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THE AMERICAN MILITIA AND THE ORIGIN OF CONSCRIPTION: A REASSESSMENT

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Author's Introduction: I originally completed this article in 1986, but it appeared only in an obscure, now-defunct (I believe) libertarian publication, *Rampart Individualist* 4 (Summer 1988). I have long intended to revise it for some more prominent forum, but have never found the time. I offer it again, with only slight stylistic revision, because of the recent publication of Michael A. Bellesiles's controversial book, *Arming America: The Origins of a National Gun Culture*.[1] Bellesiles's most arresting claim, and the one for which he has drawn the most criticism, is that very few Americans owned firearms prior to the Civil War. In reaching this conclusion, Bellesiles makes some equally dubious assertions about the insignificance and incompetence of the American militia of the era. His denigration flies in the face of what military historians, whatever their ideological inclinations, have long known about the pervasive historical role and operations of the militia. Thus, I present this article as a mild corrective. If I were to revise it, I would primarily take notice of many of the relevant books and articles that have appeared in the intervening fifteen years. But very few of the scholarly gaps in the literature I identified then have yet been fully filled, and almost none of my overall conclusions require the slightest modification.

According to established mythology, American citizens were not conscripted until the Civil War. First the Confederacy and then the Union resorted to the draft to fill their depleting armies. Prior to that, this mythology holds, no draft existed in the United States. The U.S. government fought the American Revolution, the War of 1812, and the Mexican War solely with volunteers. Toward the end of the War of 1812, the Madison administration did call for conscription, but this

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[1]Michael A. Bellesiles, *Arming America: The Origins of a National Gun Culture* (New York: Alfred A. Knopf, 2000).

request failed due to Daniel Webster's stirring and frequently reprinted denunciation of the draft on the floor of Congress.[2]

Unfortunately, this halcyon portrait is false in nearly every respect. The only U.S. war fought without conscripts before the Civil War was the Mexican War. American governments, state or national, drafted men not only to fight the Revolution and the War of 1812, but also to wage Indian wars and to suppress the Whiskey Rebellion. Because they employed decentralized militia drafts, however, this fact has often escaped notice. Military experts privy to the compulsory nature of the militia and the implications of such arcane phrases as "calling forth the militia" have failed to communicate their knowledge to outsiders. Indeed, the militia's coercive elements lasted until they were discontinued during the Jacksonian era.[3]

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[2]As reputable and able an authority on conscription as Martin Anderson, who served on President Reagan's Military Manpower Task Force, appears to hold to aspects of this mythology. His works on the subject include a bibliography he compiled with Valerie Bloom—*Conscription: A Select and Annotated Bibliography* (Stanford, Calif.: Hoover Institution Press, 1967)—plus two collections he edited: *The Military Draft: Selected Readings on Conscription* (Stanford, Calif.: Hoover Institution Press, 1982), with Barbara Honegger; and *Registration and the Draft: Proceedings of the Hoover-Rochester Conference on the All-Volunteer Force* (Stanford, Calif.: Hoover Institution Press, 1982). Although Anderson has not written personally on conscription's history, he included on the inside covers of *The Military Draft* a historical chart which conforms to this mythology. From the same volume, his editorial introduction to William G. Carleton's "Raising Armies Before the Civil War," pp. 67–78, evinces a similar historical view. Incidentally, although Anderson selected this article to survey American conscription during the pre-Civil War period, it really says very little about that subject, being actually concerned with the question of regulars versus federal volunteers, two different types of voluntarily recruited soldiers. See n. 28 below.

[3]The scholarly literature could very fruitfully accommodate another history of the American militia and another history of conscription in the United States. The most recent account of the origin and development of state military forces is John K. Mahon, *History of the Militia and the National Guard* (New York: Macmillan, 1983). It offers the most complete enumeration available of instances in which a militia draft was employed, but overall, unfortunately, it is not quite up to the standards of thoroughness set by its companion volumes in the Macmillan Wars of the United States series, or by the author's previous work.

Still less helpful are the two older histories of the militia: William H. Riker, *Soldiers of the States: The Role of the National Guard in American*

Democracy (Washington, D.C.: Public Affairs Press, 1957); and Jim Dan Hill, *The Minute Man in Peace and War: A History of the National Guard* (Harrisburg, Penn.: Stackpole, 1964). Riker's book offers interesting statistics, but it is brief, and it slights the volunteer militia. Hill's book, on the other hand, takes a narrative approach that emphasizes the volunteer militia, but devotes only one of its twenty-one chapters to the pre-Civil War period. Likewise, Eileen Galloway, *History of United States Military Policy on Reserve Forces, 1775–1957*, Paper No. 17, prepared for the House Armed Services Committee, 85th Cong., 1st sess., 1957, can only be cursory in its mere fifty-seven pages.

Although a collection of documents, John O'Sullivan and Allan M. Meckler, ed., *The Draft and Its Enemies: A Documentary History* (Urbana: University of Illinois Press, 1974), provides in its textual introduction and notes the best—indeed, nearly the only—general history of conscription in the United States. It incorporates more fully than any other work on the subject an awareness of the militia's coercive nature. A neglected but extremely well-informed summary that covers this topic through the end of the Civil War is William L. Shaw, "Conscription by the State through the Time of the Civil War," *Judge Advocate Journal*, no. 34 (October 1962), pp. 1–40. Also helpful as to the history of the draft, despite having little on the militia, are two articles by Cotton M. Lindsay, "Our National Tradition of Conscription: The Early Years" and "Our National Tradition of Conscription: Experience with the Draft," in *Why the Draft? The Case for a Volunteer Army*, ed. James C. Miller, III (Baltimore: Penguin, 1968), pp. 107–45.

Much sketchier is John L. Rafuse, "United States' Experience with Volunteer and Conscript Forces," in *Studies Prepared for the President's Commission on an All-Volunteer Armed Force* (Washington, D.C.: U.S. Government Printing Office, 1970), vol. 2. Joseph C. Duggan's published dissertation, *The Legislative and Statutory Development of the Federal Concept of Conscription for Military Service* (Washington, D.C.: Catholic University of America Press, 1964), is weak on the antebellum period. John Remington Graham, *A Constitutional History of the Military Draft* (Minneapolis: Ross & Hainers, 1971), is a brief but reliable overview, despite its partisan objection to conscription's constitutionality. Jack Franklin Leach, *Conscription in the United States: Historical Background* (Rutland, Vermont: Charles E. Tuttle, 1952), really only covers the efforts for conscription at the national level during the War of 1812 and the Civil War.

Marvin A. Kreidberg and Merton G. Henry, *History of Military Mobilization in the United States Army, 1775–1945* (Washington, D.C.: Department of the Army, 1955), surveys the history of U.S. manpower mobilization in general. A magisterial work from the Macmillan Wars of the United States series that places the history of U.S. conscription into a broad context is Russell F. Weigley, *History of the United States Army* (New York: Macmillan, 1967).

THE COLONIAL PERIOD AND THE AMERICAN REVOLUTION

The militia system was originally transplanted to the American colonies from England.[4] At the outset, it was grounded in the principle of universal obligation. Practices differed widely from colony to colony, but everywhere the militia had two coercive elements. First, it enrolled every able-bodied male between certain ages (usually sixteen to sixty), with only a few exemptions. Colonial governments required those enrolled to furnish their own arms (no small expense) and to muster for regularly scheduled training. Failure to do so resulted in fines. Initially, this mandatory training could be as frequent as once a week or more, but, as the Indian threat receded, most colonies reduced the number of training days to approximately four per year. The militia thereby provided a compulsory system of universal military training.

The second coercive element evolved when the militia was called forth for active military service. Only in dire emergency, and only for a short period, would a militia district deploy its enrolled manpower in toto. Normally, when a colonial government called upon its militia for a military campaign, it would set quotas for each district. The districts would then try to fill the quotas with volunteers, and sometimes the colonies would encourage volunteering with bounties. However, if volunteers were insufficient, the districts would then meet their quotas through drafts. Generally, the only legal ways of avoiding such militia drafts were by either paying a stiff fine or hiring a substitute. Thus, the threat of conscription lurked behind every resort to the seemingly innocuous power to call out the militia.

Enforcement of the militia's coercive elements was sometimes lax. Moreover, there were hallowed restrictions upon employment of the militia draft. Colonial governments were not supposed to send drafted militiamen outside the colony, and the draftee's term of service was usually limited to three months. Consequently, if colonial

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[4]On the English precursor to the American militia system, see Michael Powicke, *Military Obligation in Medieval England: A Study in Liberty and Duty* (Oxford: Clarendon Press, 1962); Lindsay Boynton, *The Elizabethan Militia, 1558–1638* (London: Routledge & Kegan Paul, 1967); and J.R. Western, *The English Militia in the Eighteenth Century: The Story of a Political Issue, 1660–1802* (London: Routledge & Kegan Paul, 1965).

governments planned long, offensive military expeditions, they generally relied upon militia volunteers who specifically contracted for such expeditions. On occasion, some colonies even established quasi-standing military forces independent of the militia.

Colonial governments nonetheless made frequent recourse to militia drafts during the Indian wars and in imperial wars against France and Spain. If necessary, they passed special legislation obviating the militia draft's restrictions, or directly impressed men not from the militia rolls but from the lower strata of society, as was commonly done in Britain. In addition, the militia functioned as a standby local police force. (American cities did not establish their first professional forces of armed police until the 1850s.) The New England colonies merged the militia with the night watch while the Southern colonies assigned it the mission of slave patrolling. Governments in every locale depended on the militia to suppress insurrections. All such additional militia tasks imposed further compulsory duties upon the citizens.[5]

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[5]Colonial militias have been well studied. For overviews, see Herbert L. Osgood, *The American Colonies in the Seventeenth Century* (New York: Macmillan, 1904–07), vol. 1, pp. 496–527, vol. 2, pp. 375–400; Louis Morton, "The Origins of American Military Policy," *Military Affairs* 22 (Summer 1958), pp. 75–82, reprinted in Anderson, *The Military Draft*, pp. 47–58, as well as in *Military Analysis of the Revolutionary War: An Anthology of the Editors of* Military Affairs (Millwood, N.Y.: KTO Press, 1977), pp. 7–14; Daniel Boorstin, *The Americans: The Colonial Experience* (New York: Random House, 1958), pp. 343–72; John W. Shy, "A New Look at the Colonial Militia," *William and Mary Quarterly*, 3rd ser., 20 (April 1963), pp. 175–85, reprinted and slightly revised in *A People Numerous and Armed: Reflections on the Military Struggle for American Independence*, ed. John W. Shy (New York: Oxford University Press, 1976), pp. 21–33, and also reprinted in *The Military in America: From the Colonial Era to the Present*, ed. Peter Karsten (New York: Free Press, 1980), pp. 3–12; Douglas Edward Leach, *Arms for Empire: A Military History of the British Colonies in North America, 1607–1763* (New York: Macmillan, 1973), pp. 1–41; and Darrett B. Rutman, *A Militant New World, 1607–1640* (New York: Arno Press, 1979), a reprint of his 1959 Ph.D. dissertation for the University of Virginia.

These works, along with Mahon's *History of the Militia*, pp. 14–34, and Russell F. Weigley's *History of the United States Army* (New York: Macmillan, 1967), pp. 3–12, lead us to more specialized journal articles and dissertations which cover the militia of nearly every colony. Three especially noteworthy colony studies are David William Cole, "The Organization and Administration of the South Carolina Militia System, 1670–1783" (Ph.D. diss.,

Within this fundamentally coercive system, a volunteer component did emerge. Alongside the *common* militia, just described, was what came to be called the *volunteer* militia, consisting of privately recruited military units. The earliest such unit was the Ancient and Honorable Artillery Company of Boston, organized in 1636 and still in existence. At first, these volunteer units were completely independent of the common militia. Later, colonial governments and successor state governments integrated them into the general militia systems. Volunteer units provided much of the cavalry, artillery, and elite infantry within the militia. Men could gain exemption from the common militia by joining a volunteer unit. But many of these units still remained private fraternities with exclusive memberships. Furthermore, the total number and aggregate size of such units remained relatively small for most of the eighteenth century.[6]

University of South Carolina, 1953); William L. Shea, *The Virginia Militia in the Seventeenth Century* (Baton Rouge: Louisiana State University Press, 1983); and Fred Anderson, *A People's Army: Massachusetts Soldiers and Society in the Seven Years' War* (Chapel Hill: University of North Carolina Press, 1984).

