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The Legitimacy of the Modern Militia

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SENIOR THESIS APPROVAL

This Honors thesis entitled

“The Legitimacy of the Modern Militia”

written by

Jonathan Huber

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requirements for completion of the
Carl Goodson Honors Program
meets the criteria for acceptance
and has been approved by the undersigned readers.

thesis director

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Introduction

The Legitimacy of the Modern Militia

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Honors Thesis

Ouachita Baptist University

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Introduction

On May 16, 2001, barring any last minute court appeals, Timothy McVeigh will be executed for his role in the bombing of the Alfred P. Murrah Federal Building in Oklahoma City. He along with thousands of other Americans who have joined private armies, known as militia, to fight the American government share a common belief that the American government is corrupt at its core and actions such as this one are at the very least patriotic. To most Americans, however, acts such as the bombing of the Oklahoma City Federal Building are not only terroristic, but demonstrate the need for the American government to crack down on these type of organizations to prevent similar atrocities. Is there any justification for the existence of militia groups in the United States, even though most Americans deplore their actions and ideals? This paper will examine the historical use of the militia in the United States and its modern adaptation of militia heritage as well as several different types of militias and recent events that have helped this topic to emerge to the forefront of current discourse.

The History of the Militia

While United States militia have their origin in the Revolutionary War, the militia is a much older concept. The beginning of the militia dates back to the growth of ancient Athens, which was a democracy employing the infantry phalanx. Each citizen was legally required to keep his armor, spear, and sword at home. The army of this Greek city-state was made up of individual citizens and military obligation was based on the economic status of the individual. (Halliday, 145) While the Greeks never referred to their armies as militia, the English under the reign of Henry II did. King Henry II revived his Assize of Arms in 1181 that specified each freeman possess certain arms, which were arranged in proportion to their possessions. They were also required to demonstrate to Royal officials that they were properly armed. (Hatch, “The Right to Keep and Bear Arms”) These weapons included a mail vest and iron skullcap and a spear. This was the first time that the citizen army was referred to as “the militia.”

In 1242, Henry III issued a new Assize of Arms to update the militia and gave it a new responsibility. Not only was the militia to protect against foreign invasion, it was to help keep the peace at home. He placed very specific requirements on who was to own particular weapons based on their annual income. (Weir, 6)

Forty-three years after Henry III’s Assize of Arms in England, Edward I ordered all men who could afford them, not just the freemen, to have arms. This decree was known as the Statute of Winchester and remained in effect until the sixteenth century. (Hatch, “The Right to Keep and Bear Arms”) In the sixteenth century, Queen Mary issued a militia statute listing in great detail what each man should have, mentioning both guns and bows, depending on his wealth. (Weir, 7)

The most important duty of the militia was the defense of designated home counties. Their officers were the gentry of their localities and were led by their county sheriff. Some men trained in special units called “trained bands,” while others simply practiced after church or on holidays. The king could call on the militia to serve him for up to forty days outside of their county, but not outside of the country. The trained bands usually stayed home to protect the county. (Hatch, “The Right to Keep and Bear Arms”)

The idea that the militia was a defender of liberty became rooted in English political philosophy. Sir Walter Raleigh is quoted as saying a tyrant always tries “to unarm his people of weapons, money, and all means whereby they resist his power.” (Malcolm, 9) Sir Thomas More had both men and women in Utopia trained with weapons so they could “defend themselves, or their friends, from unjust aggressor; or out of good-nature or in compassion assist an oppressed nation in shaking off the yoke of tyranny.” (More, 87)

Despite the movement toward integrating the militia into English society, some rulers reacted with great fear to the militia concept. Edward III in 1328 was uneasy with an armed populace and forbade anyone to go armed into a public place. (Weir, 7) Later, the Catholic Irish and the Scottish Highlanders were totally disarmed to discourage attempts to overthrow the English government. (Weir, 8) The Stuarts, who followed the Tudors, were absolutists and tried to eliminate weapons in the hands of the people by passing a series of gun laws. The Tudors and the Stuarts both believed in the divine right of kings to rule and did not support the idea of every citizen having weapons which might possibly give them the means to revolt. (Elton, 201) During the reign of Charles I, Parliament claimed that it had the right to control the militia. This led Oliver Cromwell,

once he was in power, to place more regulation on the militia than had ever been placed on it. He also created a standing army. (Malcolm, 1) After Charles II was in 1660 restored to the monarchy, he took measures to prevent another revolt in England by requiring gunsmiths to report the sales of guns. He also banned the importation of guns. (Kopel, 64) The Militia Act of 1662 confirmed the king's sole control of the militia and authorized the king's agents to search all those individuals deemed dangerous to the king or his kingdom. The final act against the militia was the Game Act of 1671. This outlawed 95% of the population from hunting and caused the existing militia groups to become outraged. (Weir, 10)

