

National Defense University
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Joint Advanced Warfighting School



The Challenges of an Operationalized National Guard and a Militia Alternative

by

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A paper submitted to the Faculty of the Joint Advanced Warfighting School in partial satisfaction of the requirements of a Master of Science Degree in Joint Campaign Planning and Strategy.

The contents of this paper reflect my own personal views and are not necessarily endorsed by the National Defense University, Joint Forces Staff College or the Department of Defense.

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ABSTRACT

The current debate on the operational roles and responsibilities of the National Guard and the 30 year paradigm shift from the Guard as a strategic reserve to an operational one merits further discussion as the nation finds its active and reserve component service members in multiple foreign countries engaged in the long War on Terrorism at the beginning of the twenty-first century. The National Guard contributes nearly half of the total combat forces currently employed in both Operations Enduring Freedom and Iraqi Freedom and a majority of Operation Noble Eagle. The Department of Defense must acknowledge this increasingly unsustainable pace and toll of domestic and overseas tasking for the National Guard as the Guard attempts to fulfill its statutory requirements under Titles 10 and 32 of United States Code. The thesis of this paper is that the National Guard can not adequately support the dual status requirements of the states and the nation as an operationalized reserve engaged in the War on Terror and that reconstituting a traditional militia construct would provide the nation an affordable, legal, adequately trained and equipped citizenry which is relevant to the state governors and USNORTHCOM for employment in domestic and defensive crises. A dedicated and properly resourced traditional militia would permit the continued employment of the Air and Army National Guard as vital operational reserve forces to the active duty forces supporting the Geographic Combatant Commands' overseas military combat and contingency operations. Such an institution would give members of the All Volunteer Force several new enlistment options in their decision to serve the nation.

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If there are any errors of fact, omission or interpretation in this thesis, they are the responsibility of the author.

CONTENTS

INTRODUCTION	1
CHAPTER 1: THE AMERICAN MILITIA.....	5
UNITED STATES CODE	6
STATE DEFENSE FORCES	8
CHAPTER 2: HISTORICAL ANALYSIS.....	11
COLONIAL MILITIA EXPERIENCE	12
REVOLUTIONARY EXPERIENCE.....	18
PEACE ESTABLISHMENT AND THE CONSTITUTION	21
SETTING THE PARADIGM.....	23
DECLINE, REFORM EFFORTS, TRENDS	25
THE VOLUNTEERS RELABELED	28
FEDERALIZATION	32
TOTAL FORCE.....	39
CHAPTER 3: CONTEMPORARY TRENDS AND ANALYSIS	42
OPERATIONAL RESERVE.....	43
CONGRESSIONAL PERSPECTIVE	46
CHAPTER 4: RECOMMENDATIONS.....	55
CONCLUSION.....	60
BIBLIOGRAPHY.....	63
VITA.....	68

FIGURES

FIGURE 1. COMPARISON OF NATIONAL GUARD AND FEDERAL ROLES.....	8
FIGURE 2. STATE DEFENSE FORCES.....	10
FIGURE 3. NUMBER OF DEPLOYMENTS OF NATIONAL GUARDSMEN AND RESERVISTS, 2001-2007.....	47
FIGURE 4. GUARD AND RESERVE FUNDING COMPARED TO TOTAL DOD FUNDING, 1962-2007.....	49
FIGURE 5. AVERAGE PERCENT CROSS-LEVELED TO BUILD DEPLOYABLE ARMY GUARD UNIT	50
FIGURE 6. AVERAGE NUMBER OF ARMY NATIONAL GUARD UNITS CONTRIBUTING EQUIPMENT TO FILL ONE DEPLOYING UNIT.....	51

INTRODUCTION

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

Article I, Section 8
United States Constitution

The current discussion on the operational roles and responsibilities of the National Guard and the paradigm shift from the Guard as a strategic reserve to an operational force merits further discussion. The nation has deployed many of its active and reserve component service members in multiple foreign countries engaged in the long War on Terrorism at the beginning of the twenty-first century. The ongoing debate on how to best provide the nation properly trained and equipped active and reserve component forces to support current combat operations is lively and divisive. General and flag officers from the active and the reserve components, Department of Defense officials, state governors, federally-elected representatives, as well as, other interested parties seek answers to these questions. The National Guard is a significant force provider and contributed approximately 40% of the reserve components' combat forces employed in Iraqi Freedom in 2004¹ and nearly 60% of the forces for Operation Noble

¹ Commission on the National Guard and Reserves, *Strengthening America's Defenses in the New Security Environment: Second Report to Congress* (Washington, DC: March 2007), 18.

Eagle.² The Department of Defense must acknowledge this increasingly unsustainable pace and toll of domestic and overseas tasking for the National Guard as the Guard attempts to fulfill its statutory requirements under Titles 10 and 32 of United States Code to the supported Geographic Combatant Commanders (GCC) and state governors.³ The current federal mission of the Guard is stressing the part-time forces' personnel and equipment in ways previously not seen thanks to the high operational tempo of today's security environment.⁴ The transition from a strategic reserve to an operational one has great implications for the GCCs in the matter of available mission ready Guard forces particularly the United States Northern Command (USNORTHCOM) as the GCC responsible for the defense of the United States. The evolution of the National Guard from a strategic reserve to an operational reserve as well as the concept of Total Force must also be examined on the question of its legitimacy. Creating a truly part-time twenty-first century militia as viewed by the framers of the United States Constitution would meet the domestic needs of the state governors and provide a readily available pool of military resources available to USNORTHCOM for tasking under state control.

The thesis of this paper is that the National Guard can not adequately support the dual status requirements of the states and the nation as an operationalized reserve actively engaged in the War on Terror and that reconstituting a traditional militia construct would provide the nation an affordable, legal, adequately trained and equipped

² Christine E. Wormuth, Michèle A. Flournoy, Patrick T. Henry, and Clark A. Murdock. *The Future of the National Guard and Reserves: The Beyond Goldwater-Nichols Phase III Report* (Washington, DC: Center for Strategic and International Studies, July 2006), xvii.

³ Defense Science Board, *Defense Science Board Task Force on Deployment of Members of the National Guard and Reserve in the Global War on Terrorism*. (Washington, DC: Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics, September 2007), iii, 27.

⁴ Mackenzie M. Eaglen, "Equipping the Army National Guard for the 21st Century," *Backgrounder*, no. 1983, (Washington, DC: Heritage Foundation, November 13, 2006): 2.

citizenry which is relevant to the state governors and USNORTHCOM for employment in domestic and defensive crises. A dedicated and properly resourced traditional militia would permit the continued employment of the Air and Army National Guard as vital operational reserve forces supporting the Geographic Combatant Commands' overseas military combat and contingency operations. Such an institution would give members of the All Volunteer Force several new enlistment options in their decision to serve the nation.

This new militia construct would give the nation a triad of military service opportunities permitting continued volunteerism by giving citizens a choice in how they can contribute to a spectrum of duty to their nation and state. This paper provides an analysis by examining legal aspects of Titles 10 and 32 of the United States Code as it pertains to the militia, a review of the militia's and National Guard's history, current trends in the employment of the operationalized National Guard, and recommendations for a reconstituted militia that will satisfy legal and both federal and state mandates. The conclusion presents one option for a viable and fiscally responsible alternative of supporting the internal security needs of the United States. A reinvigorated state militia program administered by the states' military departments, collaborating with the National Guard Bureau and resourced by the states and both the Departments of Defense and Homeland Security can provide the nation with a salient force supporting both the states' and USNORTHCOM's requirements.

It is not intended to be a comprehensive legal review of a constitutional history of the militia and National Guard, a detailed financial study on cost comparatives between the National Guard and the active duty military forces, nor an exhaustive future

model on an alternative to the current services' size, organization and structure. Other works cover these topics thoroughly and will be referenced throughout the document where appropriate. This study concentrates on the role that a revitalized militia could fulfill in today's security environment. As Congressman Ike Skelton recognized, our nation's "military strength is the foundation of a relatively secure international order in which small conflicts, though endemic and inevitable, will not decisively erode global stability."⁵ Finding a viable, legal alternative responsible to the governors and USNORTHCOM while permitting the nation's active duty and operational reserve forces to concentrate on the forward operating environment in a new security era remains the ultimate goal.

⁵ Ike Skelton, *Whispers of Warriors: Essays on the New Joint Era* (Washington, DC: National Defense University Press, 2004), 51-52.

CHAPTER 1: THE AMERICAN MILITIA

A permanent standing military seeks causes for its continued existence and resources to maintain itself. A citizen army – an army of the people – participates in the debate as to why it exists, what threat it must repel, and how and where it might be used. For a democratic republic, there is a world of difference between these two institutions.

Gary Hart¹
Former United States Senator

The topic of an American militia may conjure up different images according to one's biases and perceptions. The Anti Defamation League calls the militia "a body of armed citizens, with some military training, who may be called to temporary active military service in times of emergency" but also defines a "new" version of militia as "armed paramilitary groups....The term excludes the National Guard and the state defense forces defined in 32 USCS s. 109 (c)."² The reality is that the modern National Guard has become a federal part time force that provides valuable services to its respective state governors in peacetime but remains accountable to the President in times of war, national emergency or purposes for training.³ The dual enlistments and oaths of office that National Guardsmen and their officers take, makes use of them in

¹ Gary Hart, *The Minuteman: Restoring an Army of the People* (New York: The Free Press, 1998), 7.

² Anti-Defamation League, "Militia-History and Law FAQ", under sections 1.1 and 1.10A, <http://www.adl.org/mwd/faq1.asp> (accessed January 31, 2008).

³ Rudy Perpich, Governor of Minnesota, et al., Petitioners v. United States Department of Defense, et al., No. 89-542 (United States Supreme Court 1989), under "Statement," item 2.a, <http://www.usdoj.gov/osg/briefs/1989/sg890222.txt> (accessed January 15, 2008). This legal brief provides a legal overview of major legislation affecting the National Guard. Governor Perpich attempted to prevent a Minnesota National Guard deployment outside of the state and country by refusing his consent as governor to the activation of his state's National Guard. The court sided with the Department of Defense and upheld the legality of the Montgomery Amendment which precludes a governor's "objection to the location, purpose, type, or schedule of such active duty[under Argument, section D, item 6, paragraph two]."

“complementary federal and state purposes” simultaneously.⁴ This topic is often referred to the dual status of the National Guard. It is a simultaneous source of political tension, as well, due to the integral nature of the National Guard to be accountable to its respective state governor and the President of the United States when in federal service. The National Guard has both a state and federal role under both Titles 10 and 32 of the United States Code. A closer examination of the historical trend towards increasing federal control of the National Guard and the legislation that led to its dual status nature will be conducted in the next chapter. The dual status remains an interesting challenge since the implementation of the Total Force Policy. New concerns have arisen about National Guard’s availability to respond to homeland defense since the attacks of September 11th and its overseas commitments in support of the War on Terror. A brief examination of the current code regarding the armed forces of the United States is in order to better understand the complexities of the militia in contemporary American society.

UNITED STATES CODE

Title 10 of the United States Code is quite clear that all healthy (physically capable) men between the ages of 17 and 45 residing in the country as citizens or intending to become citizens are members of this unique American military entity in either one of two categories. Specifically, Title 10 of the United States Code states:

(a) The militia of the United States consists of all able-bodied males at least 17 years of age and, . . . under 45 years of age who are, or who have made a declaration of intention to become, citizens of the United States and of female citizens of the United States who are members of the National Guard.

(b) The classes of the militia are--

⁴ Perpich v. United States, under “Introduction and Summary of Argument,” first paragraph.

- (1) the organized militia, which consists of the National Guard and the Naval Militia; and
- (2) the unorganized militia, which consists of the members of the militia who are not members of the National Guard or the Naval Militia.⁵

If any males (along with the women members) belong to a National Guard unit, they are classified as organized militia members and are subject to Title 32 of U.S. Code.

Otherwise, if they have no active duty military affiliation they belong to the unorganized militia.

As organized militia members, the National Guard is under the control of their respective state per Article One, Section Eight of the United States Constitution.

However, the Constitution also states in Article Two, Section Two that the militia may be called into active service of the United States under the authority of the President in his role of commander in chief. The Perpich case makes it clear that “the States are assured of the use of their National Guard units for any legitimate state purpose...They are simply forbidden to use their control over the state National Guard to thwart federal use of the NGUS [National Guard of the United States] for national security...” and that “the dual enlistment system provides substantial benefit to the States by providing them with an organized militia largely at federal expense.”⁶ See figure one for an illustration of dual status responsibilities of the National Guard. The legal precedence of the National Guard’s unique dual status has been firmly established and tested for nearly 75 years. The Department of Defense’s reliance on the Guard in the prosecution of the War on Terror will continue indefinitely. The question remains as to what indigenous forces a state

⁵ U.S. Code 10 (2005), § 311.

