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The Militia System and the State Militias in the War of 1812

Robert L. Kerby

General Emory Upton's classic review, *The Military Policy of the United States*, blamed the "failures and disasters" suffered by American arms during the War of **1812** upon "the pernicious military organization established by the [Militia] act of 1792." Influenced by Upton's preference for a professional military establishment,* subsequent generations of military analysts and historians have consistently echoed his conclusion. In one of the more recent scholarly histories of the War of 1812, Harry L. Coles argued that the

* Robert L. Kerby is associate professor of history at the University of Notre Dame, Notre Dame, Indiana.

¹Emory Upton, *The Military Policy of the United States* (2nd ed., Washington, **1907**), **105**. For the Militia Act, see *United States Statutes at Large*, I, **271-74**.

*Samuel P. Huntington, *The Soldier and the State* (Cambridge, Mass., 1957), 232. See also Stephen E. Ambrose, *Upton and the Army* (Baton Rouge, 1964).

³The indispensable histories of military operations during the War of 1812 are Henry Adams, *History of the United States during the Administrations of Jefferson and Madison* (9 vols., New York, 1891-1896), vols. VII, VIII, and IX; and Benson J. Lossing, *The Pictorial Field Book of the War of 1812* (New York, 1869). Recent general histories of the war include Harry Coles, *The War of 1812* (Chicago, 1965); J. Mackay Hitsman, *The Incredible War of 1812* (Toronto, 1965); Francis F. Bierne, *The War of 1812* (New York, 1949); and Glenn Tucker, *Poltroons and Patriots* (2 vols., Indianapolis, 1954), all of which reflect Upton's perspective. Among military analysts, Upton's disciples include Frederic L. Huidekoper, *The Military Unpreparedness of the United States* (New York, 1915); R. Ernest and Trevor N. Dupuy, *Military Heritage of America* (New York, 1956); T. Harry Williams, *Americans at War* (Baton Rouge, 1960); Walter Millis, *Ams and Men* (New York, 1956); William A. Ganoe, *The History of the United States Army* (New York, 1931); John M. Palmer, *America in Arms* (New Haven, 1941), and *The Military Policy of the United States, 1775-1944* (Washington, 1944); William H. Riker, *Soldiers of the States* (Washington, 1957); Marcus Cunliffe, *Soldiers and Civilians* (Boston, 1968); Robert Leckie, *The Wars of America* (New York, 1968); Russell F. Weigley, *The American Way of War* (New York, 1973); Huntington, *The Soldier and the State*; Ambrose, *Upton and the Army*.

“militia system” established by the act of 1792 “created a huge army on paper but provided nearly nothing in the way of effectual training and preparation,” and he intimated that the system itself was therefore instrumental in causing America’s “disgraceful defeats” during the war.⁴ Even such advocates of a voluntary nonprofessional military force as General John A. Logan, the founder of the Grand Army of the Republic, criticized “the absurd militia law approved May 8, 1792.”⁵

Between 1812 and 1815 numerous contemporaries testified that militia soldiers were often “very little better than an infuriated mob”⁶ and agreed with General Edwin Tupper’s observation that the American militia reaped “a plentiful harvest of mortification and disgrace.”~ Royal officers con-

templated the American militia with such disdain that the terms of capitulation offered to American commanders usually provided only for the detention of prisoners enlisted in the regular or provisional armies of the United States, while permitting militiamen “to return to the United States on parole.”⁵ Having witnessed the mass flight of the entire American army from the battlefield at Bladensburg, a British subaltern later reflected that the American militiamen “would have been much more appropriately employed in attending to their agricultural occupations, than in standing, with muskets in their hands, on the brow of a bare green hill”⁶

Coles, *War of 1812*, 265.

⁵John A. Logan, “The Dangerous West Point Monopoly,” in Russell F. Weigley, ed., *The American Military* (Reading, Mass., 1969), 81.

⁶Brig. Gen. George McClure to Secretary of War John Armstrong, December 25, 1813, *American State Papers* (38 vols., Washington, 1832-1861), *Class V: Military Affairs* (7 included vols.), I, 487.

⁷Brig. Gen. Edwin Tupper to Maj. Gen. William H. Harrison, October 12, 1812, in T. H. Palmer, ed., *The Historical Register of the United States* (4 vols., Washington, 1814-1816), IV, “Official Documents,” 129. All citations to this work refer to the pages marked “Official Documents.”

⁸Capitulation of Lt. Col. P. G. Boerstler, June 24, 1813, *ibid.*, I, 437-38. See also the capitulation of Brig. Gen. William Hull, August 16, 1812, *ibid.*, 366, and other examples. Unlike the states’ militia, both the regular and provisional armies were federal organizations, under federal command and discipline. The regulars composed the country’s small permanent standing army, while the provisionals were federal volunteers enlisted for service in wartime or other emergencies. See C. J. Bernard and Eugene H. Bacon, *American Military Policy: Its Development Since 1775* (Harrisburg, Pa., 1961), 114-16.

[Robert Gleig], *A Subaltern in America: Comprising His Narrative of the Campaigns of the British Army* (Philadelphia, 1833), 67. Numerous imprints of Robert Gleig’s memoir, published anonymously, appeared under different titles. For the battle of Bladensburg, see Neil H. Swanson, *The Perilous Flight* (New York, 1945); Charles Muller, *The Darkest Day, 1814: The Washington-Baltimore Campaign* (Philadelphia, 1963); Walter Lord, *The Dawn’s Early Light* (New York, 1973).