When William the Orange was invited to become king, he knew his would be a limited monarchy. He signed the 1689 Bill of Rights which provided, "That the subjects which are Protestants may have arms for their defense suitable to their conditions and as allowed by law." (English Bill of Rights, 1689) For most English, militia service was considered a high civic duty.

The situation in British North America was also very different than that in England at the time. After the end of the Glorious Revolution in England, the English militia had little to do. In American, there had been conflict with the Indians since the very first colony at Roanoke. (Weir, 14) A need to have every man able to bear arms equipped with proper gear was extremely high, so high that at one point some colonial laws required men to carry weapons. In Connecticut, a law required that all citizens, not just "listed" soldiers of the militia "always be provided with and have in continual readiness, a well-fixed firelock...or other good fire-arms...a good sword, or cutlass...one pound of powder, four pounds of bullets fit for his gun, and twelve flints." (Weir, 14)

The American militia began as a means to defend British Colonies against the French and the Indians.

During the American Revolution the role of the American militia would take quite a different form. Instead of fighting to protect British colonies, the American militias fought to overthrow the British government. In Lexington, Massachusetts, the militia opened fire on the King's troops in what Ralph Waldo Emerson characterized as "the shot heard around the world." (Emerson, "Concord Hymn") From this point forward, the militia was used to defend its territory and aid those surrounding territories that called on them to do so.

The militia, however, was not the sole military structure during the American Revolution. The Continental Congress commissioned the Continental Army, which was a standing army, and often used regular state troops to fight the battles. The use of the militia for fighting the American Revolution was not that popular among many of the leaders of these organizations. In fact, George Washington was not a fan of the militia. He complained that their "want of discipline and refusal, of almost any kind of restraint and government have produced...an entire disregard of that order and subordination necessary to the well doing of an army." (Weir, 22-3) Despite the belief of some individuals such as Washington, many others felt the militia deserved as much credit for the ultimate victory as any other military organization that fought in the Revolution.

The problem of what to do once independence was won became of central importance to the people living in the new United States of America. The Federalists and the Anti-Federalists debated whether or not a strong central government or many state governments should hold most of the power. (Weir, 27) Among all of the battles over

taxation and representation, one of the most important questions was how to ensure the ultimate safety of all those who had just come through the Revolutionary War. The opponents of the new Constitution were worried because there was a provision for a standing army. (Malcolm, 2) Revolutionary War generals, including George Washington, believed very strongly that training and skill were required to fight wars and that militia groups lacked those skills. However, the idea of a standing army had been viewed with extreme disfavor since Cromwell's time by those who feared a strong central government.

As mentioned earlier, the ability of militia to maintain arms was one of the central agreements in William of Orange taking the throne and signing the Bill of Rights of 1689 in England. Many Americans worried that a standing army under the control of a federal government could ultimately suppress liberty. Additionally, Americans when they broke from English rule did not want to leave the protection of their rights in the hands of whomever might be in power, as in the British system which lacked a written constitution. For this reason, the Bill of Rights was passed as amendments to the United States Constitution, the sovereign law of the land.