⁶ Perpich v. United States, under “Introduction and Summary of Argument,” seventh paragraph.

relies upon if their National Guard is deployed in federal service. The answer lies in section 109 of Title 32.

	State Role		Federal Role
	State Funded	Federally Funded	Federally Funded
Command and Control entity	Governor	Governor	President
Mobilization authorities used	In accordance with state law	Title 32 (32 U.S.C. §502(f))	Various Title 10 authorities
Where deployed	In accordance with state law	United States	Worldwide
Mission types	In accordance with state law	Training and other federally authorized missions	Overseas training and as assigned after mobilization
Examples of domestic missions	Forest fires, floods, civil disturbances	Post-9/11 airport security, Hurricane Katrina, southwest border security	Air sovereignty, missile defense, guarding DOD infrastructure
Support law enforcement activities	Yes	Yes	As limited by Posse Comitatus*

* The 1878 Posse Comitatus Act, 18 U.S.C. §1385, prohibits the direct use of federal military troops for domestic civilian law enforcement except where authorized by the Constitution or an act of Congress. This act applies to the Army National Guard and the Air National Guard, which are reserve components of the armed forces under 10 U.S.C. §10101.
Source: GAO analysis (GAO-07-60,p.10)

Figure 1. Comparison of National Guard and Federal Roles⁷

STATE DEFENSE FORCES

Section 101 of Title 32 deals with the organization of the Army and Air National Guard. It implies a dual status nature by virtue of state appointment of its officers, federal recognition, and federal subsidization of all expenses associated with arming, equipping, and organizing a unit.⁸ However, Section 109 of Title 32 entitled “Maintenance of other troops” deals with the topic of other state forces in addition to the National Guard. Specifically, Section 109 states “a State or Territory... may, as provided by its laws, organize and maintain defense forces.... A defense force established under this section may be used within the jurisdiction concerned, as its chief executive...considers

⁷ Commission on the National Guard and Reserves, *Second Report to Congress*, 45.

⁸ U.S. Code 32 (2005), § 101.

necessary, but it may not be called, ordered, or drafted into the armed forces.”⁹ The most common nomenclature for this militia category is state defense forces (SDF) but “State Guards, Home Guards, State Militia, Defense Corps, State Military Reserves and National Guard Reserves” are terms that are interchangeable regarding state militia forces in addition to the National Guard.¹⁰ Some states have actively organized section 109 military forces in addition to their National Guard. These militia organizations are precluded by Title 32 from being drafted into the armed forces and provide an alternative in-state resource if their National Guard units are deployed. Membership in these section 109 organizations is not authorized to National Guard and other reserve component members nor does such membership exclude one from the possibility of being drafted into the armed services if the draft were reinstated.¹¹

There are 22 states and one territory currently maintaining active SDFs and eight others that have the legal authority to establish them if desired. Figure two summarizes the details of those states and territories hosting SDFs. Most of these state militias are based on a light infantry or military police model and provide the states with a ready reserve for state emergencies. Command and control is provided by the state governor through the respective state’s Adjutant General and its military department.¹² Official recognition of SDFs is acknowledged by the National Guard Bureau, the federal military entity that assists the Department of Defense in training, equipping and organizing of the

⁹ U.S. Code 32 (2005), § 109.

¹⁰ National Guard Bureau, *National Guard Regulation (NGR) 10-4, State Defense Forces: National Guard Bureau and State National Guard Interaction* (Washington, DC: Department of the Army, September 21, 1987), 2. http://www.ngbpdc.ngb.army.mil/pubs/10/ngr10_4.pdf (accessed December 14, 2007).

¹¹ U.S. Code 32 (2005), § 109; National Guard Bureau, *NGR 10-4, 2-3*.

¹² National Guard Bureau, *NGR 10-4, 3*.

54 states and territories’ National Guard units. The recognition is in the form of *National Guard Regulation 10-4, State Defense Forces* dated 1 October 1987 and recommends that SDFs be organized as a military police or light infantry.¹³ The National Guard Bureau views “activities of State Defense Forces, as envisioned by this regulation, are supplemental to the state mission of the National Guard during peacetime and are considered to be of a constabulary nature and not that of combat forces.”¹⁴ While *NGR 10-4* acknowledges SDF legitimacy, it is grossly outdated and in need of revision. Chapter two will further discuss SDFs in an historical context.

State	Active Strength	Budget in \$	Type Unit	Prior Service	Age Range
Alabama	600	30K	Support HQs	75%	22–69
Alaska	274	26.5K–1 Mil	Military Police	75%	20–72
California	500	225K	Support HQs	80+%	18–62
Connecticut	275	0	Infantry/Cavalry	40%	20–60
Georgia	500	0	Infantry	40%	18–64
Indiana	315	40K	Support HQs	70%	21–75
Louisiana	108	0	Admin HQs	96%	50–65
Maryland	194	0	Support HQs	75%	17–70
Massachusetts	60	0	Admin Det.	60–75%	18–65
Michigan	130	0	Support HQs	80%	20–70+
Mississippi	185	0	Infantry	85%	18–78
New Mexico	200	7K	Military Police	75%	18–65
New York	1,200	75K	Support HQs	75%	18–65
Ohio	650	14K	Military Police	50+%	17–67
Oklahoma	28	0	Support HQs	75%	21–75+
Oregon	184	0	Infantry	50%	18–65
Puerto Rico	1,630	300K	Support Det.	30%	16–65
South Carolina	1,500	100K	Infantry	45–50%	17–75
Tennessee	990	53K	Light Infantry	80%	18–70
Texas	1,518	103K	Infantry	60%	17–79
Vermont	326	0	Infantry	90%	17–70
Virginia	774	0	Light Infantry	70%	18–70
Washington	95	0	Infantry	90%	18–64

Figure 2. State Defense Forces¹⁵

¹³ National Guard Bureau, *NGR 10-4*, 4.

¹⁴ *Ibid.*

¹⁵ Brent C. Bankus, “Volunteer Military Organizations: An Overlooked Asset,” *Joint Force Quarterly* 43, (4th quarter, 2006): 31.

CHAPTER 2: HISTORICAL ANALYSIS

...the immediate safety and future tranquility of this extensive Continent depend in a great measure upon the peace Establishment now in contemplation; and being convinced at the same time, that the only probable means of preventing insult or hostility for any length of time and from being exempted from the consequent calamities of War, is to put the National Militia in such a condition as that they may appear truly respectable in the Eyes of our Friends and formidable to those who would otherwise become our enemies.

General George Washington¹

It is necessary to briefly review the history of the nation's militia and its historical relationship with the active duty United States Army and the creation and subsequent evolution of the National Guard to understand the context of this paper's thesis; the intriguing nature of the associated state, federal and special interest politics; and the validity of reestablishing and maturing the states' militia forces. It is neither a comprehensive history nor constitutional treatise. Rather, it addresses key points necessary to understand the complexity of relationships and dynamics of the historical militia debate in relation to the standing federal army. It also serves as the foundation for appreciating the intent of the various defense acts affecting the militia and their respective efforts to remain true to the spirit of the Constitution of the United States and the democratic ideals of the founding fathers of the republic.

The debate on the role of large standing federal army is as old as the United States itself. Veteran actors from throughout the nation's past from George Washington and his General Officer Staff, Alexander Hamilton, the Federalists and Anti-Federalists,

¹ George Washington, *Sentiments on a Peace Establishment*, 197. <http://www.history.army.mil/books/RevWar/ss/peacedoc.htm> (accessed February 1, 2008). *Sentiments* is a recommended reading for an appreciation of Washington's vision of a national militia based upon the concept of universal military training.

Senator George Dick, and Generals Emory Upton, John McAuley Palmer, and Creighton Abrams have participated in the ongoing discussion of the military's structure and organization. The product of this historical debate has remained fundamentally true to original spirit of the founders' intent towards a national military policy that fostered broad civilian participation. A closer examination of the colonial "militia" context is in order to better understand what the original militia proponents were championing in the decade following 1780 at the dawn of the United States as an independent nation.

COLONIAL MILITIA EXPERIENCE

History has treated the subject of colonial America's militia in broad terms. Often generic assumptions are applied to the various militias of the colonies despite significant colonial societal differences which were based on unique threats poised at each colony. This section briefly addresses the origins of the colonial militia, similarities, regional concerns, differentiation, and finally sources of military manning in the colonial era prior to the Revolutionary War. This will assist the reader in fathoming the subsequent constitutional debates on the subjects of a federal standing army and the militia.

As the English colonies were being settled, self defense against possible conflict with the North American natives or raiding expeditions from rival continental European powers was a concern. King Charles II's charter to the Connecticut Colony empowered the founding companies "to assemble Marshal Array and put in Warlike posture the inhabitants of said colony...to expulse repell and resist by force of Arms...and also to kill slay destroy by all fitting ways...all and every Person or Persons as shall attempt

destruction invasion detriment or annoyance of the...Inhabitants.”² The military model employed was the English “train band” where all males between 15 and 60 constituted the militia and they would assemble within their county for military training on a periodic basis.³ Each of the English outposts had a military professional responsible to train the civilian males and maintain a martial readiness for the common defense.⁴ Two familiar examples of such professionals are Captains John Smith and Myles Standish of Jamestown and Plymouth in the employ of the Virginia and Plymouth companies respectively.⁵ As these initial outposts became permanent settlements accompanied by increased population, new ones were founded and the train band concept evolved with colonial expansion. New settlements and rural counties were expected to provide permanent armed militia companies for their local and collective defense.⁶ If a military expedition to environs outside of the local area was required, the companies would pool their resources and raise a mobile company by soliciting volunteers from the militia or drafting members from it.⁷ After British consolidation of the North American colonies, thirteen different standing militia “systems” existed but they shared the following

² John K. Mahon, *History of the Militia and the National Guard* (New York: Macmillan, 1983), 14.

³ John McAuley Palmer, *America in Arms: The Experience of the United States with Military Organization* (New Haven, CT: Yale University Press, 1941), 16-17. Palmer provides a first person perspective as he was an active participant in the evolution of the active and reserve components and the grandson of famous Civil War veteran and general, Illinois Governor and U.S. Senator John McAuley Palmer.

⁴ Palmer, 16-17; Mahon, 15.

⁵ Page Smith, *A New Age Now Begins* (New York: McGraw-Hill, 1976), 1:15, 17.

⁶ Palmer, 19; Allan R. Millett and Peter Maslowski, *For the Common Defense: A Military History of the United States of America* (New York: The Free Press, 1984), 10. According to Millett and Maslowski “During the first seventy years of settlement a series of Indian wars severely tested colonial military institutions.”

⁷ Frederick P. Todd, “Our National Guard: An Introduction to Its History [Part One],” *Military Affairs*, 5, no. 2 (Summer, 1941): 75; Palmer, 18.

common characteristics: “(1) a substantial citizen could not decline a commission except for drastic reasons; (2) a commissioned officer could not resign at his pleasure but had to be released by the governor; and (3) the officers were drawn from the elites.”⁸ Generally, militia members provided their own weapons or were loaned publicly-owned weapons for drill or when called to arms.⁹ These were the common themes of the early colonial militia. Subtle differences evolved as settlement of the colonies matured and began to expose various causes of concern to the different regions.

One the most significant differences lay in the proximity to the threat. Early outposts ranging from Massachusetts and Plymouth to Virginia faced serious hostilities from Native Americans over the first 50 years of their existence. Militarily, the New England colonies continued to worry about the proximity to “New France” to the north and the accompanying threat posed by the various Algonquian and Abenaki tribes of the Northeast.¹⁰ These fears manifested as intermittent and loathsome attacks, as well as, regional wars on its settlements well into the eighteenth century.¹¹ New England remained militarily strong through out the colonial period due to the northern threat and settlement demographics that provided a “clustering of manpower and the cohesive

⁸ Mahon, 16; Millett and Maslowski, 10.

⁹ Ibid., 16-17.

