgusted soldiers believed that the nation would never be safe as long as Charles was alive and they were determined to put the king on trial. Michael Braddick elaborated on 539-545. "It was a near thing; Charles' supporters had huge numbers. The New Model Army, heavily reinforced by militia, fought battles grossly outnumbered and savaged the enemy in every engagement until they were beaten and the king surrendered."

for violating an ordnance they had passed making it treason for a king to make war on parliament. The trial began on January 16, 1649, and Charles met the axe on January 30.[1507]

The Commonwealth and the Protectorate

England was now kingless, an unprecedented situation, and the English were plowing new ground and planting the seeds of a new society. In May 1649, the House of Commons abolished the office of king, abolished the House of Lords, and declared England to be a commonwealth.[1508] In 1653, Cromwell became Lord High Protector. He abolished the Rump Parliament and began ruling essentially as a military dictator. England thrived under Cromwell but a few years after he died in 1658, the English disestablished the Commonwealth and disbanded the New Model Army. For a variety of complex reasons, the English invited Charles II, Prince of Wales and heir of Charles I, to return to England and take his dead father's throne. After a brief struggle with recalcitrant republican radicals, the monarchy was restored.[1509] So easily did that generation of Englishmen give up the freedom their fathers had won for them and the shining possibilities for the future that republican government had held before their eyes.

[1507] Purkiss, 559-560. "I go from a corruptible to an incorruptible crown, where no disturbances can be, no disturbances in the world...Remember." He prayed for a minute and then laid his head on the block. It came off with one clean swipe of the axe.

[1508] Worden, 104-105. In March 1649, the Rump Parliament abolished both the office of king and the House of Lords. The House of Commons was now the only legislative body in England.

[1509] Ibid, 152-153. On May 1, 1660, parliament reversed 20 years of history and voted to restore government by "king, lords, and commons." A fleet brought Charles II home to England to be crowned. He was, "flexible, pragmatic, loose in manners and morals, may have done nothing for the dignity of the kingship but at least he did not repeat his father's mistakes."

The Return of the Stuart Kings

Charles II and his Catholic Queen, Catharine of Braganza, had not been in England for ten days before he was appointing royalist Lord Lieutenants to lead the county militias. He wanted a standing army but Parliament would never agree to the expense, so his alternative was to attempt to gain the loyalty of the militia. His father had died for this sticking point. Charles II was a calculating and subtle man, more like his wise grandfather and less like his father who had been found wanting in so many ways. Charles worked steadily and carefully to build a base of support in parliament. His efforts quickly bore fruit in July 1661, when parliament passed *An Act Declaring the sole Right of the Militia to be in the King, and for the present Ordering and Disposing the same.* Thus, parliament in one stroke of the pen rendered moot the freedom movement of the past twenty years and the many deaths now became pointless.[1510]

The new king began to exercise his power on September 29, 1660, when he issued a royal proclamation that restricted the keeping and bearing of arms by some classes of private citizens. Charles' Privy Council fell in behind their king and expressed horror, "...at the great number of arms which hath been lately and are daily brought and transported out of the cities of London and Westminster and of

[1510] Malcolm, 36, 39. Charles also created a "Volunteer Corps" within the regular militia that was loyal only to him. He wanted the Volunteers to equal the regular militia in numbers. Malcolm continued that at Charles' prompting, several MPs called for the establishment of a standing army, but "...the force was very costly to maintain [and the events of recent years] had instilled in a large portion of the English population a deep resentment and suspicion of all standing armies. The debates in Parliament made clear its member's distrust of all armies."

the dangerous consequences the same produce."[1511] On December 14, the Council issued an order to all gunsmiths to report to the Ordnance Office with a complete list of all the weapons they had produced in the last six months, as well as the names of the customers who had purchased them. Henceforth gunsmiths were to report to the Master of the Armory every Saturday night with a record of their manufactures and sales for the week. "A form of firearms registration had been introduced."[1512] Many modern day Americans recognize Charles' actions and agenda in their own times.

His younger brother, James II, succeeded Charles when he died in 1685. James was an overt Catholic and like his father, Charles I, James had married a Catholic princess, Mary of Modena. James himself converted to Catholicism in 1668 but kept it a secret until 1673. Both English and Scottish Protestants could clearly see trouble looming on the horizon. Historian Joyce Lee Malcolm described the emerging conflict:

> When James Stuart succeeded to the throne that bleak February morning in 1686, he found himself in a position his Stuart forbears would have envied, for he had within his grasp the opportunity to establish a truly absolute monarchy. This was due in no small part to his ability to concentrate in his hands the power of the sword and to employ it to limit his subjects' liberties. He was indebted to his predecessor for this promising situation...More important, James also inherited a promising military establishment, with a militia and a commission of the peace that had been purged of the Crown's opponents and a permanent peacetime army of unusual size....[but]

[1511] Ibid, 42.

[1512] Ibid, 48. The system that exists in the United States today is more intrusive and more strenuous for firearms owners. "...all importation of weapons or parts of weapons was prohibited. The Crown now effectively controlled the production and distribution of firearms. Its police establishment kept all 'malcontents, fanatics, and sectaries' disarmed and under continuous surveillance. These very measures lost Charles much of his original popularity..."

> If the majority of Englishmen agreed on anything it was their fear of Catholicism and hatred of standing armies.[1513]

Aided by friends in parliament, Charles II had slowly and quietly accumulated a number of standing "guards" regiments (to the number of 8,700 men) and had hoped to expand this force until it was at least comparable to the size of the former New Model Army (22,000). Mahon wrote:

> When James became king in 1686, he openly defied the public mood more than Charles had ever been willing to do by enlarging the standing army to 53,000. As he was an avowed Roman Catholic, this as well as many of his other actions irritated the militant Protestants of the country.[1514]

James himself developed techniques of electoral manipulation that confined membership in the Commons to his supporters.[1515] The king gave his small, volunteer militia, which he used as a brute squad, sweeping police powers in violation of the common law. Under the combined authority of the *Militia Act* of 1662 and the *Game Act* of 1671, they could enter and search homes without a warrant, arrest anyone on suspicion, confiscate anything they thought was suspicious, and in general do whatever they wanted in the king's name and under his protection.[1516]

[1513] Ibid, 94.
[1514] Mahon, 12. See also: Malcolm, 59.
[1515] Halbrook, 43-44. "In 1670, for the first time in English history, Charles II sought to deprive all commoners of all firearms [all arms] by legislation...Thus, James II (1685-1688) carried on the same policy [of Charles II] of increasing the size of the standing army and disarming the populace, particularly Protestants."
[1516] William Fields and David Hardy, "The Militia and The Constitution: A Legal History," *Military Law Review*, Vol. 136, No. 27-100-136 (Spring 1992) 13. See also: http://www.loc.gov/rr/frd/Military_Law/Military_Law_Review/pdf-files/277479~1.pdf (Accessed May 12, 2014).

James sent orders to six Lords Lieutenants to confiscate firearms. The king had heard, he wrote them, that many people were keeping firearms illegally under the pretense of using them in shooting matches. He ordered a strict search to be made of private homes and the firearms confiscated by the volunteer militia. The records of the period show many searches and seizures executed under the authority of either the Militia Acts or the Game Act.[1517]

Writing the majority opinion in a 2008 gun-rights case heard by the Supreme Court, Justice Antonin Scalia recapitulated the negative political importance of James' attempts at imposing gun control, an attack on individual liberty that many modern day Americans fear will be replayed in the United States. Justice Scalia noted that when the Stuarts could not control the militias to the degree they wished, they just made it impossible for the militiamen to obtain arms. He cited the witness of history that tyrants can suppress opposition by not banning militias, but by disarming them. Under the authority of the 1671 Game Act, Scalia continued, the Catholic Stuarts disarmed many of their Protestant enemies while arming their Catholic supporters. These events prompted the codification of the right of every Protestant man to possess firearms in the English Bill of Rights in 1688.[1518]

> Our opinion is, that any law, State or Federal, is repugnant to the Constitution, and void, which contravenes this *right*, originally belonging to our forefathers, trampled under foot by Charles I and his two wicked sons and successors, re-established by the

[1517] Ibid, 13.
[1518] Cornell University Law School, "Majority and Minority Opinions in Heller vs the District of Columbia, 2008." Cornell University Law School Legal Information Institute, http://www.law.Cornell.edu/supct/html/07-290.ZS.html (Accessed Jan 19, 2014), 19, 25.

> Revolution of 1688, conveyed to this land of liberty by the colonists, and finally incorporated conspicuously in our own Magna Charta! (Italics in the original.)

