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**THESIS**

**STATE DEFENSE FORCES AND THEIR ROLE IN  
AMERICAN HOMELAND SECURITY**

by

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March 2015

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<p>State Defense Forces (SDFs), or organized state militias and naval militias, have a long and distinguished history of service in the United States. These state-sanctioned organizations are substantiated and legitimized through the U.S. justice system and constitutional law. Currently, 23 states and U.S. territories have SDFs; unlike National Guard units, they cannot be federalized, which means they remain a state-level asset during emergency management operations. SDFs were utilized successfully during Hurricane Katrina, proving their value in state and federal emergency response efforts.</p> <p>This thesis seeks to analyze the structure and usefulness of the SDF as a volunteer emergency response organization. Second, it seeks to understand the evolution of the SDF by examining U.S. militia history. Third, it examines the disaster-relief efforts of SDFs with regard to Hurricane Katrina. SDFs provide state governors with emergency response personnel who are locally available and ready to serve in multiple capacities. Presently, state officials can promote legislation and develop a mission-flexible State Defense Force that can act as a reserve force for local law enforcement and the National Guard during natural and man-made disasters. The SDF may be the next step in the evolution of state and local emergency response in the 21st century.</p>			
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**STATE DEFENSE FORCES AND THEIR ROLE  
IN AMERICAN HOMELAND SECURITY**

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Submitted in partial fulfillment of the  
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## **ABSTRACT**

State Defense Forces (SDFs), or organized state militias and naval militias, have a long and distinguished history of service in the United States. These state-sanctioned organizations are substantiated and legitimized through the U.S. justice system and constitutional law. Currently, 23 states and U.S. territories have SDFs; unlike National Guard units, they cannot be federalized, which means they remain a state-level asset during emergency management operations. SDFs were utilized successfully during Hurricane Katrina, proving their value in state and federal emergency response efforts.

This thesis seeks to analyze the structure and usefulness of the SDF as a volunteer emergency response organization. Second, it seeks to understand the evolution of the SDF by examining U.S. militia history. Third, it examines the disaster-relief efforts of SDFs with regard to Hurricane Katrina. SDFs provide state governors with emergency response personnel who are locally available and ready to serve in multiple capacities. Presently, state officials can promote legislation and develop a mission-flexible State Defense Force that can act as a reserve force for local law enforcement and the National Guard during natural and man-made disasters. The SDF may be the next step in the evolution of state and local emergency response in the 21st century.

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## **LIST OF ACRONYMS AND ABBREVIATIONS**

CASMR	California State Military Reserve
CRS	Congressional Research Service
DHS	Department of Homeland Security
DOD	Department of Defense
MDDF	Maryland Defense Force
MIVDF	Michigan Volunteer Defense Force
NG	National Guard
SDF	State Defense Force
SPLC	Southern Poverty Law Center
TAG	The Adjutant General
TCA	Tennessee Code Annotated
TSG	Tennessee State Guard
U.S.C.	United States Code
USNORTHCOM	U.S. Northern Command

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## I. INTRODUCTION

SDFs are a low-cost, high-payoff asset, yet many states do not maintain them. Judging by more than 50 years of actuarial data, states such as Arizona, Florida, Hawaii, Illinois, Missouri, North Carolina and Pennsylvania have a historically “high risk” of natural disasters. Yet none of those seven states has an SDF.<sup>1</sup>

State Defense Forces (SDFs), or Organized State Militias and Naval Militias, have a long and distinguished history of service in the United States. These state-sanctioned organizations are substantiated and legitimized through the U.S. justice system and constitutional law. Currently, 23 states and U.S. territories have SDFs; unlike National Guard units, they cannot be federalized, which means they remain a state-level asset during emergency management operations.<sup>2</sup>

State Defense Forces were instrumental in the emergency response after the terror attacks of September 11, 2001, and during Hurricane Katrina, proving their value in state and federal emergency response efforts.<sup>3</sup> Based on such experiences, scholars suggest that more states should use these SDFs more extensively to aid counterterrorism efforts and local natural or man-made disaster response, especially because “the federal government usually needs 72 hours to marshal national resources to respond to an incident that has surpassed a state’s response capacity.”<sup>4</sup> And yet these organizations are little known and underutilized.

James Jay Carafano suggests that SDFs face certain public-relations challenges that may account for some states not utilizing these organizations. Indeed, many within the U.S. population—citizens and state-level leaders alike—do not know these

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<sup>1</sup> James J. Carafano, “State Defense Forces Provide Professionalism on the Cheap,” *Family Security Matters*, January 10, 2015, [http://www.familysecuritymatters.org/publications/id.7744/pub\\_detail.asp](http://www.familysecuritymatters.org/publications/id.7744/pub_detail.asp).

<sup>2</sup> Arthur Tulak, Robert Kraft, and Don Silbaugh, “State Defense Forces and Homeland Security,” *Parameters* 33, no. 2 (Winter 2003–04): 137.

<sup>3</sup> *Ibid.*, 133.

<sup>4</sup> Jill D. Rhodes and James Jay Carafano, “State and Regional Response to Disasters: Solving the 72-hour Problem,” Heritage Foundation, August 21, 2006, [http://www.heritage.org/research/reports/2006/08/state-and-regional-responses-to-disasters-solving-the-72-hour-problem#\\_ftn2](http://www.heritage.org/research/reports/2006/08/state-and-regional-responses-to-disasters-solving-the-72-hour-problem#_ftn2).

organizations exist. Perhaps worse, Carafano notes that even those who are aware of SDFs often mistake them for *Patriot Militias* or other radical, anti-government organizations.”<sup>5</sup> There are militias and then there are militias; the designation of “State Defense Force” marks a key distinction in these groups’ purposes, workings, and relationships with the populations and the governments they serve. The distinction—as well as the unique opportunity that SDFs present to states in the form of nimble and locally savvy emergency response personnel who are less constrained by Posse Comitatus and who are close at hand—means that State Defense Forces should figure more prominently in national and state emergency response planning.

## **A. MAJOR RESEARCH QUESTION**

The Department of Homeland Security (DHS) must “ensure a homeland that is safe, secure, and resilient against terrorism and other hazards.”<sup>6</sup> This mission includes working with state administrations to respond with maximum effect to any threats to Americans and their way of life. It is a monumental task, and both the states and the federal authorities could use all the help they can get. SDFs are often ready, willing, able, and trained for such work. Thus, the primary research question for this thesis is: How can states best integrate State Defense Forces to complement infrastructure defense, counterterrorism efforts, and natural disaster-relief planning?

## **B. IMPORTANCE**

### **1. Economic Importance**

The vast territory within the United States presents DHS with a logistical challenge with regard to coordinating emergency management with states that are struggling to balance budgets and resolve multiple manpower issues. States can be too

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<sup>5</sup> James J. Carafano and Jessica Zuckerman, “The 21st-Century Militia: State Defense Forces and Homeland Security,” Heritage Foundation, October 8, 2010, <http://www.heritage.org/research/reports/2010/10/the-21st-century-militia-state-defense-forces-and-homeland-security>; “Active ‘Patriot’ Groups in the United States in 2011,” Southern Poverty Law Center, <http://www.splcenter.org/get-informed/intelligence-report/browse-all-issues/2012/spring/active-patriot-groups-in-the-united-states>.

<sup>6</sup> “Our Mission,” Department of Homeland Security, December 17, 2012, <http://www.dhs.gov/our-mission>.

quick to declare emergencies through the FEMA declaration process because they do not have sufficient manning or funding for their emergency response programs.<sup>7</sup> As a recent Congressional Research Service (CRS) report admonishes, “too low a threshold [to request federal aid] reinforces the perception that the federal government will always come like the cavalry to rescue states and local governments from their improvident failure to prepare for routine disasters.”<sup>8</sup> Ongoing financial pressures have caused states to take drastic measures to balance their budgets. According to the Center on Budget and Policy Priorities, “the measures that states used to close their budget gaps, combined with the severity of the fiscal crisis that states faced, suggest that state services will remain at risk for a number of years.”<sup>9</sup>

Moreover, “the steep spending cuts of the last few years have caused declines in virtually all services provided by states.”<sup>10</sup> Using SDFs and other volunteer organizations could help alleviate some of this financial burden and provide much-needed emergency response, especially within the first 72 hours, when federal aid may not be available. State Defense Forces could help fill the gap so that state response could be sufficient to local emergencies, and federal aid could be saved for greater disasters elsewhere in the nation.

## **2. Political and Historical Importance**

Certain states may not have formed SDFs because of the negative associations of the terms *state militia* and right-wing Patriot Militias.<sup>11</sup> Carafano suggests that “[o]ften those who are aware of SDFs confuse them with private militia forces associated with

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<sup>7</sup> Francis X. McCarthy, *FEMA's Disaster Declaration Process: A Primer* (CRS Report No. RL34146). (Washington, DC: Congressional Research Service, 2011), 1–5, <http://www.fas.org/sgp/crs/homesecc/RL34146.pdf>.

<sup>8</sup> McCarthy, *FEMA's Disaster Declaration Process*, 17.

<sup>9</sup> Elizabeth McNichol, “Out of Balance: Cuts in Services Have Been States’ Primary Response to Budget Gaps, Harming the Nation’s Economy,” Center on Budget and Policy Priorities, April 18, 2012, <http://www.cbpp.org/cms/index.cfm?fa=view&id=3747>.

<sup>10</sup> *Ibid.*

<sup>11</sup> “Active ‘Patriot’ Groups in the United States in 2011.”

radical organizations.”<sup>12</sup> The history of the militia provided in this thesis may help state officials understand the evolution of the SDF and therefore draw a bright line of distinction between unauthorized militias and legitimate, state-sectioned SDFs, which operate within the bounds of federal and state law. That is, SDFs are not Patriot Militias but state-sanctioned volunteer organizations that provide state defense when the National Guard is deployed or local emergency response when called upon by the governor. A discussion has also been included in the appendix to further explore the ideology of Patriot Militias and how they differ from SDFs.

### **C. PROBLEMS AND HYPOTHESES**

Particularly now, after a spate of mass shootings, gun control is at the top of political agendas. SDFs could face greater restrictions and resistance if federal gun control legislation is promulgated in the near future, especially if officials believe that SDFs and other radical militias are one and the same, which in turn can influence state officials to steer away from SDF sanction and support, thereby separating the state from these valuable local emergency responders. Probing every aspect of SDFs and understanding militia history may be the best way to counter current biases and to increase SDF legitimacy in the eyes of the U.S. population. By probing state legal documents, reviewing the Militia Acts of 1792 and 1903, and analyzing the utilization of militias from the Revolutionary War to the present, a clear legal framework can be established to enhance SDFs in the eyes of state and federal legislators and the U.S. population.

### **D. METHODS AND SOURCES**

This thesis concentrates on the history, organizational structure, composition, and integration of SDFs into the emergency response framework. Moreover, it attempts to differentiate SDFs from other types of militia groups and delve into the constitutional intricacies with regard to both organizations. This research relies on primary sources,

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<sup>12</sup> Carafano and Zuckerman, “The 21st-Century Militia: State Defense Forces and Homeland Security.”

secondary sources, unclassified government publications, scholarly books, websites, and academic journals.

It also uses the response to Hurricane Katrina as a case study. During Hurricane Katrina, multiple SDFs from eight states were used to supplement National Guard units and provide security at shelters, making them an integral part of the relief effort.<sup>13</sup> Analyzing unclassified military, state, and federal after-action reports from these two events can shed light on appropriate SDF utilization. Similarly, such an analysis of these primary and secondary sources supports the examination of how SDFs can be integrated with the U.S. military and National Guard forces to aid in emergency management efforts and disaster relief.

## **E. THESIS OVERVIEW**

Chapter I introduced the thesis. Chapter II centers on the structure and composition of SDFs. Chapters III, IV, and V cover militia history from the early colonial period to the present, concentrating on key moments in history that define the role of the militia in the United States. Chapter VI analyzes the SDF's role in Hurricane Katrina disaster response. Chapter VII provides a conclusion. The appendix includes a discussion on Patriot Militias and how they differ from SDFs.

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<sup>13</sup> James Jay Carafano and John R. Brinkerhof, "Katrina's Forgotten Responders," October 5, 2005, <http://www.heritage.org/research/reports/2005/10/katrinass-forgotten-responders-state-defense-forces-play-a-vital-role>.

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## II. STATE DEFENSE FORCES: AN OVERVIEW

In addition to its National Guard, if any, a State, the Commonwealth of Puerto Rico, the District of Columbia, Guam, or the Virgin Islands 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 (or commanding general in the case of the District of Columbia) considers necessary, but it may not be called, ordered, or drafted into the armed forces.<sup>14</sup>

— Title 32 U.S.C. § 109 (C)

State Defense Forces, commonly referred to as *Organized State Militias* or in some circumstances *State Guards* and *Naval Militias*, are an economical and efficient resource available to their respective state governor when military forces are required and the National Guard (NG) is either undermanned, federalized by the president under the Stafford Act, deployed in support of federal forces, or eliminated by a foreign enemy.<sup>15</sup> Unlike the U.S. federal forces, NG, and other U.S. military reserve units, SDFs remain under their governor’s authority at all times and cannot be federalized. Additionally, SDFs can be deployed to other states, through governor’s decree, to serve in response to natural catastrophes or man-made disasters, or anytime when a military presence may be needed to reestablish social control.<sup>16</sup>

Currently, 23 states have established state guards, with a total membership of over 14,000 in the United States and its territories (See Figure 1).<sup>17</sup> States are federally authorized to maintain SDFs per Title 32 U.S.C. § 109. They have used these volunteer organizations to support to their NGs during events such as Hurricane Katrina, when nine states’ governors activated their SDFs to provide emergency assistance. Similarly, after the September 11, 2001, terrorist attacks (9/11), “the New York Guard, New York Naval

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<sup>14</sup> Maintenance of Other Troops, Title 32 U.S.C. § 109 (1958).

<sup>15</sup> Carafano and Zuckerman, “The 21st-Century Militia: State Defense Forces and Homeland Security.”

<sup>16</sup> Ibid.

<sup>17</sup> Department of Defense, *Evaluation of Department of Defense Interaction with State Defense Force* (Department of Defense Report No. DODIG-2014-065) (Washington, DC: Department of Defense, 2014).