¹⁰ Alan Taylor, *American Colonies* (New York: Penguin Group, 2001), 188, 290; John W. Shy, “A New Look at Colonial Militia,” in *The Military in America: From the Colonial Era to the Present*, ed. Peter Karsten (New York: The Free Press, 1980), 5-6; Jill Lepore, *The Name of War: King Philip’s War and the Origins of American Identity* (New York: Alfred A. Knopf, 1998), 7; Howard H. Peckham, *The Colonial Wars 1689-1762* (Chicago, IL: University of Chicago Press, 1964), 8. Lepore illustrates the extreme nature of the violence waged between the indigenous peoples of New England and the English. It is an interesting study which lends credence to the “Clash of Civilizations” theory as postulated by Samuel P. Huntington in his article and book of the same name respectively.

¹¹ Taylor, 188, 290; Lepore, 7; Shy, 5-6.

atmosphere in the town community.”¹² The eventual animosity that arose between Massachusetts and the British over self-rule and authoritarian measures imposed by the British Crown helped maintain a strong civilian martial spirit up to the outbreak of the Revolutionary War.

Conversely, at the beginning of the eighteenth century the Virginia militia almost “ceased to exist for about a half century” due to a lack of a real threat.¹³ Virginia’s sister colonies to the north permanently faced the French and the Iroquois federation and Abenaki tribes; her sister colonies to the south faced the Spanish as well as indigenous Southeastern tribes and the French threat emanating from Louisiana.¹⁴ Within the confines of Virginia east of the Appalachian, its tribes were forced to the western regions of the colony and were contained on the frontier by roving “semi-professional rangers.”¹⁵

As the Seven Year’s War (French and Indian War) approached, the militia construct was stretched beyond its founding purpose of local self defense. The introduction long distance sustained campaign warfare in North America challenged the colonial logistic capabilities. The European powers present in the New World brought in small professional armies that were augmented by volunteer colonists or drafted quotas from the militia as was previously cited in earlier times.¹⁶ Success was predicated on the inherent martial skill of the colonial augmentees. The New England colonies maintained

¹² Shy, 5; John R. Galvin, *The Minute Men the First Fight: Myths and Realities of the American Revolution*. 2nd ed. (Washington, DC: Pergamon-Brassey’s, 1989), 9. According to Galvin “Four of the New England colonies-Plymouth, Connecticut, New Haven, and Massachusetts...” formed a confederation called the “United Colonies of New England” in 1643 for the purpose of mutual defense assistance against hostile indigenous tribes.

¹³ Shy, 6.

¹⁴ Shy, 6; Peckham, 7; Taylor, 235, 290.

¹⁵ Shy, 6.

¹⁶ Shy, 7; Millett and Maslowski, 10; Palmer, 19.

a relatively proficient militia whereas Virginia did not. By 1740, Virginia was forced to enlist volunteers or draft “vagabonds” into service for a military foray against the Cartagena tribe.¹⁷ Virginia reinstated its militia laws in August 1755 after the overwhelming defeat of General Braddock’s force of 2,200 on the banks of the Monongahela River against a force of 252 French regulars and Canadian militia and over 600 members of various Indian tribes.¹⁸ The defeat represented the first major battle of the Seven Year’s War with France.

During the Seven Year’s War, British Major General James Abercromby noted that if “provincial” troops were required to fight along side British regulars, they should be drafted out of the militia vice enlistments of raw recruits from the public that cost the Crown a premium compared the employment of the militia.¹⁹ Todd summarizes the provincial participation in the Seven Year’s War as the “rangers, militia, and uniformed volunteers.”²⁰ The last category of available colonial manpower to discuss is the uniformed volunteer.

One martial phenomenon of the outgrowth of urban colonial life was the formation of unique “volunteer units.”²¹ These units had the financial means to uniform and arm themselves and had “legislative permission” to remain separate from the

¹⁷ Shy, 7

¹⁸ Fred Anderson, *Crucible of War: The Seven Year’s War and the Fate of Empire in British North America, 1754-1766* (New York: Alfred A. Knopf, 2000), 96-109. Anderson provides a fascinating look at the Seven Year’s War and the minor yet cataclysmic role played by the inexperienced 22 year old Major George Washington.

¹⁹ Shy, 11.

²⁰ Todd, “Part One,” 75.

²¹ Mahon, 18; Todd, “Part One,” 75.

militia.²² The New Jersey Blues under the command of Peter Schuyler is fine example of a mid-eighteenth century colonial volunteer unit. An accomplished soldier who studied military science, Schuyler equipped and trained his volunteers as a light infantry regiment with a distinctive uniform and more importantly, imbued the regiment with military discipline.²³ According to military historians, it is the volunteer units such as the New Jersey Blues and their progeny that are the ‘true forebears’ of the modern National Guard.²⁴ Finally, the question remains but what about the concept of the “Minute Man?”

As tensions grew between the colonies and the British Crown, the Provincial Congress of Massachusetts, set up in opposition to the military Royal Governor General Thomas Gage, requested that a fourth of the colony’s standing militia be prepared “to march at a moment’s notice.”²⁵ This category of ready to mobilize militia earned the moniker of “Minutemen” as a result.²⁶ Shortly after the skirmish at Lexington and Concord, the Continental Congress recommended that the colonies each organize 25 percent of their militia into “minute companies” in preparation for the outbreak of hostilities.²⁷ Prior to the beginning of the Revolutionary War, the minutemen represented

²² Mahon, 18.

²³ Todd, “Part One,” 75-76.

²⁴ Barry M. Stentiford, *The American Home Guard: The State Militia in the Twentieth Century* (College Station, TX: Texas A&M University Press, 2002), 9; Mahon, 18, 260; Todd, “Part One,” 74. According to Mahon “These volunteers were the true forebears of the National Guard...” and “The National Guard grew out of the volunteer portion of the militia...” Todd goes one step further and states “The National Guard, popular belief and legislation to the contrary, is not descended from the common militia. In fact, its development has been in opposition to, and frequently in spite of, this body.”

²⁵ Smith, 1:463.

²⁶ Bruce Lancaster, *The American Revolution*, 1st ed. (New York: Mariner Books, 2001), 81; Smith, 1:459; Todd, “Part One,” 76.

²⁷ Todd, “Part One,” 76.

the final evolution of colonial North America's militia, the last remnant of the original English system.

REVOLUTIONARY EXPERIENCE

The colonial militia model served as the template for American participation in Continental Army during the Revolutionary War. Initially, the majority of the forces General Washington assumed command of in July 1775 in Cambridge, Massachusetts were 22,000 New England militia.²⁸ This force, in a lesser number, had faced the British the previous month in the second battle of the American Revolution at Breed's and Bunker Hills.²⁹ What eventually transformed into a Continental Army under Washington was an assemblage of short and long term enlisted Regulars, standing militia participating on a temporary basis, and volunteer units. The Second Continental Congress convened in May 1775 and authorized an initial enlisted period of eight months targeting the militia and subsequently in June authorized one year enlistments to stand up a formal Continental Army.³⁰ A quote by Washington that reflected his dismay after arriving in Massachusetts and shared his commonly known opinion of the extant militia: "Could I have foreseen what I have and am like to experience, no consideration upon earth should have induced me to accept this command."³¹

²⁸ Robert K. Wright Jr., *The Continental Army*, Army Lineage Series (Washington, DC: U.S. Government Printing Office, 1983), 21. <http://www.history.army.mil/books/revwar/contarmy/CA-fm.htm> (accessed January 15, 2008).

²⁹ David McCullough, *1776* (New York: Simon and Schuster, 2005), 7.

³⁰ Wright, 21, 24.

³¹ McCullough, 64.

As the close of 1775 approached, many of the militia intended to depart eastern Massachusetts in order to return home in the traditional manner of their forebears. A recruiting effort was made to keep willing militia members in Massachusetts as part of the developing Continental Army. Membership in the Continental Army would allow Washington to conduct warfare throughout the colonies without regard to territorial concerns and militia restrictions on its respective members regarding colonial border crossings. Washington authored a policy in 1775 calling on the individual colonies to use their non-mobilized militia for local defense as opposed to relying on the new and under-resourced Continental Army.³² The early reliance on the militia for local defense would permit Washington to concentrate his efforts on engaging the Continental Army with the garrisoned British troops in Boston and New York. The American military tradition of part-time local defense made this policy made palatable to the colonies. The Continental Congress would continue to authorize militia augmentation for remainder of the war effort and at Washington's request in the summer of 1776 raised enlistments to three years for the remainder of the war to give the nation a Continental Army with an experienced veterans' base.³³ It became a pragmatic issue that the new nation had a regular army with sufficient military discipline in order to have any chance of defeating the professional British and Hessian military forces. The law makers of the Continental Congress were initially reluctant to issue long enlistments due to colonial tradition of short military call ups for military expeditions, as well as, the "practical and ideological reasons" that militia involvement reflected "the full participation of society."³⁴ The requirement for

³² Wright, 84-85.

³³ Ibid., 91-91.

large American forces necessary for conducting a nation-wide campaign assured participation of the militia along side the regulars of the Continental Army through out the colonies for the duration of the war.

Washington had numerous opportunities to reflect upon the composition of his army as he frequently wrote to Congress to address his perceptions and observations on the legislature's ability to provide him with an army accompanied many deficiencies. The short term enlistments and the frequent calls for temporary militia participation were particularly irritating issues to Washington. Regarding the two, he stated "Short enlistments and a mistaken dependence upon the militia, have been the origin of all our misfortunes and the great accumulation of our debt."³⁵ Critics of the militia concept and proponents of a large standing army have quoted Washington out of context. Perhaps his most infamous impression of the militia which has been cited numerous times by those with agendas:

To place any dependence upon the militia is assuredly resting upon a broken staff...if I called upon to declare upon oath whether the militia has been most serviceable or hurtful, upon the whole I should subscribe to the latter...Experience which is the best criterion to work by, so fully, clearly, and decisively reprobates the practice of trusting to militia, that no man who has any regard for his own honor, character or peace of mind, will risk them upon this issue.³⁶

Unfortunately, this quote reflects a frustration that was a result of many life experiences beginning, perhaps, with his personal militia misadventures in the Ohio Valley starting in 1753 as a youthful and inexperienced officer of the Virginia militia. He later

³⁴ Ibid., 86.

³⁵ Palmer, 14.

³⁶ Ibid., See Thomas E. Baker's *Another Such Victory: The Story of the American Defeat at Guilford Courthouse that Helped Win the War for Independence* for a classic illustration of the expectations of the militia and its integration with the Continental Army.

accompanied Braddock on the fateful campaign along the Monongahela River. Although he criticized the militia at large, Washington and many of his key Continental general and field grade officers, as well as, enlisted regulars were militia progeny receiving an experiential military education as participants in the Seven Year's War against the French and their Native allies nearly a generation earlier.

PEACE ESTABLISHMENT AND THE CONSTITUTION

Washington's Farewell Letter to the Army raises the issue of the new nation's requirement for a defensive force for the purpose of a "Peace Establishment" and having a national standard of organization, discipline and equipment that would place "the Militia of the Union upon a regular and respectable footing."³⁷ His construct introduces the militia as a one of the "Country," one of the "Continent," and one of the "Union" all implying a model of a federal militia.³⁸ These concepts while representing his insights were shared by many others that saw service during the war.

Washington surveyed his general staff for their inputs on the new nation's military establishment to submit for consideration to the Congress Constitutional Convention. The generals consulted represented the best of Washington's general officer corps and included Generals Hand, Heath, Huntington, Know, R. Putnam and Steuben.³⁹ Palmer observed that the "most striking thing about them is their unanimity as to the military needs of the United States...they all recommended that the militia should be given uniform organization and effective training throughout the states" and that they

³⁷ George Washington, *Washington's Circular Letter of Farewell to the Army*, June 8, 1783. <http://memory.loc.gov/learn/features/timeline/amrev/peace/circular.html> (accessed January 15, 2008).

³⁸ Ibid.

³⁹ Palmer, 6.

were in agreement ‘that a well-regulated militia, so formed, would be a sufficient basis for an effective national defense.’⁴⁰

Washington consolidated his associates’ inputs and those made by Alexander Hamilton along with his own observations and titled it “Sentiments on a Peace Establishment.”⁴¹ Washington stated at the opening of his treatise the necessity of a small number of federal troops as to “awe the Indians, protect our Trade, prevent the encroachment of our Neighbors” and subsequently acknowledging the dangers to liberty of a large standing army.⁴² Regarding the militia, he continued that “A well organized Militia; upon a Plan that will pervade all the States, and introduce similarity in their Establishment Manoeuvres, Exercises and Arms” and would be modeled after the enduring militia of the Swiss federation.⁴³ The Sentiments generated lively debate when discussed at the Continental Congress and several subsequent amendments were placed before the congress as resolutions for consideration from 1784 to 1787.⁴⁴

The nation’s founders considered the merits of the Sentiments; the standing federal army’s role and implications over the course of the decade. The Federalists, advocates of a strong centralized federal government, argued for the creation and maintenance of standing army while the Anti-Federalists argued for sovereignty of the states and the states’ right to maintain a militia as a balance of power in opposition to the

⁴⁰ Ibid., 7. Note that General Huntington refrained from the otherwise unanimous agreement on the recommendations of the militia for reasons unspecified.

