

The Citizen-Soldier in War and Peace

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An Introduction to the History and Evolution
of Citizen Armies and Militias

James Biser Whisker
and
John R. Coe



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*The Citizen-Soldier in War and Peace:
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This book is respectfully dedicated to

Franklin L. Burdette

Graduate of Marshall College
Professor, University of Maryland
Director, Maryland Bureau of Governmental Research

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John R. Coe was born, raised and currently resides in Parkersburg, West Virginia. He is the youngest child of the late Dr. Donald E. Coe and Jacqueline Galka Coe. He received his B. S. degree in biology from Glenville State College, his M.S. from WVU, and his Ed. D. from Liberty University. He spent most of his working career with the Wood County Schools and retired as a central office administrator. John is currently an independent businessman in an analytical chemistry lab. He is an avid fire-arm collector of pistols, rifles and muzzle loaders. He can be found almost any day on the rifle range. He is married to his college sweetheart for 37 years. He and Dr. Whisker have collaborated on many books together and have been friends for over 43 years.

Part I

Introduction to Citizen-Armies

Introduction

The citizen soldier is a concept as old as, and certainly predating, recorded history. If we examine Plato's thought we find that the first city of the Republic was occupied before the emergence of the warrior class. The second of Plato's three hypothetical cities came emerged precisely because a warrior class had emerged from among the citizenry to dominate and control it. Good government was impossible as long as the warriors ruled.

Since Plato's time many political theorists have concluded that the best way to insure that there will be open and honest government is to guarantee the right of the people to keep and bear arms as an unorganized militia. The idea that the people be armed weighed heavily in the minds of the English Puritans and radical Whigs who were writing substantial political philosophy in the seventeenth and eighteenth centuries. They returned to the major premise of antiquity: that only freemen may be armed and that the mark of a freeman was his right to keep and bear arms. While there were some assumptions that only an armed citizen could resist the proverbial "intruder in the night" and that a citizen might use arms for recreation and hunting, there was, constantly, the clear commitment that the state had made that the best and ultimate defense and protection of the state rested in the hands of the citizen-soldiers trained at arms.

In medieval law there was a three fold obligation shared by all freemen. They must repair and maintain public roads and bridges and the like; they must serve as an ancillary police force; and they must be prepared to bear arms in defense of the state as a militia. Both the posse and the militia requirements were based on the need for privately owned arms. Medieval law in these areas developed slowly, but was always based in common law and practice. Each man was required to keep in his home the arms of his socio-economic class and have these in order ready to use in case

of emergency. Regular practice with one's arms was a general requirement. At least one English king attempted to discourage participation in any form of recreation except practice with arms, primarily with the long bow.

There were three levels of military obligation generally accepted in medieval states. The standing army was populated with trained, professional soldiers. Some of the citizenry was trained to at least a minimal degree and comprised a select militia. The untrained masses of able-bodied freemen comprised a general militia. The principle of *levee en masse*, recognized under international law, grew out of the unenrolled, mass militia of the middle ages.

The first significant contribution to the literature of the militia was made by Niccolo Machiavelli who argued that freedom was incompatible with standing armies. Given to great mischief, the standing armies represented a great threat to the people and the state in Machiavelli's writings. Although we frequently associate Machiavelli with authoritarian government as a matter of fact he looked forward to the establishment of a democratic regime as soon as possible following the establishment of a nation-state.

In democracies militias were established early as a part of the general western commitment to integral liberal values. The English militia is intimately associated with the transition from divine right kingship to liberal democracy. One of the grave errors of the Stuart monarchy was to seek control over the total armed forces of the nation. The trained bands, as the popular militias were then called, sought autonomy and identified their independence with freedom for the people. In the British colonies in North America the provincials demanded complete control their own military affairs.

Two democracies, Israel and Switzerland, have placed great emphasis on the citizen-soldier and the popular militia. Both nations require essentially universal military service and training of their subjects. Universal military service and training has resulted in wholly armed states in these two nations in which firearms are immediately available to the citizens. There is no indication that this has had any negative bearing on crime rates. Israel patterned its militia system after the Swiss program. Jews who emigrated to Israel after the near extermination of European Jewry during World War II knew that authoritarian political systems permitted no private ownership of firearms, at least among minority populations. They have vowed that

they will never again be caught in the position of being effectively disarmed in the face of their enemies. The Swiss have come to believe that their long history of autonomy is inter-related with the armed nation.