The history of the English militia is very important to the understanding of the term "militia" as used in the Second Amendment to the United States Constitution. When the Second Amendment was written, those individuals that supported it, such as Richard Henry Lee, Patrick Henry, and James Madison, were referring to a concept that was centuries old in the English-speaking world. These men were concerned about the protection of liberty against the tyranny of the federal government, and not an abstract theory of states rights when the Constitution was written. The Anti-Federalists, those that

opposed a strong central government, saw the militia, the individual citizens, armed with their own weapons, as a counterweight to the standing army. On this point, the Federalists, those that supported the idea of a strong central government, and the Anti-Federalists agreed. The Second Amendment to the Constitution giving authority to the militia was added to the United States Constitution, as a protection against the possible tyranny of the federal government. (Weir, 29) Ultimately, the Federalist and Anti-Federalists emerged with Amendment II to the United States Constitution which reads: "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." (United States Constitution)

Issues of the Modern Militia

Since the adoption of the Second Amendment, two major issues have arisen. The first major issue was over the right to bear arms. Courts and citizens groups have argued for and against gun ownership and gun control. The second major issue concerned the interpretation of what constitutes a militia. Different groups have formed different types of militia and have justified their existence under the auspices of the Second Amendment.

Debate over the right to bear arms originated in 1813 with the passage of what has become known as the first gun control law. The state of Kentucky, which had an active militia, became concerned with concealed weapons because they were at that time a frontier state. The rough nature of the frontier state was such that men carried small pistols or sword daggers to protect themselves. The 1813 law banned concealed weapons from being carried in the state of Kentucky. Not many people thought that the Kentucky law violated the Second Amendment, but that was largely due to the fact that many people did not think amendments to the U.S. Constitution applied to state laws. However, in 1822, the Kentucky Court of Appeals voided the 1813 law because it was believed to violate the Kentucky state constitution. (Hatch, "The Right to Keep and Bear Arms")

Laws regulating guns began to be passed in other states as well. Following Kentucky's lead, in 1819 the state of Indiana passed a similar law, followed by Arkansas and Georgia in 1837. In 1838, Virginia passed a weapons law. By the year 1950, all Western states had passed laws barring the carrying of concealed weapons. That eventually led to the banning of all weapons carried by individuals, except the sheriff and his deputies, inside the city limits. (Weir, 37)

The first laws requiring gun registration were passed in 1906, in Mississippi. Segregationists in the South passed these laws so that they could track those that owned guns and illegally confiscate any weapons owned by African-Americans. (Weir, 38) In the North, municipalities such as New York City, passed laws requiring permits to own guns to try and control the spread of weapons to immigrants. (Weir, 39) In more modern times, laws such as the Brady Bill and the ban on assault rifles have been passed. The laws have not only restricted certain types of guns from being sold, but have placed other restrictions on gun ownership, such as waiting periods.

While the issue over the types of guns allowed and restrictions the government may place on individuals wishing to own guns has not been resolved, one thing has remained legal. Individuals in the United States may own guns because, as the courts have ruled in cases such as the Georgia Supreme Court case, Nunn v. State of Georgia (1837), and in the U.S. Supreme Court case, United States v. Miller (1939), the Second Amendment does allow individuals the right to bear arms.

The second major issue that has arisen concerning the Second Amendment is over what constitutes a militia. Different groups have formed calling themselves militia and claimed that their actions are justifiable based on the Second Amendment. The following sections of this paper will examine the three types of militia that have formed in recent years and evaluate the characteristics and purposes of each. The types of militia that will be discussed are: Type I: Militant Militia; Type II: Cultural Militia; and Type III: Non-Militant Militia.

The three different militia types have unique characteristics that distinguish them from each of the other types of militia. Type I militant militia are known for their

aggressive nature and emphasis on the protection of liberty by preventing tyranny of the federal government. Type II cultural militia are characterized by their rejection of a group of people. Type III non-militant militia seek to achieve their goals through peaceful processes and education of its members. The following section of the paper will discuss each of these types of militia.

Type I: Militant Militia

Two recent events in the United States, the incident at Ruby Ridge, which occurred on August 20, 1992, and the bombing of the Oklahoma City Federal Building, which occurred on April 19, 1995, have brought militia organizations to the forefront of public attention. In each of these incidents, innocent people lost their lives because laws were broken by militia organizations. As inquiries were conducted to determine why these events occurred, one common element seem to be self-evident; these incidents were directly associated with militia organizations, in particular militant militia.