⁴¹ Palmer, 10.

⁴² Washington, *Sentiments on a Peace Establishment*, 193, 194.

⁴³ Ibid., 193, 197.

⁴⁴ Ibid., 208-211.

centralized government. In the context of the common defense of the new nation, the United States Constitution was written as a compromise to appease the signatories, solicit their support, and achieve consensus. Control and power over the nation's military capacity was divided between the legislature and the executive branches of government in article 1, section 8 and article 2, section 3. There was a differentiation between a standing federal army, a necessary evil in order to protect the new nation's violent frontier, and the militia of the people since it "embodied the democratic principle that the defense of the nation was the responsibility of every citizen."⁴⁵ The Bill of Rights, subsequently approved in the next session of the Congress, sought to assure the autonomy of the individual states and remove the fear of centralized federal control through the inclusion of the Second and Third Amendments which preserved the rights of the states to maintain arms by their citizen militia and prohibited federal quartering of troops respectively.

As articulated by Huntington, the army and militia clauses of the Constitution were a source of future consternation with respect to command and control under "state and national governments."⁴⁶ This paradox would continue to manifest itself throughout the nation's history. Even today, the Department of Defense struggles over questions of legality regarding command and control of the National Guard and its unique dual status.

SETTING THE PARADIGM

⁴⁵ Samuel P. Huntington, *The Soldier and the State: The Theory and Politics of Civil-Military Relations* (Cambridge, MA: Belknap Press of Harvard University Press, 1957), 167.

⁴⁶ *Ibid.*, 169.

The Ohio River Valley remained a source of contention for the new nation. Two disastrous military defeats of the newly legislated regular army and militia at the hands of the Miami Indian tribes in 1790 and 1791 must have influenced national leadership when the Militia Act of 1792 was proposed to raise the readiness of the militia.⁴⁷ The act passed less than five years after ratification of the United States Constitution and guided the nation's attitude towards its militia for the next 111 years.⁴⁸ It attempted to give additional clarification to the requirements and expectations of the militia:

to enroll every such citizen as aforesaid, and also those who shall, from time to time, arrive at the age of 18 years, or being at the age of 18 years, and under the age of 45 years (except as before excepted) shall come to reside within his bounds; and shall without delay notify such citizen of the said enrollment, by the proper non-commissioned Officer of the company, by whom such notice may be proved. That every citizen, so enrolled and notified, shall, within six months thereafter, provide himself with a good musket or firelock, a sufficient bayonet and belt, two spare flints, and a knapsack, a pouch, with a box therein, to contain not less than twenty four cartridges, suited to the bore of his musket or firelock, each cartridge to contain a proper quantity of power and ball; or with a good rifle, knapsack, shot-pouch, and power-horn, twenty balls suited to the bore of his rifle, and a quarter of a power of power; and shall appear so armed, accoutred and provided, when called out to exercise or into service, except, that when called out on company days to exercise only, he may appear without a knapsack.⁴⁹

As noted earlier in the debates of the Constitutional Convention, Elbridge Gerry's fear of militia neglect came to fruition within a generation at the outset of the War of 1812 when the various state militias performed in a manner ranging from ill-disciplined and near

⁴⁷ Emory Upton, *The Military Policy of the United States* (Washington, DC: Government Printing Office, 1917), 77, 79. Todd and Palmer levy legitimate criticism against Upton since he failed to consider Washington's *Sentiments on a Peace Establishment* in his review of national military policy.

⁴⁸ Mahon, 52.

⁴⁹ U.S. Congress, *The Militia Act of 1792*, 2nd Cong., 1st sess., May 2, 1792. http://www.constitution.org/mil/mil_act_1792.htm (accessed February 16, 2008).

mutinous to well organized and heroic.⁵⁰ It was shortly after the conclusion of the war that Andrew Jackson's victory over the British at New Orleans on January 8, 1815 "confirmed what Americans wanted to believe, namely, that the nation could draw together a fighting force at the moment of need, not before, without elaborate and expensive preplanning" of a regular army and dependant upon the citizen soldier.⁵¹ This view neglected the fact that the militia failed the nation in defense of its capitol on August 24, 1814 when at the Battle of Blandensburg a "hastily assembled" force of 5,401 composed mostly of "volunteers and militia" was "attacked and routed" by a smaller force of 3,500 British troops.⁵² In addition to the humiliating defeat and loss of the capitol, the several states refused to call up the militia in response to the federal decree.⁵³ In other cases, states provided militia but its militia refused to move beyond territorial boundaries.⁵⁴ In effect, many of the same militia issues that faced appointed, representative and military leaders of the previous two centuries remained challenges at the beginning of the nineteenth century and continued to haunt the nation in times of martial crisis for the remainder of the 1800's.

DECLINE, REFORM EFFORTS, TRENDS

The era between the War of 1812 and the Civil War was one of militia neglect. The first event was a military policy transition occurring shortly after the War of 1812.

⁵⁰ Mahon, 67-77.

⁵¹ Ibid., 77.

⁵² Upton, 126-128.

⁵³ Ibid., 96.

⁵⁴ Mahon, 68-69.

Secretary of War John C. Calhoun “thought it a delusion to rely on the militia.”⁵⁵ In December 1820, he proposed an expansible army policy of increasing the number of officers in anticipation of future wars where the professional officer corps would rapidly train and discipline primarily new army recruits and secondarily the militia.⁵⁶ Calhoun’s proposal had a lasting impact upon the proponents of a large regular army and critics of the militia.

During the administration of President John Quincy Adams, the Barbour Board, under the leadership of Secretary of War James Barbour, conducted the first serious examination of the militia in 1826.⁵⁷ As a serious undertaking, the following recommendations were made for the militia’s improvement:

1. Cut the active militia down to 400,000 and seriously train that number.
2. Divide the 400,000 among the states according to population, and let the states raise their quotas in their own ways.
3. Appoint an adjutant general for the militia affairs in the War Department.
4. Make the units of the several states truly interchangeable by enforcing common tables of organization.
5. Distribute drill manuals to all militias at federal expense.
6. Run a training camp each year in every state for at least ten days at federal expense.⁵⁸

Recognizing the growth of the nation’s population, as well as, the need to provide standards, disciplined training and modernized firearms to maintain the good order of the militia, these recommendations by military officers were practicable and logical. By this time in the nation’s history, state governments were neglecting the militia and letting it lapse into irrelevance. The board’s recommendations fell upon deaf Congressional ears.

⁵⁵ Ibid., 82.

⁵⁶ Huntington, *Soldier and the State*, 216; Palmer, 76.

⁵⁷ Mahon, 81.

⁵⁸ Ibid., 81.

Thirty-one presidential recommendations were submitted to Congress between 1816 and 1835 requesting legislative attention to improve the militia and no actions were taken.⁵⁹ State and congressional neglect of the militia would take its toll in the intervening martial events leading up to the Civil War. The draft of volunteers would require a period of training before their employment as effective military forces.

The first half of the nineteenth century was a “golden age” of the independent and self sufficient militia companies within the nation.⁶⁰ As the states disregarded militia affairs, a new trend occurred with increasing numbers of “volunteer units” which gained momentum and popularity. Instead of disbanding, militia units frequently became “social organizations lacking military discipline and military skill.”⁶¹ Essentially following the precedence established by Peter Schuyler’s New Jersey Blues, the independent movement was especially popular within the larger cities which were easier to recruit the veterans of the Revolution and the War of 1812, or attract younger men with a zest of martial spirit. These independent companies were autonomously directed, self-supported and organized. Each unit wrote its by-laws, elected their own officers and chose their own unique and creative uniforms and unit names.⁶² By the time the Civil War commenced, “compulsory militia” as mandated by the Militia Act of 1792 virtually

⁵⁹ Ibid., 79.

⁶⁰ Todd, “Part One,” 83.

⁶¹ Huntington, *Soldier and the State*, 203.

⁶² Todd, “Part One,” 83.

disappeared among the states.⁶³ The nation lacked a dependable para-military force that Washington and the framers of the Constitution envisioned.

THE VOLUNTEERS RELABELED

The period after the American Civil War was a time of turbulent change. As the nation was healing from the conflict, it was also dealing with a variety of social movements that included race, immigration and labor issues. The labor strikes of 1877 demonstrated the incompetence of the states and their militia, or lack of one, in restoring order and the requisite need to call for federal troops.⁶⁴

A number of distinguished Civil War veterans from both the North and South served in the United States Congress in the years after the Civil War. The Burnside Commission, composed of several of these members, convened in June 18, 1878 as a joint House and Senate committee to review and recommend a revised military policy for the nation.⁶⁵ General Emory Upton, chartered by General Sherman to complete a comprehensive review of United States military history and policy, provided material for congressional review. His findings along with other documentation from regular army generals supported Secretary of War Calhoun's expansible army principle first proposed roughly 50 years earlier in the Monroe Administration. The Burnside Commission rejected the militia criticism that accompanied the officers' arguments since all the Commission members had led citizen-soldiers in battle and had dissenting opinions on

⁶³ Mark P. Meyer, *The National Guard Citizen-Soldier: The Linkage Between Responsible National Security Policy and the Will of the People* (Maxwell Air Force Base, AL: Air University Press, October 1996), 6.

⁶⁴ Stentiford, 9.

⁶⁵ Palmer, 108-109.

their employment.⁶⁶ By doing so, the Commission affirmed their perceived value of the citizens' contributions to the war effort as militia members and refused to entertain growth of an expansible army at the cost of the militia which had effectively ceased to exist.

The War Department observed the fealty of the commission members to the veteran citizen soldiers. General McClellan recognized an opportunity to harness the well equipped volunteer units and their membership base of approximately 90,000 individuals which included many seasoned veterans.⁶⁷ Speaking to the Burnside Commission, he made the following comment:

All of our experience has shown that in the event of war we cannot rely upon the militia as such, but upon such individual members of the vast body as offer to serve and form corps of volunteers, and upon regiments of national guards. The great nursery of these volunteers be the corps of "National Guards." I would earnestly commend the careful thought of the committee the propriety of encouraging the formation of such corps in the various states, and of assisting them as much as possible.⁶⁸

The concept of a national guard was informally birthed out of the Burnside Commission. Although the term was first used in 1824 by state volunteer companies performing in a ceremony honoring General Lafayette who "commanded the Garde National during the French Revolution," volunteer units and the states began using the nomenclature on an increasing basis throughout the century.⁶⁹ Although its use began, it was yet to be formally recognized at a national level.

⁶⁶ Ibid., 114-115.

⁶⁷ Frederick P. Todd, "Our National Guard: An Introduction to Its History [Part Two]," *Military Affairs*, 5, no. 3 (Autumn, 1941): 159.

⁶⁸ Palmer, 115; Todd, "Part Two," 159.

⁶⁹ Stentiford, 8; Gary Hart, *The Minuteman*, 119.

General Upton's studies were privately and posthumously published as *The Military Policy of the United States* which remained a volatile tome. The official War Department version was not published until 1907, over twenty-five years past Upton's death. He argued for a larger standing federal army based on the expansible principle, criticized the nation's militia and excessive civilian control of the military.⁷⁰ He believed a disciplined, large standing army would have ended the American Civil War four years early, saving the nation "four years of war."⁷¹ He along with many of his regular army veterans shared the philosophy that "citizen soldiers are worthless and that only professional soldiers are worth their salt."⁷² These professional views were also shared with but not embraced by the Burnside Commission members who also witnessed and participated in the same carnage and horror of the American Civil War. Upton and his collaborators sought a larger professional regular army that would have minimized national suffering by ending the war expeditiously vice relying on limited volunteers, inexperienced militia, and drafted inductees. Their efforts would have lasting impact and be remembered for another 30 years paving the way for increasingly more federal control over a militia that was transforming to an association of various volunteer units. State militia muster of all legally eligible males had become a memory of the past.

State politics remained an influential force over the militia and volunteer units throughout the nineteenth century. In 1879 a powerful lobby emerged as the National Guard Association. It urged greater federal affiliation for national guard and volunteer

⁷⁰ Upton, viii-xi.