For a compilation of each of the various colonies' coercive militia enactments, see U.S. Selective Service System, *Backgrounds of Selective Service*, Special Monograph No. 1, vol. 2, *Military Obligation: The American Tradition* (Washington, D.C.: U.S. Government Printing Office, 1947). Although this compilation is very close to comprehensive, covering the years up to 1789 and consisting of fourteen parts, each a separate volume, Charles A. Lofgren, in "Compulsory Military Service Under the Constitution: The Original Understanding," *William and Mary Quarterly*, 3rd ser., 33 (January 1976), p. 78, n. 56, reports that the compilation omits some acts.

Lawrence Delbert Cress, *Citizens in Arms: The Army and the Militia in American Society to the War of 1812* (Chapel Hill: University of North Carolina Press, 1982), pp. 3–14, provides an excellent intellectual, as opposed to institutional, survey of the colonial militia tradition. Cress, however, exaggerates the extent to which eighteenth-century colonial reliance upon volunteer military expeditions represented a straying from that tradition.

The colonial militia's role in law enforcement could stand more scrutiny. David R. Johnson's *American Law Enforcement: A History* (St. Louis: Forum Press, 1981), pp. 1–16, summarizes what we know about colonial law enforcement, including the compulsory night watch, but does not develop the association with the colonial militia system.

[6]The formation of volunteer units is one aspect of the colonial militia that could stand further investigation. Because many such units began as officially chartered but private organizations, they can be traced only through

Everything noted so far about the compulsory nature of the colonial common militia is well known. Less well known is the fact that the common militia persisted without serious alteration through the Revolution. As the colonies made the revolutionary transition to states, they refurbished their militias to better maintain order, fight the British, and suppress Tories. The new militia systems, however, incorporated both of the old system's coercive elements. Even before the Battles of Lexington and Concord, the colonies increased the number of required training days, tightened exemption lists, and stiffened fines. In Frederick County, Virginia, during the spring of 1775, for instance, the patriot committee increased the frequency of mandatory training days for every male between sixteen and sixty to one per month. Compulsory militia preparations of this sort were far more widespread than

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their own rare and scattered unit histories—when they can be traced at all. For instance, the definitive work on the Ancient and Honorable Artillery Company, originally named the "Military Company of Massachusetts," is Oliver A. Roberts, *History of the Military Company of Massachusetts Now Called the Ancient and Honorable Artillery Company of Massachusetts, 1637–1888*, 4 vols. (Boston: A. Mudge & Son, 1895–1901).

General treatments of the volunteer militia that only touch lightly upon its colonial origins are Frederick P. Todd, "Our National Guard: An Introduction to its History," *Military Affairs* 5 (Summer 1941), pp. 73–86; John K. Mahon, *The American Militia: Decade of Decision, 1789–1800* (Gainesville: University of Florida Press, 1960), pp. 56–61; and Marcus Cunliffe, *Soldiers and Civilians: The Martial Spirit in America, 1775–1865* (Boston: Little, Brown, 1968), pp. 213–54. Mahon uses the term "special militia" to differentiate between *independent* units formally outside the militia system, and *volunteer* units formally within it. He admits, however, that "the volunteer companies were more intimately related to the independent companies than to the standing [i.e., common] militia" (p. 60), and that "in the last decade of the eighteenth century the distinction between [independent and volunteer units] grew more and more hazy" (p. 61).

We should further note that because the militia system provided for two distinct routes for volunteering, further ambiguity can cloud understanding of the term. The description "volunteer" applied not only to members of standing independent and volunteer militia units, but also to war volunteers recruited from the common militia for particular expeditions or purposes. Thus, John O'Sullivan and Alan M. Meckler, in their discussion of the colonial militia in *The Draft and Its Enemies: A Documentary History* (Urbana: University of Illinois Press, 1974), p. 5, somewhat inappropriately use the designation "volunteer militia" to refer to both types of volunteers. Mahon, *History of the Militia*, pp. 31–32, helps clarify these terminological issues. For a later use of the term "volunteer," see n. 28 below.

the famed contingents of minutemen, who volunteered to be ready at a moment's notice.[7]

When the states put active military forces into the field, they eventually fell back upon militia drafts. The Continental Army, the military force of the new national government, was initially composed entirely of volunteers. But, as the war dragged on, manpower shortages became acute, despite the monetary bounties and land grants

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[7]As John Shy observes in "Hearts and Minds in the American Revolution: The Case of 'Long Bill' Scott and Peterborough, New Hampshire," in *A People Numerous and Armed*, p. 174, the Revolutionary transformation of the militia "deserves more attention than it has had." Shy himself, by focusing on the Revolutionary militia's political role, emphasizes its discontinuity with the colonial militia. Don Higginbotham, in contrast, in "The American Militia: A Traditional Institution with Revolutionary Responsibilities," in *Reconsiderations of the Revolutionary War: Selected Essays*, ed. Don Higginbotham (Wesport, Conn: Greenwood Press, 1978), p. 84, concludes that the colonial militia "remained structurally much the same in the Revolution, although it was saddled with greater burdens and responsibilities than before." An examination of the actual Revolutionary militia laws in U.S. Selective Service System, *Backgrounds of Selective Service*, confirms the militia's coercive continuity.

A good discussion of the militia's Revolutionary transition, from an ideological rather than an institutional perspective, is contained in Cress, *Citizens in Arms*, pp. 53–74. The example of Frederick County, Virginia, comes from Don Higginbotham, *The War of American Independence: Military Attitudes, Policies, and Practices, 1763–1789* (New York: Macmillan, 1971), p. 10. See also Earl Milton Wheeler, "The Role of the North Carolina Militia in the Beginning of the American Revolution" (Ph.D. diss., Temple University, 1969), and his earlier article, "Development and Organization of the North Carolina Militia," *North Carolina Historical Review* 41 (July 1964), pp. 318–23.

One study that has started to fill the gap identified by Shy is Steven Rosswurm's "The Philadelphia Militia, 1775–1783: Active Duty and Active Radicalism," in *Arms and Independence: The Military Character of the American Revolution*, ed. Ronald Hoffman and Peter J. Albert (Charlottesville: University Press of Virginia, 1984), pp. 75–118. Rosswurm's article, based on his dissertation, "Arms, Culture, and Class: The Philadelphia Militia and 'Lower Orders' in the American Revolution, 1765–1783" (Northern Illinois University, 1979), finds that the Philadelphia common militia, in addition to its other military and non-military roles, enforced price controls and was the conduit of radical political action. In contrast, Philadelphia's volunteer militia unit, the City Light Horse, was politically conservative, and the two actually squared off against each other in the "Fort Wilson" riot.

offered by both the Continental Congress and the individual states. The Continental Army bid for recruits against the active forces of the thirteen state militias. Massachusetts began employing conscription in the early summer of 1776. New Hampshire followed in 1777, and most remaining states fell in line upon recommendation of Congress later that year. The states used these drafts not just to man their own forces but also to fill their quotas for the Continental Army.[8]

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[8]Revolutionary conscription has not received a single study of its own, an incredible deficiency in historical scholarship. Many general accounts of the Revolution omit any mention of drafts at all, perpetuating the popular impression that there were none. The most complete treatment of the subject is in Higginbotham's *The War of American Independence*, pp. 390–93. Other summaries can be found in Joseph C. Duggan, *The Legislative and Statutory Development of the Federal Concept of Conscription for Military Service* (Washington, D.C.: Catholic University of America Press, 1964), pp. xvii–xxi, 1–6: Marvin A. Kreidberg and Merton G. Henry, *History of Military Mobilization in the United States Army, 1775–1945* (Washington, D.C.: Department of the Army, 1955), pp. 14–15; O'Sullivan and Meckler, *The Draft and Its Enemies*, pp. 3–19; and Lofgren, "Compulsory Military Service Under the Constitution," 76–79.

Higginbotham's *The War of American Independence* is representative of the "new military history," which has vastly enriched Revolutionary War scholarship. The new military history transcends the traditional preoccupation with campaigns and battles to look more deeply at the interaction between the military and society. In the process, most such works on the Revolution at least mention conscription. A skillful synthesis of the new military history, James Kirby Martin and Mark Edward Lender's *A Respectable Army: The Military Origins of the Republic, 1763–1789* (Arlington Heights, Ill.: Harlan Davidson, 1982), esp. pp. 89–94, best sets Revolutionary conscription within a broader social and military framework. Another of these new works, Charles Royster's *A Revolutionary People at War: The Continental Army and American Character, 1775–1783* (Chapel Hill: University of North Carolina Press, 1979), offers some unsystematic but still valuable snippets on the drafts.

Older state studies of Revolutionary drafts include Jonathan Smith, "How Massachusetts Raised Her Troops in the Revolution," *Massachusetts Historical Society Proceedings* 55 (1921–22), pp. 345–70; Arthur J. Alexander, "Pennsylvania's Revolutionary Militia," *Pennsylvania Magazine of History and Biography* 69 (January 1945), pp. 15–25; and Arthur J. Alexander, "How Maryland Tried to Raise Her Continental Quotas," *Maryland Historical Magazine* 42 (September 1947), pp. 184–96. On North Carolina, see Wheeler, "The North Carolina Militia in the American Revolution," and "Development and Organization of the North Carolina Militia."

Revolutionary conscription remained decentralized, varying from state to state. Some states used conventional militia drafts; others impressed vagrants and transients. In general, only single males were drafted for short terms, and they could avoid service through the traditional mechanisms of paying a fine or finding a substitute. Nevertheless, at least in some locations, the draft's compass was wide. A local study of Concord, Massachusetts, found that half the males under fifty received at least one draft notice during the war. Some notices went to women, and others even to the old and crippled.[9] In some counties

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A fine state study that falls within the new military history, Richard Buel, Jr., *Dear Liberty: Connecticut's Mobilization for the Revolutionary War* (Middleton, Conn.: Wesleyan University Press, 1980), covers Connecticut's draft extensively. An especially neglected work that examines the Revolutionary drafts in Pennsylvania and to a lesser extent in neighboring states from the standpoint of conscientious objectors is Richard K. MacMaster with Samuel L. Horst and Robert F. Ulle, *Conscience in Crisis: Mennonites and Other Peace Churches in America, 1739–1789* (Scottsdale, Penn.: Herald Press, 1979), pp. 213–353.

For the actual draft laws of the various states, see U.S. Selective Service System, *Backgrounds of Selective Service*. The Continental Congress passed three resolutions urging the states to fill their quotas in the Continental Army through conscription. The first, on April 17, 1777—see *Journals of the Continental Congress, 1774–1789* (Washington, D.C.: U.S. Government Printing Office, 1904–1937), vol. 7, pp. 262–63—suggested that the states first grant exemptions from being drafted into the active *state* forces to any two men who furnished one recruit for the Continental Army. Only if this failed to meet the quota should the states draft men directly into the Continental Army. The second such resolution, on February 26, 1778—see *JCC,* vol. 10, pp. 199–200—simply "required forthwith" the states to fill their quotas with draftees who would serve for nine months. The third resolution, on March 9, 1779—*JCC,* vol. 13, p. 229—"earnestly recommended" conscription without specifying a term of service.

The important distinction between conscripting men into the Continental Army and conscripting them into active state forces has so far received insufficient attention. Mahon, *History of the Militia,* p. 38, claims that the latter use of the militia was uncommon and illegal, but a perusal of U.S. Selective Service System, *Backgrounds of Selective Service,* indicates the opposite. Lofgren, "Compulsory Military Service under the Constitution," p. 77, n. 56, finds that Maryland was apparently the only state not to employ a draft to fill its Continental quota.