The first and most recognizable of the major types of militia groups is the militant militia. Several characteristics distinguish militant militia from other types of militia. The first and most recognizable features of militant militia are that they tend to stockpile weapons. The militia stockpiles any weapon that will aid the organization in fighting a war with the government, should an occasion arise. On the one hand, militia organizations justify the ability to keep weapons, specifically guns, as a right guaranteed to them in the Second Amendment to the Constitution. On the other hand, the government, specifically the Federal Bureau of Alcohol, Tobacco, and Firearms (ATF), enforces laws which declare that stockpiling weapons such as automatic rifles, hand grenades, or homemade bombs are threats to society and serve no legitimate or legal purpose. The debate over the legality of this issue has been a cause for the second distinguishing characteristic of militia organizations. Militant militia organizations are groups that at one point or another act aggressively towards those individuals or institutions that oppose them.

A third characteristic of militant militia is that they have very selective memberships, generally by invitation only, and are very secretive about their doctrine. Those asked to join have expressed to a current member of the militant militia a common belief about government or issue and have had their backgrounds thoroughly checked by the militia. Militant militia also tend to attract younger individuals who have felt rejected by mainstream America. One of the ways they seek to protect themselves from infiltration by government agents or other individuals that oppose them is through the use of “cell” groups. Cell groups are small groups of people that meet together to conduct the necessary business of the organization. Most cell groups do not have a defined link to each other, but maintain channels of communication to coordinate their activities. Cell groups that do have some defined structure limit the number of individuals that know how the structure is formed. The individual members of one cell group do not know the members of another cell group. This prevents the entire organization from being shut down if outsiders infiltrate one of the cell groups. For obvious reasons, militant militia do not want to warn government agents they are about to bomb a federal building or give them cause to think they would ever do so. The true purpose and methodology of achieving that purpose is kept quiet.

A final recognizable characteristic of militant militia is that they are willing to die for their cause. Militant militia believes that the cause they are fighting for is one that will make the nation stronger and help protect liberty. For this reason, they see themselves as heroes when they die doing something that will help achieve the goals of the militia. Militant militia are also willing to kill others if it means more attention will

be paid to their cause. Many people fear militant militia the most because they are willing to go to any extent to achieve their goals.

The Bombing of the Oklahoma City Federal Building: A Case Study

On April 19, 1995, America was shown exactly to what extent a militant militia was willing to go when the Alfred P. Murrah Federal Building in Oklahoma City was bombed. One hundred and sixty-eight people were killed, including nineteen children, and hundreds of others were injured in what many have called the worst terrorist attack on American soil in the United States history. Timothy McVeigh and Terry Nichols, both members of the patriot movement, a right-wing paramilitary militia group opposing the federal government, were convicted of plotting to carrying out the crime, although only Timothy McVeigh was convicted of actually committing the “inhumane act,” as Ted Kaczynski, the Unabomber, characterized it. (www.cnn.com “Book: McVeigh was prepared to die in bombing”)

Timothy McVeigh and his connection with the patriot movement are a good illustration of how militant militia operates. (Abanes, 1) There was a violent act committed that broke the law. Secondly, Timothy McVeigh fit the mold as far as age is concerned and attitude towards government necessary to be a participant in a militant militia. He is younger and has become disgruntled with the United States government. McVeigh, a Gulf War veteran, saw things he disagreed with in the United States government through his years of service. For those reasons, he was willing to die to help achieve the goal of achieving true liberty.

An interview in the April 9, 2001, issue of Newsweek magazine provided more insight into the personality of Timothy McVeigh who committed the bombing in the name of his militia movement. McVeigh was quoted as saying “If I needed to, I was ready to stay in the truck and protect it with gunfire until the bomb blew up.” McVeigh also showed how strongly he felt for the cause with the T-shirt he wore on the day of the bombing. On the front it had a quote from John Wilkes Booth after he had assassinated Lincoln and on the back it contained a picture of tree dripping blood and a quotation from Thomas Jefferson: “The tree of liberty must be refreshed from time to time with the blood of patriots and tyrants.” (www.cnn.com, “Book: McVeigh was prepared to die in bombing”)

Timothy McVeigh and the patriot movement are a good illustration of what a militant militia organizations embody. Not only did McVeigh commit a violent act, he believed he did so in the name of patriotism and that he would somehow strength the “tree of liberty” in the process.

Type II: Cultural Militia

The 1990s saw a large increase in the total number of militia organizations largely due to the development of mass communication via the Internet. While many of the Type II cultural militias have similarities with Type I militia, there are several characteristics that distinguish them from being Type I militia.