Few Western democracies have followed Machiavelli's advice or the Swiss or Israeli example. A few of the Nordic nations, such as Sweden and Finland, have militia systems and a very few other democratic nations have universal military training. Most democracies have accepted the perspective of those who believe that mature nations have advanced beyond the "Wild West" mentality. Anti-firearms rhetoric has created a climate of opinion that accepts conclusions such as that firearms breed violence and that civilized nations are disarmed nations. They see a military armed with advanced weapons systems that are electronic, computerized, specialized and complex. Such is the current state of military preparedness. The foot soldier with small arms training is obsolete. Without any need for the foot soldier there is no need for small arms and marksmanship training and thus there is no need for the militia or ancillary support for individual firearms training.

Totalitarian governments have heeded Machiavelli's advice more than have Western democracies. They have armed their citizens and made certain that their citizens from early childhood through adulthood have become familiar with the arms regularly used by their military. They train their people in the use and assembly and disassembly of arms of all military types. The Soviet Union uses its D.O.S.A.A.F. ["Voluntary Society for the Assistance of the Army, Navy and Air Force"] as a pre-induction military support organization. Likewise, Communist China has an advanced and well funded people's militia system. Fascist Italy, Imperial Japan and Nazi Germany all had para-military organizations which provided for training of military eligible citizens of all ages. Non-democratic governments have built regime support by showing their military hardware and building pride among the people in the sheer show of terror which only military hardware can bring. Knowing that either they were limited by international agreements not to exceed a certain size in the military, or knowing that their budgets cannot fully fund the military they would like, they arm and train the population. Totalitarian governments are well aware that they may fight total and unrestrained warfare and hence become totally armed camps. Pre-militia and militia training is a key ingredient in the concept of the armed nation.

Totalitarian governments realize that an armed and trained population is a threat to their authoritarian rule so they train the population under careful supervision and control the supply of arms. Some totalitarian nations like the Soviet Union and Communist China train their people in basements of factories and other public facilities. The government provides arms, training, instruction and ammunition. Most compel their citizens to participate.

Contemporary totalitarian governments have drawn their inferences and conclusions about weapons and citizen arms training from a very realistic view of the realities of war. The war in Korea, the Vietnam War, the war in Afghanistan and the recent joint western military action in the Middle East have all utilized advanced weapons systems, but have depended no less on the foot soldier armed with a rifle. The holy wars of communism, “wars of national liberation,” have not disappeared, and will not disappear, with the collapse of communism in the former Soviet Union. Communism is still much alive in China and in the nations of southeast Asia under its influence. And wars of national liberation have always depended upon the success of the individual citizen-soldier and his small arm. Many successful wars of national liberation have been fought with obsolete and obsolescent weapons. American soldiers found Russian World War I bolt action rifles on bodies of many Viet Cong soldiers. Wars of national liberation are necessarily fought by citizen-soldiers, that is, unorganized militia, consisting of men who are first and foremost agricultural peasants and secondarily soldiers in the revolution. Soldiers in wars of national liberation are engaged in guerrilla warfare and so must disguise their role in the armed camp.

In the twenty-first century, the select militia has become formalized and in most nations is entitled something like National Guard as is the case in the United States. Usually armed with weapons the same as, or similar to, the standing army, the trained militia has advanced far beyond what the Founding Fathers might have possibly conceived. Its role has greatly expanded to include two new tasks: counter-insurgency warfare and civic action, with emphasis on relief and assistance during and following natural and also man-made disasters.