Militia, and New Jersey Naval Militia were activated to assist in response measures, recovery efforts, and critical infrastructure security.”<sup>18</sup>



Figure 1. Location of SDFs as of March 2014.<sup>19</sup>

Government officials learned in the aftermath of 9/11 that disasters can and do occur with little or no warning. With federal response times taking nearly 72 hours, “local leaders can achieve a great deal at little cost if they invest only a modest amount of effort in establishing, organizing or revitalizing their SDF capabilities.”<sup>20</sup> Even more, SDFs are particularly useful when a state’s National Guard units are deployed, which in part impeded the NG during Hurricane Katrina.<sup>21</sup>

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<sup>18</sup> Carafano and Zuckerman, “The 21st-Century Militia: State Defense Forces and Homeland Security.”

<sup>19</sup> Department of Defense, *Evaluation of Department of Defense Interaction with State Defense Force*.

<sup>20</sup> James J. Carafano, “A Well Regulated Militia,” *The American Legion Magazine*, April 1, 2008, <http://www.legion.org/magazine/1533/well-regulated-militia>.

<sup>21</sup> Bryan Bender, “Demands of Wars Since 9/11 Strain National Guard’s efforts,” *Boston Globe*, September 2, 2005, [http://www.boston.com/news/nation/washington/articles/2005/09/02/demands\\_of\\_wars\\_since\\_911\\_strain\\_national\\_guards\\_efforts/](http://www.boston.com/news/nation/washington/articles/2005/09/02/demands_of_wars_since_911_strain_national_guards_efforts/).



Even though many states have sanctioned SDFs, these groups are often underfunded and underappreciated.<sup>22</sup> Despite these handicaps, SDFs are trained and ready to perform a myriad of functions ranging from guarding commemorative events to aiding in disaster relief efforts.<sup>23</sup> Members have professional backgrounds, and many within these forces “contain a significant number of former and retired members of the armed forces, as well as accredited and state-licensed medical, legal, and other technical professionals.”<sup>24</sup> This chapter highlights the SDFs’ unique composition, chain of command, NG interaction, and mission set with regard to respective states.

Ultimately, government officials who are ardently seeking ways to trim state budgets for government services may wish to take pause and consider the usefulness of SDFs. Carafano suggests that “with state coffers pressed for cash and homeland security grants likely to shrink . . . all states should be pursuing low-cost, high-yield, common-sense measures to ensure they’ll be ready when disaster strikes. Establishing or expanding SDFs is a great way to go.”<sup>25</sup>

#### **A. SDF COMPOSITION AND COMMAND STRUCTURE**

The Adjutant General (TAG), is a member of the governor’s cabinet, and acts as the state’s senior military commander.<sup>26</sup> Also, TAG is in charge of regulating recruitment, training, equipment utilization, and coordination of the SDFs with the state’s National Guard in case emergency relief efforts are needed. SDFs are structurally similar to a NG unit. Specifically, they are composed of a Commanding General, Deputy Commander, and Chief of Staff. The Heritage Foundation suggests that SDFs consist of two to five battalions with units such as medical, legal, and engineering regiments.

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<sup>22</sup> Carafano and Zuckerman, “The 21st-Century Militia: State Defense Forces and Homeland Security.”

<sup>23</sup> Department of Defense, *Evaluation of Department of Defense Interaction with State Defense Force*.

<sup>24</sup> Ibid.

<sup>25</sup> Carafano, “State Defense Forces Provide Professionalism on the Cheap.”

<sup>26</sup> Carafano and Zuckerman, “The 21st-Century Militia: State Defense Forces and Homeland Security.”

Volunteer chaplains, a band, and a cavalry should also be available and be an integral part of any SDF.<sup>27</sup>

A review of the Tennessee State Guard (TSG) structure offers a good example of how to organize an SDF. The TSG is the “all-volunteer arm of the Tennessee Military Department, and is authorized by Tennessee Code Annotated 58-1-401.”<sup>28</sup> This 500-member force is currently under the command of Brigadier General Kenneth T. Takasaki, who is under the command of TAG, Major General Terry M. Haston. The Tennessee TAG “is responsible for the supervision of the Military Department of Tennessee that includes the Army National Guard, the Air National Guard, the Tennessee Emergency Management Agency, and the Tennessee State Guard.”<sup>29</sup> The TSG has a Directorate Headquarters that commands the 2nd Battalion; the 1st, 3rd, and 4th Regiments; and the Medical Command. The command structure is as follows:

Directorate Headquarters Offices<sup>30</sup>

Directorate of Personnel Administration	Directorate of Plans, Ops and TNG
Directorate of Security and Intelligence	Directorate of Logistics
Directorate of Civil/Military Support	Directorate of Communications
Directorate of Engineering Services	Directorate of Information Services
Headquarters Commandant	Headquarters Surgeon Section
Secretary to the General Staff	Judge Advocate General Staff
Office of the Inspector General	Provost Marshal
Special Operations (SAR) Branch	TNSG Academy
Public Information Office	Chaplains

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<sup>27</sup> Jessica Zuckerman et al., “Why More States Should Establish State Defense Forces,” Heritage Foundation, February 28, 2012, <http://www.heritage.org/research/reports/2012/02/why-more-states-should-establish-state-defense-forces>.

<sup>28</sup> “The All-Volunteer Tennessee State Guard,” Tennessee National Guard, accessed September 15, 2014, <http://www.tnmilitary.org/tennessee-state-guard.html>.

<sup>29</sup> “The Adjutant General Tennessee National Guard,” accessed September 15, 2014, Tennessee National Guard, <http://www.tnmilitary.org/the-adjutant-general.html>.

<sup>30</sup> “Tennessee State Guard Units,” Tennessee National Guard, accessed September 15, 2014, <https://web.archive.org/web/20140112225521/http://www.tnmilitary.org/SGUnits.html>.

2nd Battalion<sup>31</sup>

Officer Leadership

Deputy Commanding General  
Brigade Commander  
Brigade Executive Officer  
Brigade Command Sergeant Major

Enlisted Leadership

Brigade Command Sergeant Major  
2nd Regiment has its headquarters in Nashville, TN, and commands the 11th, 21st, 31st, 41st, and 51st Forward Support Battalions.<sup>32</sup>

1st Regiment<sup>33</sup>

Officer Leadership

Deputy Commanding General  
Regiment Commander  
Regiment Executive Officer

Enlisted Leadership

Regiment Command Sergeant Major

1st Regiment is headquartered in Jackson, TN, and commands the “1st Infantry Battalion, Millington; 2nd MP Battalion, Jackson; 3rd MP Battalion, Trenton; 4th MP Battalion, Paris.”<sup>34</sup>

3rd Regiment<sup>35</sup>

Officer Leadership

Deputy Commanding General  
Regiment Commander  
Regiment Executive Officer

Enlisted Leadership

Regiment Command Sergeant Major

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<sup>31</sup> Ibid.

<sup>32</sup> “Tennessee State Guard Units.”

<sup>33</sup> Ibid.

<sup>34</sup> Ibid.

<sup>35</sup> Ibid.

1st Regiment is headquartered in Jackson, TN, and commands the “1st Infantry Battalion, Gray; 2nd MP Battalion, Jefferson City; 3rd MP Battalion, Kingsport; 4th MP Battalion, Alcoa.”<sup>36</sup>

#### 4th Regiment<sup>37</sup>

##### Officer Leadership

Deputy Commanding General  
Regiment Commander  
Regiment Executive Officer

##### Enlisted Leadership

Regiment Command Sergeant Major

1st Regiment is headquartered in Jackson, TN, and commands the “1st Infantry Battalion, Chattanooga; 2nd MP Battalion, Cleveland; 3rd MP Battalion, McMinnville; 4th MP Battalion, Winchester.”<sup>38</sup>

#### Medical Command

2nd Battalion and the 1st, 3rd, and 4th Regiments each have a staff surgeon and a medical staff.<sup>39</sup>

## **B. SDF AND NATIONAL GUARD INTERACTION AND ITS EFFECTIVENESS**

In 2014, the Department of Defense (DOD) Inspector General (IG) produced Report No. DODIG-2014-065, “Evaluation of Department of Defense Interaction with State Defense Force,” which evaluated the effectiveness of interaction between SDFs, the National Guard, and the U.S. Department of Defense; two areas of weakness were identified.<sup>40</sup> First, regulations and federal laws were misconstrued by state organizations, minimizing the effectiveness of joint SDF and NG operations. Second, the National Guard policy regarding SDF utilization was extremely limited, resulting in

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<sup>36</sup> Ibid.

<sup>37</sup> “Tennessee State Guard Units.”

<sup>38</sup> Ibid.

<sup>39</sup> Ibid.

<sup>40</sup> Department of Defense, *Evaluation of Department of Defense Interaction with State Defense Force*.

misunderstandings during mission planning due to the lack of federal and state guidance for the NG on how to utilize the SDF. <sup>41</sup>

SDFs and National Guard units are both considered part of a state's organized militia. SDF members and NG forces work together in conjunction during disaster relief operations or any other mission when directed by the Adjutant General; however, individuals are prohibited from serving in both organizations simultaneously. <sup>42</sup> Per Title 32 U.S.C. § 109 (e), "A person may not become a member of a defense force established under subsection (c) if he is a member of a reserve component of the armed forces." <sup>43</sup>

According to the DOD IG, this separation of SDF and NG was compounded by the misinterpretation of Title 32. The report found that this federal law implied that SDFs were forbidden from utilizing any federal equipment or supplies, which in turn led to states restricting SDFs' involvement with the NG operations. Title 32 U.S.C. § 109 (d) affirms the following:

**(d)** A member of a defense force established under subsection (c) is not, because of that membership, exempt from service in the armed forces, nor is he entitled to pay, allowances, subsistence, transportation, or medical care or treatment, from funds of the United States. <sup>44</sup>

The interpretation of this law, according to the IG, is that SDF members cannot receive pensions, healthcare, bonuses, or any other type of federal benefits. The IG states that these restrictions can be misconstrued and interpreted by states to mean that they should restrict SDF members from utilizing federally funded facilities or equipment, which in turn inhibits SDFs from completing missions with NG units. If equipment is shared, it should be the decision of TAG in accordance to the guidance of the fiscal officer of the state, and not predicated on Title 32 U.S.C. § 109 (d). Unfortunately, there remains a misconception that SDFs are prohibited from using federal equipment and

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<sup>41</sup> Ibid.

<sup>42</sup> Department of Defense, *Evaluation of Department of Defense Interaction with State Defense Force*.

<sup>43</sup> Maintenance of other Troops, Title 32 U.S.C. § 109 (1958).

<sup>44</sup> Ibid.

facilities, and some states have therefore prohibited SDFs from carrying out missions in parallel with the National Guard.<sup>45</sup>

This misunderstanding is not limited to just the NG, as the DOD also has misapprehensions with regard to SDFs. The Inspector General determined that “the interaction between DOD and the 23 SDF was not properly defined.”<sup>46</sup> As previously stated, the DOD is restricted in its ability to provide aid to these forces with regard to benefits associated with the service, such as pensions or medical benefits. Further findings suggest that although SDFs are primarily voluntary, they are still entitled to access federal equipment, assets, or funds possessed by DOD.

The challenge rests in the lack of procedural processes between SDFs and the DOD that clarify how the organizations are to interact. The report states that “the only current policies directly addressing SDF was National Guard Regulation 10-4, *Organization and Functions: National Guard Interactions with State Defense Forces*. Regrettably, this regulation is only applicable to the NG, and Army Regulation 670-1, *The Wear and Appearance of Army Uniforms and Insignia*.”<sup>47</sup>

Consequently, the IG recommended researching the legal parameters regarding the interaction between the DOD and SDFs, and that the Secretary of the Defense should outline procedural guidance concerning the SDFs’ utilization of federal resources. Moreover, the IG recommends that the DOD should officially recognize SDFs “as any other state agency with respect to State Defense Forces preparation for and participation in Federal responses.”<sup>48</sup> The Undersecretary of Defense accepted the uniqueness of SDFs but was reluctant to provide further procedures regarding SDF and DOD cooperation; however, the undersecretary did agree that SDFs should be given the same consideration as any other DOD asset.<sup>49</sup>

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<sup>45</sup> Department of Defense, *Evaluation of Department of Defense Interaction with State Defense Force*.

<sup>46</sup> Ibid.

<sup>47</sup> Ibid.

<sup>48</sup> Ibid.

<sup>49</sup> Ibid.

Despite these challenges, SDFs have proven beneficial to state governors during natural or man-made disasters, as observed during 9/11 and Hurricane Katrina. SDF training and correct interpretation of federal fiscal laws will ensure effective interaction between SDFs and the NG during emergent operations.<sup>50</sup>

### **C. POSSE COMITATUS ADVANTAGE**

SDFs are not restricted by the “Posse Comitatus Act, which prohibits federal military forces from engaging in domestic law enforcement activities within the United States.”<sup>51</sup> On the contrary, a military force like U.S. Northern Command (USNORTHCOM) is restricted in its ability to operate within U.S. national boundaries, even though they are designated “to provide command and control of . . . homeland defense efforts and to coordinate defense support of civil authorities.”<sup>52</sup> This double bind affects all aspects of a domestic response. For example, during incidents of civil unrest that may occur due to natural disaster, U.S. armed forces personnel may be limited by Posse Comitatus, but SDF forces can supplement law enforcement without violating American civil rights; as National Guard regulations state, SDFs or state militias “may not be controlled or commanded by federal authorities, and missions are identified only by appropriate state officials.”<sup>53</sup>

Moreover, “while the National Guard is a dual-apportioned force that can be called to federal service under Title 10 or remain a state force under Title 32, State Defense Forces serve solely as Title 32 forces.”<sup>54</sup> For this reason they are easier for state administrations to deal with on a legal basis in support of state and federal administrations in times of crisis. Moreover, in Joint Publication 3-27, SDFs are referred

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<sup>50</sup> Zuckerman et al., “Why More States Should Establish State Defense Forces.”

<sup>51</sup> Ibid.

<sup>52</sup> “About USNORTHCOM,” U.S. Northern Command, accessed September 15, 2013, <http://www.northcom.mil/AboutUSNORTHCOM.aspx>.

<sup>53</sup> “National Guard Interaction with State Defense Forces,” National Guard Regulation 10–4, November 2, 2011, [http://www.ngbpcdc.ngb.army.mil/pubs/10/ngr10\\_4.pdf](http://www.ngbpcdc.ngb.army.mil/pubs/10/ngr10_4.pdf).