[9]Robert A. Gross, *The Minutemen and Their World* (New York: Hill and Wang, 1976), pp. 147–50.

of Virginia, militia drafts provoked rioting. The worst, at Northumberland Court House in 1780, resulted in several deaths.[10]

Although no one seems to know the precise number of actual draftees serving in the Revolutionary forces, several studies have determined the relative number of hired substitutes. Within the active militias of Lancaster and Northampton Counties in Quaker Pennsylvania, 38 and 54 percent respectively of those serving were substitutes, while 20 to 40 percent of the New Jersey Line in the Continental Army were draft substitutes.[11] Some authorities have concluded from these high percentages that the draft laws were designed primarily to raise substitutes, and that in practice, very few conscriptees were forced to serve.[12]

Actually, the large number of hired substitutes implies that many others must have been conscripted outright. Unless militia drafts discriminated in operation, calling upon only those who could afford to hire substitutes, leaving everyone else exempt, men from the population of potential substitutes could not have avoided occasionally being drafted themselves. Once called, they could hardly have bought their way out. Thus, these percentages undoubtedly would be higher still if draftees who could not afford substitutes were included.

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[10]O'Sullivan and Meckler, *The Draft and Its Enemies*, pp. 8, 14–15, contains a brief review of resistance to Revolutionary conscription. MacMaster, *Conscience in Crisis*, pp. 213–353, has a great deal about resistance by pacifist churches.

[11]Arthur J. Alexander, "Service by Substitute in the Militia of Lancaster and Northampton Counties (Pennsylvania) during the War of the Revolution," *Military Affairs* 9 (Fall 1945), pp. 278–82; and Mark Edward Lender, "The Social Structure of the New Jersey Brigade: The Continental Line as an American Standing Army," in *The Military in America*, ed. Karsten, p. 33.

[12]For instance, John Shy, "American Society and Its War for Independence," in *Reconsiderations of the Revolutionary War*, ed. Higginbotham, p. 79, asserts that "In fact, down at the grass roots, men were almost never drafted." But Rosswurm, "The Philadelphia Militia, 1775–1783," pp. 101–2, indicates otherwise, at least in Pennsylvania—the one state that could be expected, because of its large Quaker population, to have the most porous draft system. The fact that those who refused a draft call were almost always fined rather than forcibly inducted might make it difficult to distinguish between those who answered a call voluntarily and those who answered it because they could not afford a substitute or fine. Yet, MacMaster, *Conscience in Crisis*, p. 293, cites instances in which conscientious objectors, rather than simply being fined or jailed, were forcibly inducted.

Figures from the Civil War offer a crude way of estimating the possible Revolutionary ratio of actual draftees to draft substitutes, because the Union's 1863 draft law similarly allowed for hired substitutes and exemption fees. The first two calls garnered 13,297 draftees and 119,646 substitutes—approximately one draftee for every nine substitutes—with 84,966 paying the exemption fee.[13] Overall, 537,672 men entered the Union army during the period of these calls, most of them direct volunteers. Paid substitutes constituted only 22 percent of the total, a proportion at the lower end of those known for the Revolution. This would suggest that, at a minimum, actual draftees accounted for 2.5 percent of total Revolutionary troops—the same proportion as under the Union's first two calls.

During the Union's third call, the relative number of draftees increased to 26,205, as compared with 58,086 substitutes—almost one draftee for every two substitutes—and 1,298 exemptions. The exemption fee, however, had been abolished for all except conscientious objectors, driving up the price of substitutes. Overall, 272,463 men entered the Union army during this period, maintaining the proportion of substitutes at approximately the same level, 21 percent. But the proportion of draftees was now at nearly 10 percent, which gives a good upper-bound estimate for the Revolutionary period.

THE FEDERALISTS AND THE EARLY NATIONAL PERIOD

With the winning of independence, the Continental Congress rejected George Washington's proposal for a peacetime standing army supported by a nationally uniform militia with universal conscription.[14]

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[13]William L. Shaw, "The Civil War Federal Conscription and Exemption System," *Judge Advocate Journal* 32 (February 1962), p. 16. These figures also appear in Eugene C. Murdock, *Patriotism Limited, 1862–1865: The Civil War Draft and the Bounty System* (Kent, Ohio: Kent State University Press, 1967), p. 13. Murdock, however, gives only the number of men who hired substitutes *after* being drafted. He inadvertently omits an even greater number of eligible men who gained exemption by hiring substitutes *prior to* the draft calls. If these substitutes are not counted, then the ratio of draftees to substitutes increases.

[14]Washington's "Sentiments on a Peace Establishment" is reprinted in *American Military Thought*, ed. Walter Millis (Indianapolis, Ind.: Bobbs-Merrill, 1966), pp. 16–28, and excerpted in O'Sullivan and Meckler, *The Draft and Its Enemies*, pp. 26–28. The most comprehensive work on U.S. military policy from the end of the Revolution through the Federalist ascendancy is Richard

It discharged all of the Continental Army except for a remnant of eighty men and a few officers. As an alternative to a national army, the states retained full control over the militias. However, the common militia's compulsory nature remained intact. Hence, in 1786, when Virginia commissioned Revolutionary hero George Rogers Clark to lead a military campaign from what became Kentucky against the Indians, militiamen were drafted into his force, touching off widespread evasion, and then organized mutiny.[15]

Although Congress virtually disbanded the Continental Army, national acquisition of the Northwest Territory during the Revolution had shifted the burden of policing that area from the states to a national force of some kind. Consequently, the Continental Congress authorized in 1784 a small frontier constabulary to be raised voluntarily from the state militias for one year. (The Southwest Territory, as yet unceded by the states, got along without Congressional attention.) When the original enlistments expired in 1785, Congress converted this small force into a semi-standing army of regulars by authorizing new three-year recruits, without any direct reference to state militias. In 1786, in reaction to Shay's Rebellion in western Massachusetts, Congress voted to enlarge this frontier army from 700 to 2,000 men. Recruitment, however, failed to produce many additional soldiers.

Federalists such as Washington found these military arrangements unsatisfactory. They desired a national military strong enough to rival

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H. Kohn, *Eagle and Sword: Federalists and the Creation of the Military Establishment in America, 1783–1802* (New York: Free Press, 1975). See also Cress, *Citizens in Arms*, pp. 75–149, for the underlying ideological context. Don Higginbotham, "The Debate Over National Military Institutions: An Issue Slowly Resolved, 1775–1815," in *The American Revolution: Changing Perspectives*, ed. William M. Fowler, Jr. and Wallace Coyle (Boston: Northeastern University Press, 1979), pp. 149–68, surveys a slightly longer period in less detail.

[15]Temple Bodley, *George Rogers Clark: His Life and Public Service* (Boston: Houghton Mifflin, 1926), pp. 282–86. Most accounts of this Indian expedition mention the militia mutiny, but fail to mention the draft that caused it. See, for instance, Leonard C. Helderman, "The Northwest Expedition of George Rogers Clark, 1786–1787," *Mississippi Valley Historical Review* 25 (December 1938),pp. 317–34; or John Bakeless, *Background to Glory: The Life of George Rogers Clark* (Philadelphia: Lippincott, 1957), pp. 319–21. In fact, since Clark led the militia into the Northwest territory, beyond Virginia's borders at the time, in open contradiction of state law, the militia mutiny constituted a legally justified act of draft resistance.

those of the European states and to quell domestic disturbances. They succeeded in putting their military ideas into the new Constitution. "Though the point has not often been noticed," Walter Millis wrote in his classic study of U.S. military policy, "the Constitution was as much a military as a political and economic charter."[16] It granted the central government unequivocal authority both to create a standing national military and to nationalize state militias.

Once the Constitution took effect, the Washington administration used trouble with Indians in the Northwest Territory to justify a national army that numbered nearly 4,000 regulars by 1795. Congress, however, hesitated to authorize a force of this size too precipitately, and actual recruiting lagged behind authorizations. Congress, therefore, delegated to the President the emergency power to call out the state militias for frontier defense.[17] Consequently, the national government,

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[16]Walter Millis, *Arms and Men: A Study in American Military History* (New York: G.P. Putnam's Sons, 1956), p. 47.

Interestingly enough, awareness of the militia's coercive nature has found its way into the legal literature debating whether the Constitution originally envisaged conscription. Indeed, those legal scholars who find modern conscription unconstitutional rest their claim upon the sharp distinction early Americans made between the militia and standing armies. The Constitution's guarded militia clauses, they concede, gave the new national government access to conscription, but only under highly restricted circumstances. The clauses that refer to an army were distinct, and authorized a military force that would consist exclusively of volunteers. In other words, the Constitution's militia clauses gave the national govemment one military force that could be raised through drafts but whose use was severely restricted, whereas the army clauses gave it a second military force that could be used for any purpose but whose raising was restricted.

The most objective examination of this question is Lofgren, "Compulsory Military Service Under the Constitution." Lofgren finds the evidence not totally conclusive, but the weight of it indicates that the Constitution did *not* grant the national government the power to draft men into the regular army. For the best of the somewhat polemic legal literature, see, on the pro-draft side, Michael J. Malbin, "Conscription, the Constitution, and the Framers: A Historical Analysis," *Fordham Law Review* 40 (May 1972), pp. 805–26; on the anti-draft side, see Leon Friedman, "Conscription and the Constitution: The Original Understanding," *Michigan Law Review* 67 (May 1969), pp. 1493–552, reprinted in Anderson, *The Military Draft*, pp. 231–96.

[17]An act of September 29, 1789, 1 *U.S. Statutes at Large* 95, gave the President a one-year authorization to call out the militia for frontier defense. It was the first Congressional grant of this power. An act of April 30, 1790, 1 *U.S.*

when preparing its first Indian campaign under General Josiah Harmar in 1790, supplemented the regulars with 1,500 militia from Kentucky and Pennsylvania—most of them raised by state militia drafts. Both Harmar's expedition, three-fourths militia, and a subsequent mixed expedition under General Arthur St. Clair, went down to ignominious defeat at the hands of the Indians.

The Federalists did not finally subdue the Northwest tribes until 1794, after they had enlarged the standing army enough to mount an expedition consisting primarily of army regulars under General "Mad" Anthony Wayne. Ever since, Wayne's victory at the Battle of Fallen Timbers has been cited as proof of the militia's military inferiority. However, because most of the militia in the previous campaigns had been drafted, whereas the regulars were volunteers, his victory could as logically prove the inferiority of conscription. The fact that Wayne's command also included a significant contingent of Kentucky militia—but militia that were well-paid mounted volunteers rather than draftees—gives additional support to this alternate interpretation. Indeed, the frequent condemnations of the American militia by professional military officers, from Washington forward, assume a whole new meaning in light of the extensive resort to militia drafts during early U.S. history.[18]

Statutes at Large 119, made this authorization permanent. A section of the act of March 3, 1791, expanding the regular army, 1 *U.S. Statutes at Large* 222, extended this authorization to bring the army to full strength or provide it with cavalry.

[18]For the Harmar expedition, the national government called up 500 militia from Pennsylvania and 1,000 from Kentucky. Harmar eventually fielded 320 regulars and 1,133 militia. For the St. Clair expedition, the national govemment summoned 1,000 militia from Kentucky, but only 470 turned out. St. Clair also started out with 625 regulars and 1,674 six-month levies. (A hybrid between regulars and the militia, levies were volunteers who, like the militia, served only short terms but who, like the regulars, were recruited without reference to state governments.) Only about 1,400 of St. Clair's original force participated in his concluding campaign. Wayne's command at the Battle of Fallen Timbers comprised 2,000 regulars and 1,600 mounted volunteers from Kentucky. The militia in the first two campaigns were not only drafted, but were paid a mere $3 per month while in national service, as compared with the mounted volunteers, who received $20 per month. Even allowing for the additional expense of providing mounts, this represented a considerable discrepancy. The mounted volunteers were *not* part of the Kentucky militia's standing volunteer units, but were recruited and organized specifically for the campaign.

At the same time the Federalists created a standing army, they also attempted to consolidate control over the state militias. Henry Knox, President Washington's Secretary of War, submitted to Congress a plan for national training and supervision of the militia. At the heart of Knox's plan was a scheme for classifying the state militias on the basis of age. The "advanced corps" of those aged eighteen to twenty would receive ten to thirty extra days of federal training per year, much like modern reservists and members of the National Guard, except that membership would be mandatory for every male in the age bracket. Service in the advanced corps would, in fact, become a prerequisite for citizenship. The advanced corps could then be continuously ready for immediate mobilization.[19]

The fullest discussions of the use of militia draftees on the Harmer and St. Clair expeditions, as well as the use of mounted volunteers on the Wayne expedition, are Richard G. Stone, Jr., *The Brittle Sword: The Kentucky Militia, 1776–1912* (Lexington: University Press of Kentucky, 1977), pp. 22–30; and John K. Mahon, "The Citizen Soldier in National Defense, 1789–1815" (Ph.D. diss., University of California at Los Angeles, 1950), pp. 19–52, 93–101. Kohn's account in *Eagle and Sword*, pp. 91–127, 141–57, also alludes to these militia drafts, and reports that Wayne at one point almost resorted to such a draft. Otherwise, as in the case of the Clark expedition discussed in note 15 above, most accounts of the Federalist Indian expeditions overlook the militia drafts. See especially the standard military account of these campaigns, James Ripley Jacobs, *Beginnings of the U.S. Army, 1783–1812* (Princeton, N.J.: Princeton University Press, 1947), pp. 40–188.