One of the most major differences between Type I militia and Type II militia is the composition of the membership of the militia. While Type I militia tend to limit their membership and only obtain new members through invitation of existing members, Type II militia are more open to accept anyone who believes their doctrine. Type II militia generally believe that numbers and size of the organization give them more legitimacy and power. Unlike militant militia, Type II militia members do not tend to have a background in the military. Type I militia generally attract members who have experience with armed conflict, whereas Type II militia generally attract people weaker in physical and emotional makeup and searching for a place to be accepted. Militant militia and cultural militia are, however, fairly similar in the secrecy of their doctrine. Type II militia teach an ideology that mainstream America has not embraced or has already rejected. In order not to isolate themselves from potential new members, Type II militia are careful with whom they share their doctrinal beliefs.

A second characteristic of Type II militia is that there is a stronger element of indoctrination of values that occurs in comparison to other groups in society. In both Type I and Type III militia, members, all adults with rare exceptions, are united because of existing strong beliefs on the purpose of the militia organization. In Type II militia, children are raised to believe certain things without ever having the opportunity to decide

for themselves and weaker members emotions are used to have them conform to the belief of the militia organization.

One of the problems with classifying Type II militia is that they often crossover and display characteristics of Type I or Type III militia. The easiest way to determine if a militia organization is a Type I, II, or III militia is to look at the purpose for the existence of the militia. If the purpose is to convey a cultural rather than political message, it is most likely a Type II cultural militia. The Ku Klux Klan provides a good case study of a cultural militia.

The Ku Klux Klan: A Case Study

One of the most historic militia organizations in the United States is the Ku Klux Klan founded in 1866 in Pulaski, Tennessee. Originally it was formed by a small group of Confederate Soldiers who wanted to play tricks on the public. However, by 1868, the Klan had developed a political agenda; they terrorized blacks and northern whites that had moved to the South during Reconstruction. With over half a million members, in 1871 President Grant had to order soldiers to stop the Klan because their acts of terrorism had become so intolerable. (Stern, 43)

The Klan died down for some time but was reinvigorated after World War I. Throughout the 1920s and again in the 1960s the Klan modified its political agenda. They began to preach a love for whites and a hatred for blacks. They also proclaimed themselves to be patriots of the United States Constitution and hate what current government had become through affirmative action and labor unions. While the Klan of the 1990s is not the same as the Klan of the 1920s or 1960s, two very important elements

are still there. Members of the Klan still have aspirations and associations with past ideology. Members who join the Klan today do not see themselves as members of a hate group, but rather as “citizens trying to reclaim and preserve a way of life under attack.” (Stern, 44)

The Ku Klux Klan of the 1990s is a good illustration of what a Type II cultural militia is concerned with. Part of the difficulty with classifying the Klan as a Type II militia is that they have shown historically a tendency to act in overtly aggressive ways. However, the passage of several hate crime laws as well as criticism from mainstream America has altered the tendency towards acting in a violent manner, making the Klan a more suitable fit with the Type II militia.

Membership in the Klan is open to all white Christians who share the same goals and ideas as the Klan. Membership in the Klan, while mostly male, is not limited to a certain gender or age. Many Klan members have middle-rank occupations. (MacLean, 73) The doctrine of the Klan has become better known; however, many of the ritual aspects of the Klan are not open to public knowledge. Additionally, Klan members engage in intense re-education activities. Children of Klan members are taught to believe only one race is superior and that all others are inferior. Klan members must embrace the doctrine of the Klan or face exclusion from it.

Type III: Non-Militant Militia

One of the problems with discussing the militia is that a stereotype exists about all militia organizations being formed by rightwing fundamentalists who will stop at nothing to make a political statement. The incident at Ruby Ridge and the bombing of the Oklahoma Federal Building do not help to squelch the attitudes of mainstream America. However, a surprisingly large number of militia organizations do not have any hostile intent towards the government or its citizens, but are to the contrary strong advocates of the rule of law.