The totalitarian model of the Stuarts, as it is associated with the bearing of arms, causes unease among a good many Americans today.[1519]

During April 1687, the king issued a *Royal Declaration of Indulgence* in which he wished and urged that all his subjects would become Catholics. A year later, the king reiterated his wish for a national conversion to Catholicism and ordered the *Declaration of Indulgence* read from every parish pulpit. Seven bishops refused, including the Archbishop of Canterbury. James imprisoned them and put them on trial for treason, but they were found innocent on June 22.

> When the verdict was announced, a great cheer 'like a train of gunpowder set on fire" went up and down the [Thames] river and along the streets…in honor of 'a joyful deliverance to the church of England'…Bonfires were lit and guns discharged, 'tho forbid,' in noisy celebration.[1520]

The English Militia and the Glorious Revolution:
The End of Royal Catholicism in England

The heir to the throne was Mary, Protestant daughter of Charles I and wife of William, Prince of Orange in the Netherlands, also a Protestant. Her position in direct line of succession to the throne was a source of comfort to Protestants in England who hoped a Catholic monarchy was a temporary condition. This turned to despair on June 10, 1688, when Queen Mary (of Modena) produced a male heir

[1519] Ibid, 40.
[1520] Malcolm, 110.

to the throne, displacing Mary of Orange. James announced that the newborn Prince of Wales, formal heir to the throne, would be raised Catholic. This would assure a Catholic dynasty on the throne of England, but there were powerful men who were not willing to allow it to happen. James had already illegally appointed more than one hundred Catholic officers to important command positions in the militia, and was now offering England a Catholic dynasty. When supporters in parliament attempted to warn the king that his policy was unwise and he was moving too fast, he dismissed it and sent the members home.[1521]

Many English people believed that the crisis of 1640-1642 was reigniting; they took action to defend themselves, to preserve their lives and their country's peace, and the future of the Protestant faith in England. On June 22, 1688, "...seven prominent Englishmen sent an invitation to William of Orange urging him to come to England to save the realm and assured him of the support of 95 percent of its people..."[1522] William and Mary invaded England, landing at Torbay harbor with a Dutch fleet of 463 ships and 40,000 Dutch soldiers (a greater force than the Spanish Armada) on November 5, 1688, in what was an almost bloodless coup called the Glorious Revolution. Monitored along his retreat route by militiamen, James was allowed to escape to France after first throwing the Great Seal into the Thames River. Many English citizens were glad to see him get safely away because few of them wanted to go through another regicide.[1523]

[1521] Jenkins, 157-159. The Catholicizing of the militia was an ongoing issue starting in 1685.
[1522] Ibid
[1523] Sue Miller, ed., *Holt World History: The Human Journey* (Austin: Holt, Rinehart and Winston, 2005), 485, 487.

Mary was in line to be queen and the English, remembering the chaos of the previous interregnum, still wanted a monarchy. However, parliament had some conditions before bestowing the crown. Parliament had passed the *Writ of Habeas Corpus Act* in 1679. The *Declaration of Rights* and the follow-on *English Bill of Rights* became law in 1688, guaranteeing the fundamental rights of individual citizens, including the right of all Protestants to keep and bear arms.[1524] Once William and Mary agreed to these Acts of Parliament, they were crowned (1689) as joint monarchs, William III and Mary II of England, Scotland, Wales, and Ireland.

The English *Bill of Rights,* in words that would resonate a century later in the *Declaration of Independence,* complained that the king had, in part, kept a standing army within the kingdom in time of peace without the consent of parliament, and had quartered soldiers contrary to law. Further, the king had disarmed many Protestant subjects contrary to the law, and had armed many Catholics and had even given them positions in the militia, both contrary to the law. The *Bill of Rights* guaranteed that there would be no standing army in England unless parliament permitted it, and every Protestant subject had the right to be armed.[1525]

Parliament followed this with the *Toleration Act* of 1689 granting liberty of conscience to all Protestants. This did not include Catholics or Dissenters. Parliament passed the *Act of Settlement* in 1701 which, when amplified by enabling

[1524] Halbrook, 45.
[1525] Ibid

legislation, prohibited any Catholic from ever sitting on the throne of England. Any member of the royal family who married a Catholic lost his or her royal title and place in the line of succession.[1526] This law is still in effect.

With the departure of James II, the follow-on legislation of the next few years finally resolved the Catholic question and the rights of individuals were for the first time committed to paper. Any conflict between the Crown and Parliament in the future would be insignificant compared to the conflicts of 1640-1689.

Historians, especially Marxists, working during the middle of the twentieth century emphasized the hypothesis that the English civil wars were class conflicts. Many current researchers tend to disagree. "Where the kings of France and Spain set the estates, and the classes they represented," Worden wrote, "against each other, in England there were no classes to divide. Lords and Commons were separate political orders, but not separate economic or political interests."[1527] He elaborated:

> The intensity of modern research on the war dates from a controversy of the 1940s and 1950s, fought with polemical power by [Marxist historians] which explained the war, largely or wholly, as a conflict of classes: between aristocracy and gentry, or between rich gentry or poor gentry, or between a rising bourgeoisie and a declining feudal order. The hypotheses of those scholars have surrendered to the research, which they stimulated.[1528]

Many modern scholars reject the Marxist analysis, yet it persists as an idea for good reason. The claim, "Lords and Commons were separate political orders,

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[1526] Miller, ed., 485, 487.
[1527] Worden, 17.
[1528] Ibid, 49.

but not separate economic or political interests," is foolishness *prima facie*. The very names of the two groups -- Lords and Commons -- are instructive in themselves. Would the lords and commons involved in the Enclosure controversy have considered themselves to possess the same economic and political interests? It is likely that some members of parliament in the House of Commons were as wealthy as some of the Lords, but the aristocracy and the middle class have never shared the same agenda, do not have the same political and social prerogatives or privileges (even more profoundly true of the lower classes), and are constantly maneuvering against each other for power. This was poignantly true during the time under discussion.

Both parliament and many common people realized great gains from the civil wars. When the Stuarts first came to the throne, there were few constraints on the monarch's power other than in taxation. When the last Stuart monarch (Queen Anne) died in 1707, the throne still had tremendous prestige and the visible forms of royal authority remained, but parliament truly governed the country. The militia was the anvil on which the new social consensus took form.

King Alfred's militiamen still submitted themselves to the lawful national authority following the seventeenth century, but that was now the national legislature and no longer the monarch. Citizens now (subjects in name only), they still had the right to possess their own weapons. The militia had done more to shape society over the centuries than any other social institution. It had defended the kingdom, enforced its laws, and energized the continuing liberalization of society.

This was the cultural and common law heritage in which American colonial militiamen stood, and it is they who must now carry the narration forward.

APPENDIX C

ORDER OF BATTLE FOR BRITISH AND FRENCH REGULAR REGIMENTS SERVING IN NORTH AMERICA 1755-1763

British Regiments:

1st Foot (the Royals)
17th Light Dragoons
27th Foot (Inniskilling)
35th Foot (Otway's)
42nd Foot (The Black Watch)
44th Foot (Abercromby's)
46th Foot (Murray's)
48th Foot (Webb's)
51st Foot (Pepperells')
58th Foot (Anstruther's)
62nd Foot (Wiltshire)
77th Foot (Montgomery's Highlanders)
80th Foot (Gage's Light Infantry)
95th Foot (Burton's)
Royal Artillery
15th Foot (Amherst's)
22nd Foot (Whitmores)
28th Foot (Bragg's)
40th Foot (Hopson's)
43rd Foot (Kennedy's)
45th Foot (Wartburton's)
47th Foot (Lacelles')
50th Foot (Shirley's)
55th Foot (Howe's, then Prideaux's)
60th Foot (the Royal Americans)
69th Foot (Lincolnshire)
78th Foot (Fraiser's Highlanders)
94th Foot (Royal Welsh Volunteers)
Independent Battalions and Companies
Royal Marines

French Regiments:

La Reine
Artois
La Sarre
Royal Roussillon
Bourgogne
Languedoc
Cambis
Guyenne
Berry
Bearn
Angoumois
Volontaires Etrangers
Le Royal Artillerie