[19]Knox's militia plan is reprinted in O'Sullivan and Meckler, *The Draft and Its Enemies*, pp. 28–36. Kohn, *Eagle and Sword*, pp. 128–38, suggests that the Washington administration deliberately made the plan unacceptable to Congress to undermine the militia system and build support for a standing army. He repeats this thesis more strongly in "The Murder of the Militia System in the Aftermath of the American Revolution," in *Military History of the American Revolution: The Proceedings of the 6th Military History Symposium, United States Air Force Academy, 10–11 October 1974*, ed. Stanley J. Underdal (Washington, D.C.: U.S. Govemment Printing Office, 1976), pp. 110–26.

Higginbotham, "The Debate Over National Military Institutions," p. 159, is skeptical of Kohn's thesis. Along with the difficulties Higginbotham mentions, the similarity of the Knox plan to later Republican proposals for militia overhaul, as noted later in the text, renders Kohn's speculation extremely doubtful. In fact, the vote against the Knox plan crossed over the emerging partisan lines. More significant factors in the Knox plan's defeat appear to have been its high cost—$400,000 annually for the advanced corps alone—and the protests by Quakers.

Congress rejected most of Knox's plan, but, under the pressure of St. Clair's devastating defeat—the worst for U.S. arms until Custer's last stand at Little Big Horn—it did pass the Uniform Militia Act of 1792. Although military historians have tended to denigrate this act because it failed to go as far as Knox wished, the Uniform Militia Act firmly etched into national statute the principle of universal military obligation. It required the enrollment of every free, white, able-bodied male citizen between eighteen and forty-five (with some exemptions, to which the states could add) in the militia of his state. Each citizen was to equip himself at his own expense. In response to this act, all fifteen states enacted new militia laws, each of which reaffirmed the state government's power to conscript.[20]

A second Congressional measure that passed at the same time, the Calling Forth Act, specified the general conditions under which state militias could be called into national service. In a clause all but ignored by historians, the Act instituted heavy fines for failure to report when drafted for national service. Just as when responding to state calls, each militia district had a quota to be filled first by volunteers and then by draftees. Because the Act still left the actual drafting to the states, fines became the dual responsibility of both levels of government. State militia courts-martial would assess fines, and

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[20]The Uniform Militia Act (May 8, 1792) is 1 *U.S. Statutes at Large* 271. It is also reprinted in full in Millis, *American Military Thought*, pp. 62–67, and in part in O'Sullivan and Meckler, *The Draft and its Enemies*, pp. 36–39. The register of military historians dismissing this act begins with Major General Emory Upton, *The Military Policy of the United States* (Washington, D.C.: U.S. Government Printing Office, 1917), pp. 82–85. Among others, in addition to Kohn, are Cunliffe, *Soldiers and Civilians*, pp. 179–86; Kreidberg and Henry, *History of Military Mobilization*, pp. 30–31; Millis, *Arms and Men*, pp. 50–52; O'Sullivan and Meckler, *The Draft and Its Enemies*, pp. 22–23; Rafuse, "United States' Experience with Volunteer and Conscript Forces," p. 7; Riker, *Soldiers of the States*, pp. 18–22; Harry M. Ward, *The Department of War, 1781–1795* (Pittsburgh, Penn.: University of Pittsburgh Press, 1962), p. 143; and Weigley, *History of the United States Army*, pp. 93–94. Only Mahon, in his outstanding and singular monograph on how state militias actually operated during the Federalist era, *The American Militia: Decade of Decision*, pp. 14–24 ff., has bothered to examine the impact of this act upon state legislation. Mahon's monograph is based on his important but neglected dissertation, "The Citizen Soldier in National Defense, 1789–1815," which covers a longer period, and some of his unique insights have also found their way into his *History of the Militia*, pp. 51–62.

the national government would collect them.[21]

The Federalist State first found use for its new militia legislation in 1794, when it smashed the Whiskey Tax rebellion in western Pennsylvania. For this demonstration, Washington called up from four state militias no fewer than 12,950 men—more than he had usually commanded during the Revolution. Militia drafts proved necessary to raise this overwhelming force, and hostility to these drafts sparked further disturbances in eastern Pennsylvania, Virginia, and Maryland.[22]

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[21]The Calling Forth Act (May 2, 1792) is 1 *U.S. Statutes at Large* 264. Sometimes the Calling Forth Act and the Uniform Militia Act are treated as one, and they both—together or separately—are often referred to as the Militia Act of 1792. Among military historians, again only Mahon, *The American Militia: Decade of Decision*, pp. 21, 26–27, has noted the penalties for draft resistance within the Calling Forth Act. A striking example of the prevailing historical oversight with regard to the act's penalties is provided by Millis, *American Military Thought*, pp. 61–62. Millis reprints the first part of the Act, but omits later sections, beginning with sec. 5, the very one that provides penalties for draft resistance.

[22]Considering the huge amount of historical attention that the Whiskey Rebellion has received, it is surprising that the necessity for militia drafts in its suppression was not widely noted until the publication of Thomas P. Slaughter, *The Whiskey Rebellion: Frontier Epilogue to the American Revolution* (New York: Oxford University Press, 1986), pp. 210–14. Slaughter estimates that the number of conscripts within the ranks of the so-called Watermelon Army was startlingly high, varying between 75 and 100 percent. These estimates exclude, however, the volunteer militia units that constituted an almost distinct operational component of the Watermelon Army.

Previous accounts of the Whiskey Rebellion that touch upon conscription include William Findley, *History of the Insurrection in the Four Western Counties of Pennsylvania in the Year 1794* (Philadelphia: S.H. Smith, 1796), pp. 140–68; Leland Baldwin, *Whiskey Rebels: The Story of a Frontier Uprising* (Pittsburgh, Penn.: University of Pittsburgh Press, 1939), pp. 221–23; Robert W. Coakely, "Federal Use of Militia and the National Guard in Civil Disturbances: The Whiskey Rebellion to Little Rock," in *Bayonets in the Streets: The Use of Troops in Civil Disturbances*, ed. Robin Higham (Lawrence: University Press of Kansas, 1969), pp. 19–20; and Mahon, "The Citizen Soldier in National Defense," pp. 109–14. Hostility to the draft was so strong in Pennsylvania that the state government eventually offered bounties and pay raises—in addition to the standard federal pay for militia in federal service—to entice militia volunteers.

After Washington had called out the militia, Congress passed a special act on November 29, 1794, 1 *U.S. Statutes at Large* 403, giving the President

With this experience behind them, the Federalists in 1795 slightly modified the Calling Forth Act to eliminate some of its procedural safeguards against putting the militia under national control.[23]

Liberal provisions of various states for exemptions and substitutes made the conscription inherent in the two national militia acts far from universal. Historians have therefore tended to view these acts as minor and inconsequential. Even Arthur Ekirch, who is a thoroughgoing anti-militarist, holds that the Uniform Militia Act

> added little to the *nominal* service traditionally required of the citizen militia in England and American colonies. . . . [T]he militia duty of the early days of the republic bore slight resemblance to the type of military service actually exacted later in the United States under the conscription and selective service laws.[24]

Because militia service could be avoided by paying a fine or hiring a substitute, some economic historians have treated compulsory militia duty as a mere tax-in-kind infrequently substituting for what should be considered a monetary tax.[25]

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the power to station a force of 2,500 militia in the four western counties of Pennsylvania for up to three months.

[23]Act of February 28, 1795, 1 *U.S. Statutes at Large* 424. The revised Calling Forth Act eliminated, with respect to the President's power to call forth the militia to enforce national laws, the requirement for a judicial certificate and the limitation as to time. Some commentators have mistakenly concluded that the revised act was *more* restrictive. This results from confusing the section applying to the suppression of insurrection within states with the section applying to enforcement of national laws. The militia's use in the former case required the application of the state legislature or executive. This restriction was in both acts and was not extended to the enforcement of national laws by eliminating the requirement for a judicial certificate in the revised act.

Prior to revising the Calling Forth Act, Congress had passed an act on June 5, 1794, 1 *U.S. Statutes at Large* 381, allowing use of the militia for enforcing neutrality laws.

[24]Arthur A. Ekirch, Jr., *The Civilian and the Military: A History of the American Antimilitarist Tradition* (New York: Longmans, Green, 1955), pp. 34, 47, emphasis added.

[25]Rafuse takes this approach in "United States' Experience with Volunteer and Conscript Forces," p. 11, in reference not to the actual militia drafts of this period, but to the far more comprehensive national conscription proposals of the War of 1812. He asserts that if any of the proposals had passed, "it

There is no doubt that America's militia drafts of the late eighteenth and early nineteenth centuries could not match twentieth-century drafts in effectiveness and ruthlessness. Exemptions, fines, and substitutes clearly made conscription less onerous. Yet, the Civil War drafts of both Union and Confederacy started out with exemption fees and substitutes, and no one has ever argued that these were not true drafts. Even if viewed as a tax, militia fines and substitutes were a regressive one. In addition, research by John Mahon indicates that, in amount, the fines were far from nominal. The authorities could seize and sell all of a man's property to satisfy these fines. And, as this was a period in which imprisonment for unpaid debts—especially unpaid debts to the government—was standard, prison was, in fact, the ultimate penalty for evading militia service. As Mahon concludes, "militia duty had to be taken into account directly by one-tenth of the entire population, or, counting families of militiamen, by two-fifths. No other governmental relationship except taxpaying touched so many individuals."[26]

In the early national period, both national and state governments turned frequently to the common militia. After the Whiskey Rebellion,

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would have been closer to an all-volunteer force than either today's draft or the French Revolutionary *levee on* [sic] *masse*." "Never before or since in American history has such a total recognition of the tax aspect of the draft been coupled with so complete an attempt to tax everyone according to ability to pay, personal inclinations, and minimal exemptions." Cotton M. Lindsay, "Our National Tradition of Conscription: The Early Years," in *Why the Draft? The Case for a Volunteer Army*, ed. James C. Miller, III (Baltimore: Penguin, 1968), pp. 121–23, contains similar observations, but confines them precisely to the single War of 1812 proposal to which they are truly applicable, the Troup Bill. See the discussion of the War of 1812 in the text.

To his credit, Rafuse is one of the few draft historians who realizes that *if* conscription is employed, the much-maligned practice of hiring substitutes actually makes it *more* efficient and equitable, not less. Moreover, militia drafts admittedly did have one superiority over the use of regulars. Since the militia system was decentralized, it tended to impose the costs of military action and law enforcement only upon the residents of the area concerned, in those cases in which the condition was localized. Thus, during the Federalist Indian campaigns, the use of the militia forced the frontier to bear the costs of suppressing Indians, whereas the use of regulars coercively spread these costs to the rest of the country.

[26]Mahon, *The American Militia: Decade of Decision*, p. 66. On pp. 47–48, Mahon examines the severity of militia fines, as he also does in *History of the Militia*, pp. 59–60. See also Lena Londen, "The Militia Fine, 1830–1860," *Military Affairs* 15 (Fall 1951), pp. 133–44.

the national government not only called up the militia to put down resistance to other national laws,[27] but also passed at every foreign crisis special acts ordering the states to prepare militia detachments for instant mobilization.[28] States called out the militia on their own

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[27]The Washington administration, in addition to employing the militia in the Indian campaigns and the Whiskey Rebellion, induced seaboard governors to enforce Washington's Neutrality Proclamation, the 1794 Neutrality Act, and the 1794 embargo with their militias. Federalist President John Adams called out the militia to crush the Fries tax rebellion in eastern Pennsylvania during the Quasi-War with France in 1799. President Jefferson called upon the militia to forestall possible insurrection in the newly acquired Louisiana Territory in 1803, to suppress the alleged Burr Conspiracy in 1806, to defend the coast after the *Chesapeake-Leopard* affair in 1807, and (see n. 30) to enforce the embargo of 1808–9. The Madison administration had occasion to put the militia in federal service in the Michigan Territory and along the Canadian border. More importantly, it alerted militia during its annexation of west Florida in 1810, and put militia into action against Indians in the Battle of Tippecanoe in 1811. Mahon, "The Citizen Soldier in National Defense," pp. 123–24, 133–34, 247–51, mentions all these national recourses to the militia prior to the War of 1812, although he does not reveal to what extent any of them involved conscription.