Three things separate this type of militia from the previously mentioned militia types. First, non-militant militias seek to work within the status quo system to change laws and judicial decisions they disagree with. Militia organizations are by their very nature conservative and bent towards keeping things the way they are and/or once used to be. For this reason, they typically do not favor economic changes such as measures to increase taxes, specifically property taxes, or to regulate interstate commerce. On social issues, they do not favor government welfare or measures to promote alternative lifestyles such as gay rights . Unlike other militia types, the non-militant militia will encourage their members to get out and vote or run for office. They also take very active roles in communicating with elected officials their feelings or attitude towards certain legislation. Additionally, non-militant militia publicize through peaceful protest or distribution of literature their goals and values. By working within the system, they believe they can actually gain support to have laws changed.

A second difference between non-militant militia and other types of militia is that they do not seek to re-educate or alter the minds of those who join their organization. In

militant militia, generally speaking, there is an intense indoctrination of the mind to cause its members to believe the government is evil and it is their responsibility to change it through force or any other means possible. Cultural militia begins teaching their children at a young age that certain beliefs are right and wrong. For example, the Ku Klux Klan teaches children to hate African Americans. Anti-Semitic militia groups teach hatred of Jews and support for the Aryan race. Non-militant militia organizations seek to gain members not by intense indoctrination, but through education. They allow their members to decide for themselves if the message they teach is correct. Additionally, most of the doctrine taught by non-militant militia is founded in the existing laws of the United States. They are not based on moral relativism or subjective values. Individuals have the ability to think freely and maintain membership for the period of time the individual wants to.

A third difference is that they are by definition non-militant. Unlike other militia types, they do not blow things up or shoot at those who seek to enforce the law. The non-militant militia is committed to obtaining change through peace, knowledge, and understanding, not violence, rage, or hatred. The militant militia teaches their members to be prepared to fight the “enemy of government” at all costs. Type II militia are committed to what has become their god and think they will obtain salvation in many cases for doing as instructed. The non-militant militia does not take this approach. Through spreading their word they see change in future generations mindsets as the real goal.

The aspect of the Type III Militia that makes it so difficult to pinpoint is that in many cases Type I and II militia start out as a Type III militia. The true Type III militia

can only be labeled over time as its goals are clearly laid out and its motives and intentions made clear. For this reason, many Type III militia are treated by the government and the news media as Type I or II militia. This often hurts the public-image of otherwise well-intentioned organizations seeking a meaningful change in their government.

The Maine Militia: A Case Study

While groups like the Southern Poverty Leadership Center and the Anti-Defamation League view all militia under the same lens, the Maine Militia is an organization that falls outside of their scope of analysis. The SPLC and the ADL focus on the violent aspects associated with the militia movement, while ignoring the non-militant groups. The Maine Militia is a non-militant militia that meets all of the aforementioned criteria and clearly sets forth clear and precise objectives and standards that allow the outside observer to classify it as a Type III militia.

The Maine Militia was established in the 1990s for the expressed purpose of defending the Constitutions of Maine and the United States of America, to uphold and defend the Bill of Rights, and to ensure that all Citizens regardless of race, color, religion, sex or national origin have equal protection and opportunity to due process under the law. The Maine Militia believes the Second Amendment to the United States Constitution and the 1903 Dick Act passed by Congress grants them the authority to exist as a militia organization. This act provided the class of able-bodied male citizens between 18 and 45 form an "organized militia" to be known as the National Guard states and the remainder of the men, described as the "reserve militia," would have the authority to assemble as a

militia. They believe very strongly citizens have the right under this law to form as the “reserve” or “unorganized militia.” (Maine Militia Manual)

The Maine Militia can be characterized as open and very structured. Unlike some militia that are very secretive and covert in their operations, the Maine Militia presents itself to the world on the Internet. They include not only their mission and goals, but also include the organizational structure, code of conduct for members, and the oath members must take to join. Specific guidelines are set out for those wishing to join and for the appropriate behavior of members. A hierarchy exists within the militia so that no one individual acts in a foolish manner under the name of the Maine Militia. Concluding the Maine Militia manual is a prayer for militia members asking that God watch over them and protect them. *

The Maine Militia has several goals they hope to achieve. The first is to present itself to the citizens of the region as a well regulated, well-trained, knowledgeable militia comprised of ordinary citizens rather than trained professional soldiers. They also hope to establish cohesive command structure able to instruct as the need arises and train its members in the many disciplines needed to function as a militia. Additionally, they seek to educate its members in areas of historical law and principles from knowledge imparted from this country’s historical record and from the Bible. The Maine Militia goals also include informing its members of local, national, and global events imperiling the Constitution and impacting the direction of the country; encouraging its members to “stand against tyranny, globalism, moral relativism, humanism, and the New World Order; uphold the pure constitutional rule of law whereby all citizens have the right to a

trial by jury; and to seek the protection, wisdom, and leadership of almighty God.”