APPENDIX D

A SHORT ESSAY CONCERNING

THE SECOND TREATISE ON GOVERNMENT

BY JOHN LOCKE

Gerald Van Slyke
English 592
(for Dr. Amy Thomas)
Sept. 12, 2012

A Personal Response to *The Second Treatise on Civil Government* by John Locke

John Locke's *Two Treatises on Civil Government* (1689) constitute an overstocked storehouse of revolutionary sentiment so encyclopedic in nature that one must narrow the field of discussion to those issues that would have directly impacted the thinking of a colonial militiaman a century later. The first *Treatise* is a point-by-point refutation of a lengthy essay by Sir Robert Filmer titled *Patriarchia* (1680) in which Filmer, an unashamed champion of royal prerogative, defended the absolute divine right of kings with great energy and stubbornness, beginning with the patriarch Adam who, Filmer asserted, received the right to rule when he was expelled from the Garden of Eden, and continuing to the Stuart kings of England.[1529]

According to all the sources, the first *Treatise* thoroughly destroyed Filmer's position (although one confesses to have not read *Patriarchia*) and the second discussed the authority of the monarch and his government in almost every way it could be discussed. The second Treatise was largely written as a constitutional justification for British rebellion against King James II in 1688 (the Glorious Revolution) and its arguments would be used against King George III three generations later by Americans. What was there that was lurking within the second *Treatise*, that outraged assertion of civil liberty whose tenets still resonate in the hearts of both Britons and Americans in the modern day, which could foster the metamorphosis of loyal subjects of the king into independent-thinking men willing to bear arms against their own national government? What was the bright and shining light that an American militiaman could carry with him in his soul when he faced near-certain death standing in an open field facing a British infantry regiment?

In answer, two mountain peaks thrust themselves above their many fellows and beg consideration: Lock's position on private real property (that it was sacred to the individual) and his position on the responsibility of the monarchy to rule well (or else!). To Americans in 1770, these two issues had become fundamental questions of everyday life; it is not too much to say that since Locke's time, his

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[1529] Paul E. Sigmund, Ed., *The Selected Political Writings of John Locke* (New York & London, W.W. Norton and Company, 2995) xvi-xviii. This is an essay by Dr. Sigmund of Princeton University as an introduction to the book. He offers a detailed account of Locke's disagreement with Filmer's position.

work has been central to the development of the political consensus of the modern western democracies.[1530]

Locke's position on removing tracts of land out of the "common" or state of nature (terrain that existed as it always had since the time of creation without being changed by the hand of man) provided the legitimizing political ethic for the appropriation of Native American lands in the new world, an action that was seen as necessary by most colonial Americans.[1531] The land could not be owned collectively in the Native American way, Locke asserted, but could only be owned individually after it had been improved by the labor of an individual and then enclosed, that is, separated from the remainder of nature. It then became "property" and was then owned by an individual and reserved for that individual's exclusive use.[1532] He wrote:

[1530] Larry Schweikart and Michael Allen, A Patriot's History of the United States: From Columbus' Great Discovery to the War on Terror (New York, Sentinel Publishers, 2004) 70-72. See also: Pauline Maier, From Resistance to Revolution: Colonial Radicals and the Development of American Opposition to Britain, 1765-1776 (New York and London, W.W. Norton Company, 1991) 27-28. Maier devotes a chapter to the idea that Locke's philosophy (and that of others who shared his opinions) was a balanced ideology of both resistance and restraint. See also: David Barton, The Second Amendment: Preserving the Inalienable Right of Individual Self-Protection (Aledo, Tex., Wallbuilder Press, 2011) 15. Although he was writing about gun control issues, Barton offers an insight into the issue of the right of British citizens to resist a tyrannical government. He notes that the right of British citizens to keep arms for exactly that contingency was referenced in Volume One of Blackstone's Commentaries (1803) in the following words: "The right....of having arms.... [is] the natural right of resistance and self-preservation when the sanctions of society and laws are found insufficient to restrain the violence of oppression....the citizens are entitled, in the first place, to the regular administration and free course of justice in the courts of law; next, to the right of petitioning for the redress of grievances; and lastly, to the right of having and using arms for self-preservation and defense." See also: Chris Surprenant, "Minority Oppression and Justified Revolution," Journal of Social Philosophy 41, No. 4, (2010), 442-453. Surprenant stated: "John Locke is attributed the position that the illegitimate use of power by a magisterial authority legally justifies....legitimate resistance by individuals subject to that power. In contemporary discussions, Locke's position has provided the theoretical foundation to justify....resistance to oppressive regimes....[and] provides an explanation for why....[people] are released from their duty to obey the law....[and] to explain why these people are justified in revolting against the government entirely." (442)

[1531] David H. Getches, et al, *Cases and Materials on Federal Indian Law: Sixth Edition* (St. Paul, Minn., West Publishing Co., 2011) 61-62. The *Royal Proclamation of 1763* by King George III forbade white settlement west of the Appalachian Ridge, reserving the western lands for the exclusive use of the Native Americans. Americans were infuriated by this stricture and alluded to it in the list of grievances against the King in the *Declaration of Independence* (1776). Locke had said that unenclosed land was in a state of nature and that no one owned it, thus it was open to any man who would work it and enclose it.

[1532] John Locke, *Two Treatises of Government, Book the Second: An Essay Concerning the True Original Extent and End of Civil Government* (Seaside, Ore., Merchant Books of Watchmaker Publishing, 2011) 133-145. See particularly paragraphs 41 and 42 (page 140) in which Locke discusses why Native Americans have no title to lands in common. Earlier (paragraph 30) he admits that Native Americans do sometimes make a personal property.

> Whatsoever then he [a person] removes out of the state that nature hath provided...he hath mixed his labor with...and made it his property...[and] excludes the common right of other men." He added, "As much land as a man tills, plants, improves, cultivates, and can use the product of, so much is his property. He by his labor does, as it were, inclose it from the common...God gave the world to men in common: but...it cannot be supposed that he meant that it should always remain common and uncultivated.[1533]

The property rights described here became an American distinctive, firmly rooted in the American psyche and in American law (such as in the later Homestead Acts) and apparently was seen by many Americans as something worthy of militant reaction. Locke's thinking was not taken only to mean that Native American lands could be appropriated, but that the government was responsible through the Social Contract to defend the individual citizen's rights to that now-enclosed property.

The *Royal Proclamation of 1763* (and later the *Quebec Act of 1774*) fundamentally and permanently changed the colonial landscape. King George III forbade European settlement west of the Appalachian Crest; the western lands (including the much-coveted Ohio Country) were now reserved for the sole use of Native Americans. Suddenly, Native American lands were no longer accessible and westward expansion officially ceased. This outraged American colonists so much that they alluded to it in the list of grievances against the king when the *Declaration of Independence* was written.[1534]

Imagine some nameless, faceless militiaman (or yeoman), newly arrived from Manchester or Brighton, standing on a dirt street in Deerfield, New York, engaged to the love of his life and with nothing of value to his name. This man, and many like him, would doubtless have seen free land as the way out of poverty for himself and his wife-to-be, and later for their little ones. He may even have immigrated to the colonies for that reason. Now he could see the king reserving the "commons" for the very people who wasted it, did not improve it and did not enclose it, and would not use it properly. He may well have wondered if the king hated his loyal colonial subjects. Could the king not hear the homeless children crying for help when they called out in their little English, Welsh, Irish and Scottish voices? Did the king not care? There must have been many men like the imaginary militiaman who saw this as a call to arms, a call to prepare for war and to be ready to march.[1535]

The other mountain peak was a twin of the first: the responsibility of the king and government to rule wisely for the peace and prosperity of the land and the

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[1533] Ibid, 134, 136. The first statement comes from paragraph 27, the second from paragraphs 32 and 34.

[1534] Getches, 61-62. See footnote 3.

[1535] Maier, 243-244. "By late 1774, American firmness clearly implied a readiness to use arms. Isolated pleas for military readiness appeared from the early 1770s; but the summonses took on a new immediacy, particularly in Massachusetts...." 243.

happiness of its citizens. Locke said that the whole purpose of the social contract, the reason men form governments, is to secure their property and that their property is the ultimate source of their happiness.[1536] Government does this as its primary responsibility, first in the regular courts which interpret the law, second in the legislature which makes the laws, and third in the king who enforces the laws that are so made and so interpreted. When property rights fail, all other rights fail and the government becomes tyrannical. If this happens, people have not only the right to remove a bad government and king and replace them with a better structure, they have a responsibility to all other men to do so.[1537]

Locke maintained that the people could never make legitimate war on the lawful king. However, if the king discharged his duties so poorly that a state of de facto abdication existed, then he was no longer truly the lawful king and war could be made against him. Locke offered two examples of such abdication and said there could be more:

> Two cases there are, I say, whereby a king, ipso facto, becomes no king, and loses all power and regal authority over his people....The first is, if he endeavor to overturn the government, that is, if he have a purpose and design to ruin the kingdom....he....consequently forfeits the power of governing his subjects, as a master does the dominion over his slaves whom he hath abandoned.[1538]

An American militiaman could recognize this first reason by watching it going on all around him. The *Declaration of Independence* (a profoundly Lockean document) cited twenty-seven examples of the king having abdicated his authority to rule in the American Colonies by determining to overthrow the government and designing to ruin the colonies. Some of these were very compelling: he had incited the "merciless Indian savages" to attack frontier settlements to murder innocent people, he was importing large numbers of foreign mercenaries to destroy the society of laws in America, and he was actively waging military and naval warfare against the colonies. Locke would have agreed that any of these was cause for de facto abdication and revolution.[1539]

The King's de facto abdication of authority took an astonishing legal turn on December 22, 1775, when parliament declared (and the King agreed) the rebel colonies to be "outside the King's protection" which was to say the colonists were

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[1536] Locke, 230. This statement comes from paragraph 222 and became some of the language in the *Declaration of Independence*.