For additional details on domestic uses of militia by the national government, see Coakely, "Federal Use of Militia and the National Guard in Civil Disturbances," pp. 13–25; Bennett Milton Rich, *The Presidents and Civil Disorder* (Washington, D.C.: Brookings Institution, 1941), pp. 2–34; and Frederic T. Wilson, *Federal Aid in Domestic Disturbances, 1787–1903*, 77th Cong., 2nd sess., 1903, Senate Doc. 209, pp. 33–54. Unlike in the Whiskey Rebellion, the national government also deployed regulars in conjunction with the militia in the Fries Rebellion, in the Burr Conspiracy, and in the enforcement of Jefferson's embargo. Although the Federalists had included in an act on March 2, 1799, 1 *U.S. Statutes at Large* 725, an authorization for such use of federal volunteers, there was no similar specific statutory authorization for regulars until Jefferson, ironically, secured passage of an act on March 8, 1807, 2 *U.S. Statutes at Large* 443, allowing the use of regulars "in all cases . . . where it is lawful for the President of the United States to call forth the militia."

[28]With the stirring of international troubles in 1794, the first Detachment Act passed, requiring the states to ready a detachment of 80,000 militia for national call. This act represented a Jeffersonian Republican effort to head off the Federalist move to create an army reserve—or, as it was then referred to, a Provisional Army—directly responsive to the national government, exactly as the U.S. has today. A summary list of these various Detachment Acts, revived at every subsequent international crisis, follows:

9 May 1794	1 *Statutes* 367	80,000 militia
24 Jun 1797	1 *Statutes* 522	80,000 militia
3 Mar 1803	2 *Statutes* 241	80,000 militia
18 Apr 1806	2 *Statutes* 383	100,000 militia
30 Mar 1808	2 *Statutes* 478	100,000 militia
10 Apr 1812	2 *Statutes* 705	100,000 militia

These acts were all very similar. (For slight differences in the maximum term of national service that they set for the militia, see note 31.)

Even with passage of the Detachment Acts, the Federalists still got a Provisional Army Act, in May 1798, at the outset of the Quasi-War. This act was notable not only for authorizing a Provisional Army of 10,000, but also for allowing the national government directly to enlist volunteer militia units for terms of up to three years. It thus built upon the precedent of recruiting six-month levies during the St. Clair expedition to further develop a hybrid category between regulars and militia.

The Republicans feared that the act was a sinister attempt to undermine state control over the militia system, but after the *Chesapeake-Leopard* affair in 1807, Jefferson himself secured the authority to recruit 30,000 one-year volunteers. The major difference between this Republican measure and the previous Federalist one was that the Federalists had empowered the President to appoint the officers in volunteer units, while the Republicans left this to the states. By the War of 1812, the new category of state-organized federal volunteers was well established. A summary of the acts responsible for this new component follows:

3 Mar 1791	1 *Statutes* 222	2,000 levies
28 May 1798	1 *Statutes* 558	10,000 Provisional Army + volunteers
24 Feb 1807	2 *Statutes* 419	30,000 volunteers
6 Feb 1812	2 *Statutes* 676	50,000 volunteers
27 Jan 1815	2 *Statutes* 193	40,000 state troops + 40,000 volunteers

During the War of 1812, the Republicans amended the call for 50,000 volunteers with an act on July 6, 1812, 2 *U.S. Statutes at Large* 785, which returned to the Federalist system of having the President appoint the officers of volunteer units. Later, on January 29, 1813, 2 *U.S. Statutes at Large* 794, the Republicans tried to abandon the volunteer category altogether and instead rely totally upon regulars and the militia. However, after the failure of the Madison administration's proposals for national conscription, the act of January 27, 1815, listed above (and discussed in the section of the text dealing with the War of 1812) reinstated the category. In the Mexican War, volunteers became the national government's primary alternative to regulars.

This innovation added still another meaning to the term "volunteer." The connection between federal volunteers and the volunteer militia was

(although sometimes with national reimbursement) to battle Indians on the Southwest frontier, enforce national neutrality laws and trade embargoes, stand guard over the coast, capture criminals and fugitive slaves, control city riots, enforce quarantines, and perform various other chores.[29] If conscription was not actually implemented in all these instances, it was at least always legally imminent.

THE REPUBLICANS AND THE WAR OF 1812

When the Jeffersonian Republicans came to power in 1801, they proceeded to dismantle the Federalist State. In particular, they slashed expenditures on the army and navy. However, this made their attachment to the coercive militia system even more pronounced than that of the Federalists. Whatever its alleged dangers, the national standing army that the Federalists created was composed entirely of volunteers. Thomas Jefferson, however, denounced this dependence upon "pauper hirelings." He spoke of the "necessity of obliging every citizen to be a soldier." "We must train and classify the whole of our male citizens," he wrote, "and make military instruction a regular part of collegiate

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close, but not total. Pre-existing volunteer militia units sometimes comprised the federal volunteers, and the acts of 1798 and 1807 had greatly stimulated the establishment of such standing units. Often, however, units of federal volunteers were created *ad hoc* out of recruits from the common militia, and would disband upon discharge. Finally, it must be remembered that the regulars, too, were voluntarily enlisted. Despite their long-nurtured mutual antipathy, the only real difference between federal volunteers and regulars, once organized and in service, was that volunteers had shorter terms.

[29]The most thorough discussions of the militia's employment by state governments during the early national period are Mahon, *The American Militia: Decade of Decision*, pp. 47–55, and "The Citizen Soldier in National Defense," pp. 73–92, 135–88, 213–32. The national government's practice of encouraging states to use their militias by providing financial reimbursement was common, but few historians have looked into it. The campaigns against the Indians of the Southwest territory in particular merit additional research. The national government's war against the Northwest Indians has received all the fanfare because the regulars were involved and Indian resistance was more serious, but the national government also financed a simultaneous "war" against the Southwest tribes, conducted covertly through state and territorial militias. It would be nice to know to what extent, if any, militia drafts were implemented during these operations. This question is not addressed in Ward, *The Department of War*, pp. 154–66, which is almost the only study that discusses national involvement in these campaigns.

education."[30]

President Jefferson and his Republican successor, James Madison, desiring a classification scheme similar to Knox's rejected plan,

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[30]As quoted by Sidney Forman, "Thomas Jefferson on Universal Military Training," *Military Affairs* 11 (Fall 1947), p. 178. The Forman article is reprinted in Editors of *Military Affairs*, *Military Analysis of the Revolutionary War*, pp. 55–56. Jefferson made these statements in a letter to James Monroe during the War of 1812, but they accurately reflect his earlier ideas.

Unfortunately, there is no single study of Republican military policy to complement Kohn's *Eagle and Sword* on Federalist military policy. The best substitute is Cress, *Citizens in Arms*, pp. 150–77, an excellent treatment more of Republican military attitudes than of Republican military policies. Additional details on policy are found throughout J.C.A. Stagg's *Mr. Madison's War: Politics, Diplomacy, and Warfare in the Early American Republic, 1783–1830* (Princeton, N.J.: Princeton University Press, 1983), which is the first modern study of the War of 1812 truly to integrate the diplomatic, military, and domestic aspects of that conflict, and to fit them into the general Republican outlook. Although Mahon's *American Militia: Decade of Decision* does not extend into the Jeffersonian era, his dissertation, "The Citizen Soldier in National Defense, 1789–1815," pp. 213–465, does, offering much valuable information on the militia—at both the state and national level—unavailable elsewhere.

Jefferson's attachment to the coercive militia system is just one indication that his reputation for anti-militarism is somewhat inflated. Indeed, his administration made several other compromises with military "necessity":
(1) Jefferson left on the books the Alien Enemy Act, the one of the four Federalist Alien and Sedition Acts that allowed for wartime internment (and which was unearthed and used with telling effect by President Wilson during World War I);
(2) Jefferson's administration oversaw the founding of the U.S. Military Academy at West Point, as well as the Army Corps of Engineers, both of which dovetailed with Jefferson's penchant for State education; and
(3) Jefferson gained the first statutory authorization for using regulars in law enforcement (see note 27).

As Marcus Cunliffe has pointed out in his seminal discussion of U.S. military culture through the Civil War, *Soldiers and Civilians*, pp. 1–27, American attitudes toward the military have historically consisted of not two, but three distinct perspectives: (1) the professional military tradition, favoring conventional standing armies; (2) the anti-professional militia tradition, favoring citizen soldiers; and (3) the pacifist tradition, opposing all military expedients. The Jeffersonian Republicans fall within the second tradition, which is too often not distinguished carefully enough from the third, because, at the national level, they shared a fear of standing armies.

repeatedly called for militia reorganization. In effect, they hoped to conscript a massive reserve of citizen soldiers, as was done in Switzerland. Throughout this period, whenever the idea of militia classification was resurrected, it was simply a code that, in modern terminology, meant a national system of universal military training.

Congress proved as indifferent to Jefferson's classification scheme as it had been to Knox's. The only concrete steps it took toward militia reorganization were: (1) in 1803, to require annual militia reports from each state's adjutant general; (2) to lengthen intermittently the militia's maximum term, when called into national service, from three to six months; and (3) to pass an 1808 measure appropriating $200,000 annually to help arm state militias. (The appropriation was the first grant-in-aid in U.S. history. The original bill was introduced, ironically, by John Randolph of Roanoke, a stalwart Republican opponent of centralization. It called for a much larger annual amount.) Jefferson also secured the power to use state militias in the routine, day-to-day imposition of his hated and widely resisted embargo.[31]

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[31] An act on March 2, 1803, 2 *U.S. Statutes at Large* 207, set the requirement for annual militia returns. Although the Uniform Militia Act of 1792 had required each state's adjutant general to send to the national government duplicates of the annual militia returns made for the state government, the new act required uniform returns to be compiled directly for the national government. The Republican administrations were also much more adamant about collecting such returns.

The Detachment Acts (see note 28) of April 18, 1806, March 30, 1808, and April 10, 1812, 2 *U.S. Statutes at Large* 383, 478, 705, set the militia's term, if called into national service, at six months. All three acts expired after two years. In contrast, the first two Federalist Detachment Acts (1794 and 1797) provided three-month terms, the same as in the Calling Forth Act. The first Republican Detachment Act of March 3, 1803, 2 *U.S. Statutes at Large* 241, was ambiguous. It stated no specific term for the militia, while establishing a one-year term for any volunteer units that states provided in lieu of common militia.

An act of April 23, 1808, 2 *U.S. Statutes at Large* 490, established the annual appropriation for militia arms. Randolph wanted $1 million appropriated annually. Earlier, during the war crisis with France, an act of July 6, 1798, 1 *U.S. Statutes at Large* 576, permitted states to purchase arms for the militia from the national arsenals, and Congress had passed various acts allowing the sale or loan of national arms to militia and volunteer units while they were in national service.

The Second Enforcement Act (January 7, 1809), 2 *U.S. Statutes at Large* 506, empowered the President to use the army, navy, and militia to enforce

Subsequently, during the War of 1812, when volunteers yielded only enough manpower to raise the regular army to slightly more than half its authorized strength of 63,000, James Monroe, Madison's Secretary of War, proposed conscripting an army of 100,000. Monroe offered two possible ways of doing this: either the national government could draft men into the regular army for two years, or it could classify and directly draft the militia into national service for two years without going through state governments. Monroe's second conscription plan was similar to what Jefferson and Madison had in mind all along.[32]

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the embargo without the stipulation—which appears in the first and second Calling Forth Acts—that resistance to national laws must be too powerful for ordinary procedures of the courts and marshals to handle. The Act also allowed the President to delegate this broad power to others. It aroused such a storm of protest that it was instrumental in bringing about the total repeal of the embargo two months later. For further details on this Act and on Jefferson's use of the militia to enforce the embargo, see Leonard D. White, *The Jeffersonians: A Study in Administrative History, 1801–1829* (New York: Macmillan, 1951), pp. 460–68; Leonard W. Levy, *Jefferson and Civil Liberties: The Darker Side*, rev. ed. (New York: Quandrangle, 1973), pp. 107–20, 137–41; and Rich, *The Presidents and Civil Disorder*, pp. 31–37.

