

AMERICA'S STATE DEFENSE FORCES: AN HISTORICAL COMPONENT OF NATIONAL DEFENSE

Dr. Kent G. Sieg

Throughout American history, the bulk of U.S. military forces fighting during the nation's major wars at least through the end of the 19th Century were men who volunteered for state militia units, whether organized or unorganized. The currently existing state defense forces are the direct descendent organizations of such traditional American militias. For national or homeland defense, the U.S. military has always relied upon these militias, which are groups of part-timers assembled for contingencies.

In accordance with the militia tradition of the United States, all able-bodied young and middle-aged men are members in a particular state's branch. Traditionally, militia units have provided for their own equipment, met at periodic musters, and elected officers from the ranks. The militias would serve limited tours of active duty for discrete periods of time within defined geographical areas. They could be quickly organized and just as expeditiously disbanded, all at a minimal expense in comparison to the maintenance of large standing armies. In the U.S. Constitution, Congress was given powers to raise armies for a period of two years, after which time funding would be cut off. Article I, Section 8, incorporated the original Confederation articles regarding state control of the militia and its officers. Article I, Section 10 of the Constitution mandated consent of the Congress for states to keep military units during peacetime. The Second Amendment allowed the states to retain their militias. Title 32 U.S. Code Sec. 109 also reaffirmed for a state the right to maintain troops "within its borders in time of peace" or for policing actions. Washington also was instrumental in putting forward what became the Uniform Militia Act of 1792, which defined militia membership and specified that Adjutant Generals would be in charge for the military in every state.

The U.S. Army's mobilization scheme for national defense basically relied upon the states to provide troops. This reached its ultimate end-state during the Civil War, when eventually almost all Union and Confederate forces were volunteers. In spite of being circumscribed in the postwar years, during Reconstruction, many of the Southern militias were entirely black in racial makeup. Following the negative political fallout from the use of the Army for occupation duty in the South and for policing of northern labor strikes, Congress passed the *Posse Comitatus* Act of 1878 (18 USC 1385), the provisions of which prohibited the federal military from engaging in civil affairs. This exclusion did not apply to state militias, however, since these were not federal military troops, and still does not.

The federal regulation of militias accelerated soon after the Spanish-American War. In late 1903, Representative Charles Dick, a Republican from Ohio and a state militia general himself, sponsored legislation for a new militia act. The Dick Act of 1903 designated the state militias as the reserve forces of the nation. In turn, the federal government dramatically increased funding for the organized state militias. An organized militia was termed "National Guard", and an unorganized militia (which was the traditional militia of the minutemen and essentially were the state guards) was also defined as the "reserve militia". This law was the first step towards the eventual federalization of the traditional organized militia.

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The next significant legislation of relevance was promulgated during the First World War. The federal government would subsequently assume control over much of this militia apparatus, and by the advent of World War I had activated organized National Guard units to federal service domestically or overseas, which in effect removed these units from the control of the state governor. The National Defense Act of 1916 both created an Army Reserve organization and gave the federal government greater powers to call the militias into federal service. The act doubled the National Guard it received federal funding, but in exchange for this support the act basically gave the President full authority over the National Guard and authorized its federalization at the President's order. It also mandated that National Guardsmen take dual oaths of loyalty to both the state governor and the President. Under this act, the federal government also recognized the state commissions of militia officers. As well, the term "National Guard" became legislated nomenclature.

But state defense forces continued to exist as they became regarded by the national military establishment as an excellent force-multiplying mechanism. In practical terms, such units freed up men for service in the regular military or in the defense industry. They also served as a de facto initial training ground for personnel later inducted into federal service. Perhaps most importantly from a cultural perspective, they also allowed average citizens to serve in a uniformed, dedicated capacity. In its Section 79, the National Defense Act of 1916 had stated that when the National Guard was federalized, states had the authority to organize military reserve units for duty. The mission of such troops was strictly prescribed, though, solely to policing activities.

Thus, during the preparedness period just prior to U.S. involvement in World War I, Congress consented to establishing home defense forces for the states in the event that the National Guard was federalized. Subsequently, state legislatures authorized defense forces. The Home Defense Act of June 1917 authorized the Secretary of War to equip these "home guards" with missions focused on security and civil defense. Additionally, the nationally-based U.S. Guard, which came to number 26,000, was established as a facsimile of Britain's Home Guard. By 1918, over 100,000 men were serving in 42 state guards. But rather than use the militia to build the regular army, during the war the military relied primarily on draft calls to fill the huge manpower requirement required of the "Army of the United States" formally established in July 1918. The War Department also created the "U.S. Guards", an organization that consisted of 25,000 men culled from the ranks of those deemed unfit for overseas deployment, to oversee internal security.