<sup>54</sup> Zuckerman et al., “Why More States Should Establish State Defense Forces.”

to as *auxiliary organizations* that can be utilized if the National Guard becomes federalized.<sup>55</sup> According to JP-3-27:

The National Strategy for HS assigns to the states and localities the primary responsibility for funding, preparing, and operating the emergency services in the event of a terrorist attack. Given the dual-apportioned character of the NG, some see the State Defense Forces as the ultimate guarantor to the states and territories to handle state-specific missions in the event the NG is federalized.<sup>56</sup>

Describing SDFs as the ultimate guarantor to handle emergencies may be an exaggeration, considering that there is no standardization across states and that the number of force personnel and their experience levels vary dramatically. But this literature indicates SDFs are recognized by the U.S. Department of Defense as legitimate and useful participants in American homeland security and defense.<sup>57</sup>

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<sup>55</sup> Homeland Defense, *Joint Publication 3–27* (Washington, DC: Joint Chiefs of Staff, 2007), <http://purl.fdlp.gov/GPO/gpo29274>.

<sup>56</sup> Ibid.

<sup>57</sup> Ibid.



### **III. THE COLONIAL MILITIA—THE GENESIS OF THE STATE DEFENSE FORCE**

Contrary to the implication of much traditional writing on the subject, military history does not occur in a vacuum. When its study is set in its social, political, economic, and even intellectual context, non-military historians will begin to pay attention to what it can teach them. The colonial period is no exception.<sup>58</sup>

—John Shy

Understanding the evolution of the term *militia*, within the confines of U.S. history and U.S. federal and state statutory law, is paramount to understanding the position and purpose of contemporary State Defense Forces. The definition of “militia” has evolved over the past four centuries, and its use and misuse has created confusion and established certain stereotypes for the American public, owing in part to the term’s nostalgic ties to the American Revolution and to its use by Patriot Militias who use propaganda and misrepresentation of history for their own political ends.<sup>59</sup> Other qualifiers such as “organized” and “unorganized militia,” “volunteer militia,” and “state militia” also add to misconceptions and misperceptions.

This chapter reviews the philosophical and historical development of American militias from the colonial period up to the French and Indian War in order to better understand how these early militias eventually developed into the National Guard and the modern SDF.

#### **A. THE EARLY COLONIAL MILITIA 1607–1754**

Based on the fear of despotism, early colonial leaders avoided the idea of a standing army that could offer protection from their most prevalent threat, the American Indian, who disregarded European warfare tactics and utilized “a military system of his

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<sup>58</sup> John W. Shy, *A People Numerous and Armed: Reflections on the Military Struggle for American Independence* (Ann Arbor: University of Michigan Press, 1990). CH 2 Kindle Edition.

<sup>59</sup> “Active ‘Patriot’ Groups in the United States in 2011.”

own.”<sup>60</sup> Indians used concealment, camouflage, and guerrilla tactics to quell colonial migration westward into tribal lands. Unfortunately, the English policy of *salutary neglect*<sup>61</sup> left the colonists mostly to fend for themselves, and even if England had supplied an abundance of British regulars, their linear warfare tactics would have been inadequate due to the vast forests of the Americas, a problem highlighted at the Battle of the Monongahela in 1758.<sup>62</sup> Therefore, instead of establishing a standing colonial army, local governments relied on the English tradition of the militia, which evolved from the *Saxon fyrd*, a system of security that slowly integrated into England after the Norman Conquest in the 11th century.<sup>63</sup>

Colonial governments soon requested every “able-bodied free male from sixteen to sixty to render military service. Each member of the militia was obligated to appear for training . . . [and to] provide himself with weapons, and to hold himself in readiness for call in case of Indian attack or other emergency.”<sup>64</sup> On December 13, 1636, the Massachusetts Bay Colony held the *first muster* of its militia; the date is now celebrated

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<sup>60</sup> Richard W. Stewart, ed., *American Military History, Vol. 1: The United States Army and the Forging of a Nation, 1775–1917* (Washington, DC: Center of Military History, 2009), 30–33, <http://www.history.army.mil/html/books/030/30-21/index.html>.

<sup>61</sup> British Salutary Neglect, a term coined by British philosopher Edmund Burke, was a colonial policy in the Americas from 1714 to 1760 that allowed for limited governmental involvement with regard to internal affairs of colonies. This initial taste of self-government by the colonists was the initial foundation of the Revolution; see James A. Henretta, Rebecca Edwards, and Robert O. Self, *America: A Concise History, Combined Volume*, 5th ed. (Boston: Bedford/St. Martin, 2012), 89.

<sup>62</sup> Rene Chartrand, *Monongahela 1754–55: Washington’s Defeat, Braddock’s Disaster* (Oxford: Osprey Publishing, 2013), 62–6. The Battle of the Monongahela, which occurred on July 9, 1755, saw the defeat of 1,300 British regulars under the command of General Edward Braddock. The French Captain Daniel Hyacinthe Liénard de Beaujeu led 300 men, including Indian allies, and used surprise and superior woodland tactics to his advantage; Beaujeu wore Indian war dress and applied paint to his face. George Washington was present and described the battle in a letter to his mother: “[W]e were attacked by a party of French and Indians, whose number, I am persuaded, did not exceed three hundred men; while ours consisted of about one thousand three hundred well-armed troops, chiefly regular soldiers, who were struck with such a panic that they behaved with more cowardice than it is possible to conceive.” See Jared Sparks, *Official Letters Relating to the French War, and Private Letters Before the American Revolution, 1754–May 1775* (Boston: Hilliard, Gray and Company, 1834), 87.

<sup>63</sup> The Saxon fyrd evolved from the ancient Saxon tradition of *Allegiance*, which was an order of *Pagi*. Each Pagus was required to send forth 100 warriors from his land when requested, which most likely required all the able-bodied men available to the Pagus. See Dudley J. Medley, *A Student’s Manual of English Constitutional History* (London: Simpkin, Marshall & Co., 1894), 418; and Stephen Morillo, *Warfare Under the Anglo Norman Kings 1066–1135* (Suffolk: Boydell Press, 1994), 66–9; Stewart, *American Military History*, 30–33.

<sup>64</sup> Stewart, *American Military History*, 30–33.

as the birthday of the American National Guard. Yet the militia that took part in the first muster is also a distant relation of the modern SDF.<sup>65</sup>

At that time the colonies were not under federal leadership and generally operated independently in each colony under salutary neglect. Each colony had compulsory militia service except for Pennsylvania, which finally passed its first militia legislation in 1755; its militia was completely voluntary, just like the SDF.<sup>66</sup> Nonetheless, the militia was promulgated by distinctly separate colonial legislators, similar to the current state legislative systems that have passed statutes for the creation and maintenance of their respective militias, NG and SDF alike; hence, the National Guard perhaps should share a birthday with the SDF, and they should become symbolic brothers-in-arms.<sup>67</sup>

By 1755, each colony had individually promulgated militia service and mainly used its force for “protecting or extending its own frontiers.”<sup>68</sup> The colonies had their own colonial assemblies that elected officers, who typically were chosen by popularity or their ability to bring men together and face whatever conflict arose to threaten the well-being of the colony.<sup>69</sup>

Additionally, “rank in the militia generally corresponded with social station in the community.”<sup>70</sup> Social standing became an important aspect in choosing which able-bodied men to send into conflict. Outsiders, men without families, and the poor and indigent were sent first.<sup>71</sup> Historians, at times, may have overlooked these social and cultural effects when analyzing the history of the men who made up the colonial militias.

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<sup>65</sup> Ibid.

<sup>66</sup> Stewart, ed. *American Military History*, 30–3; J. Revell Carr, *Seeds of Discontent: The Deep Roots of the American Revolution, 1650–1750* (New York: Walker Publishing Company, 2008), 127.

<sup>67</sup> Stewart, *American Military History*, 30–33.

<sup>68</sup> Ibid., 30.

<sup>69</sup> Ibid.

<sup>70</sup> Ibid., 30–41

<sup>71</sup> Kyle Zelner succinctly and imaginatively offers a view of obligatory service during the colonial period that is truly enlightening and sheds new light on the social influences that impacted the military sector during the colonial era; his work is key to understanding the stereotype of the undisciplined colonial militia; see Kyle F. Zelner, *A Rabble in Arms: Massachusetts Towns and Militiamen During King Philip’s War* (New York: New York University Press, 2009), 1–3.

The men were not part of an elite group of well-armed, well-trained military soldiers hardened by the trials of lethal combat—most were simply the undesirables of the colonies. This point appears obvious in hindsight, but it should be taken into consideration when analyzing the statements by the founding fathers with regard to the bad discipline and unreliability of militias during the French and Indian War and into the Revolutionary War.<sup>72</sup>

## **B. ENGLISH PHILOSOPHY**

In addition to social and cultural insights into compulsory militia service, political philosophy also influenced the development of the militia system in the colonies—why did the colonists choose to utilize militias rather than create a standing army? Colonial utilization of militias followed with the contemporaneous philosophy of the English landed classes—they were adamantly opposed to standing armies.<sup>73</sup> In the late 17th century, English politicians and the landed gentry considered permanent armies a threat to very existence of liberty and that they “were the fount of all evil responsible for arbitrary government, absolutism, and aggressive [C]atholicism.”<sup>74</sup> A monarch with a standing army at his disposal was not only a threat to the authority of the lords and commons but also a threat to the concept of English liberty. Standing armies were “wreckers of parliaments and representative institutions, the destroyers of individual liberty, and a threat to the vested interests and political franchises of the English landed classes.”<sup>75</sup>

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<sup>72</sup> Zelner, *A Rabble in Arms*; Henretta, et al., *America: A Concise History*, 89.

<sup>73</sup> John Childs, *The British Army of William III, 1689–1702* (Manchester: University of Manchester Press, 1990), 184.

<sup>74</sup> “James II: 1685–1688,” The British Monarchy, accessed October 25, 2014. <http://www.royal.gov.uk/HistoryoftheMonarchy/KingsandQueensoftheUnitedKingdom/TheStuarts/JamesII.aspx>; John Childs, *The British Army of William III*.

<sup>75</sup> Childs, *The British Army of William III*; Stewart, *American Military History*, 30–41; Robert K. Wright and Morris J. MacGregor, “The Constitution,” *Soldier-Statesmen of the Constitution*, U.S. Army Center of Military History, U.S. Army, August 11, 2000, <http://www.history.army.mil/books/RevWar/ss/ch4.htm>.

These ideas centered on individual liberty, freedom from absolutism, and inherent distrust of oppressive monarchs with unchecked military power are conveyed in the U.S. Declaration of Independence:

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.—That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, —That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it.<sup>76</sup>

Colonists needed to adapt to the threat that was most prevalent and find a way to continue their lives, provide security for their families, and protect all others in their respective colony without help from a standing British Army.<sup>77</sup>

Before the birth of the United States, each colonial government chose the militia system to provide civic protection not only because of salutary neglect but also due to their British philosophical roots. Colonials—now a new British landed class in America—were influenced by English philosophies and were eagerly engaging in “life, liberty, and the pursuit of happiness.” Of course, even this phrase was gleaned from the famous English political philosopher John Locke in his *Second Treatise of Government*, which states that “Man . . . hath by nature a power, not only to preserve his property, that is, his *life, liberty* and *estate*, against the injuries and attempts of other men.”<sup>78</sup>

### C. COLONIAL MILITIAS AND THE FRENCH AND INDIAN WAR

The French and Indian War (1754–1763) prompted more cooperation between colonial militias and paved the way for the future general of the Colonial Army, George

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<sup>76</sup> “The Declaration of Independence,” UShistory.org, July 4, 1995, <http://www.ushistory.org/declaration/document/>.

<sup>77</sup> Stewart, *American Military History*, 37–9; Chartrand, *Monongahela 1754–55*, 62–6.

<sup>78</sup> John Locke, *The Works of John Locke, Vol. 5, Two Treatises of Government [1689]*, prepared by Rod Hay for the McMaster University Archive (London: n.p., 1823), <http://socserv2.mcmaster.ca/~econ/ugcm/3ll3/locke/government.pdf>; Stewart, *American Military History*, 30–39.

Washington, to gain valuable military experience.<sup>79</sup> Washington commanded militia forces throughout the conflict in conjunction with the British regulars to halt French expansion into British territory. Washington's performance was lackluster, considering his failure at Fort Necessity, and even more, during the expedition to take Fort Duquesne in 1758, where General Braddock's army was decimated by French and Indian forces. Despite these failures, Virginia's Governor Robert Dinwiddie placed Washington in command of all Virginia militia forces in order to provide protection for the northern frontier. The militia was made up entirely of colonials who were "inclined to be highly individualistic and to resent discipline and the inevitable restrictions of military life."<sup>80</sup> Men wished to be free to concentrate on their own ambitions, so when they entered into the militia, they "did so with the idea of winning victory as quickly as possible so they could return to his normal civilian pursuits."<sup>81</sup>

Washington, hoping someday to receive a British commission, often complained of working with the undisciplined militia. In a letter to Dinwiddie he noted:

The militia are under such bad order and discipline, that they will go and come when and where they please, without regarding time, their officers, or the safety of the inhabitants, consulting solely their own inclinations. . . . I scorn to make unjust remarks on the behaviour [*sic*] of the militia . . . I only want to make the Country sensible, how ardently I have studied to promote her cause; & wish very sincerely my Successor may fill my place, more to their satisfaction in every respect than I have been able to do.<sup>82</sup>

Despite Washington's views, toward the end of the war, he and the Virginia militia returned to Fort Duquesne with British forces and reclaimed the area from the French.<sup>83</sup>

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<sup>79</sup> Colonial militias had cooperated in the late 17th century. North Carolina militiamen served alongside those of Georgia and South Carolina, most likely attributed to a shared enemy, the Cherokee Indians. See Thomas G. Mitchell, *Indian Fighters Turned Politicians: From Military Service to Public Office* (Westport: Praeger Publishers, 2003), 3; Rene Chartrand, *Monongahela 1754–55: Washington's Defeat, Braddock's Disaster* (Oxford: Osprey Publishing, 2013), 62–6.

<sup>80</sup> Stewart, *American Military History*, 41.

<sup>81</sup> *Ibid.*, 42

<sup>82</sup> *The Papers of George Washington*, Colonial Series, vol. 3, *16 April 1756–9 November 1756*, ed. W. W. Abbott (Charlottesville: University Press of Virginia, 1984), 430–435.

<sup>83</sup> Chartrand, *Monongahela 1754–55*, 62–66.