The Jefferson administration was also responsible for a fifth, minor, militia innovation. An act of March 3, 1803, 2 *U.S. Statutes at Large* 215, established the common militia in the District of Columbia.

[32]The most complete discussion of the proposal for national conscription during the War of 1812 is the first section of Jack Franklin Leach's *Conscription in the United States: Historical Background* (Rutland, Vermont: Charles E. Tuttle, 1952). Fortunately, Leach's heavy-handed, pro-conscription bias does not outweigh the richness of his account. Other good discussions include Edward J. Harden, *The Life of George M. Troup* (Savannah, Ga.: E.J. Purse, 1859), pp. 141–55; Kreidberg and Henry, *History of Military Mobilization*, pp. 47–56; Lindsay, "Our National Tradition of Conscription: The Early Years," pp. 114–23; O'Sullivan and Meckler, *The Draft and Its Enemies*, pp. 24–25, 40–52; Rafuse, "United States' Experience with Volunteer and Conscript Forces," pp. 8–13; and Stagg, *Mr. Madison's War*, pp. 453–68. Nearly all of these works at least hint at the existence of state conscription during the war, but none gives even a summary discussion of the matter.

Some authors, following Upton, *The Military Policy of the United States*, p. 137, report that 65,032 regulars (including 5,000 in the navy and the marines) served during the War of 1812. These forces did not all serve simultaneously, however. According to the *Historical Statistics of the United States from Colonial Times to 1970* (Washington, D.C.: U.S. Government Printing Office, 1975), vol. 2, p. 1142, regulars never exceeded 39,000 in total strength at any one time.

Because the war ended before *national* conscription could pass, this has left the mistaken impression that the U.S. fought the War of 1812 without conscription altogether. On the contrary, state governments continuously relied upon drafts to raise more than 200,000 soldiers who served in the militia at various moments and for various durations. Sometimes states drafted the militia in response to national calls, in which case they generally adhered to the "Rules with Regard to Militia Draughts" set forth in official army regulations of May 1, 1813. At other times, states drafted the militia to meet their own military needs. Many of the Maryland militia who failed to defend the U.S. capital at the battle of Bladensburg, to give just one example, were conscripts.[33]

A third plan that Monroe suggested, in the event that Congress refused to consider national conscription in any form, confirms the

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[33]The number of militia who served during the War of 1812 is difficult to ascertain. Upton's *The Military Policy of the United States*, p. 137, reports a total of nearly 450,000. However, this total not only includes troops who served at different times, but also duplications for the same individual being called into militia service more than once. *Historical Statistics*, vol. 2, p. 1135, estimates that a total of 286,730 different individuals served in state and U.S. forces during the War of 1812. Subtracting from that total the number of regulars and federal volunteers who served produces an estimate of 200,000. This conforms with the estimates in Weigley, *History of the United States Army*, p. 121. Also consult Hill, *The Minute Man in Peace and War*, pp. 14–16.

The Rules and Regulations of the Army for May 1, 1813, relating to militia drafts are *American State Papers: Military Affairs*, vol. 1, pp. 425–38. For drafted militia at the Battle of Bladensburg, see Hill, *The Minute Man in Peace and War*, pp. 12–14, and Mahon, "The Citizen Soldier in National Defense," pp. 420–35. It is interesting to note that the national government called for 5,000 militia from Pennsylvania before this battle, but the state replied that, because of a legislative lapse, it was temporarily unable to employ conscription. Only a meager number of Pennsylvania volunteers showed up for the battle.

Considerable confusion surrounded the legal length of the term of national service for drafted militiamen during the War of 1812. Militiamen often claimed that they were summoned under the Calling Forth Act for a three-month term, while the Madison administration claimed they were summoned under the 1812 Detachment Act (see note 32), for a six-month term. This dispute reached its most serious point when General Andrew Jackson, in February 1815, court-martialed and executed six militiamen who had the temerity to challenge too vociferously his decision about the length of their terms.

importance of these militia drafts. Men who could provide another to volunteer for the regular army would receive exemptions from state militia service. Congress eventually instituted this alternative method of bringing U.S. forces up to 100,000. Obviously, such exemptions would have been valueless if militia drafts had been rare or nonexistent.[34]

Indeed, Monroe went so far as to argue that his first proposal, for conscription into the regular army, would be less coercive than the militia system itself.

> The organization of the militia is an act of public authority, not a voluntary association. The service required must be performed by all, under penalties, which delinquents pay. . . .
>
> The [conscription] plan proposed is not more compulsive than the militia service, while it is free from most of the objections to it. The militia service calls from home, for long terms, whole districts of the country. None can elude the call. Few can avoid the service; and those who do are compelled to pay great sums for substitutes.[35]

Overall, for evading national service during the War of 1812, militia courts-martial fined nearly 10,000 men a total of $500,000. Still others ignored purely state calls; New York, for example, assessed an additional $200,000 against 4,000 militia resistors. These numbers strikingly belie the common impression that militia drafts were nominal and unimportant. Only the awkward administrative dualism that divided responsibility between the state and national governments, coupled with increasing popular opposition to the militia, prevented

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[34]Act of December 10, 1814, 3 *U.S. Statutes at Large* 146. Monroe's original plan called for five militia exemptions per regular volunteer, but the final act provided only one. It also incorporated Monroe's fourth proposal, an increase in incentives for volunteering. The Federalists had earlier used national militia exemptions—in an amendment to the Provisional Army Act (June 22, 1798) 1 *U.S. Statutes at Large* 569—to stimulate formation of volunteer units. The Republicans, in contrast, did not grant volunteer units *national* exemptions from militia duty until the units were actually called into national service.

[35]As quoted in O'Sullivan and Meckler, *The Draft and Its Enemies*, p. 43. Monroe's recommendations are also reprinted in Anderson, *The Military Draft*, pp. 503–13. We should note that Monroe's second conscription plan, in addition to calling for a national militia draft, would have proscribed the prevailing practice of allowing drafted militiamen to hire substitutes.

the full collection of national fines after the war had ceased. New York apparently collected the entire $200,000, but only at a monetary cost that exceeded that amount by $25,000.[36]

In other words, the issue that Daniel Webster so eloquently debated on the floor of the House of Representatives was not whether there should be conscription at all, but, rather, who should do the conscripting, states or the national government.[37] The measures before Congress at the time were the Giles Bill, which had passed in the Senate, and the Troup Bill, which had been introduced in the House. The Giles Bill was a modified version of Monroe's second conscription proposal, setting up a national system of militia classification and conscription to raise a force of 80,000 that would serve for two years. The Troup Bill modified Monroe's first proposal, classified the population, and set quotas for the regular army, but did not authorize a draft. Instead, each class would meet its quota through taxes, proportional to wealth, that would be sufficiently high to pay for volunteers. Thus, the Troup Bill would have established a kind of primitive decentralized income tax to finance a volunteer army. It was an alternative to conscription that the militias of some states had tried during the Revolution.

The House eventually passed its own version of the Giles Bill, but since the two houses could not resolve their differences, they instead passed in January of 1815 an act allowing the national government to accept up to 40,000 special troops organized by the states, plus any privately organized volunteer units that offered themselves,

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[36]White, *The Jeffersonians*, pp. 536–39, contains the only discussion that I have come across of the national fines arising out of militia drafts. Mahon's *History of the Militia*, p. 81, mentions the additional New York state fines. Congress passed an act on February 2, 1813, 2 *U.S. Statutes at Large* 797, and a further special wartime measure on April 18, 1814, 3 *U.S. Statutes at Large* 134, both of which elaborated on the procedures for collecting the fines established in the Calling Forth Act. On the travail of the Quakers in their efforts to avoid militia conscription during the War of 1812, see Peter Brock's monumental *Pacifism in the United States: From the Colonial Era to the First World War* (Princeton, N.J.: Princeton University Press, 1968), pp. 339–42.

[37]Webster's speech was not published until *The Letters of Daniel Webster: From Documents Owned Principally by the New Hampshire Historical Society*, ed. C.H. Van Tyne (New York: McClure, Phillips, 1902), pp. 56–68. It is reprint-ed in Anderson, *The Military Draft*, pp. 633–45, and O'Sullivan and Meckler, *The Draft and Its Enemies*, pp. 44–49.

to serve for one year, with the total force not to exceed 80,000. Eight states, with New York at the fore, began creating special state forces. This usually involved modifying militia laws by adding a more effective system of state classification and conscription. Peace came, however, before these forces became fully operational, and the act of January 1815 was repealed.[38]

This preoccupation with the centralization—as opposed to the extent—of power had already arisen in the war's most rancorous and fateful militia controversy. The governors of Massachusetts and Connecticut and the legislature of Rhode Island had refused at various times to furnish their state militias for national service, while a newly elected governor of Vermont had ordered his state militia to return home in the midst of a military campaign. Not until 1827 did the U.S. Supreme Court, in *Martin v. Mott*, finally settle this jurisdictional controversy by endorsing unchecked Presidential discretion in calling state militias into national service.[39]

Less often cited, but equally significant, was the Supreme Court decision in *Houston v. Moore* seven years earlier. This virtually unknown militia case actually yielded the first Court ruling on conscription. It involved a Pennsylvania man who had been drafted into the militia during the War of 1812 in response to a Presidential call. When he evaded the draft, a Pennsylvania court fined him under the national Calling Forth Act. The draft resistor challenged the constitutionality of his punishment, arguing that because he had been drafted in response to a Presidential call, only a federal court could fine him. In effect, he denied that Congress had either the authority or the intention to establish a concurrent administration for militia drafts, in which the state governments assessed fines that the national government collected. The Court, however, disagreed and upheld the fine.[40]

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[38]Act of January 27, 1815, 3 *U.S. Statutes at Large* 193.

[39]Henry Wheaton, *Reports of Cases Argued and Adjudged in the Supreme Court of the United States, 1816–1827* (Philadelphia: Matthew Carey, 1816–1827), vol. 12, pp. 19–40. Nearly every account of the War of 1812 refers to the controversy over calling out the New England militia, but for a concise summary, see White, *The Jeffersonians*, pp. 539–45. Massachusetts disavowed its action in 1824 in order to receive financial reimbursement from the national government for its wartime militia operations.

[40]Wheaton, *Reports of Cases Argued*, vol. 5, pp. 1–76. The obvious reason that legal scholars and historians have virtually ignored this case is that it applied only to the militia and said nothing either way about the national government's authority to draft men into the regular army.

FROM THE WAR OF 1812 TO THE CIVIL WAR

Meanwhile, nearly every subsequent President continued to suggest militia reorganization in his annual messages. President Martin Van Buren's Secretary of War, Joel R. Poinsett, made the last serious effort to nationalize the state militias in 1840.[41] But all these suggestions died from lack of interest. The national government relied for the most part upon a small regular army. Still, during the Second Seminole War (1835–1842)—the first protracted counter-insurgency campaign by the U.S.—large numbers of militia from various states supplemented the regulars, and some of them from the Florida territory itself were drafted.[42]

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[41]Mahon, *History of the Militia*, p. 79, reports that between 1816 and 1835 the various Presidents requested militia reorganization from Congress no fewer than thirty-one times. For Congressional initiatives toward militia reorganization in the post-War of 1812 period, see Edgar Bruce Wesley, *Guarding the Frontier: A Study of Frontier Defense from 1815 to 1825* (Minneapolis: University of Minnesota Press, 1935), pp. 94–96.

Poinsett's militia plan is treated in Cunliffe, *Soldiers and Civilians*, pp. 197–99, as well as in J. Fred Rippy, *Joel R. Poinsett: Versatile American* (Durham, N.C.: Duke University Press, 1935), pp. 175–77; James C. Curtis, *The Fox at Bay: Martin Van Buren and the Presidency, 1837–1841* (Lexington: University Press of Kentucky, 1970), pp. 199–201; and Major L. Wilson, *The Presidency of Martin Van Buren* (Lawrence: University Press of Kansas, 1984), pp. 188–89. The Whigs turned Poinsett's militia plan politically against Van Buren to great effect during the 1840 Presidential race.