The coming of the next World War was a turning point for the state militias. Both the state defense forces and the National Guard itself had declined in numbers and readiness during the interwar years. Nevertheless, the National Guard was entirely recalled to federal service (the 1933 National Guard Mobilization Act brought these state units into a permanent federal status and ensured that National Guard units would remain intact when called into federal service). State governors were uneasy over leaving their constituents unprotected, and thus state guards were recreated by the time of American entry into World War II. In 1940, Section 61 of the old National Defense Act of 1916 was modified to again allow the establishment of state defense forces. An amendment specified that state forces would be limited to duties as determined by their respective state governors. Even before Pearl Harbor, state guards were stood up in 37 states and involved 90,000 men. By 1945, 47 states and territories had organized home guards consisting of 150,000 troops. Their primary mission during the war was to engage in infrastructure security, one example being Pennsylvania's Reserve Defense Corps, which initially wore the uniforms of the state police. Other state guards were mobilized as special security units for temporary periods.

The state guards declined again after World War II's conclusion. Operative parts of the 1940 enabling legislation were rescinded, and the National Security Act of 1947 ignored the state guards entirely. Indeed, a 1948 Defense Department board even suggested doing away with the National Guard as a federal reserve force and instead melding it into the Organized Reserve. This trend held until the advent of the Korean War. During the 1950s, the National Guard Bureau directed that states temporarily maintain cadres of military personnel to assist with planning. Federal legislation for the creation of state defense forces was enacted by the 84th Congress in Public Law 364 of 1955 and in the State Defense Forces Act of the United States of 1958.

But in the aftermath of the Korean War, the return home of so many National Guardsmen meant that the state forces were extraneous. Furthermore, a struggle ensued between the federal government and the states over relative control of the National Guard during the 1950s and 1960s. The Pentagon's National Guard Bureau began paying the majority of the costs to maintain each state's National Guard. Furthermore, the Army came to rely more heavily upon the Army Reserve in comparison to the National Guard, thereby further undermining an argument for maintaining solely state forces. Furthermore, by the time of the Vietnam era, the Total Force policy had been put into place as a way of restructuring the reserve forces. Under Total Force, the military would not be utilized if the President and Congress had not gone to the effort to garner popular support for any expedition. The National Guard assumed a major share of the Army's combat reserve while service units became housed within the Army Reserve. There was only a minimal state militia capability left for the National Guard, and state control of the militia was severely curtailed. Thus, at this time most state military forces, to include the state guards, fell moribund.

But the pendulum eventually swung back in the favor of state militia utilization. With the renewed Cold War confrontation of the 1980s, the and consequent emphasis upon a strong military establishment of the Reagan years, and the reliance upon reserve and National Guard forces for the Total Force developed by the Pentagon, state defense forces were broadly revived. Spurred by the danger of bipolar confrontation and the need for internal forces to maintain order, in the early 1980s the Reserve Affairs Office in the Office of the Secretary of Defense assessed the efficacy of state defense forces. As a result, the Department of Defense directed the National Guard Bureau to encourage and militarily support the states with the establishment of defense forces. The end result was National Guard Regulation 10-4, effective 1 October 1987, which set policies for the support of the state militaries. It noted that such forces could not come under federal command and control and were "under the exclusive jurisdiction of the respective governor." The National Guard Bureau also would "monitor" the state guards and provide assistance in training "upon request".

However, as the years went by the National Guard failed to oversee, train, and utilize the state guards. Constraints in this complex relationship included the priorities of the National Guard's federal versus state missions, the lack of discipline and command and control within the state defense forces themselves, funding limitations, and legal restrictions. The National Guard simply did not want the state defense forces. A 1995 report by the RAND Corporation noted that the National Guard was fully capable of meeting its state obligations, and a survey of state adjutant generals found that nearly all objected to the formation or continuation of state defense forces. The situation became so dire that even the Supreme Court ruled that the federal government's action were infringing upon the right of states to maintain their militias.

State guards still survive and in recent years have had about 8000 members nationwide. The militia tradition persists in the continued existence of defense forces in two dozen states and a territory. There

are up to 12,000 state defense force members on the official rolls, but many are inactive or, like the Maryland Defense Force, have a reserve militia category which accords rank but requires no participation. Puerto Rico by far outdistances in personnel numbers the other state defense forces; it as well as Texas, South Carolina, and New York all have over 1200 members each. At the lower end is Michigan, which has retained on paper only about a dozen members after the disestablishment of the Michigan Emergency Volunteers. The list of official state defense forces includes: Alaska, Alabama, Mississippi, Florida, Texas, Tennessee, South Carolina, Georgia, California, New York, New Jersey, Maryland, Virginia, Nevada, Puerto Rico, Massachusetts, Vermont, Washington, Oregon, Ohio, Michigan, Indiana, North Carolina, New Mexico, Maine, and Connecticut. Wisconsin, Rhode Island, and Delaware are considering organizing such units, and California is poised to reinstate its naval militia. Other states retain laws allowing state guards but have yet to reconstitute them.