Summing up his evaluation of American militia performance during the War of 1812, the distinguished British military historian, Brigadier J. W. Fortescue, expressed the general consensus: the Americans, he wrote, “were not without their victories,” but as a rule “the quality of their troops” was “beneath contempt.”¹⁰

Yet there were laurels won by the militia. Peter Porter’s militia brigade distinguished itself at Lundy’s Lane. Militia stormed and took Fort Erie, and other militiamen held off columns of British regulars advancing against both Baltimore and Plattsburg. William Henry Harrison used militia levies to clear the enemy from much of the Northwest and employed militia forces to chase Brigadier Henry Proctor’s redcoats and Tecumseh’s warriors into Ontario. And the great majority of Andrew Jackson’s troops, at both Horseshoe Bend and New Orleans, were western militiamen.¹¹

Generally speaking, the militia’s performance during the war was poor. But the exceptions to the rule suggest that the fault for the militia’s failures might not have lain with the act of 1792 and the system based upon it but rather with deficiencies in the implementation of the act and factors extraneous to the system itself. General Logan implied as much when he balanced his remark about the absurdity of the act with the comment that “had there been earnest action in the direction of following the spirit” of the measure, “important results would undoubtedly have followed”¹² A distinction should be made between the militia system as it was theoretically envisioned in 1812 and the actual condition of the

J. W. Fortescue, *A History of the British Army* (13 vols., London, 1920), X, 137; Upton, *Military Policy*, 137.

See William Henry Harrison to John Armstrong, October 9, 1813, in John Brannan, ed., *Official Letters of the Military and Naval Officers of the United States* (Washington, 1823), 236-37; Harrison to Armstrong, May 5, 1813, *ibid.*, 149-51; Brig. Gen. Jacob Brown to Armstrong, August [?], 1814, *ibid.*, 381-82; Brown to Secretary of War James Monroe, September 29, 1814, *ibid.*, 442; Brig. Henry Proctor to Maj. Gen. Sir George Prevost, May 14, 1813, in William James, *Military Occurrences of the Late War* (2 vols., London, 1818), I, 425-29; Lieut. Gen. Gordon Drummond to Prevost, July 27, 1814, *ibid.*, 11, 437; Col. Arthur Brooke to Earl Bathurst, September 17, 1814, *ibid.*, 510; Maj. Gen. Samuel Smith to Monroe, September 29, 1814, Palmer, *Historical Register*, IV, 188; Brig. Gen. William Winder to Armstrong, August 27, 1814, *ibid.*, 129; Brig. Gen. John Stricker to Smith, September 15, 1814, *ibid.*, 191-95; Brig. Gen. Alexander Macomb to Monroe, September 15, 1814, *ibid.*, 220-24; Lieut. Col. Joseph Sterett to Congress, November 22, 1814, *American State Papers, Military Affairs*, I, 568.

¹² Logan, “The Dangerous West Point Monopoly,” in Weigley, *The American Military*, 81-82.

militia troops thrown into combat. Their sorry showing may be attributable not to the system, but to the failure of the national government, the states, and the people at large to enforce and employ the system with wisdom. Considering that the subsequent professionalization of the American military was largely justified by criticism of the militia system,¹³ this distinction holds more than semantic significance for a generation troubled by the concentration of power represented by America's modern military establishment.

The militia system of the United States was the product of colonial tradition and experience, modified by a measure of constitutional compromise between the interests of the states and those of the national government. Despite George Washington's emphatic admonition that "*NO Militia* will ever acquire the habits necessary to resist a regular force,"¹⁴ the performance of militia at Concord, against "Gentleman Johnny" Burgoyne and Barry St. Leger, and during the Revolutionary War campaigns in the South and in the interior was sufficiently respectable to cast some doubt upon Washington's dictum. In any case the revolutionary state governments were disinclined to surrender to the Confederation prerogatives wrested from the British Empire, and during the decade following America's Declaration of Independence the states preserved their authority in matters of military policy. Having repudiated George III for keeping "among us, in times of peace, Standing Armies without the Consent of our legislature,"¹⁵ the states respectively retained the power, under the Articles of Confederation, to "keep up a well regulated and disciplined militia, sufficiently armed and accoutred" to provide for the common defense.¹⁶ By 1786, the year in which Shays' Rebellion broke out in Massachusetts, America's revolutionary navy and marine corps had been disbanded, almost all of the Continental troops had been discharged, and the Confederation's regular army had been

reduced in strength to a single company of artillery (one

¹³Upton, *The Military Policy of the United States*, 271 and *passim*; Huntington, *The Soldier and the State*, 143-373; Millis, *Arms and Men*; Ambrose, *Upton and the Army*.

¹⁴Gen. George Washington to the President of Congress, September 15, 1780, in John C. Fitzpatrick, ed., *The Writings of George Washington* (39 vols., Washington, 1931-1944), XX, 49-50.

¹⁵The Declaration of Independence.

¹⁶The Articles of Confederation, Article VI.

captain and eighty enlisted men). The several state militias were virtually the only armed forces left in the country.¹⁶

One reason for calling the Constitutional Convention of 1787 was the inability of the Confederation to bring appropriate military force to bear against the Shaysites. The status of the militia was therefore among the questions debated by the convention. The delegates finally decided to bring the militias of the several states “under one plan of discipline”¹⁷ by giving the new federal Congress authority 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.” Congress was also empowered to “provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions,” while the president was designated “Commander in Chief . . . of the Militia of the several States, when called into the actual Service of the United States.”¹⁸

These provisions incited the opposition of antifederalist delegates and spokesmen, who protested that “the advocates

of this system design the *destruction* of the State governments¹⁷ Fearing that a national government with excessive power over the militia might subvert the states' sovereign liberties, numerous states demanded prompt enactment of specific constitutional assurances guaranteeing the autonomy of the states' authority over their militia forces.²¹ "A well regulated Militia, being necessary to the security of a free State," the Constitution was amended in 1791 to insure

¹⁷Bernard O and Bacon, *American Military Policy*, 61-62; *American Military History* (Washington, 1969), 104.

¹⁸John Jay, "The Federalist No. 4," in Edward Meade Earle, ed., *The Federalist* (New York, 1937), 20. For pertinent debates at the convention, see Max Farrand, *The Records of the Federal Convention of 1787* (4 vols., New Haven, 1911-1937), especially 11, 330-32, 385-86, and 111, 208-209.

¹⁹The Constitution of the United States, Article I, Section 8, and Article 11, Section 2.

²⁰Luther Martin, "The Genuine Information" (addressed to the Maryland legislature), November 29, 1787, in Farrand, *Records*, 111, 209.