⁷¹ Upton, xv.

⁷² Palmer, 80.

units in hopes of receiving federal funds and limited federal oversight.⁷³ With strong federal backing in both the legislative and executive branches of government, the Militia Act of 1903 was passed.⁷⁴ The act gave the governors the option to request federal funding for their respective Guard units but it required federal oversight by the Regular Army of organizing, equipping, and training; and mandated minimum participation in annual drills and a summer field exercise.⁷⁵ It also shared elements of the colonial tradition of seeking individual volunteers from the Guard to participate in a federal call up. Other caveats remained such as the governors retaining the right to authorize units into federal status, individuals had to volunteer for federal service which could not exceed nine months.⁷⁶ Secretary of War Elihu Root viewed the Guard's mission as an agent responsible for "peacetime training" of a manpower pool providing a wartime source of individual volunteers; unit integrity was not assured during mobilization.⁷⁷ As the Militia Act of 1792 tried to correct deficiencies of the Constitution and the Bill of Rights so did the subsequent Act of 1908.

⁷³ Todd, "Part Two," 162-163.

⁷⁴ Mahon, 297; Stentiford, 12, 248; Todd, "Part Two," 163. The Militia Act of 1903 was commonly referred to as the Dick Act, named after U.S. Congressman George F. Dick, an Ohio National Guard Major General, President of the National Guard Association and chairman of the House Committee on the Militia. The act gave official recognition to the National Guard as the organized militia. It was differentiated from the unorganized militia which consisted of all males not members of the organized militia and eligible for militia service if conditions warranted. Interestingly, the Act's draft resolution sought a 100,000 member federal reserve without any state affiliation which was rejected by the Senate thanks to lobbying efforts by the National Guard Association.

⁷⁵ Todd, "Part Two," 139-140.

⁷⁶ Stentiford, 13.

⁷⁷ Stentiford, 13; Todd, "Part Two," 140. It is important to note this phenomenon. It is similar to what Secretary of Defense Rumsfeld attempted in his "cross leveling," the selective use of the reserve component where individuals were mobilized vice entire units for initial action in Operations Enduring Freedom and Iraqi Freedom.

FEDERALIZATION

The Act of 1908 was not the success it was intended in its attempt to overcome the perceived limitations of the Dick Act. While it did increase the length of service the President could call up members of the Guard and enabled military service outside of the country, it faced a legal challenge in 1912 when the Act of 1908 was declared unconstitutional by the United States Attorney General and the Judge Advocate General of the Army; ultimately setting the stage for the eventual establishment of a federal reserve.⁷⁸ The War Department's 1907 publishing of Upton's *The Military Policy of the United States* continued to stir debate on the viability of the state militia as a federal force provider. It was a final attempt to bypass the National Guard and its power lobby the National Guard Association. The Army's continued a vision of a military structure in accordance with the long-deceased Upton:

In time of peace and war the military forces of the country to consist of – The Regular Army, The National Volunteers, and The Militia. The Regular Army in time of peace to be organized on the expansive principle and in proportion to the population, not to exceed one thousand in one million. The National Volunteers to be officered and supported by the Government, to be organized on the expansive principle and to consist in time of peace of one battalion of two hundred men to each Congressional district. The Militia to be supported exclusively by the States and as a last resort to be used only as intended by the Constitution, namely to execute the laws, suppress insurrections, and repel invasions.⁷⁹

This vision represented Upton's quest for a larger Regular Army with absolute federal control of the militia. Upton held a long-term perception of excessive civilian control and civilian manipulation of the military. He and his adherents believed his original proposal would avoid the confusing nature of state and federal governments sharing authority over

⁷⁸ Todd, "Part Two," 142.

⁷⁹ Upton, xiv.

the militia. According to Eliot Cohen, the Uptonians believed “American military policy was a history of the irresponsibility of legislative authority and ...democratic neglect of the armed forces.”⁸⁰ He continues that an “irrational antimilitary prejudice” accompanied by significant losses due to “civilian interference in...micromanagement of military operations.”⁸¹ It proved to be partially successful in the context of the next series of defense resolutions that led to increased federalization of the Guard and beyond.

The National Defense Act of 1916 set the stage for the efficiency debates throughout the remainder of the twentieth century. Among its significant achievements it created a federal reserve not affiliated with any states, required Guardsmen to swear oaths to both their state and the federal government which facilitated the transfer of the Guard from the Constitutional authority of the militia clause to the army clause, and allowing the employment of the Guard beyond the nation’s borders, and increased federal training mandates and oversight.⁸² It also created a tiered military structure which assured the Guard’s activation as the second line of defense to the Regular Army. This would occur in two possible ways. The first as mobilized units of the National Guard when called to federal service via the governors or second as individuals when called upon by the Congress when the use of military force was authorized. The third tier was the

⁸⁰ Eliot A. Cohen, *Making Do With Less, Or Coping With Upton’s Ghost*, lecture at the U.S. Army War College Sixth Annual Strategy Conference, April 26, 1995. Published by the Strategic Studies Institute, U.S. Army War College, Carlisle Barracks, PA: May 26, 1995, 7.

⁸¹ *Ibid.*, 7.

⁸² Mahon, 148-149; Stentiford, 17-20; Todd, “Part Two,” 165-166. According Mahon, the National Defense Act of 1916 also created the Reserve Officer’s Training Corps (ROTC) operating at the nation’s land-grant universities.

solicitation of volunteers from the newly formed reserve.⁸³ Creating new reserve component containing both National Guard and national reserves ensured continued debate and subsequent legislation clarifying roles and missions for each but ultimately yielding additional control of both entities to the federal government.

President Wilson's wartime mobilization of the National Guard in 1917 removed the Guards obligation to the states and resulted in the states' loss of their respective state forces. Mobilization removed an asset the governors could employ for civil disturbances or natural disasters. According to Stentiford, one significant aspect of the National Defense Act of 1916 legislation was the National Guard Association's advocacy for Section 61 which precluded the states from maintaining other troops in peace time except for their National Guard units. This denied the states the possession of any militia forces in the absence of their National Guard.⁸⁴ However, section 57 of the National Defense Act of 1916, also formalized an "unorganized militia" into two separate categories belonging to the state and the nation.⁸⁵ In theory, this set the conditions for conscription to reconstitute the militia by either the state or federal governments in a situation as found at the outbreak of World War One; neither entity did.

As a subsequent response to losing their militia to federalized service supporting the war effort, the states organized replacement units with volunteers to fill the important vacuum left by the federalized National Guard. Only Pennsylvania had a state police force, the other states relied on their National Guard for "responding to natural disasters,

⁸³ Mahon, 148; Stentiford, 20. Stentiford points out that one consideration remained which was not anticipated and that was the case of Guard activation.

⁸⁴ Stentiford, 19, 73. The National Guard Association was concerned that State Defense Forces would threaten the future of the National Guard.

⁸⁵ Ibid., 18.

suppressing riots, and assisting local lawmen when mobs threatened to lynch suspects in custody.”⁸⁶ The new units raised during this period were called a variety of names such as Home Guard, State Guard, and County Guard; and operated under the last portion of Section 61 which stated “nothing contained in this Act shall prevent the organization and maintenance of state police or constabulary” but were expected to disestablish upon return of the National Guard.⁸⁷ These units were state funded and had high personnel turnover rates since home guard membership did not preclude one from being drafted.⁸⁸ The War Department also created the United States Guard in December of 1917 to assist those states without a home guard program.⁸⁹ The federal home guard would also be disestablished upon cessation of hostilities. No research indicated that these new state-centric militia units were formed under the auspices of the unorganized militia specifications of the National Defense Act of 1916.

The pre-war political activities of the National Guard Association led to the militia-home guard crisis. The Association was founded on the principle of greater “federal support and uniformity among state forces” and designation as the nation’s second and preeminent tier of defense to the active duty army.⁹⁰ As a consequence, Section 61 of the National Defense Act of 1916 which was viewed a political victory for the Association clashed with its other intention being the second string for the nation to

⁸⁶ Ibid., 22.

⁸⁷ Ibid., 23-25, 31.

⁸⁸ Ibid., 23.

⁸⁹ Mahon, 157.

⁹⁰ Stentiford, 73.

draw upon in a martial crisis.⁹¹ This dichotomy assured the states of losing their militia in any war or national emergency and creating a void in state capability to respond in any crises. As Stentiford opines, the National Guard Association viewed state duty as “an excellent public relations tool” but “was at best a secondary function of the National Guard.”⁹² This philosophy was embraced by the Association throughout the remainder of the twentieth century.

After World War I, Congress held a round of hearings in June 1919 to determine the future shaping of the post-war military.⁹³ The product of the hearings was the National Defense Act of 1920, an amendment to the 1916 act.⁹⁴ The major deliverables of the act was the formal establishment of the Organized Reserves, a federal reserve without state affiliation consolidating the Officer and Enlisted Reserve Corps and the Reserve Officer Training Corps; and the formal recognition of the National Guard as a component of the Regular Army when the Guard is in federal status.⁹⁵ This legislation upheld the tiered concept of the National Defense Act of 1916. The seminal legislation was the creation of the National Guard of the United States in June, 1933. It severed federal administration of the National Guard via the “Militia Clause” of the Constitution, placing it permanently under the “Army Clause” when ordered to federal service by the President after a Congressional declaration of a national emergency, and placed its

⁹¹ Ibid.

⁹² Ibid., 74.

⁹³ Todd, “Part Two,” 169.

⁹⁴ Mahon, 172.

⁹⁵ Mahon, 171-172.

authority under the National Guard Bureau.⁹⁶ It maintained its militia clause status in peacetime, thereby reinforcing its dual status nature answering to both state governors and the President.⁹⁷ With the threat of another World War appearing on the horizon, the question of state militia in the absence of the National Guard remained unanswered. No legislation had yet provided a permanent answer as to providing a lasting state militia capability in the event of the mobilization of the National Guard.

In October 1940, Congress tackled the question and amended the National Defense Act of 1920 to establish the State Guards.⁹⁸ Within a year, 37 states had formed State Guards and the National Guard Bureau developed Army Regulation 850-250, *Regulation for State Guards* for the administration of the program. The regulation recommended organization along the lines of military police battalions even suggesting a “distinctive” uniform distinguishable from that of the National Guard.⁹⁹ Similar to the Home Guards of World War One in terms of remaining state funded, the federal government did make an exception and “loan” weapons to the State Guards.¹⁰⁰ The National Security Act of 1947 disestablished the State Guard program by default with language similar to the 1916 legislation specifying the primacy of the National Guard in peacetime.¹⁰¹ Shortly after the close of World War Two, the nation was transitioning from a large standing army, employing the active duty, and the mobilized Army Reserve

⁹⁶ Todd, “Part Two,” 170; Mahon, 175; Huntington, *Soldier and the State*, 173.

⁹⁷ Huntington, *Soldier and the State*, 173.

⁹⁸ George J. Stein, “State Defense Forces: The Missing Link in National Security,” *Military Review* 64 (September, 1984): 4; Mahon, 186.

⁹⁹ Stein, 4; Mahon, 186.

¹⁰⁰ Stein, 4.

¹⁰¹ Stein, 5; Mahon, 198.

and National Guard, to peacetime force which saw mass demobilizations of all three components. It was also time for Congress to disestablish the State Guard program in anticipation of the return of National Guard and its role as the dual status militia and federal reserve under the peacetime control of the states.

The National Guard Association remained vigilant for any efforts to marginalize the National Guard. After World War II, the National Guard was threatened by the Department of Defense's effort to consolidate it into the Organized Reserve as recommended by the Gray Board in 1948.¹⁰² The Association was quick to get Congress involved in the proceedings and dashed the proposed merger.¹⁰³ The political activism of the National Guard Association successfully kept the National Guard autonomous and independent of the active duty Army and Army Reserve.

The Armed Forces Reserve Act of 1952 was a resolution that impacted the National Guard and the other reserve components. Its key points mandated that the services create three categories of reserves: retired, standby, and ready which included all of the Air and Army National Guard subjecting all categories to a two year involuntary activation by the President in a national emergency.¹⁰⁴ It also "reaffirmed priority for the National Guard to be ordered into federal service ahead of other reserves."¹⁰⁵ The politics of the Reserve Components' posturing and associated lobbying efforts continued overshadowing national security and local readiness issues.

¹⁰² Huntington, *Soldier and the State*, 173, 176; Mahon, 201.

¹⁰³ Mahon, 202.