The most active are those in New York, Georgia, Tennessee, South Carolina, Virginia, Oklahoma, Texas, California, Alabama, and Ohio, as well as Puerto Rico. New York, New Jersey, Ohio, and Alaska have naval militias as well. The naval militias in Alaska and New York operate strictly under Title 10 of the U.S. Code under which their membership must be 95% drilling Marine Corps, Naval, or Coast Guard reservists. The other two naval militias fall under Title 32 as well and recruit volunteers along with reservists. Furthermore, some state defense forces, such as New York and Texas, also have aviation components. The air guards primarily provide security to Air National Guard installations in their respective states.

The current status and regard for such units is mixed. There are many positive contributions being made. Maryland used to have 350 members that engaged in activities ranging from snow emergencies to flood relief to wildfire suppression, but currently is undergoing reorganization in order to develop into a service force to the National Guard. Ohio's Naval Militia still patrols a 32 square-mile area on Lake Erie. The Alabama State Defense Force continues to assist with traffic control and search and rescue. Oregon's State Defense Force has integrated with the National Guard and provides emergency services, employer support, recruiting, and family wellness. Indiana's Guard Reserve has patrolled Dunes State Park to supplement security at the understaffed facility. California's State Military Reserve runs the state's military museum activities. Furthermore, its members are allowed to serve in full-time active duty positions with the California National Guard. The Georgia Defense grew to over 300 members in the period after 9-11 and moreover saves the state an estimated \$1.5 million annually due to the donated time and services of its members. The missions of the 500 members of the Virginia Defense Force include aviation support. The South Carolina State Guard has a very active equestrian unit utilized in ceremonial events. Dozens of New York Guard members are routinely utilized for support during ice storms. Tennessee's Defense Force (subsequently renamed the Tennessee State Guard) provided security and evacuation services during the response to a major chemical spill in the eastern part of the state in 1996. Alaska's Naval Militia was mobilized for the Exxon Valdez oil spill and subsequent natural disasters. The Texas State Guard, which can trace its roots to the 1820 Home Guard of the Austin colonists, is an important part of the land and air forces of that state and has its headquarters co-located with the rest of the state militia.

There is an underside, however. The Utah State Guard was dismantled in 1987 after it was found that 400 of its members were affiliated with the Aryan Nations. One unit in Texas was commanded by a former soldier of fortune. Officers in the Virginia Defense Force were preparing to purchase a tank and practicing drug raids. Some officers of the Ohio Military Reserve had participated in the Kent State Massacre decades earlier. Various other defense forces had their own anti-terrorist plans devised or engaged in unsanctioned law enforcement activities. The governor disbanded the 300-member strong

New Jersey Naval Militia in the spring of 2003 after complaints from the adjutant general over the lack of military discipline and the associated costs of maintaining the unit.

The widespread mobilization of National Guardsmen as well as reservists following the onset of the war against terrorism, the largest use of them since World War II, have wrought the need for a re-examination of the role and use of the state militias as an augmentation force for homeland security. The specter of international terrorism striking against U.S. soil, in conjunction with the call-up in some cases of 50% of National Guard units to federal service to fight the war on terror overseas, again made state-specific military units viable and necessary. As marked by the formation of Northern Command and the Department of Homeland Security, the new emphasis placed upon homeland defense by the administration of President George W. Bush is launching a reinvigoration of the state forces. This resurgence is abetted by the fact that the National Guard is consumed by fulfillment of its augmentation mission for the regular forces at home and abroad as well as by the fact that resources available to respond to state disasters are scarce. A secondary factor derives from the extreme investment that the federal government has been making in the reserve components. With the emphasis on intensive training in order to make National Guardsmen and reservists equivalent in readiness to their active counterparts, these part-timers are in essence too expensive and valuable to use for some of the more routine homeland defense missions.

A strong argument has been made for a national-level Homeland Defense Force to be created under the Department of Homeland Security. Such a "Home Guard" already exists in the state defense forces already in place. 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. The state guards would not interfere with federal or National Guard missions but would instead complement them. "The State Guard/Home Guard company costs virtually nothing in new budget appropriation," former longtime State Guard Association of the United States (SGAUS) President Paul McHenry noted back in 1998. "It supports but does not lead the civil government. It fills in behind police, the emergency manager, and any other agency within the purview of its function. The home guard company has support as its function – support of those with expertise. Home guard has nothing to do with warrior classes of the Armed Forces."

The post-September 11th period is an opportunity to carefully strengthen the military's connection to overall society and to trade upon the goodwill that the military response to the war on terrorism that has been generated. In the aftermath of that tragedy, another SGAUS president wrote to former Governor Thomas Ridge (who later became the first Secretary of the Department of Homeland Security) and urged him to provide training, equipment, missions, and recognition to state defense forces. The state guards can provide trained emergency response personnel intimately familiar with local and regional mission requirements. Indeed, state guards "can play an important role in enhancing the ability of the state through planning, coordination, and rehearsals during times of normalcy in order to bring effective organizations and their capabilities to bear in times of crisis." In fact, the overall numbers of state guardsmen have swollen by upwards of 25% after the terrorist attacks of 2001. Also, within Congress efforts have been made to introduce legislation to allow federal recognition and formal support to the state defense forces.