[1537] Ibid, 232. Paragraph 225 discusses the 'long string of abuses' quoted in the *Declaration of Independence*.

[1538] Ibid, 239-240. Here Locke is quoting royalist William Barclay in paragraph 237 to prove that even the proponents of absolutism admit there are times when rebellion is moral.

[1539] No Author Listed, The Constitution of the United States and The Declaration of Independence (Washington, D.C., GPO, 2000) 36-38.

"outlaws" or outside the protection of the King's Peace.[1540] The King had never done so in the case of the Scottish and Irish rebels and Americans were shocked that he had done so to them. Jefferson made reference to this when a few months later he wrote into the Declaration of Independence a litany of grievances against the King and said in part, "He has abdicated government here by declaring us out of his protection...."[1541]

The second cause of de facto abdication was:

> "The other case is, When a king makes himself the dependent of another, and subjects his kingdom....and the people put free in his hands, to the dominion of another....he betrayed or forced his people, whose liberty he ought to have carefully preserved, into the power and dominion of a foreign nation...."[1542]

For Americans at that time, this equated to *An Act For Making More Effectual Provision for the Government of the Province of Quebec in North America*, commonly known as the *Quebec Act* of 1774, one of the 'intolerable acts' designed to punish the Americans for the Boston Tea Party. Recently conquered French Quebec was allowed to remain officially Roman Catholic, was allowed to retain French civil law to include trying Englishmen under French law, the oath of allegiance to the Crown as it was recited in Quebec made no reference to supporting the Protestant Faith, there would be no need for an elected legislature since the royal governor would appoint a board of bishops to advise him, and the borders were enlarged to be contiguous with the western borders of New England.[1543]

[1540] Woody Holton. *Forced Founders: Indians, Debtors, Slaves & the Making of the American Revolution in Virginia* (Chapel Hill, N.C. and London, the University of North Carolina Press, 1999) 187.

[1541] Paul Lauter, General Editor, *The Heath Anthology of American Literature, Third Edition* (Boston & New York, Houghton Mifflin Company, 1998) 921.

[1542] Locke, 240. Locke is quoting Barclay again.

[1543] Maier, 225 &248. This Act was very unpopular in England as well as in America. "Thousands gathered at Parliament House when the King went there to give his assent to the Quebec Act, and the crowd "not only hissed, but it is said, pelted him from the House of Lords to the Palace, crying out "*No Roman Catholic king: No Roman Catholic Religion! America forever*!" 248 Maier records how the tightening of government in the American Colonies (and elsewhere such as in Grenada) and the King's new friendliness toward Catholicism alarmed many in England who foresaw that if left uncurbed the government's new attitude toward its colonies would spread to England as well where harbingers of the same had already begun to show themselves. "The City of London began to move again, too, and petitioned against the (Quebec) Act, while in Falmouth - where a few days earlier America was so unpopular that a colonial captain had found the town disagreeable - news of the Quebec Act "so incensed the people that they declared for America, and imprecated every Anathema upon it, if it should submit to the *Patriot's History*, 68, 81. "New Englanders not only reject the late acts of Parliament" (the Intolerable Acts of which the Quebec Act was one). Even the "highest Tories" it was said, suddenly began declaring "They will take up Arms if Attempts are made to enforce the Acts"." (Maier was quoting an August 21, 1774, letter from Thomas Young to Samuel Adams.) See also: Schweikart and Allen, *A* viewed the Quebec Act as theft of lands intended for American Colonial settlement, they also feared the

This meant that Americans were not only cut off from unenclosed Native American lands, but that they also were surrounded by Roman Catholic territory at a time in history when few Americans did not have some family horror stories to recite concerning Catholic religious persecutions. (Forty years later a British journalist asked Jefferson where the point of no return had been in the progress toward revolution. "The Quebec Act," he was reported as having said.) The Americans felt that they had been delivered to the domination of a foreign law code and of a hated foreign religion, and this at a time when their king was sending thousands of foreign mercenaries to kill them. They sensed that the new authoritarian colonial government in Canada was a blueprint for America and they wanted none of it. Many American diary entries of the time spoke of the King's "pernicious hatred" for them as a people.[1544]

Locke's criteria for armed resistance against George III had been met on every level just as they had been for James II, and American militiamen could go into battle in the sureness of the morality of their cause. They were fighting for their property, their rights under the English Constitution, their families and their Protestant faith against a tyrannical government led by an abdicated non-king with Catholic affiliations in much the same way their ancestors had done in 1688. At the genesis of their core political opposition to the Crown lay John Locke's classic of English political thought, *Treatises on Government*.

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presence of more Catholics on the frontier. John Adams, for one, was terrified at the potential for a recatholicization of America. Antipapism was endemic in New England where political propagandists fulminated against this new encroachment of the Roman antichrist." 68

[1544] Ibid.

APPENDIX E

ORDER OF BATTLE FOR BRITISH REGIMENTS

SERVING IN AMERICA DURING THE REVOLUTION

1774-1783

Artillery:

Royal Regiment of Artillery
Royal Irish Regiment of Artillery

Horse:

16th Horse (Queen's Lancers)
17th Horse (Light Dragoons)

Foot Guards:

1st Battalion (From Coldstream Guards)
2nd Battalion (From 1st and 3rd Regiments of Foot Guards)

Line Infantry:

1st Foot (Royals)
3rd Foot (The Buffs)
4th Foot (King's Own)
5th Foot
6th Foot
7th Foot (Royal Fusiliers)
8th Foot (The King's)
9th Foot
10th Foot
13th Foot
14th Foot
15th Foot
16th Foot
17th Foot
18th Foot (Royal Irish)
19th Foot
20th Foot
21st Foot (Royal North British Fusiliers)
22nd Foot (Cheshire Regiment)
23rd Foot (Royal Welch Fusiliers)
24th Foot
26th Foot
27th Foot (Ennis Killen Regiment)
28the Foot
29th Foot
30th Foot
31st Foot

33rd Foot
34th Foot
35th Foot
37th Foot
38th Foot
40th Foot
42nd Foot (Royal Highlanders)
43rd Foot
44th Foot
45th Foot
46th Foot
47th Foot
48th Foot
49th Foot
50th Foot
52nd Foot
53rd Foot
54th Foot
55th Foot
57th Foot
59th Foot
60th Foot (Royal Americans)
62nd Foot
63rd Foot
64th Foot
65th Foot
69th Foot
70th Foot (Glasgow Lowlanders)
71st Foot (Frasers Highlanders)
74th Foot (Argyle Highlanders)
76th Foot (MacDonald's Highlanders)
79th Foot (Liverpool Royal Volunteers)
80th Foot (Edinburgh Royal Volunteers)
82nd Foot
83rd Foot (Glasgow Royal Volunteers)
84th Foot (Royal Highland Loyalist Emigrants)
85th Foot (Westminster Volunteers)
86th Foot (Rutland's)
87th Foot
88th Foot
105th Foot (Loyal Americans)
110th Foot (Loyal Americans)

H.M. Royal Marines:

1st Battalion
2nd Battalion

H.M. American Establishment:

1st American Foot (Queen's Rangers)
2nd American Foot (Irish Volunteers)
3rd American Foot (New York Volunteers)
4th American Foot (King's Americans)
5th American Foot (British Legion)

In addition, there were 71 royal volunteer units ranging from company to regimental size (American), about one hundred militias (American), dozens of local volunteer and associated corps (Americans), 12 large militias and volunteer companies from the West Indies, and 42 German regiments and numerous jaeger companies.