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The Citizen-Soldier

The citizen-soldier may have been either conscript or volunteer. He stands in marked contrast to the professional soldier whose vocation is war. The citizen-soldier does not enter war for pay or booty. He goes to war only reluctantly, spurred on by notions of patriotism and nationalism and of duty. The citizen-soldier was the backbone of every American army. He deplures war. It was he who called attention to the excesses of professional soldiers in such disgraceful events as My Lai, Vietnam. He fights only as last recourse, when his nation is threatened, and not in imperialistic adventures. A recent article concluded that the Second Amendment to the United States Constitution was adopted “as a declaration that Federal Government can never fully nationalize all the military forces of this nation” because the masses of men with their own guns constitute “an essentially civilian-manned and oriented set of military forces” who can “inveigh against federal professionalization of the state militia.”¹ The Preamble to the Declaration of Independence listed as two grievances against King George III that “[h]e has kept among us, in times of peace, standing armies without the consent of our legislatures [and] [h]e has affected to render the military independent of and superior to the Civil power.”

The citizen-soldier is seen, again, in medieval times, as the peasant conscripted to fight as a foot soldier. After the wars were over the peasant, too, returned to the fields. He is seen in the Minuteman of Lexington and Concord who left his business to attend to the matter of the nation's liberty. Of the wrongs done to the colonists, the Minute Men of Massachusetts, and the role of the citizen-soldiers, Chief Justice Earl Warren once wrote,

¹ Levine, Ronald B. and Saxe, David B., “The Second Amendment: The Right to Bear Arms,” *Houston Law Review* 1: 1 (1969) a 8.

Among the grievous wrongs of which [the Americans] complained in the Declaration of Independence were that the King had subordinated the civil power to the military, that he had quartered troops among them in times of peace, and that through his mercenaries, he had committed other cruelties. Our War of the Revolution was, in good measure, fought as a protest against standing armies. Moreover, it was fought largely with a civilian army, the militia, and its great Commander-in-Chief was a civilian at heart. . . . [Fears of despotism] were uppermost in the minds of the Founding Fathers when they drafted the Constitution. Distrust of a standing army was expressed by many. Recognition of the danger from Indians and foreign nations caused them to authorize a national armed force begrudgingly.²

Definition of Militia

The citizen-soldier as a militiaman, is either a member of the unenrolled or the enrolled militia. Those enrolled formally today belong to the National Guard units of their state. A simple dictionary definition of militia is, “a body of soldiers for home use.” The term meant “miles” or “troops” and was derived from the Latin word for soldiers.³ In medieval Europe it was “the whole body of freemen” between the ages of 15 and 40 years, who were required by law to keep weapons in defense of their nation.⁴ In the later Middle Ages the militia was the whole body of “citizens, burgesses, free tenants, villeins [serfs] and others from 15 to 60 years of age” who were obliged by the law to be armed.⁵

The United State Code defines the militia in this way. The militia of the United States consists of all able-bodied males at least 17 years of age and, except as provided in section 313 of title 32, under 45 years of age who are, or who have made a declaration of intention to become, citizens of the

² Warren, Earl, “The Bill of Rights and the Military,” *New York Law Review* 37 (1962) at 183–84.

³ “Militia” in *Etymological Dictionary of the English Language*.

⁴ “Assize of Arms,” (1181) in Lyon, B., ed. *A Constitutional and Legal History of Medieval England*. New or; 2nd ed., 1980, p. 273.

⁵ Bagley, J. J. and Rowley, P. B., eds. *A Documentary History of England, 1066–1540*. New York, 1965, 1: 155–56, daed 1253.

United States and of female citizens of the United States who are members of the National Guard. The classes of the militia are: (1) the organized militia, which consists of the National Guard and the Naval Militia; and (2) the unorganized militia, which consists of the members of the militia who are not members of the National Guard or the Naval Militia.⁶

Sir James A. H. Murray in his *New English Dictionary of Historical Principles*, defined the militia as, a military force, especially the body of soldiers in the service of the sovereign of the state, [who are] the whole body of men amenable to military service, without enlistment, whether drilled or not A citizen army as distinguished from a body of mercenaries or professional soldiers.⁷

Simeon Howard (1733–1804), writing in Boston in 1773, said that a militia was “the power of defense in the body of the people . . . [that is], a well-regulated and well-disciplined militia. This is placing the sword in hands that will not be likely to betray their trust, and who will have the strongest motives to act their part well, in defence of their country.”⁸