¹⁰⁴ Charles J. Gross, *Militiaman, Volunteer, and Professional: The Air National Guard and the American Military Tradition* (Washington, DC: Historical Services Division, National Guard Bureau, 1995), 84; Mahon, 211.

¹⁰⁵ Mahon, 211. This portion of the Act caused much public animosity between the National Guard and its sister reserve components.

TOTAL FORCE

The Vietnam experience was viewed as a dismal era for the lack of integration of the active duty forces and their respective Reserve Component members. As a means to recoup its losses and to solicit future buy in from the American public, the Total Force policy and All Volunteer Force was conceived. The methodology would include plans to ensure participation of America's hometowns through the mobilization of the National Guard and sister reserve components. In 1970, Secretary of Defense Melvin Laird issued a memorandum to the services: "Department of Defense, ... economies will require reductions in over-all strengths and capabilities of the active forces, and increased reliance on the combat and combat support units of the Guard and Reserves," furthermore, the memorandum continued:

Emphasis will be given to the concurrent consideration of the Total Forces, active and reserve, to determine the most advantageous mix to support national strategy and meet the threat. A total force concept will be applied in all aspects of planning, programming, manning, equipping and employing Guard and Reserve forces.¹⁰⁶

This policy addressed all of the reserve components by ensuring their participation in "any future emergency requiring a rapid and substantial expansion of the active forces."¹⁰⁷ The 1973 All Volunteer Force decision and subsequent rescission of the draft would also end the reputation the National Guard developed during the Vietnam conflict as a haven for draft dodgers since mobilization was assured with any future combat

¹⁰⁶ Stephan M. Duncan, *Citizen Warriors: America's National Guard and Reserve Forces and the Politics of National Security* (Novato, CA: Presidio Press, 1997), 140.

¹⁰⁷ *Ibid.*, 141.

operations planned.¹⁰⁸ The continued commitment to the Total Force policy by the Reagan Administration was accompanied by sufficient resources to purchase new and updated equipment for both the Guard and other members of the Reserve Component.¹⁰⁹ The test of the new policy would be whether the Department of Defense would follow through on its commitment to mobilizing the entire Reserve Component in future military endeavors.

The Persian Gulf War of 1990 was the first limited test of the Total Force policy under the administration of President George H.W. Bush. The Air National Guard supported the war effort with a small but significant deployment of various airlift, fighter, reconnaissance and refueling squadrons and non-flying support personnel.¹¹⁰ The Army National Guard did not fare as well. Officials representing the regular army claimed that Army Guard units mobilized “did not meet readiness standards” and consequently could not be placed in combat operations.¹¹¹ Most of the National Guard physically remained stateside during the war and according to one expert neither Total Force nor existing State Defense Forces were “fully tested.”¹¹² Another interesting illustration from the Persian Gulf experience was the redeployment of forces back to the United States.

¹⁰⁸ Daniel L. Gladman, *Total Force Policy and the Fighter Force* (Maxwell Air Force Base, AL: Air University Press, 1995), 13; Gross, 144. Unfortunately, the National Guard and other reserve components developed the undeserved reputation since President Johnson refused to mobilize the bulk of the Guard and Reserves for combat employment in Vietnam due to political reasons, a significant “first” in U.S. military history.

¹⁰⁹ Gladman, 15.

¹¹⁰ Gross, 185-189; Gladman, 15.

¹¹¹ Hart, 141. Hart offers that due to the complexities of maneuver warfare, the Round Out Brigade Concept was difficult to train on a traditional drill schedule consisting of one weekend per month and 15 days of annual training usually occurring over the summer.

¹¹² Stentiford, 231.

General Schwarzkopf adopted a first in first out policy which disregarded the status of the members and their units whether active, Guard or Reserve.¹¹³ Although it appeared fair, it neglected the fiscal reality of keeping Guard and reserve personnel on active duty as well as their absence from their primary civilian occupations.¹¹⁴ Overall, the National Guard's Persian Gulf War experience appeared to affirm the concept of Total Force and the feasibility of the All Volunteer Force. However, failure of a widespread mobilization did not comprehensively validate the policy of Total Force since the majority of the National Guard remained in garrison stateside. Other opportunities would continue to present themselves for further validation of the Total Force policy and impacts on dual status standing over the next ten years.

¹¹³ Duncan, *Citizen Warriors*, 121.

¹¹⁴ *Ibid.*, 121-122.

CHAPTER 3: CONTEMPORARY TRENDS AND ANALYSIS

...recent experience of what the new order will bring in the 21st century in terms of using armed forces. Examples of the new missions are numerous and include the Gulf War, Bosnia, Somalia, Haiti, Hurricane Andrew, the 1994 California earthquake, the 1994 California urban riots, and midwestern floods. All of these incidents required the use of Reserve Component individuals and units and give a clear indication of what the Armed Forces and their Reserve Components should expect well into the next century.¹

The Department of Defense has remained committed to the Total Force construct. Over the past 35 years, integration among the active duty services and their respective reserve components has slowly but steadily improved. After the events of September 11th, a rapid evolution of the Total Force occurred which magnified a subtle change that occurred in the 1990s at the onset of Operations Desert Shield and Desert Storm and the accompanying involuntary as well as, voluntary mobilizations.² This metamorphosis was an attitudinal shift away from the employment of the National Guard as a strategic reserve force. No significant Congressional or public participation occurred in the department's formulation of this policy shift away from a strategic reserve. In essence, the Department of Defense has fostered an attitude that the National Guard has become an "on call" military regularly augmenting the active duty military on federal missions within the United States and overseas in addition to its gubernatorial tasking in support of state emergencies.

The National Governors Association reflect this criticism when they wrote that they "perceive a lack of coordinated planning for the use of nonfederal forces,

¹ Charles E. Heller, *Total Force: Federal Reserves and State National Guard* (Carlisle Barracks, PA: Strategic Studies Institute, September 1, 1994), 5.

² Commission on the National Guard and Reserves, *Second Report to Congress*, 10.

insufficient coordination of state and federal emergency response capabilities, inadequate funding to re-equip Guard units returning from active duty abroad, a lack of dual use equipment, and insufficient consultation with governors by the Department of Defense.”³ Historically, the National Guard has been more concerned with its perceived federal combat mission. According to Stentiford, the National Guard viewed its service in a state capacity as a “secondary function” that produced improved “public relations.”⁴

OPERATIONAL RESERVE

The introduction of an “Operational Reserve” concept of the National Guard and the other reserve components was referred to in the 2006 version of the *Quadrennial Defense Review Report*.⁵ This nomenclature conflicts with the American military tradition of the federal government expediently employing the nation’s militia forces in times of national emergency. It is a misunderstood concept with grave implications for the National Guard since it is a fully engaged partner with the active duty military in waging the War on Terror, as well as, a primary state force provider under its dual status mission. Current doctrine defines an operational reserve as “An emergency reserve of men and/or material established for the support of a specific operation.”⁶ That dated definition refers to a tactical or operational construct. It does not address the transition of the National Guard from a strategic reserve to the new operational construct. It is also

³ Commission on the National Guard and Reserves, *Second Report to Congress*, 56.

⁴ Stentiford, 74.

⁵ U.S. Department of Defense, *Quadrennial Defense Review Report* (Washington, DC: February 2006), 76-77.

⁶ U.S. Department of Defense, *Joint Publication (JP) 1-02: Department of Defense Dictionary of Military and Associated Terms* (Washington, DC: Government Printing Office, April 12, 2001), 312.

interesting to note that Joint Publication (JP) 1-02 does not define a strategic reserve which begets the question of doctrinal employment of the Reserve Component.

A recently proposed definition of an operational reserve remains in draft. It states:

The total Reserve Component structure that operates across the continuum of military missions performing both strategic and operational roles in peacetime, wartime, contingency, domestic emergencies, and homeland defense operations. As such, the Services organize, resource, equip, train, and utilize their Guard and Reserve Components to support mission requirements to the same standards as their active components. Each Service's force generation plan prepares both units and individuals to participate in missions, across the full spectrum of military operations, in a cyclic or periodic manner that provides predictability for the combatant commands, the Services, service members, their families, and civilian employers.⁷

This proposal attempts to cover all aspects of the new construct but challenges remain. It is difficult to categorize the entire Reserve Component together and neglect addressing the dual status of the National Guard in its peacetime role supporting the states' governors. It also addresses a continued strategic role which appears to conflict with its operational obligations. A former Vice Chairman of the Joint Chiefs of Staff stated "Current terminology defines an operational Reserve as a trained, predominantly part-time force, a portion of which is mission-tasked and engaged at all times."⁸ The question remains of whether the active duty military is wholly reliant on the National Guard alone as the nation's second tier to accomplish the War on Terror mission as orchestrated by prior legislation.

⁷ Joseph E. Whitlock, *What Is An Operational Reserve?* http://www.ameriforce.net/PDF/Rng_dec07/RNG_Dec07_006-008.pdf (accessed January 18, 2008). Finding an official draft definition of an operational reserve proved difficult.

⁸ Commission on the National Guard and Reserves, *Second Report to Congress*, 10.

A review of some data that was presented earlier depicts a significant insight as to the Department of Defense's reliance on the National Guard in the accomplishment of national defense. The National Guard has provided approximately 40% of the reserve components' combat forces employed in Iraqi Freedom in 2004⁹ and nearly 60% of the forces for Operation Noble Eagle.¹⁰ Some highly respected analysts have opined that the Department of Defense cannot continue the War on Terror without the continued mobilization contributions of the National Guard stating "Employing the Reserve Component as part of the operational force is mandatory, not a choice."¹¹

An illustration demonstrating the growing demands upon the National Guard as an operational reserve is the increasing Guard utilization by the Department of Defense. During the period from 2004 to 2005, the National Guard provided approximately 40 percent of the deployed Army forces in Afghanistan and Iraq and also provided 50,000 National Guardsmen to the Hurricane Katrina effort in the summer of 2005.¹² The deployed operational tempo of the National Guard is raising questions within the Department of Defense. Thomas Hall, Assistant Secretary of Defense for Reserve Affairs, stated that a predictable rotation model for all of the reserves should be one year of mobilization every six years.¹³ However, since the terrorist attacks, Army Guardsmen have mobilized and deployed for an average of 18 months, and numbers for Air

⁹ Commission on the National Guard and Reserves, *Second Report to Congress*, 18.

¹⁰ Wormuth, Flournoy, Henry, and Murdock, xvii.

¹¹ *Ibid.*, ix.

¹² Steven H. Blum, "The National Guard: Transforming to an Operational Force," *Joint Force Quarterly* 43, (4th quarter, 2006): 15, 14.

¹³ Thomas F. Hall, an interview by David H. Gurney and Jeffrey D. Smotherman, *Joint Force Quarterly* 43, (4th quarter, 2006): 10.

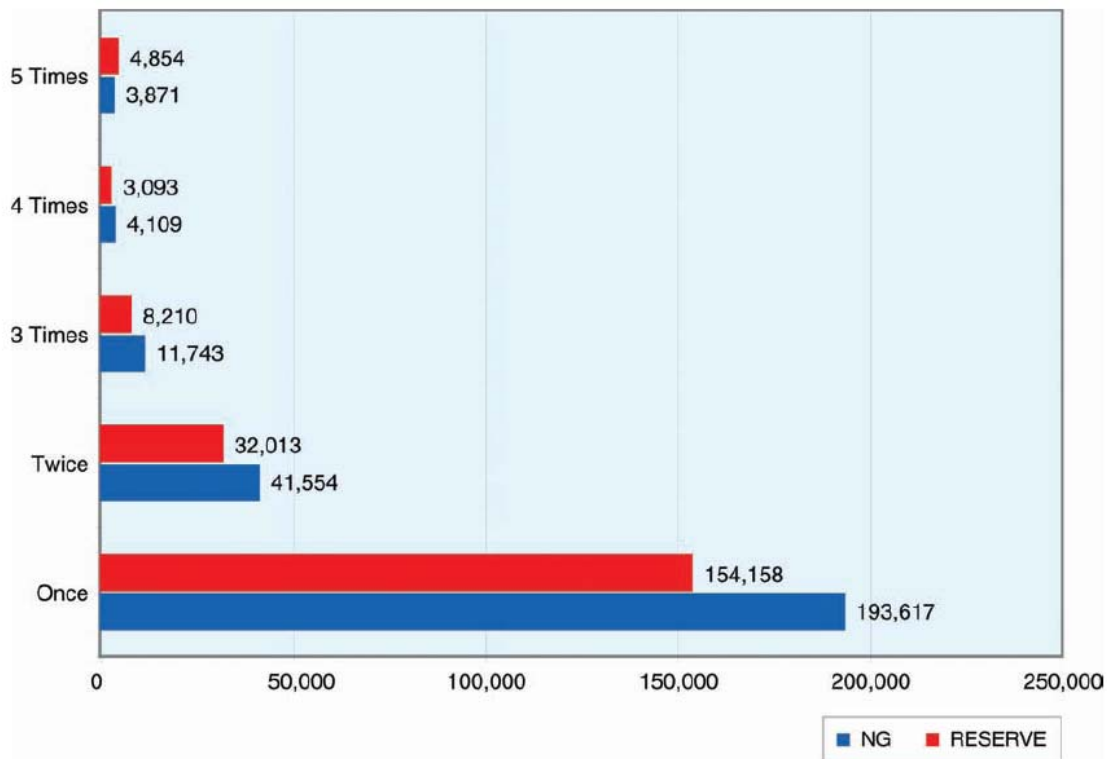
Guardsmen will average approximately 432 days deployed over the six year model according to the Chief of the National Guard Bureau.¹⁴ In some instances, Guardsmen are redeploying back overseas multiple times, well inside of the six year model. See figure three for a summary of deployments by National Guard members and the other reserve components. This requirement for troops has forced the Department of Defense to drop limitations on involuntary mobilizations of 24 months or greater. David Chu, Undersecretary of Defense for Personnel and Readiness, stated “This limit no longer makes much sense in today’s operational reserve.”¹⁵ This increasing operational tempo is gradually taking a toll on the National Guard in terms of personnel, equipment, families and employers. Congressional members and state elected officials are becoming more vocal in their criticism of the operational reserve and its impacts upon their districts.