²¹See Jonathan Elliot, *The Debates in the Several State Conventions on the Adoption of the Federal Constitution* (5 vols., Philadelphia 1801-1881), especially 11, 406, 345, 552, and 111, 200, 382, 385, 395, 416-17, 419, 424, 660. The state demands were considerably more explicit than the cautious language of the Constitution's Second Amendment indicates.

that "the right of the people to keep and bear Arms shall not be infringed."²²

The compromise arranged between 1787 and 1791 placed the militia in an ambiguous situation. The Second Amendment secured the states' concurrent authority to govern their militias, but neglected to make the exercise of that authority mandatory. The power of the federal government to regulate the militia remained, but the degree to which such regulation could be enforced was circumscribed by the guarantee of the states' autonomy. The precise relationship between national and state authority was not defined. The success of the

militia system would therefore depend upon willing cooperation between the states and the federal government and upon the determination of both sovereignties to exercise their responsibilities.

Sensitive to the states' concern for the preservation of autonomy in military affairs, Congress provided a regulatory plan to standardize the arming, organization, and discipline of the militia which conformed to existing practice and which encouraged the states to continue building upon past tradition. The scheme of militia organization inherited from the British was basically territorial. The states were divided into regiments, battalions, and companies, each of which was ordinarily coterminous with some existing political subdivision such as a county or a township. Eligible residents of each district composed that district's "standing militia" force. The Militia Act of 1792 provided that "each and every free able-bodied white male citizen of the respective states" between the ages of eighteen and forty-five, with certain exceptions, "shall severally and respectively be enrolled in the militia by the captain or commanding officer of the company, within whose bounds such citizen shall reside" In accordance with custom the states, "if the same be convenient," were requested to arrange local companies into regiments and brigades. Individual militiamen were directed to procure and provide their own arms and equipment. A concession was made to "sundry corps" of socially prominent and privately raised "uniformed" militia, which "have not been incorporated with, or subject to the general regulations of the [standing] militia," by permitting such units to "retain their accustomed privileges, subject, nevertheless, to all other duties

²²The Second Amendment to the Constitution of the United States.

The bond uniting enlistees in required by this act²³ uniformed companies, such as the Ancient and Honourable Artillery Company of Boston or the First Troop of Pennsylvania Cavalry in Philadelphia, was not the accident of residence but free choice inspired by martial *esprit*. In all cases, in accordance with the Constitution, the states were to commission officers and provide for the training of the militia.

Reflecting the bulk of scholarly opinion, Samuel P. Huntington attributed the inadequacies of the militia to the “constant confusion and bickering” caused by the scheme of dual control erected by the Constitution and the act of 1792. He criticized Congress, in particular, for “refusing to exercise its powers under the militia clauses,” and for providing “neither effective federal supervision nor effective federal

Yet the United States was a federation, and the militias were state troops. Had not Congress displayed an appreciation for state autonomy and had it not been circumspect about introducing innovations it seems unlikely that any militia system which incorporated a measure of national regulation could have been enacted. Further, the confusion, bickering, and ineffective supervision and support which later occurred need not be attributed either to the federal character of the militia system or to the organic law which established that system, but may rather be assigned to the failure of men to implement the system with consistency.

In 1790 and 1791, Secretary of War Henry Knox, borrowing an idea first proposed by Washington in 1783,²⁵ advocated a radical reorganization of the militia.²⁶ Knox suggested that different corps be composed of men from different age groups, with the youngest receiving thirty days of “basic training” and the others periodic brief courses of drill. This training was to be subsidized and supervised by the federal government. Not only did Knox’s plan envision a sharp departure from custom, but it appeared to contradict the Constitution’s explicit reservation “to the States respectively” of “the Authority of training the Militia”²⁷ Moreover, Knox’s scheme of organization by age rather than by territory

²³ *U S . Statutes*, I, 271, 272, 274 (May 8, 1792).
²⁴ Huntington, *The Soldier and the State*, 169.

²⁵ Washington, “Sentiments on a Peace Establishment,” May 2, 1783, Fitzpatrick, *Writings of George Washington*, XXVI, 374-99.

²⁶ Huntington, *The Soldier and the State*, 169.

²⁷ The Constitution of the United States, Article I, Section 8.

and the virtual nationalization of militiamen for training purposes threatened to make state autonomy meaningless. Congress therefore chose to interpret the Constitution strictly, and in the Militia Act of 1792 provided norms for the regulation of militia forces which respected state sensibilities.

It was not the fact of dual sovereignty which enervated the militia, any more than it was dual sovereignty which inhibited other aspects of American political and socioeconomic development during the next seventy years. In certain fields of endeavor, from canal building to political philosophy, federalism established conditions which inspired competition and spurred innovative progress.²⁸ There is no inherent reason why federalism should have aborted the continued successful evolution of the militia system. On the contrary, the militia system was undermined by the failure of dual sovereignty to function. Instead of sharing responsibility, both the states and the national government avoided responsibility for the militia. The states in particular refused to cooperate with the federal government, and both the states and the Union shirked their respective obligations to enforce the militia laws. At the root of the problem was the disinclination of the voting citizens who were militiamen to serve as soldiers, and the consequent disinclination of elected officeholders, whether state or federal, to press for the implementation of the militia statutes. Dual sovereignty offered politicians at both levels rhetorical excuses for evading: unpopular initiatives but did not itself necessitate such evasion.

By 1803, for example, the "deficiency" of the militia was all "too apparent in some of the states," but a House committee excused the federal government by reporting that imperfections of the militia system arose "from omission on the part of the State Governments."~~ Five years later, reacting to the refusal of certain states to employ militia for the enforcement of the Embargo, President Thomas Jeffer-

²⁸ See Oscar and Mary Handlin, *Commonwealth: A Study of the Role of Government in the American Economy: Massachusetts, 1774-1861* (New York, 1947); Louis Hartz, *Economic Policy and Democratic Thought: Pennsylvania, 1776-1860* (Cambridge, Mass., 1948); Milton Sydney Heath, *Constructive Liberalism: The Role of the State in Economic Development in Georgia to 1860* (Cambridge, Mass., 1954).