Sometimes the term "militia reform" has been applied to these efforts to strengthen and centralize the common militia's coercive features. The term, however, also refers to contrary movements at the state level, discussed below, to voluntarize the militia. For the sake of clarity, I have confined "militia reform" exclusively to the latter movement, and used the term "militia reorganization" to denote the nationalizing efforts.

[42]To fight the Second Seminole War, the national government first called up the militia of the Florida territory and neighboring states. Later, in an act of May 23, 1836, 5 *U.S. Statutes at Large* 32, Congress authorized 10,000 six- or twelve-month federal volunteers. It is not clear whether the territorial government of Florida initiated its militia draft in response to the national call or on its own. See John K. Mahon, *History of the Second Seminole War, 1835–1842* (Gainesville: University of Florida Press, 1967), pp. 139–40, 242; and George C. Bittle, "The Organized Florida Militia from 1821 to 1920" (Ph.D. diss., Florida State University, 1965), passim.

Although the national government appears to have placed relatively greater reliance upon the regulars after the War of 1812, there is no satisfactory

Although the state governments continued to depend heavily upon their militias throughout the post-War of 1812 period, the entire militia system by this time was coming under sustained criticism at the

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catalog of all national mobilizations of state militias between the War of 1812 and Civil War with which to confirm this observation systematically. Much less is there an exploration of whether such mobilizations involved militia drafts. Partial listings are in Mahon, *History of the Militia*, pp. 86–96; Coakley, "Federal Use of Militia and National Guard in Civil Disturbances," pp. 25–26; and Rich, *The Presidents and Civil Disorder*, pp. 38–71. The most comprehensive compilation is Wilson, *Federal Aid in Domestic Disturbances*, pp. 55–106.

The national government supplemented regulars with militia to fight Indians not only in the Second Seminole War but also in the First Seminole War (1817–18) and the Black Hawk War (1831–12). During the somewhat misleadingly named First Seminole War, in which U.S. forces invaded Spanish Florida, General Andrew Jackson, on his own authority, raised more than 1,000 federal volunteers from Tennessee and Kentucky, appointing their officers himself and ignoring the state governments. A Senate investigating committee later reprimanded him for this irregularity. A contingent of Georgia militia that had been properly called into national service also participated in this campaign, and it may or may not have been drafted by the state. Militia participating in the Black Hawk War seems to have been confined to mounted volunteers.

Regulars imposed national authority without support of federalized militia (although militia under state control may have been present) during the slave revolts of 1831, the Bleeding Kansas episode (1856–58), the Mormon War (1857), and the Harpers Ferry Raid (1859). Small detachments of federalized militia assisted regulars in the Sabine border intrusion into Mexico (1836), in enforcement of neutrality during the Patriot insurrection in Canada (1837–38), in removal of the Cherokee Indians (1838), and in enforcement of the fugitive slave laws (early 1850s). Probably none of these latter uses resulted in conscription. During the bloodless Aroostook War on the Canada-Maine border, Congress passed an act on March 3, 1839, 5 *U.S. Statutes at Large* 355, authorizing the President to call out the militia for six months and to enlist 50,000 federal volunteers for six- to twelve-month terms, but President Van Buren did not put the act to use.

Purely state calls upon the militia, while certainly more numerous, are even less well recounted. The two most significant were by South Carolina during the Nullification Crisis (1832) and by Maine during the Aroostook War (1838–39). The South Carolina call involved only volunteers, and I have been unable to find any indication either way about the Maine call. State militias were also involved in the Buckshot War in Pennsylvania (1838) and the Dorr Rebellion in Rhode Island (1842).

state level. Launching these political attacks was a collage of radical Jacksonians, peace advocates, and moralistic reformers. The Workingmen's Party in New York, precursor of the laissez-faire "Locofoco" Jacksonians, condemned militia fines because they fell unfairly upon laborers and the poor. The common militia also became the butt of an effective campaign of ridicule and civil disobedience. Men would muster for mandatory training with cornstalks, brooms, or other silly substitutes for weapons, giving rise to the derisive sobriquet "cornstalk militia." In some locations, disgruntled militiamen would elect the town drunk their commander. As a result of these attacks, the compulsory features of the common militia began to ease.

Delaware became the first state to repeal some of its militia fines as early as 1816, and, in 1831, it abolished the common militia system altogether. Massachusetts eliminated all compulsory militia service in 1840, followed by Maine, Ohio, and Vermont in 1844, Connecticut and New York in 1846, Missouri in 1847, and New Hampshire in 1851. New Jersey eliminated imprisonment for failure to pay a militia fine in 1844, followed by Iowa in 1846, Michigan in 1850, and California in 1856. In several states, fines were no longer enforced, or became truly nominal. Mandatory training days were already less frequent, and had degenerated into more social than military events.[43]

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[43]Practically the only study of the militia reform movement is Londen, "The Militia Fine." Other sources, such as Paul T. Smith, "Militia in the United States from 1846 to 1860," *Indiana Magazine of History* 15 (March 1919), pp. 20–47; Cunliffe, *Soldiers and Civilians*, pp. 186–92, 205–12; Mahon, *History of the Militia*, pp. 83–84; and Riker, *Soldiers of the States*, pp. 26–35, briefly recount the decline in the common militia or the legal changes at the state level that the militia reform movement brought about, but none look at this movement's actual ideology or composition, which deserves greater attention.

On the continuing Quaker campaign of civil disobedience against the common militia, see Brock, *Pacifism in the United States*, pp. 342–50. The opposition of the New York Workingmen's Party to compulsory militia duty is mentioned in Walter Hugins, *Jacksonian Democracy and the Working Class: A Study of the New York Workingmen's Movement, 1829–1837* (Stanford, Calif.: Stanford University Press, 1960), pp. 138–39. This radical Jacksonian advocacy of militia reform is consistent with Londen's observation that opposition to militia fines and to debt imprisonment were closely united, since the radical Jacksonian Democrats also supported the elimination of the latter.

However, this observation conflicts with the findings of Herbert Ershkowitz and William G. Shade in "Consensus or Conflict? Political Behavior

Only in the South were the compulsory features of the militia maintained, probably because of their vital connection with slave patrols.[44]

A remarkable growth in the volunteer militia was concomitant with this decline in the common militia. Expanding steadily since the Revolution, the number of volunteer units exploded during the Jacksonian period. Three hundred sprang up in California between 1849 and 1856. One out of every twenty-nine people in the District of Columbia belonged to a volunteer company. With this burgeoning mass appeal, the volunteer militia was no longer the preserve of a wealthy elite. As Russell Weigley noted in his eminent history of the U.S. Army, units such as "[t]he New England Guards of Boston, the 7th Regiment of New York 'National Guards,' the First Troop of the Philadelphia City Cavalry, the Light Infantry Blues of Richmond, [and] the Washington Artillery of New Orleans" were popular and colorful "fixtures

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in the State Legislatures During the Jacksonian Era," *Journal of American History* 58 (December 1971), pp. 591–621, reprinted in *The Many-Faceted Jacksonian Era: New Interpretations*, ed. Edward Pessen (Westport, Conn.: Greenwood Press, 1977), pp. 212–41. Based on a quantitative voting analysis of four state legislatures, Ershkowitz and Shade find that while Democrats supported debt reform more strongly than did Whigs, militia reform crossed party lines.

[44]The relationship between the common militia and the compulsory slave patrol in the South is difficult to pin down because little has been written about the latter. Among the most illuminating exceptions are John Anthony Scott, "Segregation: A Fundamental Aspect of Southern Race Relations, 1800–1860," *Journal of the Early Republic* 4 (Winter 1984), pp. 421–42, and John Hope Franklin, *The Militant South, 1800–1861* (Cambridge, Mass.: Belknap, 1956), pp. 72–76. Franklin, on pp. 171–92, also discusses the Southern militia system.

When scholars do consider the slave patrol, they are understandably more concerned with its impact on the slaves than on free whites. Nonetheless, this scholarly gap is doubly unfortunate, because the compulsory slave patrol was one way that slave owners socialized the costs of maintaining the slave system, thereby distorting the economic calculation of those costs and transferring them to non-owners. The operation of the compulsory slave patrol thus has enormous implications for the controversies about slavery's economic efficiency.

George Fitzhugh, a perceptive arch-apologist for slavery, was acutely aware of this critical relationship. In *Sociology for the South: Or the Failure of Free Society* (Richmond, Virg.: A Morris, 1854), pp. 144–45, he proclaimed: "The poor . . . constitute our militia and our police. They protect men in the possession of property, as in other countries; and do much more, they secure men in possession of a kind of property which could not hold a day but for the supervision and protection of the poor."

of the American scene." Even in the South, the volunteer militia came to supplant the common militia in size and importance.[45]

The supplanting was so thorough that some historians call the volunteer component of the pre-Civil War militia the *organized* militia while designating the common component the *enrolled* militia. In prior periods, of course, organized units had come from both the common and volunteer militia. In short, the Jacksonian era witnessed nearly total transformation of the militia from a compulsory to a voluntary system. Because many volunteer units were privately organized, recruited, and equipped, the militia became a partially privatized system as well. A third terminological variation clearly reflects this last trait: the volunteer militia became popularly known as the *uniformed* militia. States rarely provided uniforms to any militia units, so volunteer units purchased their own.

Many military historians have unfairly characterized the transformation to voluntarism as "the decay" of the militia.[46] Because of this so-called decay, the Mexican War became the first in U.S. history to be fought solely with volunteers. A remnant of the common militia survived, and Congress gave President James K. Polk the power to call the militia into national service for six months rather than the three months specified in the Calling Forth Act. Early in the war, General Edmund Gaines, commanding at New Orleans, made an unauthorized call for militia from the Southwestern states, and Louisiana's governor threatened a draft in order to raise his state's allotment. But the Polk administration quickly relieved Gaines and canceled his call.[47]

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[45]Weigley, *History of the United States Army*, p. 157. The flourishing of volunteer militia is covered in Mahon, "The Citizen Soldier in National Defense," pp. 189–201 ff.; Mahon, *The American Militia: Decade of Decision*, pp. 56–61; Mahon, *History of the Militia*, pp. 84–87; Cunliffe, *Soldiers and Civilians*, pp. 213–54; and Todd, "Our National Guard."

[46]Thus, Riker, *Soldiers of the States*, titles his third chapter "Degeneration of the Militia, 1792–1860"; Mahon, *History of the Militia*, titles his sixth chapter "Decline of the Militia: Rise of the Volunteers"; and Cunliffe, *Soldiers and Civilians*, has a sub-chapter on "The Militia in Decline." In contrast, John K. Mahon, "A Board of Officers Considers the Condition of the Militia in 1826," *Military Affairs* 15 (Summer 1951), pp. 85–94, reports that a War Department board that investigated the militia discovered that, even before the disappearance of the common militia, most experts believed the volunteer militia to be superior.

[47]An act of May 13, 1846, 9 *U.S. Statutes at Large* 9, recognized a state of war between Mexico and the United States, authorized the President to call

Therefore, Polk could justifiably boast that in, waging the Mexican War,

> Unlike what would have occurred in any other country, we were under no necessity of resorting to drafts or conscriptions. On the contrary, such was the number of volunteers who patriotically tendered their services that the chief difficulty was in . . . determining who should be compelled to remain at home.[48]

Equally significant, the 60,931 federal volunteers, many from volunteer militia units, who served alongside the 42,374 U.S. regulars, displayed none of the previous military ineptitude of the drafted common militia. Whatever their other shortcomings, they won nearly all their engagements, although usually outnumbered.[49]

UNION AND CONFEDERACY DURING THE CIVIL WAR

The volunteer militia was so vibrant at the beginning of the Civil War that it brought to each side an enthusiastic influx of units—more units, in fact, than either could process. Civil War historian Kenneth P. Williams has observed that, within four months of the firing on Fort Sumter, the Union army multiplied by an astonishing factor of twenty-seven despite the defection of nearly half the country and of many professional officers. That sharply contrasts with the army's

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out the militia to serve for six months, and authorized the recruitment of 50,000 volunteers to serve for one year or the duration of the war.