CONGRESSIONAL PERSPECTIVE

The Congressional role in the conduct of military affairs is articulated in the United States Constitution. Section Eight of Article One specifies that Congress shall be responsible “...for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States...” The maturation of the Total Force construct is accompanied by the Operational Reserve

¹⁴ Blum, 16.

¹⁵ William Matthews, “No Longer in Reserve,” *Military Officer* (August 2007): 56-57.



Source: Defense Manpower Data Center (DOD), Contingency Tracking System Deployment File, November 2007.

Figure 3. Number of Deployments of National Guardsmen and Reservists, 2001-2007¹⁶

policy that has been applied to all reserve components including the National Guard. Unfortunately, Congress abdicated its responsibility and allowed the Department of Defense to develop the Operational Reserve within the confines of the Pentagon without significant Congressional participation in the department's formulation of a policy shifting emphasis on the Guard as a strategic reserve to one of an operational reserve. Congressman Ike Skelton has stated "it is the duty of Congress, not the President – let

¹⁶ Commission on the National Guard and Reserves, *Transforming the National Guard and Reserves into a 21st-Century Operational Force: Final Report to Congress and the Secretary of Defense* (Washington, DC: January 31, 2008), 82. Also see the Commission's *Transforming the National Guard and Reserves into a 21st-Century Operational Force: Executive Summary of Final Report to Congress and the Secretary of Defense* for a concise summary.

alone the secretary of defense or the joint chiefs of staff – to determine the size and composition of our Armed Forces.”¹⁷

Since September 11th, Congress has taken notice of the new security environment that the United States faces. It passed legislation in 2005 to conduct a comprehensive review of the National Guard and the other reserve service branches by establishing the Commission on the National Guard and Reserves (CNGR). It is the first comprehensive assessment of the reserve component since World War II.¹⁸ Concluding its two year review, the CNGR released its final report on January 31, 2008. The final and interim reports examine a variety of issues regarding readiness, organization, equipment and operational tempo of all the branches of the Reserve Components and make valid observations and important recommendations for the reserve components’ future.

One of the Commission’s early findings was the fiscal benefits that the National Guard and the Reserve components offer the nation. The CNGR Final Report compared costs for active duty manpower with those of the reserve component (which includes the National Guard) and found:

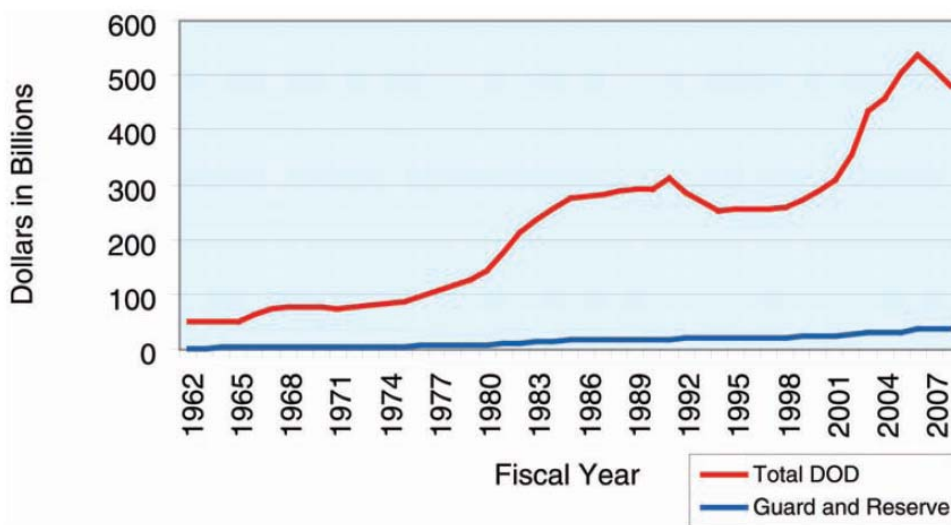
The per capita annual cost of active duty manpower has risen from \$96,000 to more than \$126,000 since 2000, owing largely to increases in such deferred benefits as health care, as well as to the expenses of recruiting, retention, and other initiatives to maintain an all-volunteer force strained by prolonged conflict. From a cost perspective, the reserve components remain a significant bargain for the taxpayer in comparison to the active component.

¹⁷ Skelton, 49.

¹⁸ Commission on the National Guard and Reserves, *Did You Know* <http://www.cngr.gov/resource-center.did-you-know.asp> (accessed January 4, 2008). Congress also considered the proposed *State Defense Force Improvement Act*, HR 826, which was subsequently introduced in February 2007. It called for support of State Defense Forces in light of the new security challenges of the twenty-first century.

In addition, significantly increasing the active force—versus investing more in the reserves—may not be the right long-term choice in light of the new threats to our homeland, where the reserves have a significant advantage over the active component. When disaster strikes at home, the first military responders will be national guardsmen and reservists coming to the aid of their friends and neighbors close by. The value of this linkage cannot be discounted. In contrast to the nationwide presence of reserve component forces, the nation’s active duty military forces are increasingly isolated, interacting less frequently with the civil society they serve. There are fewer active duty military bases, and members of the active component only reside in or near this limited number of government facilities.¹⁹

Figure four further graphically illustrates the value of the National Guard and the other Reserve Components as compared to the total expenditures of the Department of Defense. The National Guard and other Reserve components remain an affordable and viable option to complement the active duty forces.



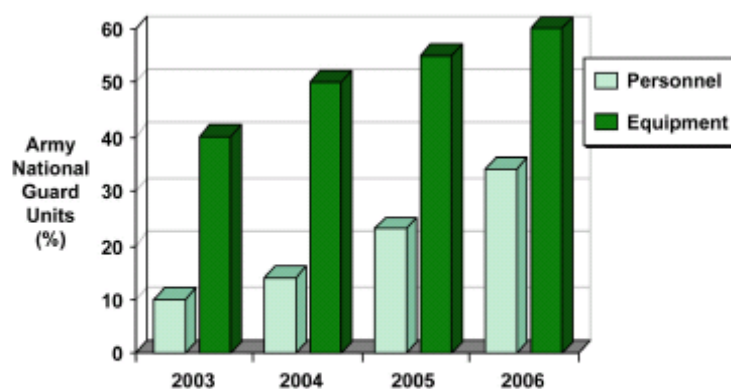
Source: Office of the Under Secretary of Defense (Comptroller), *National Defense Budget Estimates for FY 2008*, March 2007.

Figure 4. Guard and Reserve Funding Compared to Total DOD Funding, 1962-2007²⁰

¹⁹ Commission on the National Guard and Reserves, *Final Report*, 9.

²⁰ *Ibid.*, 75.

One of the more controversial issues facing the National Guard in the prosecution of the War on Terror has been the cross-leveling of various units. Cross-leveling, a phenomenon of the Rumsfeld era, involves the solicitation of individual volunteers to augment other reserve or guard units which have been activated but remain undermanned and borrow equipment for such units due to the under-resourcing of the reserve components by the Department of Defense. The results have had “deleterious effects on unit cohesion, training, and readiness and on the ability of the reserve components to provide support to the families of mobilized reservists.”²¹ From mid-2002 through the end of fiscal year 2005, the Army National Guard’s unit readiness statistics significantly “decreased by 41 percent in order to provide personnel and equipment to deploying units.”²² Figures five and six illustrate of the significant level of effort required to cross-level units across the Army National Guard. Other societal factors have also challenged the readiness and training issues of the National Guard.



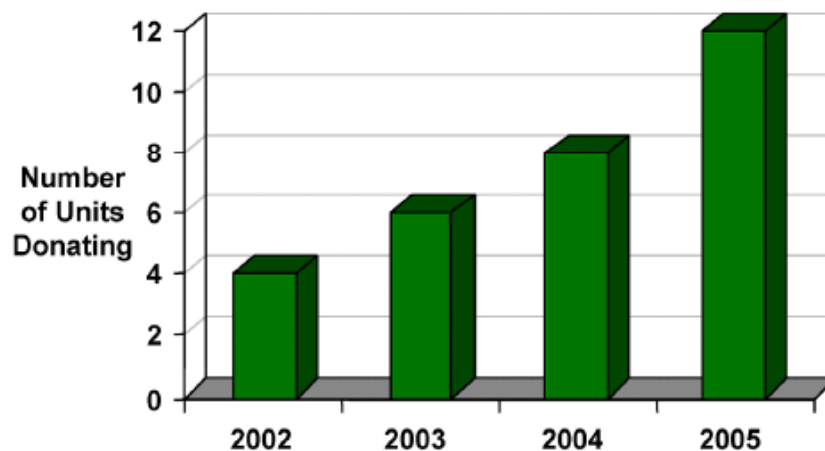
Note: Equipment includes items from National Guard and other Army and theater sources.
 Source: Staff analysis of data provided by National Guard Bureau, Readiness and Logistics Divisions, January 2007.

Figure 5. Average Percent Cross-Leveled to Build Deployable Army Guard Unit²³

²¹ Commission on the National Guard and Reserves, *Second Report to Congress*, 19.

²² Eaglen, 4.

²³ Commission on the National Guard and Reserves, *Second Report to Congress*, 21.



Note: Average Number of Army National Guard Units Contributing Equipment to Fill One Deploying Unit
 Source: Data provided by National Guard Bureau Logistics Division, January 2007.

Figure 6. Average Number of Army National Guard Units Contributing Equipment to Fill One Deploying Unit²⁴

Historically, the National Guard has relied upon recruiting prior service members. The benefits are clear: previously trained and experienced service personnel continue to contribute to the national defense establishment on a part time basis. Doing so precludes the necessity and expense of sending a raw recruit to basic and specialty training. The CNGR determined that prior service enlistments in the Guard and the reserve are in decline across all reserve components.²⁵ Another recruiting challenge that may be difficult to overcome is societal attitude of America's youth.

At the opposite end of the recruitment spectrum, military recruiters are facing a new trend that impacts active duty, National Guard and the Reserve components. The propensity of the nation's youth to join the military has significantly declined. For males, it declined from 21 percent in 2005 to 14 percent in 2006; the rates for female youth

²⁴ Ibid., 22.

²⁵ Ibid.

declined from 15 to 10 percent in the same period.²⁶ As the numbers of American military killed in action and wounded in action increase in the prosecution of the War on Terror, recruiters will likely see this trend continue among the national youth. America's teenagers and young adults targeted for recruitment are not the only demographics of concern.

Two other social factors are weighing heavily on Guardsmen. The first is spousal support. The somber trend is the decline of support by Guard and Reserve members' spouses or significant others. For the Air National Guard, support declined 12 percent.²⁷ The decline was 19 percent from May 2003 to Dec 2005 for the Army National Guard.²⁸ One Minnesota spouse wrote "You'll never get our soldiers back once we finally get them home" after her husband and his unit had their tour extended in Iraq.²⁹ Three months later, the same spouse was quoted that "A lot of us out here are still fuming."³⁰ The second factor is employer support and the implications of Guard membership and expected activations. Although employer support is difficult to assess due to existing labor laws, an informal poll conducted by *Workforce Management* magazine and cited by the Navy Times concluded that 51 percent of individuals interviewed responded that they would not hire a citizen soldier.³¹ Publicly, there are legal reemployment issues

²⁶ Ibid., 26.