The third edition of *Black’s Law Dictionary* defined militia as “The body of citizens in a state, enrolled for discipline as a military force, but not engaged in actual service except in emergencies, as distinguished from regular troops or a standing army.” The Free Dictionary, citing the American Heritage Dictionary, defines the militia as “An army composed of ordinary citizens; a military force that is not part of a regular army and is subject to call for service in any emergency; the whole body of physically fit citizens eligible by law for military service.”⁹ The Cambridge English Dictionary defines militia as “a military force whose members are trained soldiers but who often have other jobs.” According to the *Oxford Dictionary of Constitutional Law*, the term militia may be defined as [a] military force that is raised from the civil population to supplement a regular army in an emergency. The word, first recorded in the English language around the end of the 16th century, comes from the Latin term *militia* (‘military service’), which in turn descends from *miles* (‘soldier’).

⁶ Aug. 10, 1956, ch. 1041, 70A Stat. 14, § 311; Pub. L. 85–861, § 1(7), Sept. 2, 1958, 72 Stat. 1439; Pub. L. 103–160, div. A, title V, § 524(a), Nov. 30, 1993, 107 Stat. 1656; renumbered § 246, Pub. L. 114–328, div. A, title XII, § 1241(a)(2), Dec. 23, 2016, 130 Stat. 2497.

⁷ Murray, James A. H. *A New English Dictionary of Historical Principles*, Sagwan Reprint, 2018, 4: 439.

⁸ Howard, Simeon. “A Sermon Preached to the Ancient and Honorable Artillery Company in Boston,” (1773) in Hyneman, Charles and Lutz, Donald S., eds. *American Political Writing during the Founding Era*. Indianapolis, 1983, 1: 199.

⁹ American Heritage Dictionary of the English Language. 5th ed. 2106.

Your Dictionary defines militia this way: “The definition of a militia is an army made up of regular citizens called to respond during an emergency. A military force that is not part of a regular army and is subject to call for service in an emergency. An army composed of ordinary citizens rather than professional soldiers.”

Wikipedia say that, “A militia is generally an army or some other fighting organization of non-professional soldiers, citizens of a country, or subjects of a state, who may perform military service during a time of need, as opposed to a professional force of regular, full-time military personnel or to members of a warrior nobility class. Generally unable to hold ground against regular forces, militias commonly support regular troops by skirmishing, holding fortifications, or conducting irregular warfare, instead of undertaking offensive campaigns by themselves. Local civilian laws often limit militias to serve only in their home region, and to serve only for a limited time; this further reduces their use in long military campaigns.”

Militias may be either military or paramilitary. The following are some of the contexts in which the term militia may be applied. First, forces engaged in a defense activity or service, to protect a community, its territory, property, and laws. Second, the entire able-bodied population of a community available to be called to arms. See *levees en masse*, below. Third may be a subset of these who may be legally penalized for failing to respond to a call-up. Fourth is also a subset, in this case of these who actually respond to a call-up regardless of legal obligation. Fifth, it may be erroneously applied to private, that is, non-governmental, forces which are not necessarily directly supported or sanctioned by a government. Sixth, it may be applied to an irregular armed force that enables its leader to exercise military, economic, or political control over a sub-national territory within a sovereign state. For example, in former soviet republics, an official reserve army composed of citizen-soldiers known as the *militsiya*.¹⁰ Seventh, it may apply to select militia composed of a small, non-representative portion of the population. Eighth, it may be used to describe maritime militias composed of fishermen

¹⁰The term *Militsiya* in Russia and former Communist Bloc nations was specifically to refer to the civilian police force, and should not be confused with the conventional western definition of militia. The term, as used in this context, dated from post-revolutionary Russia in late 1917 and was intended to draw a distinction between the new Soviet law enforcement agencies and the disbanded Tsarist police. In some of these states militia was renamed back to police such as Ukraine while in the other states it remains such as Belarus.

and other participants of the marine industry which are organized and sanctioned by a state to enforce its maritime boundaries.¹¹

Webster's New Collegiate Dictionary defines the militia as "a part of the organized armed forces of a country liable to call only in emergency" and as "the whole body of able-bodied male citizens declared by law as being subject to call to military service." One who participates in the militia, Webster notes, is a militia man. Webster's New World Dictionary provides an even more comprehensive definition of militia:

Militia. 1. originally, any military force. b. later, any army composed of citizens rather than professional soldiers, called out in time of emergency. 2. In the United States, all able-bodied male citizens between 18 and 45 years old who are not already members of the regular armed forces: members of the National Guard, Organized Reserve Corps (Army and Air), and the Naval and Marine Reserves constitute the organized militia; all others, the unorganized militia.