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son not only observed that “every degree of neglect is to be found” in the militia but abandoned his usual states rights stance to insist that “Congress alone” possessed “the power to produce an uniform state of preparation in this great

organ of defense³⁰ A Senate committee dominated by Jeffersonian Democrats rushed to the rescue of Jeffersonian states rights orthodoxy by reiterating that if “the States are anxious for an effective militia, to them belong the power, and to them too belong the means of rendering the militia truly our bulwark in war, and our safeguard in peace³¹ Yet on the very eve of war with Great Britain, the Jeffersonian legislature of Kentucky endorsed the notion of federal culpability for the militia’s deficiencies by professing its “belief that an adequate remedy for the evil rests in the hands

of the General Government alone³² While Jeffersonians at both the federal and state levels blamed one another for weaknesses in the militia, Federalists wrote off the militia altogether. “Let the Government proceed to regulate the militia to the utmost length,” avowed the Federalist adjutant general of Connecticut in 1810; “. . . it will be just so far as to make them food for powder in the day of battle³³

The militia system of the United States did provide an immense reservoir of the most basic military resource, manpower. By 1812 there were not only enough militiamen to invade Canada but more than enough to repopulate Canada. That year, with the returns of Louisiana and two territories missing and those of all but nine states in arrears, militia strength was estimated at 719,449 men.³⁴ Two years later, with returns from Louisiana and three territories missing and some revision of the figures caused by casualties, exemptions, the updating of statistics, and the enlistment of militia-

men in the regular and provisional armies, a Senate committee estimated that of the country's 1,102,437 free white male

³⁰Jefferson's Eighth Annual Message, November 8, 1808, in James D. Richardson, *A Compilation of the Messages and Papers of the Presidents* (10 vols., New York, 1896-1899), I, 455. James Madison agreed; see Madison's Second Annual Message, December 5, 1810, *ibid.*, 486.

³¹Report of the Select Committee on the Militia, U.S. Senate, March 6, 1810, *American State Papers, Military Affairs*, I, 256.

³²Resolution of the General Assembly of Kentucky, addressed to the House of Representatives of the United States, March 6, 1812, *ibid.*, 318.

³³Gen. Ebenezer Huntington to Congressman Benjamin Tallmadge, January 5, 1810, *ibid.*, 263.

³⁴War Department Annual Militia Return for 1812, February 13, 1813, *ibid.*, 332.

citizens between the ages of sixteen and forty-five, at least 711,551 were enrolled militiamen.³⁵ The Adjutant General's Office and the Bureau of Pensions later reported that 458,463 of the 527,654 soldiers, sailors, and marines who saw service during the war were men drawn from, mustered, and deployed as militia.³⁶

The problem lay in the failure to organize, discipline, supply, and employ the manpower provided by the system in the most profitable fashion. Speaking in 1787 to Pennsylvania's convention for the ratification of the Constitution, James Wilson had warned that "any gentleman, who possesses military experience, will inform you that men without a uniformity of arms, accoutrements, and discipline, are no more than a mob in camp; that, in the field, instead of assisting, they interfere with one another." Wilson's reproof survived to mock James Madison's presidential years: "How powerful and respectable must the body of the militia appear under general and uniform regulations ! How disjointed, weak, and inefficient they are at

The first requirement for an efficient militia was organization. The militias were not a single homogeneous body. Although the organic act of 1792 established norms for the organization of militia forces, it did not provide for federal supervision and enforcement. Eighteen states, four territories, and the District of Columbia enrolled men in the standing militia or accepted volunteers into the uniformed corps under the provisions of twenty-three different collections of local statutes. In 1803, in an attempt to introduce a measure of federal supervision, the states and territories were obliged to submit annual militia returns to the war department. But between 1803 and 1812 the proportion of the states and territories which complied with this regulation declined from 88 to 39 percent. In 1812 only nine state and territorial governments bothered to forward the figures.³⁹ Clerical errors were not the only evidence of neglect. Two

³⁵*Report of the Select Committee on the Militia, U.S. Senate, 1814, ibid., 523.*

³⁶Upton, *The Military Policy of the United States*, 137.

³⁷James Wilson to the Pennsylvania Constitutional Ratification Convention, December 11, 1787, Elliot, *Debates*, 11, 521-22.

³⁸*U.S. Statutes*, 11, 207 (March 2, 1803).

³⁹Riker, *Soldiers of the States*, 25; Militia Return for 1812, February 13, 1813, *American State Papers, Military Affairs*, I, 331-34.

years after the commencement of hostilities, the governor of Pennsylvania found it impossible to call out militia for the defense of Washington because the state legislature had allowed Pennsylvania's militia laws to

To permit calling the militia into federal service, congressional legislation provided a number of methods by which the transfer of jurisdiction could occur. Acts passed in 1792 and 1795 allowed the national government to make an emer-

gency levy upon the whole, or upon any portion of, the state militias. Such levies, or so called general “drafts” of militia, might be used to “*execute the laws of the Union, to suppress insurrection, and repel invasions*,”⁹⁹ but “no officer, non-commissioned officer, or private of the Militia [could] be compelled to serve more than three months, after his arrival at the place of rendezvous, in any one year.” Some restrictions were placed upon the employment of levies beyond the boundaries of their home states, but such employment was not prohibited.¹⁰⁰ The “detachment” or “requisition” acts of 1803, 1806, 1808, and 1812 required the several governors to put selected portions of their respective militias on alert status when requested to do so by the federal government. Rather like the minutemen of the Revolutionary era, alerted detachments were to be kept ready “to march at a moment’s warning” when called into the field by federal authority. The duration of detached service was limited to six months, but no additional statutory circumscriptions were placed upon the use of requisitions. While it was assumed that most requisitions would be filled by state drafts, the president was authorized to permit governors to accept volunteers in lieu of Since both the acts of 1795 and 1812 were in effect during the war,¹⁰¹ provision existed for the mass draft of three month levies and for the selective requisition of either drafted or volunteer detachments for terms of service

⁴⁰Documentary evidence is collected in Edward D. Ingraham, *A Sketch of the Events Which Preceded the Capture of Washington* (Philadelphia, 1849), 44-45.

⁴¹*U.S. Statutes*, I, 264 (May 2, 1792), substantially reenacted in *ibid.*, 424 (February 28, 1795).

⁴²*Zbid.*, 424.

⁴³*Zbid.*, 11, 241 (March 3, 1803), 383-84 (April 18, 1806), 478-79 (March 30, 1808), 705-707 (April 10, 1812).