²⁷ Ibid., 28.

²⁸ Ibid.

²⁹ Matthews, 54.

³⁰ Ibid., 55.

³¹ Commission on the National Guard and Reserves, *Second Report to Congress*, 30.

associated with employee participation in the National Guard and the Reserves. However one witness testifying before a Senate Committee stated:

These results are indicative of a trend among companies nationally to not want to hire members of the Guard and Reserve due to the extended use by the Department of Defense of their Guard and Reserve employees. The trend to not supporting Guard and Reserve employees is directly correlated to when the term Strategic Reserve was changed to Operational Reserve. If they are operational, they are not really a reserve.³²

The Navy Times informal poll reveals a perception that combined with the other factors previously discussed indicates a chilling trend may be developing where the sustainment of the operational reserve may be a severe challenge to the Department of Defense. The CNGR concluded that “the Commission believes that the nation will need to rely on an operational reserve force for many years to come.”³³ This is a matter of concern to the state governors as they view their National Guard units’ increasing operational tempo.

The Emergency Management Assistance Compact (EMAC) is a congressionally ratified organization that coordinates mutual interstate aid in disaster scenarios among voluntarily participating states and territories.³⁴ It provides a forum for a governor to request National Guard support when his or her respective state’s Guard is deployed or requires additional assistance. EMAC is not a panacea for the governor with deployed National Guard troops. It has been cited as burdensome and not efficient for the deployment of large numbers of Guardsmen as was the case with Hurricane Katrina.³⁵ In

³² Ibid.

³³ Commission on the National Guard and Reserves, *Final Report*, 10.

³⁴ Emergency Management Assistance Compact, “What is EMAC?,” <http://www.emacweb.org/?9> (accessed February 15, 2008).

fact, the federal government's self-report on the transformation of government since 9/11 and its assessment of managing the after effects of Hurricane Katrina provides a chilling warning to the nation's governors in regards to emergency management and disaster response. The report summarized the federal government's performance as:

Effective response to mass emergencies is a critical role of every level of government. It is a role that requires an unusual level of planning, coordination and dispatch among governments' diverse units. Following the terrorist attacks of 9/11, this country went through one of the most sweeping reorganizations of federal government in history. While driven primarily by concerns of terrorism, the reorganization was designed to strengthen our nation's ability to address the consequences of both natural and man-made disasters. In its first major test, this reorganized system failed. Katrina revealed that much remains to be done.³⁶

Other mechanisms or forces must be readily available to state executives when required to respond to a natural disaster or emergency. One possible solution remains the State Defense Force option, a legal alternative that resides or potentially resides within each respective state or territory.

³⁵ Commission on the National Guard and Reserves, *Second Report to Congress*, 45; Commission on the National Guard and Reserves, *Final Report*, 109.

³⁶ United States Senate, *Hurricane Katrina: A Nation Still Unprepared*. Report of the Senate Committee on Homeland Security and Government Affairs, May 2006. <http://www.cngr.gov/pdf/Hurricane%20Katrina%20ExecSum.pdf> (accessed January 23, 2008).

CHAPTER 4: RECOMMENDATIONS

If a regular army is admitted will not the militia be neglected and gradually dwindle in contempt?

Elbridge Gerry¹
Constitutional Convention Delegate

The operationalized National Guard's relevance as a federal reserve component has increased significantly as an active participant in the the long War on Terror. The Department of Defense can not execute its overseas missions and contingency operations without support from the National Guard and other Reserve Components. As a result, many state governors have expressed concern over the Guard's past employment and future deployment plans in support of the Guard's Title 10 responsibilities and corresponding limitations to carry out its Title 32 mission. Their concerns cover a gamut of issues ranging from Guard personnel and equipment availability to support state missions to the loss and lack of equipment due to the toll of the cross-leveling requirements to support multiple overseas deployments. The Commission on the National Guard and Reserves declared that an operationalized National Guard is a somber reality that must continue in the nation's War on Terror.

A fair criticism of a Total Force defense policy incorporating an operationalized Reserve Component is that an enlarged National Guard does not answer the homeland defense needs of the nation. As part of the operationalized reserve, the National Guard would be subsumed by the active duty in the prosecution of the long war. Unfortunately, a larger active duty military force costs the nation more its limited treasure in a fiscally

¹ Mahon, 48.

constrained environment. The Commission on the National Guard and Reserves demonstrated the cost effectiveness of the Reserve Component. Such efficiencies could be harnessed in a revitalized and widely distributed State Defense Force program.

A State Defense Force (SDF) construct based on section 109 of Title 32 of the U.S. Code provides a viable and alternate response capability to the states. The original vision of the founding fathers of a Peace Establishment which was based on the model of the Swiss Republic remains a viable concept today. General Washington's thoughts on a Peace Establishment were based largely on his knowledge of the Swiss Republic's militia and his desire for general military training requirements for the populace. Over two hundred years later, Kevin Stringer in his book *Military Organizations for Homeland Defense and Smaller-Scale Contingencies: A Comparative Approach* argues convincingly that the modern Swiss militia system provides a potential solution to an operationalized National Guard. His premise challenges the National Guard paradigm of dual status missions. He believes "times have changed and require specialized and dedicated units for various missions within homeland defense.... This belief also entails the conviction that the U.S. Army National Guard (ARNG) has to become the nation's sole and dedicated homeland defense force, with a reduced or eliminated overseas combat mission."² He continues challenging corporate Guard thinking with his criticism of dual status. Targeting the regional chemical, biological, radiological, nuclear, high-yield explosives enhanced force packages (CERFPS), he states

² Kevin D. Stringer, *Military Organizations for Homeland Defense and Smaller-Scale Contingencies: A Comparative Approach* (Westport, CT: Praeger Security International, 2006), xii. It is interesting to note that the *National Security Strategy*, *National Strategy for Homeland Security*, *National Defense Strategy* and *National Military Strategy* fail to consider employing a militia construct in answering homeland needs in the current security environment. The *NSS* does mention development of a "civilian reserve corps, analogous to the military reserves" for "international disaster relief and post-conflict reconstruction."

the concept is inherently flawed since the 12 units are an amalgamation of existing state-based units and subject to Title 10 federalization for use overseas.³ Such a severe restructuring would serve the nation's homeland defense requirements but would certainly meet with objections from the National Guard Association of the United States (NGAUS) and senior leadership within the National Guard. Dual status paired with a more deployed operationalized National Guard leaves the nation vulnerable to asymmetric threats, natural and manmade disasters. Conceptually, Stringer's vision could be fulfilled by SDFs which he acknowledges do not suffer from dual status obligations.⁴ Such use of state defense forces would permit continued National Guard support to the active duty Army and Air Force in its role as an integral member of the operationalized Reserve Component.

Specialized state defense forces have a place in contemporary society and the new security environment. Such forces would be under control of the governors for state use and would be subject to the Emergency Management Assistance Cooperation (EMAC) for interstate support and federal mobilization only to support United States Northern Command in domestic situations under the Militia Clause of the Constitution. Currently, Title 32 precludes such activation of SDFs and it should be amended to reflect the new security milieu and acknowledge the requirement of an operationalized National Guard as primarily a federal reserve. The state defense force would be the acknowledged state militia⁵. Title 10 should be amended to recognize membership in the SDF as

³ Ibid., 73.

⁴ Ibid., 157.

⁵ The proposed *State Defense Force Improvement Act*, HR 826, would legally compel such recognition.

meeting the legal definition and requirement of an organized militia class. Its jurisdiction would remain under the Militia Clause of the Constitution.

Unit specialization would be driven by security concerns relevant to each state. Border states' forces may participate in border patrol and constabulary functions. Areas with significant geographic hazards such as faults or seasonal storm activity could employ units with hazard-unique response capabilities. Areas with critical infrastructure assets may employ assets emphasizing asset and point defense. Considering the spectrum of vulnerabilities and risk possibilities, all states would benefit from state militia forces trained in the health sciences, civil engineering, policing functions, and search and rescue. States and the Department of Homeland Security would identify specific regional security requirements with respect to the key scenario sets of the 15 National Planning Scenarios and equip, train and manage state defense forces based on regional considerations.⁶

The National Guard Bureau should be mandated to recognize the significant contribution potential of state-based militia forces. SDFs can make valuable contributions to the nation's security in the face of man made or natural disasters in peacetime and war independent of a state's National Guard. An immediate Bureau update to *NCR 10-4* should be coordinated with the Emergency Management Assistance Cooperation, Department of Homeland Security and the Adjutant Generals of the states and territories emphasizing the state and U.S. Northern Command relationships. In the event of an emergency, coordination with other agencies would occur through the respective state

⁶ U.S. Department of Homeland Security, *National Response Framework* (Washington, DC: January 2008), 75. The *National Strategy for Pandemic Influenza* mentions the use of military personnel and resources in combating the effects of disease outbreak. The author infers it would include extensive use of the National Guard if available in garrison.

Joint Force Headquarters under the state Adjutant General as the delegated representative with the Governor's authority. Cost sharing between the states, and the Departments of Defense and Homeland Security would provide the funding to expand existing state defense forces and initiating new ones in those states without current dedicated state militia forces.

CONCLUSION

As we move into the next century we must appreciate the fact that the United States is a militia nation, and the large standing military of the last 50 years is an aberration. The significance of the militia nation culture cannot be underestimated, and it must be ingrained into the force designers and force maintainers of the future...

General Ron Fogleman¹
Former Chief of Staff, USAF

The reality of today's security challenges promotes a constructive dialogue and lively debate on the nation's military force structure and matters in the opening of the twenty-first century's operational environment. The United States militia construct was born on the heels of the nation's Revolutionary War after a nearly two hundred year tradition of colonial militia experience. The context was a young nation flanked to the north and south by hostile European powers and to the west by a frontier inhabited by hostile natives who violently resisted westward American expansion. The militia was placed in a dichotomous role: as a defender of state sovereignty and as well as a force provider to the federal government at times as articulated by Article One, Section Eight and the Second Amendment of the United States Constitution.

The United States is no longer a frontier nation. It is now bordered by two amicable neighbors. Historically, the National Guard sought to be the preeminent part time military force within the federal Reserve Component, first to be called upon, regardless of its dual status supporting both state and federal missions. The trend towards federalization culminated in the Total Force concept. The long War on Terror has demonstrated that under the Total Force concept, the National Guard is an "Operational

¹ Meyer, iii.

Reserve” in full partnership with the active duty military structure in waging the current war. However, this commitment has left the states vulnerable in times of domestic crises and natural disasters when their respective National Guard forces are mobilized. The Commission on the National Guard and Reserves has determined that the operational reserve construct is taking a toll on the readiness of the National Guard. Alternative concepts must be evaluated. Any attempt to minimize this issue by the National Guard Association of the United States is irresponsible and potentially leave the nation vulnerable to asymmetric threats, natural or manmade disaster. A volunteer militia system modeled after a state defense force construct and incorporating the elements of state power is a possible answer to filling this vacuum.

A state defense force program administered under the Department of Homeland Security and the Militia Clause of the Constitution brings the individual states and the nation a capability that is ready and relevant in responding to local domestic crises and natural disasters. It presents citizens an opportunity to serve in a manner the nation’s founders viewed as necessary for the nation’s survival. The presence of a state defense program avoids the combat readiness and deployment complexities of the operational reserves construct which both the Department of Defense and the National Guard have embraced. Reintroduction of the debate of organizing state capabilities under the Constitution’s militia clause would be a healthy and transformational dialogue.

A possible state defense force construct would remain under state control and contain elements sufficiently trained in health sciences, civil engineering, policing functions, and search and rescue. State units trained in such a manner would be valuable in responding to a variety of natural or manmade crises. Coordination with other agencies

through the respective state Joint Force Headquarters would occur under the state Adjutant General as the delegated representative with the Governor's authority. Local control infers familiarity with local capabilities and would require regularly scheduled drills and periodic exercises involving various state and federal agencies. The new threats facing our nation could easily overwhelm extant state and federal agencies in the case of a major disaster. A state defense program modeled after the early militia tradition could provide a template for harnessing Americans' talent and volunteerism on the home front.

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