The French and Indian War provided invaluable military experience, planted the seeds of cooperation between the colonial governors and their militias, and molded the character and leadership of George Washington, who eventually united the colonies during the Revolutionary War.<sup>84</sup> Military knowledge gained proved invaluable, as “many colonials later to become famous in the Revolution had served their military apprenticeship as officers of middle rank.”<sup>85</sup> In addition to George Washington, these men included Israel Putnam, Philip Schuyler, John Stark, Charles Lee, Horatio Gates, and Richard Montgomery. Most importantly, these colonial militia leaders had actually served in a military capacity prior to taking command.<sup>86</sup>

As the French and Indian War came to an end, the British government began to feel the financial burden of the war and moved to force the colonials to contribute to imperial defense. Under the initiative to create an “American Establishment,” a large force of British regulars to be established for colonial defense, the British government began to impose a series of taxes without offering the colonials a voice in parliament to protest, hence, taxation without representation—a misjudgment that led to eventual insurrection of the colonies.<sup>87</sup>

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<sup>84</sup> Stewart, *American Military History*, 30–33.

<sup>85</sup> *Ibid.*, 41–42.

<sup>86</sup> *Ibid.*, 30–46.

<sup>87</sup> Stewart, *American Military History*, 45–6; Mitchell, *Indian Fighters*, 1–3.

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## IV. THE REVOLUTIONARY WAR MILITIA AND THE ARTICLES OF CONFEDERATION

To place any dependence upon militia, is, assuredly, resting upon a broken staff. Men just dragged from the tender scenes of domestic life—unaccustomed to the din of arms—totally unacquainted with every kind of military skill, which being followed by a want of confidence in themselves when opposed to troops regularly trained, disciplined, and appointed, superior in knowledge, and superior in arms, makes them timid and ready to fly from their own shadows.<sup>88</sup>

—George Washington

During the American Revolutionary War (1775–1783), the colonial militias continued to play a crucial role by providing local defense, responding to emergent needs of the revolution, and augmenting the Continental Army as they fought against the British regular army. Initially, the militia performed well against British regulars during the battles of Lexington and Concord, but history has concluded that the Americans won the war by creating and utilizing a regular army and establishing political ties with the French. Without the aid of the Continental Army and the French crown, American victory would have been impossible.<sup>89</sup>

This chapter reviews the role of the militia during the Revolutionary War period to the Confederation period and continues to shed light on the development of the American militia.

### A. THE FIRST CONTINENTAL CONGRESS

As frustration mounted over what colonialists perceived as unjust taxation, colonial leaders attended the First Continental Congress in Philadelphia from September 5 to October 26, 1775. Their intent was to draft official petitions, address the Intolerable Acts, and establish non-import/non-export agreements in order to place pressure the

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<sup>88</sup> “Association of the Sons of Liberty in New York; December 15, 1773,” Yale Law School, accessed November 12, 2014, [http://avalon.law.yale.edu/18th\\_century/assoc\\_sons\\_ny\\_1773.asp](http://avalon.law.yale.edu/18th_century/assoc_sons_ny_1773.asp).

<sup>89</sup> Robert K. Wright Jr., *The Continental Army* (Washington, D.C.: Center for Military History, 1983), 4–20. Stewart, *American Military History*, 45–105.

British government to address colonial concerns with regard to colonial rule.<sup>90</sup> Within *The Declaration and Resolves of the First Continental Congress*, the colonials addressed the philosophical nature of freedom and the right to representation within free governments:

*Resolved*, 4. That the foundation of English liberty, and of all free government, is a right in the people to participate in their legislative council: and as the English colonists are not represented, and from their local and other circumstances, . . . we cheerfully consent to the operation of such acts of the British parliament, as are bonfide [*sic*], restrained to the regulation of our external commerce, for the purpose of securing the commercial advantages of the whole empire to the mother country, and the commercial benefits of its respective members; excluding every idea of taxation internal or external, for raising a revenue on the subjects, in America, without their consent.<sup>91</sup>

The colonials still wished to reconcile with British Parliament and King George and hoped that a political resolution could be reached; however, in anticipation that parliament would ignore their requests, the colonists established committees in each colony and township that became local authorities in regard to imposing the agreements reached at the First Continental Congress. These committees soon gained control of the local militias and began to prepare them to oppose British regulars at a minute's notice if required.<sup>92</sup>

The Massachusetts Provincial Congress immediately met to create a shadow government and designed "Executive Committees of Safety and of Supplies" and gave

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<sup>90</sup> Parliament passed the *Coercive Acts*, or *Intolerable Acts* as they were known by the colonists, after the Boston Tea Party in order to quell the rebellious activities in Boston. The Acts included the Boston Port Act (which effectively closed the port of Boston), the Administration of Justice Act, the Massachusetts Government Act, the Quartering Act, and the Quebec Act. Samuel Adams spoke of these acts in a letter to James Warren in May of 1774, "This Town has received the Copy of an Act of the British Parliament, wherein it appears that we have been tried and condemned, and are to be punished, by the shutting up of the harbor and other marks of revenge, until we shall disgrace ourselves by servilely yielding up, in effect, the just and righteous claims of America. . . . The people receive this cruel edict with abhorrence and indignation." From Harry Alonzo Cushing, *The Writings of Samuel Adams Collected and Edited*, vol. 3, 1907. Reprint. (London: Forgotten Books, 2013), 112–3; Stewart, *American Military History*, 45–46.

<sup>91</sup> Charles C. Tansill, compiler, *Documents Illustrative of the Formation of the Union of the American States* (Washington, DC: Government Printing Office, 1927), House Document No. 398, [http://avalon.law.yale.edu/18th\\_century/resolves.asp](http://avalon.law.yale.edu/18th_century/resolves.asp).

<sup>92</sup> Stewart, *American Military History*, 40–48.

these committees the power to form and call out the Massachusetts militia when needed.<sup>93</sup> They called for “the militia officers to reorganize their commands into more efficient units, to conduct new elections, to drill according to the latest British manual, and to organize one-quarter of the colony’s force into ‘minute companies.’”<sup>94</sup> Of course, these militias, most notably the Minutemen, were the first to oppose British regulars in Lexington and Concord, and later they fought bravely during the Siege on Boston.<sup>95</sup>

## **B. THE SECOND CONTINENTAL CONGRESS AND THE CONTINENTAL ARMY**

In the summer of 1775, the colonies held the Second Continental Congress in order to properly coordinate the war effort and to begrudgingly establish a standing army in order to officially take up arms against the British.<sup>96</sup> The following is an excerpt from the Second Continental Congress document *Declaration on the Causes and Necessity of Taking up Arms*:

In our own native land, in defence [*sic*] of the freedom that is our birth-right, and which we ever enjoyed till the late violation of it—for the protection of our property, acquired solely by the honest industry of our fore-fathers and ourselves, against violence actually offered, we have taken up arms. We shall lay them down when hostilities shall cease on the part of the aggressors, and all danger of their being renewed shall be removed, and not before.<sup>97</sup>

The colonists’ decision to raise an army was inevitable, and the militia was the natural beginning to this endeavor. At first, the colonials thought that the best course of action was to strengthen the existing militias; however, as hostilities worsened, leadership realized that a force of militia alone might not suffice. According to Dr. Robert K. Wright, Jr. in his work *The Continental Army*:

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<sup>93</sup> Wright Jr., *The Continental Army*, 11; Stewart, *American Military History*, 45–6

<sup>94</sup> Wright Jr., *The Continental Army*, 11.

<sup>95</sup> Wright Jr., *The Continental Army*, 1–20; Stewart, *American Military History*, 45–6.

<sup>96</sup> *American Military History*, 45–6.

<sup>97</sup> Tansill, *Documents Illustrative of the Formation of the Union of the American States*.

American leaders moved beyond the basic militia. They began to prepare provisional militia units that could muster at short notice and remain in the field for longer periods. Whether volunteer companies or minutemen, these units were a response to the same need to minimize economic disruption that seventeenth century colonists had faced. The New England army that came into being at the instigation of Massachusetts moved a step beyond the minutemen.<sup>98</sup>

Eventually this New England Army became the newly formed Continental Army. During the Second Continental Congress, the delegates chose George Washington as Commanding General. Understandably, Washington sustained his views on the militia from the French and Indian War, and now he was paired again with militiamen, who by all standards were subpar with regard to military discipline. In a letter to his cousin Lund Washington in September 1776, Washington expresses his displeasure:

I am wearied to death all day with a variety of perplexing circumstances—  
disturbed at the conduct of the militia, whose behavior and want of  
discipline has done great injury to the other troops, who never had  
officers, except in a few instances, worth the bread they eat.<sup>99</sup>

Whatever Washington's views, the militia made up the bulk of the Continental Army in its inception; moreover, the New England Army had worked independently at the beginning of the Siege on Boston and had performed quite well against British regulars. Throughout the war, Washington continued to recruit from militia groups in order to maintain his numbers; even though the militia failed to dependably hold lines, they were still a valuable asset against the British regulars when utilized correctly.<sup>100</sup>

John Adams, in a letter to James Warren in October 1775, praised the idea of a militia, and he idealistically implied that citizen soldiers in command of an army, with full understanding of the meaning of true liberty, would not use said army to destroy personal liberties:

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<sup>98</sup> Wright, *The Continental Army*, 4–20.

<sup>99</sup> “Letter from George Washington to Lund Washington, September 30, 1776,” National Archives, accessed January 12, 2015. <http://founders.archives.gov/documents/Washington/03-06-02-0341>.

<sup>100</sup> Louis Gottschalk, *LaFayette and the Close of the American Revolution*, (Chicago: University of Chicago Press, 1942), 108-9; Wright, *The Continental Army*, 4–20; Stewart, *American Military History*, 45–71.

The Militia is composed of free Citizens. There is therefore no Danger of their making Use of their Power to the Destruction of their own Rights or suffering others to invade them. I earnestly wish that young Gentlemen of a military Genius, and many such I am satisfied there are in our Colony, might be instructed in the Art of War, and taught at the same time the Principles of a free Government, and deeply impressd [*sic*] with a Sense of that indispensable Obligation which every Individual is under to the whole Society. These might in Time be fit for Officers in the Militia and being thoroughly acquainted with the Duties of Citizens as well as Soldiers might be entrusted with a Share in the Command of our Army, at such Times as Necessity might require so dangerous a Body to exist.<sup>101</sup>

Although many in the militia were of the lower classes, they did not make up the majority of the militia. What's more, because of the continual need for men, the Continental Army also accepted blacks, who at the time were considered the bottom of the ranks. James Mahon, in his work *The History of the Militia and the National Guard*, asserts:

Low-status whites came in, but yeomen and artisans also entered the ranks. By and large, the enlisted men of the Revolutionary Army were not the castoffs and conscripts characteristic of European forces. What the Americans fielded was unique for the end of the eighteenth century it was a citizen army.<sup>102</sup>

After years of conflict and several campaigns, the Continental Army and their French allies launched an offensive against British General Cornwallis at Yorktown. The Virginia Militia was present in small numbers. Michael McDonnell, University of Sydney, suggests that “even the best estimates of the number of militia at Yorktown show that perhaps no more than 3,000 participated in some way, whereas 7,800 French troops, and more than 5,000 Continental troops . . . . This, of a militia estimated to number more than 50,000.”<sup>103</sup> The deciding factor at the battle of Yorktown was not the militia, but the French naval force commanded by Admiral Comte de Grasse who kept the British from

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<sup>101</sup> John Adams, “in *Warren-Adams Letters: Being Chiefly a Correspondence among John Adams, Samuel Adams, and James Warren (1743–1814)*, vol. 2, ed. by Henry Cabot Lodge (Boston: Publisher, 1917), 198.

<sup>102</sup> Mahon, John K. *The History of the Militia and the National Guard* (New York: MacMillan, Inc., 1983), accessed January 12, 2015, <http://www.potowmack.org/mahonch3.html>.

<sup>103</sup> Michael A. McDonnell, *The Politics of War: Race, Class and Conflict in Revolutionary Virginia* (Chapel Hill, NC: University of North Carolina Press, 2007), 474.

being reinforced; moreover, his ships prevented any retreat of Cornwallis and his forces. Yorktown was the decisive battle that ended the revolutionary war and led to the Treaty of Paris on September 3, 1783.<sup>104</sup>

The strength of the militia alone was not enough to end the American Revolutionary War; the militias were not well suited to fight a lengthy war against a regular army. Those in the congress understood this eventuality, which led them to the formation of the Continental Army. According to Mahon:

It is true that the militia played a very important role in the War of American Independence. Its political functions probably were indispensable, and as a military institution, supported by state troops, it continued to meet its traditional colonial responsibilities for local defense and for providing a general emergency reserve.<sup>105</sup>

### **C. THE ARTICLES OF CONFEDERATION**

The delegates of the Second Continental Congress conceived the Articles of Confederation in 1776 in order to establish national government functions to better coordinate the war effort across the 13 colonies. Within a year, all the colonies had adopted the Articles, with the exception of Maryland, whose delegates signed the agreement in March of 1781, only after raids by British soldiers along the Chesapeake stoked fear in the Marylanders. Now independent, the newly formed United States of America found itself entangled in a series of tenuous interstate trade and border disputes that threatened unity in the nation.<sup>106</sup>

Shays' Rebellion exposed the weaknesses inherent in the militia system and highlighted the state and federal governments' inability to manage the debts incurred

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<sup>104</sup> Stewart, *American Military History*, 98–102.

<sup>105</sup> Mahon, *History of the Militia and the National Guard*.

<sup>106</sup> Robert K. Wright and Morris J. MacGregor, "The Articles of Confederation," *Soldier-Statesmen of the Constitution*, U.S. Army Center of Military History, U.S. Army, August 11, 2000, <http://www.history.army.mil/books/RevWar/ss/ch3.htm>; Stewart, *American Military History*, 107–113.

during the revolution.<sup>107</sup> The weak federal government, created by design, held little power to force cooperation between the states, or even compel the states to pay taxes to run the national government. The nation was at a turning point, and again delegates called upon George Washington to unite the diverse states and bring order to the chaos. The failure of the confederation was evident, and the members of Congress met in May of 1787 in Philadelphia to alter the Articles and somehow resolve the issues that plagued the states. In order to amend the Articles, all 13 colonies had to reach unanimity, a task most nearly impossible to complete; hence, the first recommendation proposed at the conference was the abolition of the Articles and the establishment of a new form of government, which later became the Constitution.<sup>108</sup>

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<sup>107</sup> Stewart, *American Military History*, 113; Washington was not optimistic about resolving the governmental issues facing the Confederate Congress. In a written response to Henry Knox with regard to his hearing of Shays' Rebellion, Washington expressed that "If government shrinks, or is unable to enforce its laws; fresh manœuvres [*sic*] will be displayed by the insurgents—anarchy & confusion must prevail—and every thing [*sic*] will be turned topsy turvey [*sic*] in that State; where it is not probable the mischiefs will terminate." –Letter to Henry Knox, February 3<sup>rd</sup>, 1787, quoted in "Rediscovering George Washington," accessed November 22, 2014, [http://www.pbs.org/georgewashington/collection/pre-pres\\_1787feb3.html](http://www.pbs.org/georgewashington/collection/pre-pres_1787feb3.html).