(Maine Militia Manual)

Another defining feature of the Maine Militia that makes its categorization as a Type III militia accurate is that it encourages its members in the Maine Militia manual to live exemplary lives. Members are told that blatant violation of the law places the legitimacy of the Maine Militia at risk and that just one member can jeopardize the civilian militia through illegal acts when those wishing to discredit it look for such an opportunity. This meets the third criteria of the non-militant militia, which their intentions are clear and they do not wish to act in a hostile manner.

The Maine Militia is a militia typical of the non-militant militia type. They seek to change government through status quo methods of educating their members on issues and becoming involved in issues of political importance to them. They present their message in a clear and open manner, inviting those who share their beliefs to join at their own free will. Finally, they have motives that are not hostile in nature. In fact, quite the opposite is true; they deplore illegal acts and discourage them. For these reasons, it is clear that the Maine Militia is a good example for what the non-militant Type III militia represents.

The Militia to Balance Tyranny

We have established the historical nature of the militia, examined in a broader sense what the modern militia has become, and examined three types of militia that exist in America today, along with specific case studies of each militia type. Yet the question remains, is there a legitimate need for any one of these types of militia to continue to exist in today's society?

The hardest part of answering this question is separating the issue of gun control from the intent of James Madison in establishing the militia. Often the debate over the militia being legal or illegal falls revolves around the question of whether individuals should be able to own guns. However, that debate is not critical to the understanding of the purpose for the militia.

James Madison wanted to ensure the existence of the militia to prevent the possible tyranny of the federal government over its citizens. At that time, the country was young, undeveloped, and untested. Time has changed those things. Today, two key advancements, the development of an effective federal and state court system, and the development of mass communications, specifically the television and the Internet, have taken the role of the militia in serving as a balance of power to the standing army and other tyrannical features of a strong central government that James Madison, Patrick Henry, and Richard Henry Lee were concerned about.

The first advancement that serves to replace the need for the militia to balance central control is a well-developed, sophisticated, multi-tiered, diversified court system on two levels built up over two centuries of democratic government. The United States Constitution established only one court, the United States Supreme Court. All other

courts came about through acts of legislation of Congress, as outlined in the Constitution. Additionally, the Constitution states that all powers and duties not explicitly outlined in the document are left to the states. For this reason, the states have created court systems to handle all matters not pertinent to federal law. The United States court system serves on two levels, the federal and the state. The court system is also multi-tiered. In addition to having courts of original jurisdiction, appellate courts also exist. Beyond the appellate courts, there are circuit courts. State courts mirror the federal system with many tiers as well. These tiers allow for plaintiffs and defendants to have adequate opportunity to make their case to different individuals and find justice. The court system is also well developed. With over one hundred years of precedent to work from, the current court judges are able to make decisions in a fair and equitable manner. Common law has been well established in our legal system and makes our court system more advanced than it has ever been before.

The advancement of the court systems in the United States is an important development in preventing tyranny by any branch of government, specifically the federal government. A well-defined and developed court system allows for issues that might infringe on individual liberty to be challenged before they ever cause any destruction of liberty. The power of the sword has been replaced with the authority of the law. For this reason, the purpose of the militia to act when liberty is threatened is not necessary. The courts act to circumvent the federal governments attempt to shift the scale to far one way or the other. The U.S. court system has replaced the need for groups in our society that violate the law for the purpose of preventing tyranny.

The second advancement that serves to replace the need for the militia to balance the scale of liberty and prevent tyranny by the federal central government is the development of mass communication, especially television and the Internet. The television and the Internet allow for information to be disseminated to the masses in a rapid manner that those who ratified the Bill of Rights never could have imagined possible. Twenty-four hour news stations and up to the second website data sources on the Internet allow the common citizen to be informed on what is happening in their government. Unlike the days prior to the development of mass communications, reactions to changes in law are instant and quickly felt. This makes it hard for the federal government to implement policies that take away the liberties of the people without their consent. The average citizen has the ability to be more informed on what happens in government than ever before.