APPENDIX F

ORDER OF BATTLE FOR BRITISH REGIMENTS SERVING IN AMERICA DURING THE WAR OF 1812

1812-1815

Cavalry:

6th Innis Killing Dragoons
14th Light Dragoons
19th Light Dragoons

Line Infantry:

4th Royal Veteran Battalion
10th Royal Veteran Battalion

1st Foot (Royal Scotts)
3rd Foot (Buffs)
4th Foot (King's Own)
5th Foot (Northumberland)
6th Foot (Warwickshire)
7th Foot (Royal Fusiliers)
8th Foot (King's)
9th Foot (Norfolk)
13th Foot (Somersetshire)
16th Foot (Bedfordshire)
21st Foot (Royal North British Fusiliers)
26th Foot (Cameronians)
27th Foot (Innis Killings)
29th Foot (Worchestershire)
37th Foot (Hampshire)
39th Foot (Dorsetshire)
40th Foot (Somersetshire)
41st Foot
43rd Foot (Monmouthshire)
44th Foot (Essex)
49th Foot (Hertfordshire)
57th Foot (West Middlesex)
58th Foot (Rutlandshire)
59th Foot (Nottinghamshire)
60th Foot (Royal Americans)
62nd Foot (Wiltshire)
64th Foot (Staffordshire)
70th Foot (Glasgow Lowlanders)
76th Foot
81st Foot
82nd Foot (Prince of Wales Volunteers)
85th Foot (Bucks Volunteers)
88th Foot (Connaught Rangers)

89th Foot
90th Foot (Perthshire Volunteers)
93rd Foot (Sutherland Highlanders)
95th (Rifles)
97th Foot
98th Foot
99th Foot
100th Foot
101st Foot
102nd Foot
103rd Foot
104th Foot (New Brunswick)

Foreign and Fencible Regiments:

Regiment de Emuron
Regiment de Watteville
Independent Companies of Foreigners
Royal Newfoundland Fencibles
Nova Scotia Fencibles
Glengarry Light Infantry Fencibles
New Brunswick Fencibles
Provincial Corps of Light Infantry (Voltiguers)
Michigan Fencibles
1st West India Regiment
2nd West India Regiment
5th West India Regiment
Royal West India Rangers

Militia:

Frontier Light Infantry
Select Embodied Militia
Sedentary Embodied Militia Battalions
Canadian Fencible Battalions
Canadian Chasseurs
The Quebec Volunteers
The Compagnie des Guides
The Dorchester Provincial Light Dragoons
Canadian Light Dragoons
The Royal Militia Artillery
The Corps of Provincial Artillery Drivers
The Corps of Canadian Voyageurs
Flank Companies

The Incorporated Militia Battalion
Caldwell's Rangers
The Loyal Kent Volunteers
The Loyal Essex Volunteers
Provincial Dragoons - Merritt's Troop
The Mississippi Volunteers
The Incorporated Militia Artillery
The Provincial Artillery Drivers
The Corps of Provincial Artificers
2nd Regiment York Militia

Board of Ordnance and Other Corps:

Royal Horse Artillery (Rocket)
Royal Artillery Regiments
Corps of Royal Engineers
Royal Sappers and Miners
Corps of Royal Military Artificers and Laborers
Royal Staff Corps
Royal Marine Battalions
Royal Marine Artillery

APPENDIX G

SIGNIFICANT ACTS AND COURT CASES

DEALING WITH NATIVE AMERICANS

1763-2010

Acts and Cases

1763 - French & Indian War Ended
Treaty of Paris, France sold the Louisiana Territory to Spain, France ceded Canada to the British, and the western boundary of the British colonial area became the Mississippi River

1763 - Proclamation of 1763
King George III established a line along the Appalachian crest beyond which colonists could not settle.

1776-1783 - American Revolution
United States achieved its independence from England and assumed sovereignty over lands formerly held by the crown

1779 - Virginia Declaratory Act
Retroactively voided unlicensed purchases of Indian lands

1785 - Hopewell Treaty (Several - first in 1785)
Western boundary of the US enlarged into Indian lands, the US would control trade with the Indians, Indians would acknowledge themselves under the protection of the US, Whites must stay off Indian lands

1790 -1836 - Nonintercourse Acts (six acts 1790 -1804 and 1836)
Indians have an original inalienable title to their aboriginal lands; federal approval was required for the acquisition of Indian lands. Individual titles for private purchase of Indian lands were not recognized.

1803 -1804 - Georgia Compact
Georgia sold the US its western lands (Alabama and Mississippi) for $1.25 million and a promise to remove all Indians from Georgia as quickly as possible

1823 - Johnson vs McIntosh (First of the Marshall Trilogy)
Europeans acquired sovereignty through Doctrine of Discovery (established Indian title) but Indians retained right of occupancy, assumed inherent racial and cultural differences between Whites and Indians

1825 - Assimilative Crimes Act
States may have power to prosecute criminal acts committed on federal lands if there is no federal law that covers the criminal act

1830 - Indian Removal Act
This authorized the President to trade western lands to Indians living east of the Mississippi River for their eastern lands.

1831 - Cherokee Nation vs Georgia (Second of the Marshall Trilogy)
The court ruled that the Cherokee were a "domestic dependent nation" and that it could not hear the case, but it was supportive of the Indians in the dicta. It reaffirmed Indian rights to their lands.

1832 - Worcester vs Georgia (Third of the Marshall Trilogy)
US government has a special trust relationship with Indians. Tribes are sovereign on their reservations and states have no authority there. Treaties are the supreme law of the land and are sacred.

1823 - 1832 The Marshall Trilogy (Johnson, Cherokee, Worcester)
Results:
1. US has a special trust relationship with Indian tribes
2. Indian tribes are domestic, dependent nations
3. Tribes are sovereign on reservations
4. States have no powers on reservations
5. Treaties are supreme law and are sacred

1871 - Treaty making with Indians ended.

1881 - United States vs McBratney
The court held that in crimes occurring on Indian reservations between non-Indians, the state would have jurisdiction and not the federal or tribal courts.

1883 - Ex Parte Crow Dog
Supreme Court ruled that territorial courts had no jurisdiction over Indian reservations. (This law led to the major crimes act)

1884 - Alaska Organic Act
This established a civil government for Alaska.

1885 - Major Crimes Act
This act granted the US authority to bring to trial and punish major crimes on Indian reservations.

1886 - US vs Kagama
This case upheld the Major Crimes Act of 1885 and upheld the plenary power of the Congress over Indian tribes.

1887 - General Allotment Act (Dawes Act)

This allowed the partition of reservations to individual Indians for agriculture. This was to assimilate Indians into the larger society and provide surplus lands for US development. Indians were given fee simple title (after 25 years) while absolute title was held by US. Created original membership rolls. The act granted US citizenship with the fee patent for land. Allotment resulted in loss of tribal lands and loss of land value.

1896 - Talton vs Mayes

Individual rights protections that limit the authority of federal and state governments do not apply to tribal governments since earlier cases such as Cherokee vs Georgia (1831) had held that Indian tribes are "domestic, dependent nations."

1903 - Lone Wolf vs Hitchcock

The court asserted the plenary power of Congress over native tribes including the power to abrogate treaties and dispose of native lands unilaterally

1908 - Winters vs US

This reaffirmed the water rights of tribes. Ruled that when treaties were effected that established reservations, water rights were reserved by the tribes as an implication of the treaty.

1912 - Alaska Territory

This established Alaska as a territory.

1913 - US vs Sandoval

The court held that the Pueblos were an Indian people and subject to the laws of Congress addressed to Indians. Congress has plenary power.

1924 - Indian Citizenship Act

Granted US citizenship to all indigenous peoples born in the US and subject to its control.

1928 - Meriam Report: "The Problem of Indian Administration"

Recommended the end of allotment

1934 - Indian Reorganization Act Wheeler-Howard Act

This act ended allotment and prohibited further transfer of Indian lands which strengthened tribal control and sovereignty, and set up a fund to make loans to Indian corporations. Within one year each tribe must vote on whether or not to implement the Act on their reservation. It gave each reservation the right to establish a reservation constitution and government,

ended absolute control over Indian affairs previously exercised by the Bureau of Indian Affairs (BIA) while still preserving Federal guardianship. It gave the Secretary of the Interior power to create new reservations and to approve tribal constitutions and charters.

1941 - Handbook of Federal Indian Law

An important work published by the Interior Department. Authored by Felix Cohen, associate solicitor of the Interior Department, it synthesized and made sense of the hodgepodge of Indian laws, treaties, regulations, etc.