⁴⁴Report of the Select Committee on the Militia, House of Representatives, January 14, 1814, *American State Papers, Military Affairs*, I, 438. The act of 1795 was repealed in 1861; that of 1812 was reenacted in 1814.

not exceeding six months. The concurrent operation of parallel legislation forming a distinct provisional army of federal left no doubt that drafts and detachments of the militia retained their status as militia while in the national service.

An examination of operative legislation indicates that the refusal of governors in Vermont, Connecticut, and Massachusetts to convey their militia forces “out of the[ir] jurisdiction or controul” during the war⁴⁶ was not caused by inadequacies or oversights in the body of laws covering the system of militia organization but rather by the governors’ refusal to obey the laws. The New England governors contested presidential authority to federalize militia without their consent—a novel argument which, when adjudicated by the Supreme Court in 1827, was settled in favor of the national government.⁴⁷ The fact that the law was disobeyed does not constitute criticism of the legislation then in force, or of the militia system itself.

Similarly, the occasional refusal of some militia levies to cross boundaries was not due to weaknesses in the system of militia organization, but rather to the ill discipline of the militiamen involved. At Queenstown, for example, during the first major field engagement of the war, a herd of untrained three month levies drawn from the New York militia “absolutely refused to cross” the Niagara River in order to rescue a small advance party caught in a fire fight on the Canadian shore. Even though the Yorkers could see a column of British regulars rolling over their compatriots, “neither the orders, nor threats, nor remonstrances” of their commander, General Stephen Van Rensselaer, served to drive

⁴⁶*US. Statutes*, 11, 241 (March 3, 1803) was an amalgam of militia procedure and precedents from John Adams’ provisional army: *ibid.*, 1, 558-61 (May 28, 1798), and 725-27 (March 2, 1799). Subsequent legislation concerning the provisional army distinguished it from the militia: *ibid.*, 11, 419-20 (February 24, 1807), 670 (January 2, 1812), 676-77 (February 6, 1812), and 785-86 (July 6, 1812).

⁴⁷Quoting Governor Martin Chittenden, Proclamation, November 10, 1813, Brannan, *Official Letters*, 261-62. Chittenden, the Federalist governor of Vermont, emulated earlier action by Roger Griswold and John Cotton Smith of Connecticut and Caleb Strong of Massachusetts. *American State Papers, Military Affairs*, 1, [321]-26, 604-23, 675. The governor of Virginia held similar views. See documents in Ingraham, *Sketch of the Events*, especially 46. Some citizens in New York and Maryland agreed. David Thompson, *History of the Late War between Great Britain and the United States of America* . . . (2nd ed., Toronto, 1845), 274, 294-95.

⁴⁸*Martin vs. Mott*, XI Wheaton 19 (1827).

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them across the river.⁴⁸ But not even the Queenstown debacle was an indictment of the militia system; instead, in the estimation of Van Rensselaer's successor, it was "a caution against relying on crowds⁴⁹ By way of contrast, a year later, when directed by their governor to withdraw from New York soil, a disciplined brigade of Vermont militiamen refused to obey, replying that "we are under paramount obligation to our common country, to the great confederacy of the

The chief difference between a crowd and an army is discipline. Writing to James Monroe in 1813, Jefferson insisted that "we must train and classify the whole of our male citizens, and make military instruction a part of collegiate education."⁵¹ Six years earlier Jefferson had come to the conclusion that a "well-regulated" militia demanded federal supervision of trainings⁵² and, borrowing a leaf from Knox, Jefferson had gone so far as to recommend "a classification which shall constitute a select and a reserve militia"—that is, a trained cadre plus a manpower pool. Early in 1810 a Senate committee reviewed this proposal but reported that "prejudices against such a mode of organization in many parts of the Union" made such a project impracticable.⁵³ Later that same year, President Madison, insisting that the militia "should be instructed and practiced in the rules by which

Lieut. Col. John Chrystie to Maj. Gen. Thomas H. Cushing, February 22, 1813, in John Armstrong, *Notices of the War of 1812* (2 vols., New York, 1840), I, 216. See also Maj. Gen. Stephen Van Rensselaer to Secretary of War William Eustis, October 14, 1812, in Solomon Van Rensselaer, *A Narrative of the Affair at Queenstown* (New York, 1836), appendix, 66-67. On the general topic of campaigns along the Niagara frontier, see Louis L. Babcock, *The War of 1812 on the Niagara Frontier* (Buffalo, 1827); Ernest A. Cruikshank, *Documentary History of the Campaign Upon the Niagara Frontier* (9 vols., Welland, Ont., 1896-1908); and Morris Zaslow, *The Defended Border: Upper Canada and the War of 1812* (Toronto, 1964).

⁴⁸ Armstrong, *Notices*, I, 117. See also Armstrong to Harrison, April 4, 1813, *ibid.*, 245-48.

⁵⁰ Lieut. Col. Luther Dixon to Chittenden, November [?] 1813, Brannan, *Official Letters*, 262-63.

⁵¹ Jefferson to Monroe, June 18, 1813, quoted in Charles M. Wiltse, *The Jeffersonian Tradition in American Democracy* (Chapel Hill, 1935), 135.

⁵² Jefferson to Madison, May 5, 1807, in Paul L. Ford, ed., *The Works of Thomas Jefferson* (12 vols., New York, 1892-1899), X, 392. See

also Jefferson's Eighth Annual Message, November 8, 1808, in Richard-son, *Messages and Papers of the Presidents*, I, 455.

⁵³ Report of the Select Committee on the Militia, U.S. Senate, March 6, 1810, *American State Papers, Military Affairs*, I, 256.

they are to be governed," urged Congress to consider calling "into the field at the public expense and for a given time certain portions of the commissioned and noncommissioned officers" so that they might be drilled. Madison hoped that the "instruction and discipline thus acquired would gradually

diffuse through the entire body of the militia . . . ⁵¹ because of states rights scruples and the expense involved, Congress declined to entertain Madison's scheme, and did nothing.