<sup>108</sup> Stewart, *American Military History*, 112–113.

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## V. THE CONSTITUTIONAL FRAMEWORK TO THE MODERN SDF

An overweening vanity leads the fond many, each man against the conviction of his own heart, to believe or affect to believe, that militia can beat veteran troops in the open field and even play of battle. This idle notion, fed by vaunting demagogues, alarmed us for our country, when in the course of time and chance, which happen to all, she should be at war with a great power.<sup>109</sup>

—Gouverneur Morris

The failures associated with the Articles of Confederation tested the resolve of the founding fathers and set in motion a chain of events that helped define the role of the militia and the U.S. military. From the Constitution to the current laws of the individual states, the central concept of limiting the powers of the executive still permeates legislation. This chapter is designed to offer a legal review of established federal and state law with regard to the militia and will place the SDF within a sound legal framework in order to highlight the advantages of these volunteer organizations. Tennessee statutes will serve as the example for SDF state legal precedent.

### A. THE CONSTITUTION AND THE MILITIA

Many of the delegates of the 1787 Constitutional Convention opposed a national army in the hands of a centralized government, which they feared would become a tyrannical tool used to oppress the people. Nonetheless, the states still faced issues such as civil unrest, Indian attacks on the frontier, and potential invasion from foreign powers, and as experienced in the recent revolution, the militia was not always a sufficient military force.<sup>110</sup> With this in mind, the anti-Federalists and Federalists entered heated debates on how to maintain national security without a national army, or how to have such an army without infringing on liberty.<sup>111</sup>

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<sup>109</sup> Max Farrand, ed. *Records of the Federal Convention of 1787*, Volume 3 (New Haven, CT: Yale University Press, 1996), 420.

<sup>110</sup> Wright and MacGregor, “The Constitution”; Stewart, *American Military History*, 112–113.

<sup>111</sup> *Ibid.*

Alexander Hamilton, an ardent Federalist, believed that under the Articles of Confederation the states were incapable of defending themselves collectively from enemies foreign or domestic, as demonstrated during the recent chaos of Shays' Rebellion. Hamilton observed, "Are we in a condition to resent or to repel the aggression? We have neither troops, nor treasury, nor government."<sup>112</sup> Governor Edmund Randolph of Virginia agreed and concluded that "the Revolution had demonstrated conclusively that a regular army was needed to defend the nation without the economic disruption brought about by large-scale mobilization of the state militias."<sup>113</sup> On the contrary, anti-Federalists fearing despotism believed the national defense should solely remain with the militia. James Madison, although a Federalist, asserted that "[t]he means of defence [*sic*] against foreign danger, have been always the instruments of tyranny at home . . . . Throughout all Europe, the armies kept up under the pretext of defending, have enslaved the people"<sup>114</sup>

Madison may have been referring to the reign of King James in 17th-century England, who used a standing army to coerce Britain to accept Catholicism, which in turn, threatened English liberty. In July 1687, King James II had increased the size of his standing army and used that power to prorogue parliament. He used his power, as well, to increase the Catholic influence in England, manipulate British laws, circumvent normal elections, and eventually dissolve Parliament in order to rule autonomously.<sup>115</sup> After William of Orange removed James II from power in the Glorious Revolution of November 1688, Parliament established the English Bill of Rights in order to limit the power of future monarchs by vesting all legislative authority in the legislature.<sup>116</sup>

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<sup>112</sup> Alexander Hamilton, "Federalist #15," in *The Federalist Papers*, accessed 10 September 2014, <http://www.foundingfathers.info/federalistpapers/fed15.htm>.

<sup>113</sup> Wright and MacGregor, "The Constitution."

<sup>114</sup> Max Farrand, ed. *Records of the Federal Convention of 1787*, Volume 1 (New Haven, CT: Yale University Press, 1996), 465; Wright and MacGregor, "The Constitution"; Stewart, *American Military History*, 112–113.

<sup>115</sup> Even though King James II unduly used his influence after his conversion to Catholicism, he did promote religious tolerance by issuing a declaration of Indulgence in 1687; "James II: 1685–1688."

<sup>116</sup> "James II: 1685–1688"; "English Bill of Rights," Yale Law School, accessed, January 6, 2015, [http://avalon.law.yale.edu/17th\\_century/england.asp](http://avalon.law.yale.edu/17th_century/england.asp).

After nearly a century of grueling religious and civil war, England's Parliament also sought to limit the executive's capacity for destruction and violence by outlawing a large standing army that was not raised with Parliament's approval. The 1689 Bill of Rights states:

And thereupon the said Lords Spiritual and Temporal and Commons, pursuant to their respective letters and elections, being now assembled in a full and free representative of this nation . . . [t]hat the raising or keeping a standing army within the kingdom in time of peace, unless it be with consent of Parliament, is against law.<sup>117</sup>

A century later, another civil war of sorts cost Britain its American colonies, but the new United States remained transfixed by the apparent conundrum of the army in a democracy. In the spirit of compromise, however, anti-Federalist and Federalist delegates eventually reached an agreement that limited the appropriations of said army to two years. If the people wished to reduce or dismiss the army due to apparent misuse, the members of the House of Representatives could simply oppose further appropriations, thereby cutting the army's funding.<sup>118</sup> The governmental branch closest to the people held the power to increase the army or decrease it as it saw fit; hence, just as parliament controlled the English military, so the representatives of Congress would control a U.S. military.<sup>119</sup>

Within the Constitution, the delegates addressed the issue of an army in Article I, Section 8, clause 12 of the Constitution, also known as *the army clause*: "The Congress shall have Power . . . [t]o raise and support armies, but no appropriation of money to that use shall be for a longer term than two years." Additionally, to accompany the army clause and keep the army under the control of the civilian authority, Article 1, Section 8,

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<sup>117</sup> "English Bill of Rights."

<sup>118</sup> "James II: 1685–1688."

<sup>119</sup> U.S. Const., art. I, sec. 8, cl. 12; "Army Clause," *The Heritage Guide to the Constitution*, accessed March 20, 2015, <http://www.heritage.org/constitution/#!/articles/1/essays/52/army-clause>; Wright and MacGregor, "The Constitution."

clause 14 was drafted, which gives Congress absolute power to regulate the military.<sup>120</sup> To ensure the ability to thwart future insurrections such as the rebellion in Massachusetts the delegates gave Congress the power to “provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions.”<sup>121</sup>

The delegates then turned their attention to the role of the militia. George Mason, an anti-Federalist and Virginia delegate, stressed that the militia should be standardized to allow for the smaller national army and that the federal government should regulate the organization, the armaments, and the tactics of the militia. Massachusetts delegate Elbridge Gerry and Luther Martin of Maryland opposed any type of standing army and therefore opposed any central control of the militia. Meanwhile, others debated various approaches to the militia being balanced between federal and state control. George Washington, Henry Knox, and Baron von Steuben proposed the creation of a “national, select militia force,” which was met with two rebuttals: one that it would lead to the “erosion of the common militia” and two, a militia with federal responsibilities would diminish its service to the state.<sup>122</sup>

Eventually, the delegates decided to give the national government the legislative “power . . . [t]o 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”; meanwhile, the power to train the militia and appoint officers remained with the states, as long as training was performed “according to the discipline prescribed by Congress.”<sup>123</sup> Senior officers could only be appointed with senatorial concurrence.

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<sup>120</sup> Article 1, Section 8, clause 13, *the Navy clause*, was not subject to the same level of debate since mercantilism was prevalent in the Americas and the need for a national navy was somewhat obvious. Anti-Federalists were concerned that a strong navy may instigate war with other naval powers; nonetheless, the delegates gave Congress the power to “provide and maintain a Navy”; U.S. Const., art. I, sec. 8, cl. 13; “Navy Clause,” *The Heritage Guide to the Constitution*, accessed March 20, 2015, <http://www.heritage.org/constitution/#!/articles/1/essays/53/navy-clause>.

<sup>121</sup> Wright and MacGregor, “The Constitution.”

<sup>122</sup> *Ibid.*

<sup>123</sup> U.S. Const., art. I, sec. 8, cl. 16. “Organizing the Militia,” *The Heritage Guide to the Constitution*, accessed March 20, 2015, <http://www.heritage.org/constitution/#!/articles/1/essays/56/organizing-the-militia>.

An additional stipulation was placed on the militia, the army, and the navy in Article 2, section 2, which states: “The President shall be the Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States when called into the actual Service of the United States.”<sup>124</sup> These checks and balances within the Constitution—composed with purposefully blurred lines of exact authority so that every decision to raise an army and go to war necessitated debate and discussion—assuaged fears of the menacing permanent army. Further, the Constitution ensured civilian control of the military by having funding regulated by the House of Representatives, the appointment of senior officers managed by the Senate, and the military directed by its commander in chief, the president of the United States.<sup>125</sup>

## **B. THE SECOND AMENDMENT**

The Second Amendment of the Constitution states: “A well-regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed.”<sup>126</sup> David E. Vandercoy, in his work “The History of the Second Amendment,” contends that the “national, select militia force” suggested by Washington, Knox, and Steuben during the Constitutional Convention instilled fear that such a force “armed by and loyal to the federal government, would be accompanied by disarmament of the people in general.”<sup>127</sup>

Nonetheless, the stress is on the assertion that “the well-regulated militia” is “necessary to the security of a free state,”<sup>128</sup> which could be interpreted as a reference to

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<sup>124</sup> Wright and MacGregor, “The Constitution.”

<sup>125</sup> U.S. Const., art. II, sec. 2; Wright and MacGregor, “The Constitution.”

<sup>126</sup> David E. Vandercoy, “The History of the Second Amendment,” *Valparaiso University Law Review* 28 (1994): 1007–39.

<sup>127</sup> Although this thesis is not centered on the legal debate on whether the right to bear arms is an individual right or simply the right of those who are part of the state’s militia, in light of the constitutional delegates’ views on standing armies, research suggests “the right to bear arms” is an individual right. Vandercoy agrees. He suggests that “the original intent of the Second Amendment was to protect each individual’s right to keep and bear arms, and to guarantee that individuals acting collectively could throw off the yokes of any oppressive government which might arise”; Vandercoy, “The History of the Second Amendment,” 2.

<sup>128</sup> Vandercoy, “The History of the Second Amendment,” 1–3.

Congress’s power to regulate the militia in Article I, section 8, clause 16: “The Congress shall have Power [t]o . . . 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.”<sup>129</sup> Also, the last part of *the militia clause* leaves to the states the responsibility for the “[a]ppointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress.”<sup>130</sup> Therefore, if states choose officers from within their own populations and those officers lead an armed militia of citizens from that same state, they presumably will oppose any despotic ruler and therefore remain free. Noah Webster, a contemporary of the founding fathers, suggests:<sup>131</sup>

Before a standing army can rule, the people must be disarmed; as they are in almost every Kingdom of Europe. The Supreme power in America cannot enforce unjust laws by the sword; **because the whole body of the people are armed**, and constitute a force superior to any bands of regular troops that can be, on any pretense, raised in the United States.<sup>132</sup>

### C. THE MILITIA ACTS OF 1792

The reality of militia forces did not immediately live up to these expectations. Two years after the Constitution was ratified, British agents from Canada violated the 1783 Treaty of Paris by prompting American Indians to attack U.S. settlers in the North West Territory. President Washington dispatched American troops commanded by Brigadier General Josiah Harmar in an attempt to suppress the Indian raids. The attempt was futile. Little Turtle, the Miami chief, quickly overwhelmed Hamar’s force, which was inadequately supplied and poorly commanded. Washington’s second attempt to quell the Indian riots was even more disastrous, for he sent disease-weakened Major General St. Clair and a force of 1,400 men, mostly comprised of volunteer militia. Little Turtle’s

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<sup>129</sup> U.S. Const. art. I, sec. 8, cl. 16.

<sup>130</sup> *Ibid.*

<sup>131</sup> Wright and MacGregor, “The Constitution.”

<sup>132</sup> Noah Webster, *An Examination into the Leading Principles of the Federal Constitution Proposed by the Late Convention Held at Philadelphia* (Philadelphia: Prichard & Hall, 1787), reprinted in Paul L. Ford, ed., *Pamphlets on the Constitution of the United States Published during its Discussion by the People: 1787–1788* (Philadelphia: Prichard & Hall, 1888).

forces devastated St. Clair's troops. Those men who were not killed in battle were brutally tortured.<sup>133</sup>

President Washington's reaction to the defeat was the establishment of the First Militia Acts of 1792, which authorized the president to assemble militias of several states in times of foreign or Indian invasion; hence, the president now possessed the power to federalize the militia "whenever the laws of the United States shall be opposed or the execution thereof obstructed."<sup>134</sup> Additionally, the law granted states the right to organize a militia and compel citizens to serve. The act states:

That each and every free able-bodied white male citizen of the respective States, resident therein, who is or shall be of age of eighteen years, and under the age of forty-five years (except as is herein after excepted) shall severally and respectively be enrolled in the militia.<sup>135</sup>

The system put in place by the Militia Acts, added little value to the U.S. Army, for there was no federal funding for equipment or pay, and "there were no sanctions for non-compliance."<sup>136</sup> Although flawed in concept, the acts were the first congressional endeavor "to provide a credible force to augment the Regular Army during wartime without bankrupting the country or resorting to a militarization of American society."<sup>137</sup>

#### **D. THE DICK ACT**

In 1901, the U.S. secretary of war, Elihu Root, introduced Congress to a program that called for the reorganization of the U.S. militia and other volunteer groups due to the insufficient size of the federal forces during the recent Spanish-American War. Consequently, the Militia Act of 1792 was replaced by the Dick Act of 1903, which established a clear differentiation between the organized militia, now termed the National

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<sup>133</sup> Patrick Feng, "The Battle of the Wabash: The Forgotten Disaster of the Indian Wars," National Museum of the United States Army, accessed October 3, 2014, <https://armyhistory.org/the-battle-of-the-wabash-the-forgotten-disaster-of-the-indian-wars/>.