Webster's original dictionary contained this entry on the word militia: Militia: noun [Latin from miles, a soldier; Gr. war, to fight, combat, contention. The primary sense of fighting is to strive, struggle, drive, or to strike, to beat, Eng. moil, Latin molior; Heb. to labor or toil.] The body of soldiers in a state enrolled for discipline, but not engaged in actual service except in emergencies; as distinguished from regular troops, whose sole occupation is war or military service. The militia of a country are the able bodied men organized into companies, regiments and brigades, with officers of all grades, and required by law to attend military exercises on certain days only, but at other times left to pursue their usual occupations.¹² Wiktionary defines militia as "An army of trained civilians, which may be an official reserve army, called upon in time of need, the entire able-bodied population of a state which may also be called upon, or a private force not

¹¹ "Militia" in Wikipedia. See also Ahrem, Ariel. *Proxy Warriors: The Rise and Fall of State Sponsored Militias*. Stanford University Press, 2011. See also Halbrook, Stephen P., "The Right of the People or the Power of the State Bearing Arms, Arming Militias, and the Second Amendment," *Valparaiso Law Review*, 26: 1, (1991).

¹² *American Dictionary of the English Language* (1828).

under government control. WordNet 3.0 from Princeton University calls the militia “the entire body of physically fit civilians eligible by law for military service; civilians trained as soldiers but not part of the regular army.”

A mid-Nineteenth Century dictionary merely defines militia as a trained band, a standing and total military force of the nation.¹³ Another dictionary defines the militia as follows:

1. an authorized military force other than that of the full time, professional military establishment, especially an army of citizens trained for war or any other emergency
2. an authorized but unorganized military force consisting of the entire body of able-bodied men in the United States or its territories who have reached the age of 18 and are not more than 45
3. any citizens’ army; any nonprofessional armed force organized or summoned to duty in an emergency.¹⁴

The latter definition includes “any non-professional armed force” which allows, unlike most other dictionaries, for non-governmental, or private. Militia forces. It is our contention that such irregular units are not militias in an ordinary sense, nor would we think of them covered by the Second Amendment or the Militia Clause of the Constitution.

The Encyclopedia Britannica has a long and very useful summary of militias through history. As a simple definition, it offers the following: “Militia, military organization of citizens with limited military training, which is available for emergency service, usually for local defense. In many countries the militia is of ancient origin. . . .” The Collins Dictionary wrote, “A militia is an organization that operates like an army but whose members are not professional soldiers.”

CNN Politics shared this perspective: At the time of the American Revolutionary War, militias were groups of able-bodied men who protected their towns, colonies, and eventually states. When the Constitution

¹³ *Johnson’s and Walker’s English Dictionary*. Philadelphia, 1853, p. 601.

¹⁴ Barnhart, Clarence, ed. *The World Book Dictionary*. Chicago, 1972, 2: 1306. See also *The American Heritage Dictionary of the English Language*. New York, 1969, p. 832, which says essentially the same thing.

was drafted, militia were state-based. States were responsible for organizing them. Initially, well-regulated meant well-organized, well-armed, well-disciplined. It meant the militia was in an effective shape to fight and was prepared to do its duty.