But

In strict conformity with the Constitution, the Militia Act of 1792 lodged responsibility for training the militia with the states. Militiamen were expected to turn out at periodic drills, four days a year, to practice the evolutions and maneuvers of line infantry. This arrangement, however, left supervision to the discretion of state legislators, who, in, Edmund Randolph's estimation, "courted popularity too much to enforce a proper discipline." The power to coerce attendance at musters was surrendered to military courts "composed of militia officers . . . Since most such officers were neighborhood men popularly elected to rank, they seldom imposed more than a token fine on an absentee. The days set apart for militia drill soon became occasions for visiting and conviviality; except for the members of uniformed companies who enjoyed marching in parade, even the militiamen who reported for duty were not bothered by very much. The failure to enforce training produced predictable results. Victories on the battlefield, said Harrison, could only be won

“by those disciplined evolutions which give harmony and concert to numerous bodies of men, and enable whole armies to move with the activity and address of single combatants.” But the War of 1812 “repeatedly exhibited the melancholy fact, of large corps of militia going to the field of battle

⁴⁴Madison’s Second Annual Message, December 5, 1810, in Richardson, *Messages and Papers of the Presidents*, **I**, 486.

⁴⁵Debate on the Militia, August 23, 1787, Farrand, *Records*, **11**, 387. *U.S. Statutes*, **I**, 264 (May 2, 1792), substantially reenacted in *ibid.*, 424 (February 28, 1795). Despite congressional acknowledgment that the system was ineffectual (*American State Papers, Military Affairs*, **I**, 256), it was reenacted again on February 2, 1813, in *U.S. Statutes*, **11**, 797.

⁴⁷See *American State Papers, Military Affairs*, **11**, 314-19, 329-37, 389-95, and 527-29. See also Martha Swain, “It Was Fun to Be a Soldier,” *American Heritage*, **VII** (August, 1956), 12-23.

without understanding a single elementary principle, and without being able to perform a single evolution.”

One factor which encouraged the disregard for training was the patriotic myth that “the greater part of the American militia” was, as Harrison thought, “accustomed from their early youth to the use of a fire-arms . . .”⁵⁹

But during the

war a veteran staff officer saw “so many militia-men . . . who are not skilled in the use of the Rifle or Musket” that he published a drill manual which devoted an entire page to the elementary art of fixing a flint in a cock.⁶⁰ The twenty-three distinct motions necessary to prime, load, ram, and set a firelock could not be mastered by a raw citizen-soldier while enroute from an armory to a battlefield with a brand new weapon in his fist. Yet thousands of militiamen showed up at Queenstown, Bladensburg, New Orleans, and other battlefields utterly innocent of any acquaintance with the

firearms they carried.⁶¹ Even men who knew how to work a muzzle loader needed discipline to use their muskets in a fire fight.⁶² When confronting a force of British regulars who habitually formed and maneuvered “with so much coolness and precision as if the whole had been nothing more than a review,”⁶³ American militiamen tended to deliver one volley, break, and flee.⁶⁴ In battle only a thoroughly drilled auto-

⁵⁸Report of the Select Committee on Militia Reorganization, House of Representatives, January 17, 1817, *American State Papers, Military Affairs*, I, 663, 664. As a congressman in 1817, Harrison chaired this committee.

⁵⁹*Ibid.*, 663.

⁶⁰Charles K. Gardner, *Compend of the United States System of Infantry Exercise and Maneuvers* (New York, 1819), 247; see also 28-34.

⁶¹Van Rensselaer to Lieut. Col. John Fenwick, September 15, 1812, to Maj. Gen. Henry Dearborn, September 1, 1812, and to Governor Daniel D. Tompkins, September 15, 1812, in Van Rensselaer, *Queens-town*, appendix, 49, 37-38, and 53; Col. George Minor to Congressman R. M. Johnson, October 30, 1814, *American State Papers, Military Affairs*, I, 569; Leonard D. White, *The Jeffersonians* (New York, 1959), 221; Maj. Gen. Andrew Jackson to Monroe, January 9, 1815, Palmer, *Historical Register*, IV, 291; W. C. C. Claiborne to Governor Willie Blount, January 4, 1815, and to Madison, January 19, 1815, in Dunbar Rowland, *Official Letter Books of W. C. C. Claiborne*, 1801-1816 (6 vols., Jackson, Miss., 1917), VI, 330, 334. For the New Orleans campaign, see Charles B. Brooks, *The Siege of New Orleans* (Seattle, 1961).

⁶²Gardner, *Infantry Exercise and Maneuvers*, 47.

⁶³[Gleig], *A Subaltern in America*, 128.

⁶⁴For particular examples, of which there are scores, see the battle reports in Palmer, *Historical Register*, II, 231, 336, and IV, 132-33, 193, 221; in Brannan, *Official Letters*, 289, 369-70; and in James, *Military Occurrences*, II, 410, 489, 561.

maton could reload with deliberation; the undisciplined militiaman, caught in the open with a discharged musket in his hands, lacked the steadiness to stand fast and take the time to reload. “The firmness requisite for the real business of fighting,” as Washington had warned, could only “be at-

tained by a constant course in discipline and service.⁶⁵ In conformity with colonial custom the Militia Act of 1792 required militiamen to arm and equip themselves. Since most male householders were militiamen, this supply system theoretically provided a fairly equitable substitute for defense taxation, and it promised to simplify the administration of military logistics. But in 1794, when many of the militiamen who turned out to put down the Whisky Rebellion reported for duty without weapons or equipment,⁶⁶ it became evident that militiamen were not complying with the law. The federal government periodically reminded the states that they were obliged to insure that every militiaman was “constantly provided with arms, accoutrements, and

convinced that reminders were not enough, the federal government offered to sell the states 30,000 stand of arms.⁶⁸ In 1808 Congress attempted to use the power of the purse to encourage the annual submission of militia returns. It appropriated \$200,000 to purchase “arms and military equipments for the whole body of the militia” and offered to donate these supplies gratis to the states in proportion to the numbers of enrolled militia annually

proprietion was repeated each year thereafter. Yet by 1812 only 12,250 stand of the 30,000 made available in 1798 had been purchased (by Delaware, Maryland, and Georgia), and only \$94,792 of the \$1,000,000 appropriated since 1808 had been spent. This disbursement purchased 31,640 stand of arms, of which only 16,098 were actually transferred to the states before the war. An additional 8,100 were loaned to various uniformed militia corps.⁷⁰

In 1798,

This ap-

⁶⁵ Washington to the President of Congress, September 15, 1780, Fitzpatrick, *Writings of George Washington*, XX, 49-50.