<sup>134</sup> Calling Forth Act of 1792 § 1, 1 Stat. at 264.

<sup>135</sup> *Ibid.*

<sup>136</sup> Barry M. Stentiford. *The American Home Guard: The State Militia in the Twentieth Century*, Williams-Ford Texas A&M University Military History Series (Location: Texas A&M University Press, 2002), Kindle edition.

<sup>137</sup> Stentiford, *The American Home Guard*.

Guard, and the Reserve Militia. Guard units were to be reorganized to match the structure of the regular army. Short annual training sessions, as well as drills, became mandatory; moreover, federal funds became available for the National Guard forces. In 1908, the Medical Reserve Corps was instituted and served as a precursor of the future U.S. Army Reserve that “in the future would train, commission, mobilize, and retain hundreds of thousands of officers.”<sup>138</sup>

In 1910, a plan for three permanent infantry divisions was drafted to aid the Regular Army as well the National Guard; however, it was never carried out due to the conflict along the Mexican border in 1911. As a result, the Army established and implemented a provisional maneuver division of about 13,000 officers to end border skirmishes in San Antonio, Texas. This attempt was a complete failure because of the Army’s inability to deploy in an efficient manner. Barry Stentiford, in his work *The American Home Guard*, aptly describes the transition from the Organized Militia to the National Guard. He states that, “In retrospect, the Spanish-American War represented the swan song of the old system, and the Great War marked the dawn of the modern American military establishment.”<sup>139</sup>

## **E. WWI TO THE PRESENT**

Despite the effectiveness of the Dick Act, WWI presented state governors with unforeseen challenges when all the members of the NG forces were deployed, depriving the states of military defensive capability to repulse U.S. mainland attacks; therefore, governors began to create “home defense forces or organized state militias.”<sup>140</sup> Consequently, Congress passed the Home Defense Act of 1917, which granted states the right to organize home defense forces when the National Guard is mobilized. After WWI, the majority of the SDF units were disbanded until WWII, when the reinstatement of the SDF attracted over 150,000 members across 46 states. Again the war diminished and state forces decreased. As the Cold War began, the need for homeland defense rose yet

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<sup>138</sup> Ibid.

<sup>139</sup> Stentiford, *The American Home Guard*.

<sup>140</sup> Carafano and Zuckerman, “The 21st-Century Militia.”



again, leading Congress to amend the National Defense Act, which continues to be the legal foundation for these volunteer organizations.<sup>141</sup>

#### **F. TITLE 32 U.S. CODE § 109 AND TENNESSEE SDF LEGISLATION**

Federal law Title 32 U.S. Code § 109 allows for Tennessee, along with the other states and U.S. territories, to promulgate legislation to “organize and maintain defense forces.”<sup>142</sup> This force may be utilized by the chief executive, the governor, within the jurisdiction of his or her respective state; moreover, these forces are in addition to the state’s National Guard.<sup>143</sup>

Tennessee has established such a force, and per the Tennessee Constitution, Article III, Section 5, the governor has been appointed “commander-in-chief of the Army and Navy . . . and of the Militia, except when they shall be called into the service of the United States”; however, his power to call forth the militia is limited by two restrictions: one, the “Militia shall not be called into service except in case of rebellion or invasion” and two, the governor requires concurrence of the Tennessee General Assembly, which “shall declare, by law, that the public safety requires it.”<sup>144</sup>

In parallel with Article 1, section 8, clause 16 of the U.S. Constitution, Tennessee Code 58-1-405 states that:

The governor is authorized to appoint and commission necessary officers for the state guard; to prescribe rules and regulations governing the enlistment, organization, administration, pay, equipment, discipline and discharge of the personnel of the state guard.<sup>145</sup>

In addition to regulating the Tennessee State Guard (TSG), the governor, per Tennessee Code Annotated (TCA) 58-1-405, may also “obtain by grant, requisition, or purchase such necessary arms and equipment as may be secured from the department of

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<sup>141</sup> Stentiford, *The American Home Guard*.

<sup>142</sup> Maintenance of Other Troops, Title 32 U.S.C. § 109 (1958).

<sup>143</sup> *Ibid*.

<sup>144</sup> TN Constitution, art III, sec 5.

<sup>145</sup> TCA 58–1-405.

defense . . . [for] the necessary arms and equipment to maintain and equip the state guard”<sup>146</sup>; therefore, when required, the TSG can be armed “in case of rebellion or invasion” in the State of Tennessee. Additionally, per TCA 58-1-401 and 410, if the Tennessee National Guard is called into national service per U.S.C. Title 10, the governor can call forth the Tennessee Guard.<sup>147</sup>

The U.S. Constitution, federal laws, and Tennessee legislation sanction the use of the TSG by the Tennessee state governor. As the Dick Act was the genesis of today’s National Guard, so Title 32 U.S.C. 109 is the new legacy for the organized militia when the National Guard is federalized or deployed.<sup>148</sup>

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<sup>146</sup> Ibid.

<sup>147</sup> Tennessee Code 58–1-401, 410.

<sup>148</sup> Maintenance of Other Troops, Title 32 U.S.C. § 109 (1958).

## VI. STATE DEFENSE FORCES AND HURRICANE KATRINA

Hurricane Katrina and the subsequent sustained flooding of New Orleans exposed significant flaws in our national preparedness for catastrophic events and our capacity to respond to them. Emergency plans at all levels of government – including the 600-page National Response Plan that set forth the Federal government’s plan to coordinate all its departments and agencies and integrate them with State, local, and private sector partners – were put to the test and came up short.<sup>149</sup>

—*The Federal Response to Hurricane Katrina: Lessons Learned*

Hurricane Katrina, with its devastating 127 mph winds and unprecedented 27-foot storm surge, remains the costliest residential disaster in the history of the United States.<sup>150</sup> This massive storm spanned over 93,000 miles and spread destruction over most of the northern Gulf Coast from New Orleans, Louisiana, to Mobile, Alabama.<sup>151</sup> 1,330 people lost their lives as a result of the storm, and property damage estimates climbed to 108 billion dollars; thousands were left without shelter, power, clean water, sanitation, and food, while emergency responders were rendered ineffectual by the sheer scope of such widespread destruction. This disaster exposed weaknesses in the nation’s *Emergency Response Plan*, and the residents of the Gulf coast suffered the consequences.<sup>152</sup>

Although Katrina itself had dissipated within 48 hours of landfall, the weeks following amplified the complexity of the situation and tested the mettle of federal, state

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<sup>149</sup> Frances Fragos et al., *The Federal Response to Hurricane Katrina: Lessons Learned*. Washington, D.C.: The White House, 2006, 1–2.

<sup>150</sup> Department of Homeland Security, *National Response Framework*, January 2008, <http://www.fema.gov/pdf/emergency/nrf/nrf-core.pdf>. According to the National Response Framework, “A catastrophic incident is defined as any natural or manmade incident, including terrorism, that results in extraordinary levels of mass casualties, damage, or disruption severely affecting the population, infrastructure, environment, economy, national morale, and/or government functions”; “The Federal Response to Hurricane Katrina: Lessons Learned.”

<sup>151</sup> “Billion-Dollar Weather and Climate Disasters: Table of Events,” National Climate Data Center: NOAA, accessed October 15, 2014, <http://www.ncdc.noaa.gov/billions/events>.

<sup>152</sup> *Ibid.*

and local emergency responders.<sup>153</sup> Emergency management protocols were found to be insufficient, and soon government officials faced a *wicked problem*.<sup>154</sup> Coordination seemed impossible on such a large scale, especially in the city of New Orleans where those in charge of relief efforts faced communication difficulties and personality conflicts. State and local leaders clashed on how and when to execute evacuations, and law enforcement officials became victims themselves as they fled the wrath of Katrina. As the storm passed, the media concentrated on heroic acts by the Coast Guard, National Guard, and other emergency responders, but soon their praise turned to criticism. Networks, eager for ratings, captured the public eye by citing government oversight failures and broadcasting images of starving Americans stranded on interstate overpasses to prove their point. Stories of rape and pillaging in New Orleans topped the headlines, and the major news networks flooded the airways with discrediting comments from local residents.

Answering the public outcry, former President George W. Bush confirmed the breakdown in government oversight during a joint news conference on September 13<sup>th</sup>, 15 days after the storm: “Katrina exposed serious problems in our response capability at all levels of government, and to the extent that the federal government didn’t fully do its job right, I take responsibility.”<sup>155</sup>

Despite the apparent failures, there are success stories with regard to many of the first responders, including “government, private sector, faith-based, non-profit, and other volunteer personnel who collaborated in innovative ways to provide medical, financial, and housing assistance.”<sup>156</sup> State Defense Forces were part of this collaborative effort.

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<sup>153</sup> Fragos et al., *The Federal Response to Hurricane Katrina*, 1–19.

<sup>154</sup> A *wicked problem* presents decision makers with a complex scenario with no finite solution. It does not have a definable problem statement or definitive stopping point; moreover, it cannot be objectively evaluated as right or wrong. Decision makers can only hope to find a “good enough” solution; see Horst W. J. Rittel, “Dilemmas in a General Theory of Planning,” *Policy Sciences* 4 (1973): 155–69.

<sup>155</sup> “Bush to Address Nation Thursday about Katrina,” CNN.com, September 13, 2005, <http://www.cnn.com/2005/POLITICS/09/13/katrina.washington/>.

<sup>156</sup> Fragos et al., *The Federal Response to Hurricane Katrina*, 48.

James J. Carafano, Senior Research Fellow for National Security and Homeland Security, suggests,

As the emergency response to Hurricane Katrina demonstrated, these groups can be an important supplement to the National Guard, particularly during catastrophic disasters. When trained, disciplined, and well organized, local responders are essential for providing immediate aid and security. Congress and the Bush Administration should encourage states to better organize, train, and equip these volunteer units.<sup>157</sup>

This chapter considers the following questions: How did the Gulf States utilize SDFs during Katrina? Are the states too dependent on the federal government for emergency management? Moreover, how can states *better* utilize SDFs in the future to enhance the state's emergency response and reduce federal dependency?

#### **A. SDFS AND THEIR ROLE IN HURRICANE KATRINA**

An estimated 2,274 SDF members from eight different states responded to the Katrina disaster and participated as emergency response personnel.<sup>158</sup> SDF members from Louisiana, Mississippi, Georgia, Texas, Maryland, Virginia, California and Tennessee, at the request of their respective adjutant general, were activated and utilized in various capacities: primarily, for augmenting National Guard Units, and secondarily, for those members with medical backgrounds, to provide emergent medical care to the thousands injured or displaced by the storm.

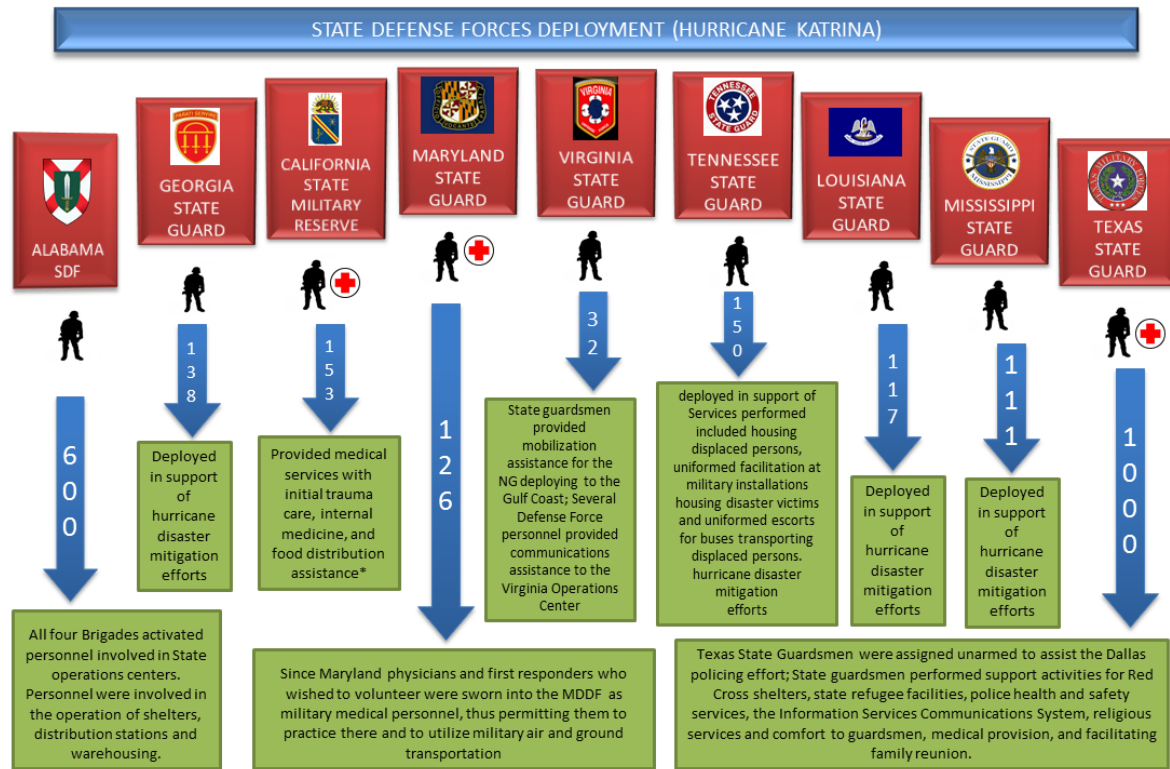
The Maryland Defense Force (MDDF) incorporated physicians as military medical personnel and successfully deployed an 81-person team to Louisiana to “provide assistance in emergency management, health and mental hygiene, and homeland

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<sup>157</sup> Carafano and Brinkerhof, “Katrina’s Forgotten Responders.”