1941 - United States vs Santa Fe Pacific Railroad Company

The court ruled that Indian title need not be based on treaty or statute to be valid.

1942 - Seminole Nation vs U.S.

The original suit was decided by the Court of Claims in favor of petitioner, Seminole Nation, for damages of $1,317,087.27. The Supreme Court reversed this decision for want of jurisdiction. The jurisdictional barrier was removed by statute, and Seminole Nation filed a second amended petition in the Court of Claims, reasserting the six claims previously denied by the Supreme Court.

1946 - Indian Claims Commission Act (ICC)

This commission would hear all claims against the United States, statute of limitations notwithstanding, as long as the claims were filed before Aug. 13, 1951. The ICC lasted until Sept. 1978

1953 - Public Law 280

This was a law to establish a method whereby states may assume authority over reservation Indians. Six states were given authority under the act, others may assume control if Indians agree.

1955 - Tee-hit-ton vs US

Property rights of non-recognized tribes (by treaty or statute) are not protected. Indian right to land was an "usufructuary" right similar to the right of a mere licensee.

1959 - Williams vs. Lee

The court ruled that a state court had no legal authority to collect a debt from an Indian on Indian land. State courts could not function on sovereign tribal land.

1963 - Arizona vs California
This case dealt with water rights from the Colorado River. It began with the BIA wanting more water allocated to the Indians. This was granted because Indians had a prior claim.

1968 - Menominee Tribe vs US
Indian tribes did not lose their hunting and fishing rights under treaty just because the reservation had been terminated.

1968 - Indian Civil Rights Act
This made portions of the Bill of Rights operative within Indian tribes.

1971 - Alaska Native Claims Settlement Act
Natives received territory and nearly a billion dollars for the abrogation of their claims to land.

1971 - McClanahan vs Arizona State Tax Commission
The court ruled that a state could not tax an Indian Reservation because it interfered with both federal and tribal autonomy.

1973 - McClanahan vs Arizona State Tax Commission
State has no authority to impose an income tax on an Indian living on a reservation whose income is entirely earned on the reservation. This would interfere with both federal and state autonomy.

1974 - Morton vs Mancari
The court ruled that the BIA could extend hiring and promoting preference to Indians without violating civil rights legislation because Indians are a political group and not a racial group.

1975 - Indian Self-Determination and Education Assistance Act
Reversed termination policy and made self-determination the focus of federal policy toward Indians. Authorized government agencies to enter into contract with and make grants directly to federally recognized Indian tribes.

1976 - Bryan vs Itasca County
The court held that a state does not have the authority to tax Indian property on a reservation without specific congressional authority to do so.

1977 - U.S. vs. Antelope
Indians in this case, murderers, were treated fairly by the U.S. even though they were tried in a federal rather than a state court for a crime that would have imposed stiffer requirements on the prosecutor in a state court, because

of the unique federal relationship between Indians and the federal government.

1978 - Oliphant vs Suquamish Indian Tribe
Tribal courts do not have inherent jurisdiction to try non-Indians.

1978 - Santa Clara Pueblo vs Martinez
This involved a request to force the tribe to stop denying tribal membership to the children of female tribal members who married outside of the tribe. The court denied the request since the federal government could not interfere in tribal government.

1978 - U.S. vs Wheeler
An Indian could be tried by both tribal and federal courts for the same crime since they represented separate sovereigns.

1978 - American Indian Religious Freedom Act
Indians have the right to practice traditional religions, possess sacred objects and substances and have access to sacred places.

1980 - US vs Sioux Nation
The court held that lands taken from Indians must be given just compensation.

1980 - US vs Mitchell -
The court held that the GAA did not provide for the BIA to manage timber lands belonging to allotees.

1981 - Montana vs US
The Crow tribe could not regulate fishing and hunting on non-Indian property by non-Indians.

1983 - US vs Mitchell -
The court held that statutes and practices resulting from them required the US to act as a fiduciary on behalf of the Indians in the management of forest lands and that the Indians could seek money compensation through the courts.

1983 - Nevada vs US
The U.S. and the Paiute tribe went to court together to increase the amount of water the tribe was allocated out of the Truckee River. The court refused to increase the allotment citing that a previous case (1944) had already decided future water rights.

1984 - Guerin vs Regina (Canada)

Indian land rights that were in existence prior to the Royal Proclamation of 1763 are inherent and such lands can only be ceded to the Crown - the govt. has a trust relationship with the Indians that includes interceding on behalf of their best interests.

1984 - Solem vs Bartlett

The selling of reservation lands to private individuals does not diminish reservation boundaries.

1985 - US vs Dann

The court ruled that an Indian Claims Commission award (Shoshone) extinguished aboriginal title including hunting and fishing rights. Dann took the case to the OAS and UN, both of which advised the US to accede to the tribe's demands and the US refused.

1986 - US vs Dion

Pursuant to the Eagle Protection Act, prohibits Indians from hunting eagles.

1988 - in re...Big Horn

A Wyoming court ruled that Indians do have a prior right to water but that the purpose had been for agriculture so they would get only as much as was practical for acreage under cultivation.

1988 - Lyng vs Northwest Indian Cemetery Protective Association

The court ruled that the Forest Service could build a road that Indians claimed threatened religious sites. Congress intervened and placed the disputed area into a nearby wilderness area in which roads may not be built. Federal rights to federal lands outweigh Indian religious claims.

1990 - Duro vs Reina

Tribal courts have no jurisdiction over non-member Indians from other reservations but may eject undesirables from Indian lands. They may hold non-member Indian offenders for state authorities.

1990 - Native American Grave Registration and Repatriation Act

Required government agencies to return to the Native Americans any cultural artifacts in their possession and all future NA artifacts would be controlled by NA.

1991 - Duro Fix (an Act)

Reversed Duro vs Reina. Tribes have inherent jurisdiction over any Indian on their reservation.

1997 - Delgamuukw vs Regina (Canadian)

The court refused to decide the case but ruled that Indian oral histories are as important as written histories; reasserted that only the Crown could acquire Indian lands, not individuals.

2000 - Rice v Cayetano

The court ruled that non-Hawaiian natives could not be prevented from voting for candidates standing for office with the Office of Hawaiian Affairs because native Hawaiians are not a recognized tribe.

2001 - Nevada vs. Hicks

Hicks poached two bighorn sheep off the reservation and then brought them on to the reservation where he lived. He said a tribal court would deal with the matter but the state game wardens wanted to take him to state court because the tribal court had no authority. The federal arbitrator said the tribal courts had to be exhausted prior to approaching the federal courts.

2004 - U.S. vs Lara

The U.S. and tribal courts could try an Indian for the same criminal act without violating the double jeopardy clause because the accused was tried by two separate sovereigns.

2008 - Cobell vs Salazar

An ongoing class action lawsuit brought by Native Americans against the United States Government. The plaintiffs claim that the U.S. government has incorrectly accounted for Indian trust assets, which belong to individual Native Americans (as beneficial owners) but are managed by the Department of the Interior as the legal owner and fiduciary trustee).

2009 - US vs Navajo Nation

The Court ruled that an Indian Tribe must "identify a substantive source of law that establishes specific fiduciary or other duties." The majority opinion written by Justice Ruth Bader Ginsburg held that the IMLA could not be interpreted to require the Secretary to exercise broad authority to manage the tribe's resources for the tribe's benefit. Instead, the tribe itself controls negotiations and the Secretary has a more limited role in approving the agreements. The Court concluded that no provision of the IMLA entitled the tribe to monetary damages resulting from the government's role in the negotiations. Justice Souter, joined by justices Stevens and O'Connor, wrote a dissent arguing that the Secretary's approval power must be exercised for the tribe's benefit, and monetary damages may be awarded if the power is misused.

2010 - Tribal Law and Order Act

Increases the penalties that tribal courts can impose and requires federal prosecutors to explain why they decline to try a case. This requires increased training of tribal law enforcement officials and their level of cooperation with state and federal law authorities.

APPENDIX H

TEXT OF THE SECOND AND FOURTEENTH AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES OF AMERICA

TEXT OF THE SECOND AMENDMENT

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed

TEXT OF THE FOURTEENTH AMENDMENT

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

APPENDIX I

TEXT OF

THE MILITIA ACT OF 1903

January 21, 1903.
[Public, No. 83.]
[CHAPTER. 186]
AN ACT

To promote the efficiency of the militia, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the militia shall consist of every able-bodied male citizen of the respective States, Territories, and the District of Columbia, and every able-bodied male of foreign birth who has declared his intention to become a citizen, who is more than eighteen and less than forty-five years of age, and shall be divided into two classes—the organized militia, to be known as the National Guard of the State, Territory, or District of Columbia, or by such other designations as may be given them by the laws of the respective States or Territories, and the remainder to be known as the Reserve Militia.