⁶⁶ Leonard D. White, *The Federalists* (New York, 1948), 420-21.

⁶⁷ U.S. *Statutes*, 11, 490 (April 23, 1808).

⁶⁸ *Ibid.*, I, 576 (July 6, 1798). One “stand of arms” consisted of one smooth-bore, muzzle-load, flintlock musket, its ramrod, its bayonet and scabbard, and sundry pieces of related equipment.

⁶⁹ *Ibid.*, 11, 490 (April 23, 1808).

⁷⁰ *American State Papers, Military Affairs*, I, 327-29, 337; White, *The Jeffersonians*, 532.

When hostilities broke out in 1812, the shortage of weapons and materiel was endemic. New York, Kentucky, Virginia, indeed almost every state which committed militia forces to battle sent unarmed men off to war.¹¹ “I am ready,” asserted the governor of Rhode Island, “. . . to call out the militia . . . but we are destitute of almost every necessary for the comfort and subsistence of those men, and for making them effective, as soldiers. We are without tents, equipage, and provisions, and have a very inadequate supply of cannon, muskets, and ammunition.”¹² While promising to forward troops as expeditiously as possible, the governor of Pennsylvania relied “on the deficiency [in arms and accoutrements] being supplied by the United States as promptly as practicable, to render the men . . . efficient.”¹³ Had the states exercised a modicum of foresight and had the militiamen themselves adhered to the supply system instituted in 1792, such situations would not have arisen.

Abstract debates concerning the constitutional responsibility for the militia did not cause the militia’s deterioration. Had the people given the militia system greater support, their elected representatives at both the national and the state levels would have been less disposed to advance litigious arguments justifying evasions of responsibility for the maintenance of the militia. The debates and the excuses were merely symptomatic of the country’s prevalent spirit, a spirit which combined egalitarian individualism and economic opportunism with an aversion to military service. Even during the Revolution, it had been apparent that many Americans not only disliked standing armies, but resisted soldiering in any guise. Once the Revolution ended and men became busy with civilian affairs, that attitude only intensified.¹⁴

Addressing Virginia’s constitutional ratification convention, Francis Corbin had warned that if “our defense be

¹¹ Brig. Gen. Peter B. Porter, “To the Public,” December 14, 1812, in Brannan, *Official Letters*, 106; and note 61, above. A cursory examination of battle reports turned up seventeen additional instances in which substantial militia units arrived at rendezvous or on the battlefield without weapons.

¹² Governor William James to Monroe, September 8, 1814, *American State Papers, Military Affairs*, I, 622.

¹³ Executive Secretary N. B. Boileau to Armstrong, August 27, 1814, Ingraham, *Sketch of the Events*, 45-46.

¹⁴ See Bernard O. and Bacon, *American Military Policy*, 6-10, 19-22, 25-31, 77-82, 93-108.

solely trusted to militia, ignorance of arms, and negligence of farming, will ensue⁷⁵ In practice Americans slighted the arts of war in order to concentrate upon the rewards of peace. As Alexander Hamilton had predicted, the “industrious habits of the people . . . absorbed in the pursuits of gain, and devoted to the improvements of agriculture and commerce,” proved to be “incompatible with the condition of a nation of soldiers”⁷⁶ Reporting to a House committee after the War of 1812, Harrison noted that the “sentiments and habits of a free country necessarily produce amongst the citizens a superior restlessness under restraint than is to be met with in the subjects of a monarchy. This spirit frequently manifests itself even in a career of military service There can scarcely be a restraint more vexatious and disgusting to a grown man, than the initiatory lessons of the military art. . . . It is believed that to this cause is to be attributed the little progress which has been made in training the militia of thee [*sic*] United States.”

The militia system established in 1792 did not fail in 1812 because the system envisioned by the Militia Act was not really tried during the war. The system was designed to provide a “well regulated” militia, organized, trained, supplied, and ready for service in the field. Generally speaking, the crowds of militiamen who reported to rendezvous came to war unorganized, poorly drilled, ill equipped, and unprepared. Once committed to combat, these crowds were often deployed as if they were experienced line infantry—exposed on open ground and expected to maneuver and fire with the steady precision of synthetic battalions. It would be difficult to imagine any tactic less suited to the talents of raw enlistees. War, as Fortescue remarked, is “an ugly thing at

⁷⁵Francis Corbin to the Virginia Constitutional Ratification Convention, June 8, 1788, Elliot, *Debates*, 111, 112-13.

⁷⁶Alexander Hamilton, “The Federalist No. 8,” in Earle, *Federalist*, 44.

⁷⁷Report of the Select Committee on Militia Reorganization, House

Affairs, 66; James, January 17, 1817, *American State Papers, Military*

⁷⁸[Gleig], *A Subaltern in America*, 67, 72; Rear Adm. George Cockburn to Vice Adm. John B. Warren, April 20, 1813, James, *Military Occurrences*, 11, 405; Col. Edward Baynes to Prevost, May 30, 1813, *ibid.*, I, 415; Maj. Gen. Robert Ross to Bathurst, August 30, 1814, *ibid.*, 11, 497; Brown to Armstrong, June 1, 1813, Palmer, *Historical Register*, 11, 231; Report of the Court of Inquiry in the Case of Brigadier General Winder, February 25, 1815, Ingraham, *Sketch of the Events*, 64.

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the best of times, [but it] is rarely so inhuman as when waged by amateur~.”~~

The militia system was meant to insure that citizen soldiers would not be amateurs. Some of them were not. Harrison’s “Pittsburgh Blues,” a company of uniformed militia, consistently “behave [d] well” and were praised in dispatches on a number of occasions. Ro Teams of uniformed cannoneers, such as those who participated in the bombardment of Fort Niagara and in the defense of Fort & Henry, were also extolled by their commanders. X* Uniformed Maryland militiamen “distinguished themselves gloriously” during the raid on York (Toronto). 8z The Fifth Maryland Infantry, a regiment of standing militia composed of uniformed companies from Baltimore, was the only militia unit at Bladensburg to put up a fight-one British line officer thought the Fifth Maryland was a regiment of regulars.~~ The governor of Louisiana advised General Jackson that “much confidence may be reposed” in the uniformed companies from New or lean^.^’ In the battle against Pakenham’s regulars these militiamen “realized all the anticipations which the general had formed of their conduct,” displaying “courage and perseverance in the performance of their

corps, organized, drilled, equipped, and made up of men who wanted to soldier, provided one demonstration that the militia system could work.