With these two advancements, the need to have the militia to serve as a balance of power to the standing army and other tyrannical features of a strong central government is nonexistent. Despite the long lasting value of the United States Constitution and its many relevant aspects to our country, the idea that the militia is needed to provide liberty to the population as a whole is not justifiable.

The Militia to Protect the Liberty of the Individual

In addition to the idea that James Madison established the militia in the Second Amendment to the United States Constitution for the protection of liberty of the population as a whole against the tyranny of the central government, there also exists an idea among many militia members that the Second Amendment was written to protect the individual sovereignty of each citizen and that individuals are politically sovereign not bound by the corporate law of society. However, as Bill Utterback in his article “Individual Sovereignty and the Culture War” points out, individual sovereignty is a “dangerous patriot myth.” (www.mo51st.org) The concept of individual sovereignty is what has given justification to people such as Timothy McVeigh to carry out the Oklahoma City bombing or to members of the Ku Klux Klan to lynch a black man. However, this is not what was meant by the Second Amendment when written by James Madison.

In the United States, the people as a whole are sovereign. The preamble to the United States Constitution states “We the People” are the ones who have established and ordained the government under which we live. This sovereignty of the whole does not mean that individuals have political sovereignty. The problem is created when these two concepts coincide with each other, as was seen with the Type II militia. When individuals confuse their right to individual religious sovereignty as political, tensions can mount and problems exist. (Pitcavage, www.militia-watchdog.org)

The other problem is understanding exactly what individual sovereignty means. Militia members who view themselves as having individual sovereignty see themselves as their own kings, subject to no rules or laws whatsoever. Each person may believe it is

acceptable to murder and not be held accountable for those acts. They do not see themselves as under the United States Constitution or any other federal, state, or local laws. It amounts to nothing more than “pure anarchy,” as Utterback suggests.

(www.mo51st.org) In our society, individuals have rights, but not absolute rights.

Individuals are not kings, and are not politically sovereign. One individual’s rights stop where another individual’s rights begin.

One of the rights militia members like to say they have is the right to travel where they wish, when they wish, without any government regulation, requirements or fees. For this reason, some members of militia organizations do not purchase car insurance or register their vehicles or obtain driver’s licenses. They violate these laws under the idea that they are politically sovereign and have the right to travel where they want to travel. The article “Individual Sovereignty and The Culture War” challenges this idea and presents several interesting arguments against this often used justification for violation of the law by militia members. (www.mo51st.org)

The first point that the article makes is that there is a difference between the “right to travel” and the “right to operate a motor vehicle.” The privilege to operate a car on public roads must be earned by showing one is a safe driver and by passing a written test. Also, fees must be paid to obtain the right to operate the vehicle. It cost money to maintain the roads and someone must pay it. If everyone took the attitude of the militia members, then what would happen to the roads? While individuals have the right to do certain things, it is also the job of the government to protect the individual rights of other citizens, in this case the driver harming another because they had not earned the privilege to drive on the roads.

Ultimately, the “patriot myth” is just that, a myth. Anyone who acts out believing this myth to support their actions can expect to find resistance from those elected to represent the people as a whole in the government. There are numerous problems in the government today, some which may be unconstitutional; however maintaining the militia for the purpose of protecting the liberty of the individual is not the solution.

Conclusion

Do militia organizations in the twenty-first century serve a legitimate purpose in the United States? To the extent that they promote the betterment of society through instruction in the protection of freedom, there will always be a need for the militia. However, there is not a need for those organizations seeking to blatantly violate the rule of law through illegal acts aimed at promoting individual sovereignty. The Second Amendment to the United States Constitution was written to ensure liberty for those who would follow in future generations. We must not only recognize the true purpose for which militia have served in this country, but we must make sure we continue to work towards achieving true liberty for all, regardless of race, color, or creed. Militant and cultural militia types serve no legitimate purpose consistent with the reason for the establishment of the militia in the Second Amendment to the Constitution. Non-militant militia whose purpose is the education of its members on how to become better citizens and protect liberty through legal processes does serve a legitimate purpose in today's society.

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