Sec. 2. That the Vice-President of the United States, the officers, judicial and executive, of the Government of the United States, the members and officers of each House of Congress, persons in the military or naval service of the United States, all custom-house officers, with their clerks, postmasters and persons employed by the United States in the transmission of the mail, ferrymen employed at any ferry on a post-road, artificers and workmen employed in the armories and arsenals of the United States, pilots, manners actually employed in the sea service of any citizen or merchant within the United States, and all persons who are exempted by the laws of the respective States or Territories shall be exempted from militia duty, without regard to age: *Provided,* That nothing in this Act shall be construed to require or compel any member of any well-recognized religious sect or organization at present organized and existing whose creed forbids its members to participate in war in any form, and whose religious convictions are against war or participation therein, in accordance with the creed of said religious organization, to serve in the militia or any other armed or volunteer force under the jurisdiction and authority of the United States.

Sec. 3. That the regularly enlisted, organized, and uniformed active militia in the several States and Territories and the District of Columbia who have heretofore participated or shall hereafter participate in the apportionment of the annual appropriation provided by section sixteen hundred and sixty-one of the Revised Statutes of the United States, as amended, whether known and designated as National Guard, militia, or otherwise, shall constitute the organized militia. The organization, armament, and discipline of the organized militia in the several States and Territories and in the District of Columbia shall be the same as that which is now or may hereafter be prescribed for the Regular and Volunteer-Armies of the United States, within five years from the date of the approval of this Act: *Provided,* That the President of the United States, in time of peace, may by order fix the minimum number of enlisted men in each company, troop, battery, signal corps, engineer corps, and hospital corps: *And provided further,* That any corps of artillery, cavalry and infantry existing in any of the States at the passage of the Act

of May eighth, seventeen hundred and ninety-two, which, by the laws, customs or usages of the said States have been in continuous existence since the passage of said Act under its provisions and under the provisions of Section two hundred and thirty-two and Sections sixteen hundred and twenty-five to sixteen hundred and sixty, both inclusive, of Title sixteen of the Revised Statutes of the United States relating to the Militia, shall be allowed to retain their accustomed privileges, subject, nevertheless, to all other duties required by law in like manner as the other Militia.

Sec. 4. That whenever the United States is invaded, or in danger of invasion from any foreign nation, or of rebellion against the authority of the Government of the United States, or the President is unable, with the other forces at his command, to execute the laws of the Union in any part thereof, it shall be lawful for the President to call forth, for a period not exceeding nine months, such number of the militia of the State or of the States or Territories or of the District of Columbia as he may deem necessary to repel such invasion, suppress such rebellion, or to enable him to execute such laws, and to issue his orders for that purpose to such officers of the militia as he may think proper.

Sec. 5. That whenever the President calls forth the militia of any State or Territory or of the District of Columbia to be employed in the service of the United States, he may specify in his call the period for which, such service is required, not exceeding nine months, and the militia so called shall continue to serve during the term so specified, unless sooner discharged by order of the President.

Sec. 6. That when the militia of more than one State is called into the actual service of the United States by the President he may, in his discretion, apportion them among such States or Territories or to the District of Columbia according to representative population.

Sec. 7. That every officer and enlisted man of the militia who shall be called forth in the manner hereinbefore prescribed and shall be found fit for military service shall be mustered or accepted into the United States service by a duly authorized mustering officer of the United States: *Provided, however,* That any officer or enlisted man of the militia who shall refuse or neglect to present himself to such mustering officer upon being called forth as herein prescribed shall be subject to trial by court-martial, and shall be punished as such court-martial may direct.

Sec. 8. That courts-martial for the trial of officers or men of the militia, when in the service of the United States, shall be composed of militia officers only.

Sec. 9. That the militia, when called into the actual service of the United States, shall be subject to the same Rules and Articles of War as the regular troops of the United States.

Sec. 10. That the militia, when called into the actual service of the United States, shall, during their time of service, be entitled to the same pay and allowances as are or may be provided by law for the Regular Army.

Sec. 11. That when the militia is called into the actual service of the United States, or any portion of the militia is accepted under the provisions of this Act, their pay shall commence from the day of their appearing at the place of company

rendezvous. But this provision shall not be construed to authorize any species of expenditure previous to arriving at such places of rendezvous which is not provided by existing laws to be paid after their arrival at such places of rendezvous.

Sec. 12. That there shall be appointed in each State, Territory and District of Columbia, an Adjutant-General, who shall perform such duties as may be prescribed by the laws of such State, Territory, and District, respectively, and make returns to the Secretary of War, at such times and in such form as he shall from time to time prescribe, of the strength of the organized militia, and also make such reports as may from time to time be required by the Secretary of War. That the Secretary of War shall, with his annual report of each year, transmit to Congress an abstract of the returns and reports of the adjutants- general of the States, Territories', and the District of Columbia, with such observations thereon as he may deem necessary for the information of Congress.

Sec. 13. That the Secretary of War is hereby authorized to issue, on the requisitions of the governors of the several States and Territories, or of the commanding general of the militia of the District of Columbia, such number of the United States standard service magazine arms, with bayonets, bayonet scabbards, gun slings, belts, and such other necessary accoutrements and equipments as are required for the Army of the United States, for arming all of the organized militia in said States and Territories and District of Columbia, without charging the cost or value thereof, or any which have been issued since December first, nineteen hundred and one, or any expense connected therewith, against the allotment to said State, Territory, or District of Columbia, out of the annual appropriation provided by section sixteen hundred and sixty-one of the Revised Statutes, as amended, or requiring payment therefor, and to exchange, without receiving any money credit therefor, ammunition, or parts thereof, suitable to the new arms, round for round, for corresponding ammunition suitable to the old arms theretofore issued to said State, Territory, or District by the United States: *Provided*, That said rifles and carbines and other property shall be receipted for and shall remain the property of the United States and be annually accounted for by the governors of the States and Territories as now required by law, and that each State, Territory, and District shall, on receipt of the new arms, turn in to the Ordnance Department of the United States Army, without receiving any money credit therefor, and without expense for transportation, all United States rifles and carbines now in its possession.

To provide means to carry into effect the provisions of this section, the necessary money to cover the cost of exchanging or issuing the new arms, accoutrements, equipments, and ammunition to be exchanged or issued hereunder is hereby appropriated out of any moneys in the Treasury not otherwise appropriated.

Sec. 14. That whenever it shall appear by the report of inspections, which it shall be the duty of the Secretary of War to cause to be made at least once in each year by officers detailed by him for that purpose, that the organized militia of a State or Territory or of the District of Columbia is sufficiently armed, uniformed, and equipped for active duty in the field, the Secretary of War is authorized, on the requisition of the governor of such State or Territory, to pay to the quartermaster-

general thereof, or to such other officer of the militia of said State as the said governor may designate and appoint for the purpose, so much of its allotment out of the said annual appropriation under section sixteen hundred and sixty-one of the Revised Statutes as amended as shall be necessary for the payment, subsistence, and transportation of such portion of said organized militia as shall engage in actual field or camp service for instruction, and the officers and enlisted men of such militia while so engaged shall be entitled to the same pay, subsistence, and transportation or travel allowances as officers and enlisted men of Corresponding grades of the Regular Army are or may hereafter be entitled by law, and the officer so designated and appointed shall be regarded as a disbursing officer of the United States, and shall render his accounts through the War Department to the proper accounting officers of the Treasury for settlement, and he shall be required to give good and sufficient bonds to the United States, in such sums as the Secretary of War may direct, faithfully to account for the safe-keeping and payment of the public moneys so intrusted to him for disbursement.

Sec. 15. That the Secretary of War is hereby authorized to provide for participation by any part of the organized militia of any State or Territory on the request of the governor thereof in the encampment, maneuvers, and field instruction of any part of the Regular Army at or near any military post or camp or lake or seacoast defenses of the United States. In such case the organized militia so participating shall receive the same pay, subsistence, and transportation as is provided by law for the officers and men of the Regular Army, to be paid out of the appropriation for the pay, subsistence, and transportation of the Army: *Provided*, That the command of such military post or camp and of the officers and troops of the United States there stationed shall remain with the regular commander of the post without regard to the rank of the commanding or other officers of the militia temporarily so encamped within its limits or in its vicinity.