<sup>158</sup> 2,274 is an estimate based on SDF deployed during Hurricane Katrina and also Hurricane Rita, which occurred less than a month later. Many of these SDF members volunteered to serve during both relief efforts. “Lieutenant General H. Steven Blum, Director, National Guard Bureau stated that early numbers indicated that nearly 1,700 SDF personnel were assisting on Katrina needs and pledged to build stronger relationships with responders”; Colonel Martin Hershkowitz, “Summary of Available State Defense Force After Action Reports from Hurricanes Katrina and Rita Deployments,” *State Defense Force Journal* Vol. 2, No. 1 (2006): 1.

security.”<sup>159</sup> The California State Military Reserve (CASMR) also provided medical services with initial trauma care, internal medicine, and food distribution assistance.<sup>160</sup> Figure 2 depicts the number of SDF members deployed during Hurricane Katarina and Hurricane Rita and summarizes their accomplishments:



All information derived from: Colonel Martin Hershkowitz, "Summary of Available State Defense Force After Action Reports from Hurricanes Katrina and Rita Deployments," State Defense Force Journal, Vol. 2, No. 1, Spring 2006  
 Information on CAMR from: Carafano, Katrina's Forgotten Responders, <http://www.heritage.org/research/reports/2005/10/katrina's-forgotten-responders-state-defense-forces-play-a-vital-role>

Figure 2. SDF Deployment Numbers for Hurricane Katrina<sup>161</sup>

<sup>159</sup> Carafano and Brinkerhof, "Katrina's Forgotten Responders."

<sup>160</sup> Ibid.

<sup>161</sup> Graphic was created by the author. All data derived from Hershkowitz, "Summary of Available State Defense Force After Action Reports from Hurricanes Katrina and Rita Deployments,"; Information on CAMR from Carafano and Brinkerhof, "Katrina's Forgotten Responders."

## **B. U.S. MILITARY, NATIONAL GUARD, AND SDF RESPONSE**

Active duty military personnel led by Lieutenant General Russel Honoré, and National Guard Forces and SDFs led by their respective state governors, proved an integral asset in emergency relief efforts during and after Katrina. LTG Honoré, Commander of Joint Task Force Katrina, in cooperation with other DOD assets served an integral role in “search and rescue, security, and logistical support” after Katrina’s landfall.<sup>162</sup> In addition to manpower, the federal military forces provided two C-130 firefighting aircraft, and seven helicopters were deployed to the area to perform “search and rescue, evacuation, and supply delivery missions.” Moreover, DOD aircraft were involved in malaria and other disease preventative measures by spraying over two million acres of land with the potential of developing high concentrations of mosquitos.<sup>163</sup>

The National Guard’s response was only moderately effective due to its inability to cover the entirety of the disaster relief area. As a result, Lieutenant General H. Steven Blum, Chief of the National Guard Bureau, urged all 54 TAGs to provide extra NG forces and equipment to the disaster relief zones. The Mississippi, Texas, and Pennsylvania National Guard troops were among the first responders to engage in a wide range of activities such as “enforcement support, debris removal, shelter support, evacuations, food and water distributions, communication restorations” to support the states in a dire need of attention.<sup>164</sup> By the end of the Katrina disaster, around 50,000 National Guard members from all 50 states were involved in disaster relief efforts.<sup>165</sup>

More than 1,400 SDF members contributed to disaster relief during the aftermath of the storm. For example, the Texas State Guard paid over 1,000 members and placed them on active duty. Members were assigned to 12-hour shifts to assist in shelter management, where they provided immediate emergency medical aid to refugees with life-threatening injuries, supplied refugees with water supply, and performed support for

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<sup>162</sup> Fragos et al., *The Federal Response to Hurricane Katrina*, 43.

<sup>163</sup> *Ibid.*

<sup>164</sup> *Ibid.*, 42–44.

<sup>165</sup> *Ibid.*

the Red Cross to ensure the availability of health and safety services.<sup>166</sup> The states of Georgia, Virginia, and Tennessee activated SDF support personnel in unpaid status to aid shelters as well as provide medical and administrative support. Additionally, Tennessee SDF members aided in transportation and facilitated housing at military installations for displaced disaster victims.<sup>167</sup>

### C. FUNDING KATRINA DISASTER RELIEF

The federal government spent an estimated \$120 billion along the Gulf Coast after Hurricane Katrina, and over \$75 billion of that amount funded disaster relief operations.<sup>168</sup> These figures are astronomical, but considering the scope of the damage, it is no wonder why the states had required aid from the federal government; however, did the states do their part before throwing in the proverbial towel? Since Katrina, administrations have continued to face major budget deficiencies, and in an effort to reduce spending and increase revenue, they have initiated over “\$290 billion in cuts to public services and \$100 billion in tax and fee increases.”<sup>169</sup> States continue to tread water and depend on the federal government to subsidize their budgets. According to the Center on Budget and Policy Priorities, “The measures that states used to close their budget gaps, combined with the severity of the fiscal crisis that states faced, suggest that state services will remain at risk for a number of years.”<sup>170</sup> How can a state government be expected to have the funds to handle disaster management when it cannot support normal governmental services? It is no wonder that Louisiana Governor Kathleen Blanco requested then-President George Bush to declare an emergency prior to Katrina’s landfall.

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<sup>166</sup> Carafano and Brinkerhof, “Katrina’s Forgotten Responders.”

<sup>167</sup> Ibid.

<sup>168</sup> “Hurricane Katrina Statistics Fast Facts,” *CNN.com*, August 22, 2014, <http://www.cnn.com/2013/08/23/us/hurricane-katrina-statistics-fast-facts/>.

<sup>169</sup> McNichol, *Out of Balance*, 1.

<sup>170</sup> Ibid.



Generally, only after state and local government resources are exhausted, or deemed insufficient, can a governor request aid from the federal government. Hopefully, the state is resourceful enough that the governor can activate the state National Guard and other emergency responders who can manage the incident. If not, the president of the United States, at the governor's request, can then utilize the Stafford Act to declare a major disaster, which in turn allows for a "continuing means of assistance by the Federal Government to state and local governments in carrying out their responsibilities to alleviate the suffering and damage which result from such disasters."<sup>171</sup> After a declaration of an "emergency" or "major disaster," the state requests assistance and the federal government tasks its departments to fulfill those requests, thereby "pulling" the assistance required from pre-staged federal resource holding areas.<sup>172</sup> Assets or commodities are often delivered to state officials and directly to local governments and those who are in need. Unfortunately, there are scenarios where the "state and local governments and responders may become victims themselves, prohibiting their ability to identify, request, receive, or deliver assistance. This is the moment of catastrophic crisis."<sup>173</sup> The federal government now has no choice but to step in and restore social order.<sup>174</sup>

A governor with a properly trained and supported SDF, with members located in all areas of the state, could respond more quickly than that of the National Guard. These SDF members could be arranged like local volunteer firemen, who respond to the emergent needs of the state in their local communities at the sound of a siren; yes, a siren, in the same fashion as Paul Revere's ride, an alarm to warn the local citizens of impending danger. These SDFs, working in conjunction with the National Guard and state and local law enforcement, may keep state government officials from having to call

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<sup>171</sup> Robert T. Stafford, Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121 et seq.

<sup>172</sup> "Emergency assistance is limited in scope and may not exceed \$5 million without Presidential approval and notification to Congress. In contrast, for a major disaster, the full complement of Stafford Act programs can be authorized, including long term public infrastructure recovery assistance and consequence management"; Townsend et al., *The Federal Response to Hurricane Katrina*, 18.

<sup>173</sup> Fragos et al., *The Federal Response to Hurricane Katrina*, 18.

<sup>174</sup> *Ibid.*

in the federal government during manageable emergencies, or at least ease the stress of federal responders by providing the greatest amount of resources to the disaster relief effort.

Today, the Gulf States affected by Katrina are still in fiscal crisis. Lawmakers in Louisiana are struggling to handle a “tattered budget that begins with a \$1.6 billion deficit.”<sup>175</sup> Governor Bobby Jindal cut “more than 30,000 full-time state employees. Moreover, he has “privatized much of the Medicaid program, turned over the state’s charity hospitals to outside managers and looked for ways to make state government more efficient.”<sup>176</sup> The Mississippi state budget is in terrible need of reform—more than half of its revenue is gleaned from the federal government. Additionally, it exceeded the “50 percent mark in both 2007 and 2010.”<sup>177</sup>

Alabama is also in dire straits and is looking at a budget deficit of 700 million dollars in FY2015.<sup>178</sup> Alabama Governor Bentley spoke of the budget crisis in his most recent State of the State Speech:

We have a \$264-Million dollar combined shortfall in our General Fund and Education Budgets. . . . Because of our debt, and because there is no growth money going into our General Fund, we cannot adequately pay for and provide the basic essential services to our people. One thing I have always known about our people, and it has proven true during my time in office—they do not back down from a challenge. Not when they are

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<sup>175</sup> Greg Hilburn, “Budget Dominates, but Eyes on Common Core, Processing Tax,” DailyWorld.com, March 7, 2015, <http://www.dailyworld.com/story/news/local/2015/03/07/budget-dominates-eyes-common-core-processing-tax/24574463/>.

<sup>176</sup> “How Bobby Jindal is Leaving a Budget Mess for Louisiana’s Next Governor: News Analysis,” Nola.com, February 12, 2015, [http://www.nola.com/politics/index.ssf/2015/02/how\\_bobby\\_jindal\\_is\\_leaving\\_a.html](http://www.nola.com/politics/index.ssf/2015/02/how_bobby_jindal_is_leaving_a.html).

<sup>177</sup> Bob Williams and Joe Luppino-Esposito, “Increased Federal Aid to States is a Long Term Trend,” State Budget Solutions.org, March 10, 2014, <http://www.statebudgetsolutions.org/publications/detail/increased-federal-aid-to-states-is-a-long-term-trend>.

<sup>178</sup> Kyle Whitmire, “So Now You Tell Us? After Reelection Bentley Comes Clean About Alabama Budget Crisis,” AL.com, November 26, 2014, [http://www.al.com/opinion/index.ssf/2014/11/so\\_now\\_you\\_tell\\_us\\_after\\_reele.html](http://www.al.com/opinion/index.ssf/2014/11/so_now_you_tell_us_after_reele.html).

fighting for their basic civil rights, not in defending our nation's Freedoms and not in the aftermath of Natural Disasters.<sup>179</sup>

As governors like Bentley look for alternatives in order to become more "effective, efficient, and accountable," perhaps increasing his support of the SDF would be prudent.

As fiscal considerations take their toll, many have suggested that SDFs be utilized in multiple capacities to ease fiscal demands on the state for emergency response. Dr. Kent Seig recommends that SDF members can fill numerous roles: "Individual members of these guards can be trained to provide for physical security, crowd control, and medical and logistical support to reserve and regular forces as well as to local and state authorities."<sup>180</sup> Even more, because the SDFs cannot be activated under Title 10 and therefore not subject to the limitations of *Posse Comitatus*, the governor can utilize them where he or she deems appropriate, an especially important point if the state's National Guard has been federalized; so, in this scenario, the governor's use of the SDF "would not interfere with federal or National Guard missions but would instead complement them."<sup>181</sup> Additionally, the National Guard may be deployed elsewhere or may have difficulty handling major catastrophes such as a chemical, nuclear, or biological attack, especially in remote areas. Regional response systems should be in place with local experts who can be at the center of the emergency management process. Because local response is at the heart of emergency management, state militias, according to Carafano, are perfect first responders because they "are continually stationed within their respective states and can be called up quickly and easily in times of need."<sup>182</sup>

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<sup>179</sup> Marl Almond, "Read Alabama Gov. Robert Bentley's 2015 State of the State Speech," AL.com, March 3, 2015, [http://www.al.com/news/index.ssf/2015/03/read\\_alabama\\_gov\\_robert\\_bentle.html](http://www.al.com/news/index.ssf/2015/03/read_alabama_gov_robert_bentle.html).

<sup>180</sup> Kent G. Sieg, "America's State Defense Forces: An Historical Component of National Defense," State Defense Force Publication Center, *State Defense Force Journal* 1 (Fall 2005): 3-7, <http://www.sdfpubcntr.net/introduction.htm>.

<sup>181</sup> Ibid.

<sup>182</sup> Carafano and Zuckerman, "The 21st-Century Militia."

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## VII. CONCLUSION

SDFs are trained, locally infused, organized state militias that stand ready to fill the gap in emergent circumstances, whether as law enforcement support, National Guard augmentation, or as immediate emergency responders. Scholars suggest that more states should use these SDFs more extensively to aid counterterrorism efforts and local natural or man-made disaster response, especially because federal aid can take up to 72 hours to reach a disaster area.<sup>183</sup> Thirty-one states and U.S. territories do not have established SDFs, and as states debate the usefulness of these volunteer organizations, they may wish to consider the following findings from this thesis:

- SDF as well as National Guard units are both considered part of a state's organized militia. SDF members and the NG forces work together in conjunction during disaster relief operations or any other mission when directed Adjutant General.
- SDFs, working in conjunction with and the National Guard state and local law enforcement, may keep the state and local governments from having to call in the federal government during manageable emergencies, or at least ease the stress of federal responders by provided the greatest amount of resources to the disaster.
- SDFs, unlike National Guard units, cannot be federalized, which means they remain a state-level asset during emergency management operations.
- SDFs are legitimate organized militias that are established through state legislation and serve at the request of the governor and the adjutant General within their respective state during emergent situations requiring military response. Legal precedent diminished the Patriot Militia's existence. These types of militias. These militias should not be confused with modern SDFs.
- SDF members have professional backgrounds, and many within these forces "contain a significant number of former and retired members of the armed forces, as well as accredited and state-licensed medical, legal, and other technical professionals."<sup>184</sup>

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<sup>183</sup> Rhodes and Carafano, "State and Regional Response to Disasters."

<sup>184</sup> Department of Defense, *Evaluation of Department of Defense Interaction with State Defense Force*.

- The National Guard’s response to Hurricane Katrina was only moderately effective due to its inability to cover the entirety of the disaster relief area. SDFs can fill the GAP during catastrophic disasters.
- As fiscal considerations take their toll on states, many have suggested that SDFs be utilized in multiple capacities to ease fiscal demands on the state for emergency response.
- SDFs are free from the confines of the “Posse Comitatus Act, which prohibits federal military forces from engaging in domestic law enforcement activities within the United States.”<sup>185</sup>
- SDFs provide a legitimate militia for state citizens who wish to volunteer for military public service. These forces may provide a positive outlet for those who might be tempted or coaxed to join Patriot Militias.
- Regulations and federal laws were misconstrued by state organizations, minimizing the effectiveness of joint SDF and NG operations.
- National Guard policy regarding SDF utilization was extremely limited, resulting in misunderstandings during mission planning due to the lack of SDF’s proper guidance.