Uniformed

Leadership, training, adequate supplies, and sensible tactical deployment could also turn levies from the standing militia into fair soldiers in relatively short order. Confidence “produced by valor and intrepidity” marked the service of “the greater part of the militia” who campaigned with

⁷⁰Fortescue, *History of the British Army*, IX, 349.

⁸⁰Harrison to Armstrong, May 13, 1813, Palmer, *Historical Register*, 11, 206; Harrison to Monroe, January 13, 1813, and Lieut. Col. John B. Campbell to Harrison, December 25, 1812, Brannan, *Official Letters*, 109, 113.

⁸¹Lieut. Col. George McFeeley to Maj. Gen. Alexander Smyth, November 25, 1812, and Lieut. Col. George Armistead to Monroe, September 24, 1814, Palmer, *Historical Register*, 11, 117, and IV, 199.

⁸²Capt. Stephen Moore to [?] Moore, May 5, 1813, Brannan, *Official Letters*, 132.

⁸³Winder to Armstrong, August 27, 1814, Palmer, *Historical Register*, IV, 130; Lieut. Col. Joseph Sterett to Congress, November 22, 1814, *American State Papers, Military Affairs*, I, 568; [Gleig], *A Subaltern in America*, 74.

⁸⁴Claiborne to Jackson, November 5, 1814, Rowland, *Letter Books*, VI, 310.

⁸⁵Jackson, General Order, January 21, 1815, Brannan, *Official Letters*, 479.

RARE BROADSIDE OF THE BATTLE OF TIPPECANOE

Courtesy Lilly Library, Indiana University, Bloomington.

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Harrison through the first winter of the war.⁶ Militiamen
who fought along the Niagara frontier needed time to learn

the military arts, but they did learn. After being routed at Chippewa, Porter's troops hurled themselves upon the British batteries at Lundy's Lane with such *e'lan* that the reports of both the American and the British commanders took special note of their performance. Struck from ambush by a large force of Creek Indians, Jackson's Tennessee militia brigade "met the approach of the enemy with astonishing intrepidity, and having given a few fires, they forthwith charged with great vigour"ss In September, **1814**, a division of New York militia draftees and a brigade from Vermont stood shoulder to shoulder with 1,500 raw regulars in the entrenchments below the Saranac and beat back the British thrust toward Plattsburg.s9 That same month General John Stricker's Maryland brigade, including many of the same elements which had broken at Bladensburg, covered the approaches to Baltimore "like men who were determined not to be

beaten . . . The British commander was picked off by some Maryland conscript, and the royal expeditionary force was smartly repulsed. And below New Orleans an entrenched army, composed, for the most part, of standing militia trained and disciplined by Jackson, "triumphed over the invincibles of Wellington, and conquered the conquerors of Europe."e1

Given drill, discipline, preparation, arms, and leadership, the militia could fight. In the two decades between the establishment of the militia system and the War of 1812, however, the military potential of the militia system was undermined by the society it was designed to defend. The federal government could have done more to supervise and standardize training and to press for the enforcement of the militia laws. But respect for the rights of the states, the individualistic and secular temper of the American popu-

⁸⁶ Harrison to Armstrong, March 17, 1813, Armstrong, *Notices*, I, 245.

⁸⁷ Brown to Armstrong, August [?] 1814, Palmer, *Historical Register*, IV, 56-60; Drummond to Prevost, July 27, 1814, James, *Military Occurrences*, 11, 437.

as Jackson to Maj. Gen. Thomas Pinckney, January [2]9, 1814, Palmer, *Historical Register*, IV, 268.

⁸⁹ Macomb to Monroe, September 15, 1814, *ibid.*, 220-24. [Gleig], *A Subaltern in America*, 125, 133; Stricker to Smith, September 15, 1814, Palmer, *Historical Register*, IV, 194.

⁹⁰ Jackson's Farewell Address to his army, March [?] 1815, Bran-

lation, and the suspicion of federal intervention engendered by the Whisky Rebellion and the Embargo, all prevailed against radical federal initiatives. The states, on the other hand, could certainly have acted with greater determination to enforce the militia system and to take advantage of the guidance and support offered by the national government. The chief fault for the failure to implement the system—which was, before all else, meant to be the cornerstone for the defense of states rightsgz-must be assigned to the states. And if the American people had really wanted a well regulated militia, they could have prepared and maintained one.

In later years, arguments for the professionalization of the American military were largely based upon an erroneous impression of the history of the militia system. Instead of acknowledging that only the implementation of the system had been found wanting in 1812, such arguments started with the premise that the system itself had never been feasible. But had the Jeffersonians enforced their militia system, it seems clear that the militiamen who went to war in 1812 would have been better prepared to prove the system's potential and that there might well have been less need or demand for the expansion of the regular establishment in subsequent years.

Finally, the militia's early decline suggests that much of the fault for the erosion of state authority under federalism belongs to the states themselves. Having struggled to achieve the principle that a well regulated militia is "necessary to the security of a free State," the states, during the first twenty years of the Second Amendment's operation, virtually abdicated responsibility for maintaining their militia forces. By **1878**, when militia officers formed the National Guard Association to lobby for the interests of the state militias, even these soldiers of the states had forgotten why the militias existed. Assuming that the national government was primarily responsible for the subsidization and supervision of state militia forces, the National Guard Association took it for granted that only federal funds and federal discipline could revive the militia

⁹²The Second Amendment to the Constitution; Elliot, *Debates*, 11, 406, 545, 552, and 111, 206, 382, 385, 395, 416-17, 419, 424, 600, and *passim*.

⁹³F. P. Dodd, "Our National Guard: An Introduction to Its History," *Military Affairs*, V (Fall, 1941), 162-63. The National Guard (Dyer) Act of 1903 replaced the Militia Act of 1792 as the organic law for the militia.