The Militia Act of 1903, defines the term militia, noting that it is used to describe two classes within the United States: The Organized militia consists of state militia forces; notably, the National Guard and Naval Militia. Second, Unorganized militia, comprising the reserve militia. Every able-bodied man of at least 17 and under 45 years of age, not a member of the National Guard or Naval Militia is a member of this militia. Prominent historian Charles A. Beard noted “That the militia ... shall be divided into two classes ... the organized militia, to be known as the National Guard ... and the remainder to be known as the Reserve Militia.”¹⁵

The U.S. Legal website defines militia in this way. “Militia refers to a body of citizens armed and trained by the state for military service apart from the regular armed forces. It is composed of physically fit civilians eligible by law for military service. It characterizes a military force recruited directly from civilians who would not otherwise be liable to serve in a state’s regular armed forces. Usually the state imposes military obligation on the militia for the purposes of local or home defense and in case of emergencies. However, on occasions such militias have been employed abroad also. It can also refer to unorganized military force drawn from within a civilian population and which has taken up arms. For example in modern Somalia the armed followers of different warlords have been characterized as militias.” The website noted a tri-fold division of militias in the United States. First was the organized militia created by the Militia Act of 1903 which consist of State militia forces, notably the National Guard and the Naval Militia. The second part consists of the reserve militia or unorganized militia, also created by the Militia Act of 1903 which presently consist of every able-bodied man of at least 17 and under 45 years of age who are not members of the National Guard or Naval Militia. There is a theoretical third part noted as a select militia is composed of a small, non-representative portion of the population, often politicized. There may also be a private organizations which are based on their own interpretation of the concept of the militia and which have no legal standing. The use of

¹⁵ Beard, Charles Austin: *Readings in American Government and Politics*. Macmillan, 1909, p. 308.

the term militia for these outfits are more a matter of convenience than of true legal meaning.¹⁶

Another authority defined militia as follows,

The word militia has in the past been given three widely different meanings. In its broadest sense it covers all citizens who could be called out in an emergency to defend the country, our able bodied manpower. In a narrower sense ... it refers to those citizens, roughly between the ages of 18 and 45 years, who were enrolled by law in regularly organized units ... The National Guard ... is the third class of militia.... [T]he guardsman is essentially an amateur soldier; the [other two classes of] militiaman was ever a civilian.¹⁷

U.S. Supreme Court on Militias

The U.S. Supreme Court has only rarely ruled on the Second Amendment, the militia clause of the U.S. Constitution, or the general right to keep and bear arms. It has accepted reasonable restrictions on the use and possession of arms, including a ban on fully automatic weapons and control of so-called gangster weapons, such as brass knuckles. The high court discussed the meaning on militia in a 1939 decision which was based on traditional views expressed in state court decisions.

The significance attributed to the term Militia appears from the debates in the Constitutional Convention, the history and legislation of Colonies and States, and the writings of approved commentators. These show plainly enough that the Militia comprised all males physically capable of acting in concert for the common defense. "A body of citizens enrolled for military discipline." And further, that ordinarily when called for service these men

¹⁶ Militia Law and Legal Definition | USLegal, Inc.

¹⁷ Todd, Frederick. "Our National Guard: An Introduction to its History," *Military Affairs* (1941), 73-86 at 73-74.

were expected bearing arms supplied by themselves and of the kind in common use at the time.... In all the colonies, as in England, the militia system was based on the principle of the assize of arms. This implied the general obligation of all adult males inhabitants to possess arms, and, with certain exceptions, to cooperate in the work of defense. The possession of arms also implied the possession of ammunition, and the authorities paid quite as much attention to the latter as to the former.¹⁸

In *Presser v. Illinois* the United States Supreme Court noted that,

It is undoubtedly true that all citizens capable of bearing arms constitute the reserve military force or reserve militia of the United States as well as of the states [T]he States cannot, even laying the constitutional provision in question out of view, prohibit the people from keeping and bearing arms, so as to deprive the United States of their rightful source for maintaining the public security, and disable the people from performing their duty to the general government.¹⁹

In 1939 the Supreme Court reaffirmed this point of law. The militia is “comprised [of] all males physically capable of acting in concert for the common defense [W]hen called for service these men were expected to appear bearing arms supplied by themselves and of the kind in common use at the time”²⁰

In one of the very few rulings given by the Supreme Court on the right to keep and bear arms, the high court looked at the historical context in which militias had developed.

It is undoubtedly true that all citizens capable of bearing arms constitute the reserved military force or reserve

¹⁸ *United States v. Miller*, 307 U.S. 174 at 179–80 (1939).

¹⁹ *Presser v. Illinois*, 116 U.S. 252 (1886).

²⁰ *U. S. v. Miller*, 307 U.S. 174 (1939).