State Defense Forces appear to be an asset available to financially challenged states, providing emergency management personnel who can “provide critical manpower at minimal cost.”<sup>186</sup> With recent cuts in the U.S. military and the National Guard, states may begin to see deficiencies in their emergency response framework. With this in mind, states may turn to SDFs to volunteer in greater numbers, rather than repeatedly relying on the federal government when they are confronted with natural and man-made disasters.<sup>187</sup>

Additionally, as U.S. citizens bear the financial burden of the nation, Patriot Militias may gain momentum. A properly trained SDF, under the legitimate authority of the state, can provide a positive outlet for militia membership, thereby steering citizens away from radical militia groups.

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<sup>185</sup> Department of Defense, *Evaluation of Department of Defense Interaction with State Defense Force*.

<sup>186</sup> Carafano and Zuckerman, “The 21st-Century Militia.”

<sup>187</sup> Ibid.

With the continued threat of terrorism and the inevitability of natural disasters, states need to be prepared for crisis scenarios. What's more, the United States has yet to face multiple major disasters simultaneously. Imagine disaster response for another category five hurricane in the gulf, a California earthquake, and a large-scale terrorist attack occurring simultaneously, especially with the present condition of the U.S. economy and the reductions in NG and military personnel.<sup>188</sup> Local response will be critical in order to facilitate disaster recovery if the federal government becomes task saturated.

The establishment of SDFs may be the next step for state officials to follow in the evolution of disaster response. Although SDFs are not a panacea, they may prove to be the element that allows state officials to maintain social control during disasters, and thereby improve the resiliency of the United States with regard to disaster response.

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<sup>188</sup> "NGAUS, AUSA Join Forces Against Budget Cuts," NGAUS.org, accessed January 27, 2015, <http://www.ngaus.org/newsroom/news/ngaus-ausa-join-forces-against-budget-cuts>.

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## APPENDIX

The militia movement in the United States draws together hundreds of diverse groups seeking to preserve their vision of an American society based on traditional ideals and, especially, on limited government. The movement's self-image stems from the mythic understanding of the role of the American militias in the Revolutionary War.<sup>189</sup>

—Richard S. Levy

### A. PATRIOT MILITIA ETHOS AND U.S. MILITIA HISTORY

American anti-government militia groups, also known as *Patriot Militias*, point to militia history and the U.S. Constitution in order to justify their existence and propagate distrust of the current federal government within the American populace.<sup>190</sup> Although the militia had minor successes throughout American history, the actual history tells a more nuanced tale.

The militia system essentially failed during the Revolutionary War, the War of 1812, and the Mexican American War, until it was finally transformed into the National Guard through the Dick Act of 1903. Still, the idea of the patriotic citizen soldier defending America from the tyranny of despotic rulers still pervades the Patriot Militia's ethos.<sup>191</sup> John Molloy suggests in his work, *American Extremism*, that anti-government militias often use “historical facts, myth, folklore” combined in an amalgam of propaganda in an attempt to “utilize American history for their own ends.”<sup>192</sup>

This chapter explores the flaws inherent in the Patriot Militia's use of American history by revisiting failures of the Confederation period, and revealing that a weak federal Government in a republican democracy will more likely lead to anarchy than a

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<sup>189</sup> Richard S. Levy, ed., *Antisemitism: A Historical Encyclopedia of Prejudice and Persecution*, Vol. 1 (Santa Barbara, CA: ABC-CLIO, 2005), 465.

<sup>190</sup> “Active ‘Patriot’ Groups in the United States in 2011.”

<sup>191</sup> *Ibid.*

<sup>192</sup> Darren Mulloy, *American Extremism: History, Politics and the Militia Movement* (London: Routledge, 2004), 87; Stewart, *American Military History*, 379; Stentiford, *The American Home Guard*; Stewart, *American Military History*, 53–72.

utopia of personal freedom. Additionally, Patriot Militias will be compared to SDFs in order to contrast the two organizations.

## **B. WEAKNESS OF THE CONFEDERATION**

The weak federal government during the Confederation period, a desired outcome of the Articles of Confederation, offered the states little national protection from internal rioting and interstate border disputes. Contrary to the myth-making of Patriot Militia leaders, the United States during the Confederation period bordered on anarchy. The lessons learned from Shay's Rebellion proved that a weak central government had little power to bring unity to the states. Delegates watched as Massachusetts saw its government and judiciary buildings burnt and its justices tarred and feathered. The rebellion spread through bordering states, as Congress lacked the power to provide coercive leadership and remedy the problem. As chaos ensued, British onlookers believed the newly formed United States would eventually fail. And at the nadir of this period, the head of Congress eventually asked the Prince of Prussia to become King of the Americas, which he kindly refused.<sup>193</sup>

These events eroded the foundations and the just causes of the Revolution, a period Patriot Militias are eager to reminisce. However, the Patriot groups fail to consider that if states have too much authority and are not under the coercive power of a federal government, the outcome can be an impotent national government ultimately rendered useless as it attempts to operate in a relatively anarchic system.

## **C. THE CONFEDERATION, ANARCHY, AND OFFENSIVE REALISM**

The Confederation period may have paralleled the anarchic system as it applies to structural realism within international relations theory; e.g., no overarching authority had coercive power to decide disputes between nation states. Structural realism, more specifically *offensive realism*, may apply during the Confederation period if one

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<sup>193</sup> Richard Krauel, "Prince Henry of Prussia and The Regency of the United States, 1786," *The American Historical Review* 17, no. 1 (1911): 44–51; Stewart, *American Military History*, 53–72.

considers the individual states and sovereign entities to have no real allegiance or compulsory subordination to the central government.<sup>194</sup>

Offensive realism is based on the following tenets: The international system is anarchic, so there is an “absence of a central authority that sits above [nation] states and can protect them from one another;” all nation states in the international system “always have some offensive military capability;” and all “states can never be certain about another states intentions.”<sup>195</sup> Based on these assumptions, the only way for a state to ensure security is through achieving primacy through the “unrelenting pursuit of power.”<sup>196</sup>

These types of power struggles were evident during the Confederation period, especially because the early United States resembled more a group of independent sovereign nations under the humanitarian ministrations of the United Nations. The UN, although not a world government, attempts to promote cooperation between the nations, but is limited in its power to truly affect positive change within sovereign nations. According to their website, the UN has four purposes: “to maintain international peace and security; to develop *friendly relations* among nations; to cooperate in resolving international problems and in promoting respect for human rights; and to be a center for harmonizing the actions of nations.”<sup>197</sup> These purposes appear to be similar to that of Article III within the Articles of Confederation:

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<sup>194</sup> James Madison spoke of his disdain with regard to Congress’ inability to govern the states: “The effect of the ordinary requisitions of Congress had only displayed the inefficiency of the authority making them, none of the states having duly complied with them, some having failed all together, or nearly so”; James Burnham, *Congress and the American Tradition* (New Jersey: Transaction Publishers, 2003), 64; Stewart, *American Military History*, 53–72.

<sup>195</sup> John J. Mearsheimer, *The Tragedy of Great Power Politics* (New York: W. W. Norton, 2001), 43; Kenneth Waltz, *Theory of International Politics* (Reading, MA: Addison–Wesley, 1978). Dr. John Mearsheimer’s work, *The Tragedy of Great Power Politics*, contributed to the compendium of realist theory by building on the foundations of realism, more distinctly, structural realism. His approach, coined *offensive realism*, parallels the established tenets of structural realism, but departs by asserting that a state’s “uncertainty about other state’s intentions creates an irreducible fear among states that leads to power-maximizing behavior”; see Mearsheimer, *The Tragedy of Great Power Politics*, 43.

<sup>196</sup> Mearsheimer, *The Tragedy of Great Power Politics*, 43; Stewart, *American Military History*, 53–72.

<sup>197</sup> “The UN in Brief,” UN.org, accessed September 15, 2014, <http://www.un.org/Overview/uninbrief/about.shtml>.

The said States hereby severally enter into a firm *league of friendship* with each other, for their common defense, the security of their liberties, and their mutual and general welfare, binding themselves to assist each other, against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretense whatever.<sup>198</sup>

Whether one examines the failures of the Articles of Confederation of the 18<sup>th</sup> Century or examines the apparent inefficacy of the United Nations in the 21<sup>st</sup>, the absence of a central coercive authority in a governmental system tends itself toward anarchy—which may be the primary intent of Patriot Militia leaders.<sup>199</sup>

#### **D. THE SDFS IN CONTRAST TO THE PATRIOT MILITIAS**

SDFs, in contrast to the Patriot Militias, are legitimate organized militias that are established through state legislation and serve at the request of the governor and the Adjutant General within their respective states. The role of the SDF is primarily explained in its respective mission statement. In this section, SDF mission statements are contrasted with Patriot Militia mission statements to reveal what their leadership considers to be their *raison d'être*.<sup>200</sup>

The Tennessee State Guard (the Tennessee SDF) has a clearly defined mission statement that outlines its chain of command and explains their role with regard to the National Guard:

The purpose of the Tennessee State Guard is to provide a professional complement of personnel to support the State mission of the Tennessee National Guard, by assisting the Tennessee Army National Guard as a force multiplier, and at the direction of the Adjutant General, to assist civil authorities with disaster relief, humanitarian causes, ceremonial service, religious and medical support for the well-being and safety of the citizenry of Tennessee.<sup>201</sup>

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<sup>198</sup> U.S. Articles of Confederation, art. III.

<sup>199</sup> Mearsheimer, *The Tragedy of Great Power Politics*, 43; Stewart, *American Military History*, 46–105.

<sup>200</sup> Carafano and Zuckerman, “The 21st-Century Militia.”

<sup>201</sup> “The All-Volunteer Tennessee State Guard.”

The goal of the Tennessee SDF is to assist the governor in maintaining social order when called upon to do so—of course, order is the antithesis of anarchy.<sup>202</sup>

The Michigan Volunteer Defense Force has a similar mission statement: “The Michigan Volunteer Defense Force (MIVDF) at the direction of the Adjutant General provides reliable personnel support to local and state agencies during declared emergencies.”<sup>203</sup> SDFs’ mission statements are quite dissimilar to those of Patriot Militias; e.g., the Michigan Militia.<sup>204</sup>

The Southern Poverty Law Center (SPLC) is a group that identifies extremist militia groups. The SPLC are “dedicated to fighting hate and bigotry and to seeking justice for the most vulnerable members of our society.”<sup>205</sup> In 2011, they identified 1,274 militias, which they consider to be “anti-government ‘Patriot’ groups.”<sup>206</sup> The Michigan Militia is listed as one of these groups, and its credo is, “A well-armed citizenry is the best form of Homeland Security and can better deter disasters, crime, invasion, terrorism, tyranny.”<sup>207</sup> Note the antagonism toward the Department of Homeland Security and the nostalgic connection to the word *tyranny* to imply that the group is connected to the founders of the U.S. who fought for freedom to gain independence from the *tyranny* of King George. According to the Michigan Militia’s website, the following militias are part of the Michigan Militia: <sup>208</sup>

- The Superior Unorganized Michigan Militia
- The Southwest Michigan Volunteer Militia
- The Liberty Militia Riding Club
- The Michigan 3 Percenters

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<sup>202</sup> Ibid.

<sup>203</sup> “Michigan Volunteer Defense Force,” [mivdf.org](http://mivdf.org/site/), accessed November 22, 2014, <http://mivdf.org/site/>.

<sup>204</sup> Ibid.

<sup>205</sup> “Active ‘Patriot’ Groups in the United States in 2011.”

<sup>206</sup> Ibid.

<sup>207</sup> “Michigan Militia: Defending against Disaster, Crime, Invasion, Terrorism and tyranny.” [Michiganmilitia.com](http://www.michiganmilitia.com/), accessed March 10, 2015, <http://www.michiganmilitia.com/>

<sup>208</sup> “Active ‘Patriot’ Groups in the United States in 2011.”

- Michigan Home Guard
- Northern Michigan Volunteers
- Illinois Sons of Liberty
- Northwest Lower Michigan Civil Defense
- Downriver Volunteer Militia
- Black Creek Volunteers
- Michigan Militia Corps Wolverines
- Southeast Michigan Volunteer Militia<sup>209</sup>

Within the mission statement of the above Patriot Militia known as the Superior Unorganized Michigan Militia, there are clear references to the Declaration of Independence, the Michigan Constitution, and the U.S. Constitution. These statements in themselves appear to be patriotic; however, there are undertones of antifederalist philosophy within the text. Note the state-centric language:

The mission of the Superior Unorganized Michigan Militia (SUMM) is to watch over and defend our great Peninsula from all enemy's [*sic*] both foreign and domestic who would challenge our God given right to Liberty and Freedom as defined in our Constitution. It is stated in the Constitution of our Great State of Michigan; 'Every person has a right to keep and bear arms for the defense of himself and the State.' We will defend our lands and property from all those who attempt to usurp our freedom, liberty and property, and give aid to our fellow citizens in time of need.<sup>210</sup>

The mission statement continues and becomes more inflammatory, and even implies the use of violence if the leadership finds reason to do so, which parallels the violence used by the colonials against despotic British rule. Note that there is no mention of the authority of Michigan's governor or Adjutant General; even more, note the underlying theme of revolution. Again, from *The Declaration of Independence*, "That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, —That whenever any Form of Government becomes destructive

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<sup>209</sup> "Michigan Militia."

<sup>210</sup> "Superior Unorganized Michigan Militia," superiorunorganizedmichiganmilitia.weebly.com, accessed November 22, 2014, <http://superior-unorganized-militia.weebly.com/index.html>.

of these ends, it is the Right of the People to alter or to abolish it.”<sup>211</sup> Note that the militia will perform its lawful actions “nonviolently so long as there remains legitimate Civil Order [*sic*]”: <sup>212</sup>

Within this mission we will train in defensive actions, audit government actions regarding our freedom, observe fair and free elections, study and uphold the ‘Rule of Law’ as stated in our constitution. We will perform these actions lawfully and nonviolently so long as there remains legitimate Civil Order in our society. A well regulated (trained) Militia has been and will be necessary to maintain our freedom. To this end we organize and train for a time when we may be needed to aid our fellow Michigan citizens in disaster relief or the protection of our liberty’s [*sic*]. We prepare for the worst and pray that time never comes.<sup>213</sup>

Although SUMM may believe it is being well intentioned and patriotic, there is a Michigan Volunteer Defense Force that is under the command of the Michigan Adjutant General, who serves at the request of the Michigan Governor and is legitimized through jurisprudence. This force can serve under the legitimacy of law and aid their fellow citizens and not return to a time when individual states were preeminent and the federal government languished in impotence.

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<sup>211</sup> “The Declaration of Independence.”

<sup>212</sup> “Superior Unorganized Michigan Militia.”

<sup>213</sup> Ibid.

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