On the unauthorized militia call by General Gaines, see K. Jack Bauer, *The Mexican War, 1846–1848* (New York: Macmillan, 1974), pp. 57–58; Kreidberg and Henry, *History of the Military Mobilization*, pp. 74–75; and Weigley, *History of the United States Army*, p. 183. Only Bauer, however, in his volume from the Macmillan Wars of the United States series, mentions the threatened Louisiana draft. General Zachary Taylor also made an earlier call, this one authorized, upon the common militia of Texas and Louisiana, when hostilities were impending, but I have uncovered no mention of any resulting draft. All 12,000 of the common militia that turned out as a result of both Taylor's and Gaines's calls were demobilized without seeing action. Otherwise, the national government relied on recruiting regulars and federal volunteers.

[48]As quoted in Cunliffe, *Soldiers and Civilians*, p. 204.

[49]See, for instance, Bauer, *The Mexican War*, passim. The most judicious summary of the relative merits of regulars and volunteers in the Mexican War is Weigley, *History of the United States Army*, pp. 173–89. The numbers of each appear in Kreidberg and Henry, *History of Military Mobilization*, p. 78.

mere threefold growth, under a rigid system of conscription, during the four months at the beginning of the U.S. entry into World War I. It is doubtful that the Confederacy, which had to turn away as many as 200,000 volunteers during the Civil War's first year, could have so quickly mobilized a major army from scratch without the foundation provided by the volunteer militia.[50]

The tradition of the common militia was not dead, however. It was responsible for exemption fees and substitute hiring in both the Confederate and Union conscription systems. As pointed out above, the Southern states had never repealed their compulsory militia laws. As a result, before the Confederate Congress passed a conscription act in April 1862, some of them independently drafted soldiers to meet their manpower quotas.[51]

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[50]Following Upton, *The Military Policy of the United States*, pp. 227–47, most military historians—especially Fred A. Shannon, *The Organization and Administration of the Union Army* (Cleveland, Ohio: Arthur H. Clark, 1928), vol. 1, pp. 15–52; and A. Howard Meneely, *The War Department, 1861: A Study in Mobilization and Administration* (New York: Columbia University Press, 1928)—have denigrated the initial Union mobilization of manpower. Kenneth P. Williams, *Lincoln Finds a General: A Military Study of the Civil War* (New York: Macmillan, 1949–59), vol. 1, pp. 60–66, 114–48, and vol. 2, pp. 796–98, first corrected this misleading impression. His comparison of Civil War and World War I mobilization appears in vol. 1, pp. 120–1. See also Weigley, *History of the United States Army*, pp. 197–201, and Kreidberg and Henry, *History of Military Mobilization*, pp. 83–103.

There is woefully little on the creation of the Confederate army. Nearly the only treatments of any substance are Kreidberg and Henry, *History of Military Mobilization*, pp. 129–37; Albert Burton Moore, *Conscription and Conflict in the Confederacy* (New York: Macmillan, 1924), pp. 1–11; William C. Harris, *Leroy Pope Walker: Confederate Secretary of War* (Tuscaloosa, Ala.: Confederate Publishing Company, 1962), pp. 56–71; William L. Shaw, "The Confederate Conscription and Exemption Acts," *American Journal of Legal History* 6 (October 1962), pp. 368–405; and E. Merton Coulter, *The Confederate States of America, 1861–1865* (Baton Rouge: Louisiana State University Press, 1966), pp. 308–13.

[51]The initial Confederate conscription act of April 1862 permitted the hiring of substitutes, but this provision was repealed in December 1863. Only conscientious objectors could pay a $500 exemption fee, and only if they were Quakers, Dunkers, or Mennonites as of October 1862.

The standard account of Confederate conscription is Moore, *Conscription and Conflict in the Confederacy*. Moore, however, does not investigate Confederate conscription at the state level. Indeed, its existence probably

Similarly, the first Union conscription law, passed in July of 1862, was only a modification of the old Calling Forth Act. It empowered the President to call out the militia for nine instead of three months, and, if the states failed to meet national quotas, authorized him to administer militia drafts directly, as Monroe's second conscription plan had requested during the War of 1812. Not until March of 1863 did Congress adopt a national conscription law similar to that of the Confederacy.[52]

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would have escaped historical notice entirely but for the intriguing contradiction posed by Governor Joseph E. Brown of Georgia, who resisted and bitterly denounced the central government's conscription act, but had earlier, on his own authority, conscripted men into the state forces. See Louise Biles Hill, *Joseph E. Brown and the Confederacy* (Chapel Hill: University of North Carolina Press, 1939), p. 80; Curtis Arthur Amlund, *Federalism in the Southern Confederacy* (Washington, D.C.: Public Affairs Press, 1966), p. 96; W. Buck Yearns, *The Confederate Governors* (Athens: University of Georgia Press, 1985), pp. 174–75, 201. William L. Shaw, "Conscription by the State through the Time of the Civil War," *Judge Advocate Journal* 34 (October 1962), pp. 33–36, gives a detailed case study of state conscription in Civil War Louisiana.

The Confederate draft, unlike the Union draft, but like modern conscription, had occupational exemptions, such as the exemption of one white man on each plantation of twenty or more slaves. The Confederate government pursued an active policy of economic intervention into the labor market by manipulating these exemptions. In February 1864, the Confederate Congress abolished all industrial exemptions and replaced them with the direct detailing of conscripted soldiers to industry. The inexorable logic of military conscription had led the nation of black agricultural slavery to the ironic but appropriate adoption of white industrial slavery.

[52]The Union Militia Act of July 17, 1862 is 12 *U.S. Statutes at Large* 597. The Union's national conscription act, or Enrollment Act, of March 3, 1863, is 12 *U.S. Statutes at Large* 731. It provided both for hiring substitutes and for a $300 commutation fee. An amendment of February 24, 1864, 13 *U.S. Statutes at Large* 6, provided that paying the fee bought exemption only from a specific call, not from subsequent calls. It also limited exemptions through substitutes. If the substitute was not subject to the draft himself, the duration of the exemption extended for as long as the substitute was in service. However, substitutes who were subject to the draft provided their purchaser only with an exemption from the current call. Congress on July 4, 1864, 13 *U.S. Statutes at Large* 379, abolished commutation except for conscientious objectors. Congress again amended the draft law on March 3, 1865, *13 U.S. Statutes at Large* 509, but by then the war was all but over.

Accounts of Union conscription include the second part of Leach, *Conscription in the United States*; the last part of the first volume and all of the

(At least two Northern states, New York and Massachusetts, temporarily reimposed a compulsory militia system during the war.[53])

AFTER THE CIVIL WAR

The Civil War triumph of *national* conscription eliminated the militia's *raison d'être*. In the years after Appomattox, all the states finally buried the common militia. Even the volunteer militia was slow to revive. The peacetime enrollment of volunteer units never approached its pre-war *per capita* level. As an isolated elite of professionals came again to dominate membership in the organized militia, its connection with government at all levels became increasingly intimate. State governments assumed ever-greater responsibility for organizing, recruiting, and equipping the units, inspired partially by the desire for a reliable force to break labor strikes.

A general effort to more closely identify the organized militia with the national government caused most states to emulate New York in borrowing the French term "National Guard." Militia officers from around the nation in 1877 organized the National Guard Association, a pressure group to lobby for larger state and national appropriations.[54]

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second volume of Shannon, *The Organization and Administration of the Union Army*; Shaw, "The Civil War Federal Conscription and Exemption System"; Murdock, *Patriotism Limited, 1862–1865*; and Eugene C. Murdock, *One Million Men: The Civil War Draft in the North* (Madison: State Historical Society of Wisconsin, 1971). Good summary treatments, most of which also touch upon the Confederacy, are Kreidberg and Henry, *History of Military Mobilization*, pp. 83–113, 129–37; Cotton M. Lindsay, "Our National Tradition of Conscription: Experience with the Draft," in *Why The Draft? The Case for a Volunteer Army*, edited by James C. Miller, III (Baltimore: Penguin, 1968), pp. 124–37; O'Sullivan and Meckler, *The Draft and Its Enemies*, pp. 53–101; Rafuse, "United States' Experience with Volunteer and Conscript Forces," 14–19; and Weigley, *History of the United States Army*, pp. 197–211.

[53]Robert S. Chamberlain, "The Northern State Militia," *Civil War History* 4 (June 1958), pp. 105–18, and Shaw, "Conscription by the State," pp. 37–39.

[54]Post-Civil War militia history is well covered in Hill, *The Minute Man in Peace and War*, pp. 99–138; Mahon, *History of the Militia*, pp. 108–24; and Riker, *Soldiers of the States*, pp. 41–66. Riker attaches special importance to the National Guard's strike-breaking role, whereas Hill almost totally discounts it. One limited and temporary reversal in the militia's post-Civil War decline was the attempt by Southern Reconstruction governments to recruit former slaves into a volunteer militia. See Otis A. Singletary, *Negro Militia and Reconstruction* (Austin: University of Texas Press, 1957).

Finally, in the wake of the Spanish-American War, Congress passed the Dick Act of 1902. Along with supplementary legislation, the Dick Act brought to final realization Washington's and Knox's old dream of a federally trained, controlled, and funded militia. The volunteer militia, which already had been de-privatized, was now fully nationalized. The only missing component of Knox's original scheme was conscription. The Dick Act did restate the principle of universal obligation in establishing what it called the Reserve Militia, but this was primarily a pro-forma vestige from the Federalist Uniform Militia Act. The Dick Act's substance applied to the wholly voluntary "organized militia, to be known as the National Guard."[55]

CONCLUSION

The birth of modern mass conscription has usually been attributed to the French Revolution. Napoleon's citizen armies first demonstrated the devastating potential of the *levee en masse*. But close examination of the traditional militia concept reveals that it had embraced the underlying ideal of universal obligation well before the revolution in France. The militia, therefore, become an important historical antecedent to the French creation of a nation at arms. The early years of the American Republic turn out to corroborate, rather than contradict, the general historical affinity between mass participation in government and mass participation in warfare, between democracy and conscription.[56]

Martha Derthick's history of the National Guard Association, *The National Guard in Politics* (Cambridge, Mass.: Harvard University Press, 1965), is, unfortunately, somewhat sparse on the Association's founding and early years. Another National Guard pressure group, founded eight years earlier (1871), was the National Rifle Association. It originally attempted to draw the Guard and the regular army closer together with organized rifle competitions.

[55]Act of January 21, 1903, 32 *U.S. Statutes at Large* 775.

[56]The classic account of the relationship between conscription and democracy is Hoffman Nickerson, *The Armed Horde 1793–1939: A Study of the Rise, Survival, and Decline of the Mass Army* (New York: G.P. Putnam's Sons, 1940). James M. McConnell, "European Experience with Volunteer and Conscript Forces," in *Studies Prepared for the President's Commission on an All-Volunteer Armed Force* (Washington, D.C.: U.S. Govemment Printing Office, 1970), vol. 2, offers a survey of the history of conscription in France, Germany, and Britain. A more recent scholarly examination of the French creation of the "armed horde," which adds some qualifications to the classic account, is Geoffrey Best, *War and Society in Revolutionary*

Conscription not only was inherent in the traditional militia system, but may also have been the hidden factor behind that system's ill repute. The contrast in military competence between the U.S. citizen soldiers who fought in the War of 1812 and those who fought in the Mexican War is so striking that it has escaped the notice of few observers. Yet, most do not realize that, in the years between those two wars, the militia system underwent a dramatic transformation from compulsion to voluntarism, and none has drawn the obvious causal inference. On the contrary, American military theorists, starting with Washington and Knox and moving on to those of the present, have used the traditional militia's weaknesses to justify far more extensive conscription and universal military training. Ironically, they have sought more of the very feature that may have been responsible for the militia's poor military performance in the first place.

If libertarians wish to look to the past for guidelines about a free society's ideal defense, they must pass over the traditional militia system. Despite its appealing decentralist rhetoric and its close ties with the American Revolution, it was from the very core a coercive system, one clearly inimical to liberty. Instead, they should cast their eyes upon the volunteer militia of the Jacksonian period. Although maligned by military historians, forgotten by all others, and corrupted by post-Civil War statism, it is the one military precedent that most closely embodies libertarian precepts.

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