Sec. 16. That whenever any officer of the organized militia shall, upon recommendation of the* governor of any State, Territory, or general commanding the District of Columbia, and when authorized by the President, attend and pursue a regular course of study at any military school or college of the United States such officer shall receive from the annual appropriation for the support of the Army the same travel allowances, and quarters, or commutation of quarters, to which an officer of the Regular Army would be entitled if attending such school or college under orders from proper military authority, and shall also receive commutation of subsistence at the rate of one dollar per day while in actual attendance upon the course of instruction.

Sec. 17. That the annual appropriation made by section sixteen hundred and sixty-one, Revised Statutes, as amended, shall be available for the purpose of providing for issue to the organized militia any stores and supplies or publications which are supplied to the Army by any department. Any State, Territory, or the District of Columbia may, with the approval of the Secretary of War, purchase for cash from the War Department, for the use of its militia, stores, supplies, material of war, or military publications, such as are furnished to the Army, in addition to those issued

under the provisions of this Act, at the price at which they are listed for issue to the Army, with the cost of transportation added, and funds received from such sales shall be credited to the appropriations to which they belong and shall not be covered into the Treasury, but shall be available until expended to replace therewith the supplies sold to the States and Territories and to the District of Columbia in the manner herein provided.

Sec. 18. That each State or Territory furnished with material of war under the provisions of; this or former Acts of Congress shall, during the year next preceding each annual allotment of funds, in accordance with section sixteen hundred and sixty-one of the. Revised Statutes as amended, have required every company, troop, and battery in its organized militia not excused by the governor of such State or Territory to participate in practice marches or go into camp of instruction at least five consecutive days, and to assemble for drill and instruction at company, battalion, or regimental armories or rendezvous or for target practice not less than twenty-four times, and shall' also have required during such year an inspection of each such company, troop, and battery to be made by an officer of such militia or an officer of the Regular Army.

Sec. 19. That upon the application of the governor of any State or Territory furnished with material of war under the provisions of- this Act or former laws of Congress, the Secretary of War may detail one or more officers of the Army to attend any encampment of the organized militia, and to give such instruction and information to the officers and men assembled in such camp as may be requested by the governor. Such officer or officers shall immediately make a report of such encampment to the Secretary of War, who shall furnish a copy thereof to the governor of the State or Territory.

Sec. 20. That upon application of the governor of any State or Territory furnished with material of war under the provisions of this Act or former laws of Congress, the Secretary of War may, in his discretion, detail one or more officers of the Army to report to the governor of such State or Territory for duty in connection with the organized militia. All such assignments may be revoked at the request of the governor of such State or Territory or at the pleasure of the Secretary of War.

Sec. 21. That the troops of the militia encamped at any military post or camp of the United States may be furnished such amounts of ammunition for instruction in firing and target practice as may be prescribed by the Secretary of War, and such instruction in firing shall be carried on under the direction of an officer selected for that purpose by the proper military commander.

Sec. 22. That when any officer, noncommissioned officer, or private of the militia is disabled by reason of wounds or disabilities received or incurred in the service of the United States he shall be entitled to all the benefits of the pension laws existing at the time of his service, and in case such officer, noncommissioned officer, or private dies in the service of the United States or in returning to his place of residence after being mustered out of such service, or at any time, in consequence of wounds or disabilities received in such service, his widow and children, if any, shall be entitled to all the benefits of such pension laws.

Sec. 23. That for the purpose of securing a list of persons specially qualified to hold commissions in any volunteer force which may hereafter be called for and organized under the authority of Congress, other than a force composed of organized militia, the Secretary of War is authorized from time to time to convene boards of officers at suitable and convenient army posts in different parts of the United States, who shall examine as to their qualifications for the command of troops or for the performance, of staff duties all applicants who shall have served in the Regular Army of the United States, in any of the volunteer forces of the United States, or in the organized militia of any State or Territory or District of Columbia, or who, being a citizen of the United States, shall have attended or pursued a regular course of instruction in any military school or college of the United States Army, or shall have graduated from any educational institution to which an officer of the Army or Navy has been detailed as superintendent or professor pursuant to law after having creditably pursued the course of military instruction therein provided. Such examinations shall be under rules and regulations prescribed by the Secretary of War, and shall be especially directed to ascertain the practical capacity of the applicant. The record of previous service of the applicant shall be considered as a part of the examination. Upon the conclusion of each examination the board shall certify to the War Department its judgment as to the fitness of the applicant, stating the office, if any, which it deems him qualified to fill, and, upon approval by the President, the names of the persons certified to be qualified shall be inscribed in a register to be kept in the War Department for that purpose. The persons so certified and registered snail, subject to a physical examination at the time, constitute an eligible class for commissions pursuant to such certificates in any volunteer force hereafter called for and organized under the authority of Congress, other than a force composed of organized militia, and the President may authorize persons from this class, to attend and pursue a regular course of study at any military school or college of the United States other than the Military Academy at West Point and to receive from the annual appropriation for the support of the Army the same allowances and commutations as provided in this Act for officers of the organized militia: *Provided,* That no person shall be entitled to receive a commission as a second lieutenant after he shall have passed the age of thirty; as first lieutenant after he shall have passed the age of thirty-five; as. captain after he shall have passed the age of forty; as major after he shall have passed the age of forty-five; as lieutenant-colonel after he shall have passed the age of fifty, or as colonel after he shall have passed the age of fifty-five: *And provided further,* That such appointments shall be distributed proportionately, as near as may be, among the various States contributing such volunteer force: *And provided.* That the appointments in this section provided for shall not be deemed to include appointments to any office in any company, troop, battery, battalion, or regiment of the organized militia which volunteers as a body or the officers of which are appointed by the governor of a State or Territory.

Sec. 24. That all the volunteer forces of the United States called for by authority of Congress shall, except as hereinbefore provided, be organized in the manner

provided by the Act entitled "An Act to provide for temporarily increasing the military establishment of the United States in time of war, and for other purposes," approved April twenty-second, eighteen hundred and ninety-eight.

Sec. 25. That sections sixteen hundred and twenty-five to sixteen hundred and sixty, both included, of title sixteen of the Revised Statutes, and section two hundred and thirty-two thereof, relating to the militia, are hereby repealed.

Sec. 26. That this Act shall take effect upon the date of its approval.

Approved, January 21, 1903.

APPENDIX J

A RECORD OF THE POSTERITY UNITED MONTANA ASSEMBLY

DECISION NOT TO ORGANIZE A MILITIA

Gallatin County
Republic of Montana
Dec. 5, 2013

Pursuant to the By-Laws Adopted by PUMA in November 2013, under the section titled "committees," a proposal is made to organize a militia committee responsible to and under the control of the Executive Council of PUMA.

The militia committee will be a constitutional body that will mirror the cultural militias of the colonial era and the early republic; to wit: (1) the members shall be able bodied citizens who (2) arm and provision themselves at their own expense, (3) if called into service willingly submit themselves to the control of the lawfully elected authorities of the government *so long as they are acting lawfully*, and (4) prepare themselves through training and cooperation to aid the lawful authorities in defending the community against the lawless, the ravages of nature, or any other instance in which the government may seek citizen assistance. Militia committee leaders will be picked by consensus and internal matters within the committee will be decided by consensus.

The militia committee will in no case aid government at any level in depriving any American citizen of his or her God-given rights and, indeed, may elect to oppose any such unlawful and criminal action to the limit of its ability as it would oppose any other criminal activity. The militia will train with the understanding that it may be given the distasteful task of resisting further atrocities committed against innocent American citizens by rogue elements of the government.

A dependable firearm (a rifle and, if possible, a pistol) and an ammunition supply is required. Many patriots are suffering hardship because of the current purposeful destruction of our nation's economy, but this is a necessary sacrifice patriots must make. A thousand rounds for each primary firearm is comfortable, 200 rounds are a minimum.

So, what are we talking about? Let us look at a possible (and not too improbable) scenario: A violent splinter group of 500 Rainbow persons come to town, armed and out of control and doing whatever they want to whomever they want. The National Guard is unavailable so the Sheriff calls out the unorganized militia (the official designation under the Militia Act of 1903). The militiamen answer the summons and obey the Sheriff’s orders. Conflict ensues. The militiamen do what they have to do as responsible citizens. After it is over and the Sheriff releases the militia, it goes home. That is the classical unorganized militia in operation. The militia , if it is formed, will be referred to as "The PUMA Unorganized Militia Committee."

Respectfully Submitted for Consideration
to the Executive Council of the
Posterity United Montana Assembly

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