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THE 1933 NATIONAL GUARD BILL(U) ARMY WAR COLL CARLISLE

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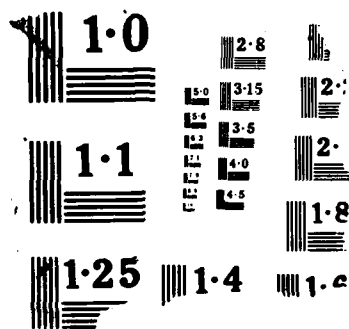
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THE 1933 NATIONAL GUARD BILL

BY

COLONEL LLOYD E. KRASE

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USAWC MILITARY STUDIES PROGRAM PAPER

THE 1933 NATIONAL GUARD BILL

An Individual Study Project
Intended for Publication

by

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U.S. Army War College
Carlisle Barracks, Pennsylvania 17013
14 March 1988

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ABSTRACT

AUTHOR: Lloyd E. Krase, COL, IN

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The National Guard entered the twentieth century with an uncertain future. From 1902 through 1933, the United States Congress enacted legislation that would have a profound impact on the future of the National Guard. The last of these acts was the 1933 National Guard Bill. Information was gathered by reviewing literature and conducting a policy trace of this bill from its formulation in the National Guard Association through the signature of President Roosevelt. The article concludes with a short discussion about the necessity of the legislation in light of today's knowledge.



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A recent listing of Advisory Committees to the Association of the United States Army reveals National Guard officers using signature blocks that indicate they are members of some state National Guard like Iowa Army National Guard (IaARNG). Other signature blocks indicate the officer is a member of the National Guard of the United States (NGUS). Two National Guard officers at a service school say they are attending the course under different portions of the United States Code--one under the Militia Clause of the Constitution (U.S. Code Title 32), and one under the Army Clause of the Constitution (U.S. Code Title 10). One states he is subject to the Uniform Code of Military Justice while the other states he is subject to the military statutes of his state. How can this be? Are both correct? How can National Guardsmen belong to two military organizations concurrently? The answer to these questions is the National Guard leads a "dual existence," or as a 1987 article from the US Army War College calls it, "a doppelganger-a shadowy double" of itself.¹ This dual existence is the reason National Guard officers take two oaths, one to the state and one to the nation. Likewise, National Guard enlisted soldiers take an enlistment oath where they promise to obey not only the President of the United States, but also the governor of the state.

What are these two organizations? These organizations were created by a 1933 amendment to the 1916 Army Defense Act as amended in 1920. Several authors of National Guard and

Army histories attribute the idea of this dual legal existence to the National Guard Association (NGA), an organization of National Guard officers.² If this is true, what was their motivation to press for the passage of legislation to cause establishment of this "doppelganger?"

This article examines the historical context of this legislation and its subsequent impact on the United States military, and, in particular, the National Guard. In order to do this, it is necessary to look at the situation in the late 1920's and early 1930's and trace the development of this 1933 Amendment.

During the period from the enactment of the "1792 Militia Act" to the passage of the 1933 amendment, there were a continuing series of problems with the administration of the National Guard. These problems related to the lack of prescribed training standards on a national basis, bringing the National Guard into national service, continuity of National Guard units while in national service, service of National Guard units outside the boundaries of the United States, and return of these units to state status intact.

Deployment of the National Guard outside the boundaries of the United States was an issue during this timeframe due to the opinion of many state governors that the wording in the Constitution that provided for a militia to "execute the laws of the Union, suppress insurrections and repel invasions"³ meant exactly that. Those with this opinion held that the

militia was not to operate outside the borders of the United States. Illustrations of the decisions resulting from this position are several. During the War of 1812, the Ohio and New York militias did not cross into Canada to attack the British forces since they felt this would constitute participating in an invasion rather than "repelling an invasion." Also, the Governors of Massachusetts and Connecticut refused to honor the President's call for militia during this war since they disagreed that invasion was probable even though the British fleet had blockaded the coast.⁴ For the Mexican War, this view of the Constitution was the rationale for Congress to authorize the organization of volunteers not subject to the restrictions of the militia clause for offensive operations in Mexico rather than attempt to utilize the militia. Likewise, this constitutional problem precluded service of militia organizations during the Spanish-American War.

The lack of uniform standards for the training of the militia also posed a problem since it allowed the various states to train to whatever standards they desired, including the frequency of training. Some of the northeastern states provided reasonably adequate funding to allow some training of their militia. However, the majority of states did not. Therefore, there was not uniformity in either readiness nor organizational structure among the various state militias.

Attempts to correct these problems were made in the early 1900's. The first was the Dick Act of 1903 which established

standards for training and organization of the militia. The Act, however, left the question of service outside the borders of the United States unanswered. In 1908, legislation was passed which included provisions that the National Guard could serve "either within or without the territory of the United States."⁵ But, in response to the question of National Guard service in Mexico to "enforce the laws of the Union" in 1912, United States Attorney General Wickersham concurred with the Judge Advocate General of the Army. According to this opinion, the National Guard could not be utilized for this purpose under the Militia Clause because treaties were not "laws of the Union," one of the authorized uses of the militia in the Militia Clause of the Constitution.⁶

Congress acted swiftly in an attempt to resolve the issue raised by this opinion by passage of the National Defense Act of June 3, 1916. This act contained section 111, authorizing the President to draft into federal service members of the National Guard who would be automatically discharged from the National Guard.⁷ While this provision seemed to resolve the overseas deployment problem, it failed to insure the structure of National Guard units on federal status and a method to return these units to state status intact.

National Guard members deeply resented being drafted for service in France during World War I rather than entering as federalized units. These feelings were shared by members of

Congress as evidenced by the following testimony from the debate of the 1933 Amendment.

For years this condition was most unsatisfactory, not only to Congress, but to the officers and men who comprised the great body of Organized Militia, now known as the National Guard of the United States. Because of the fact that the National Guard was administered under the militia clause of the Constitution, it had to be drafted for service outside the United States in the World War notwithstanding the fact that every officer and man in the organization had volunteered for service. The units and organizations, some of them dating back to Revolutionary War Period, were ruthlessly destroyed and the individuals were organized into new war strength organizations.⁸

Balancing this desire for ease of nationalizing the militia and upgrading the readiness of the militia was the concern on the part of Congress to not usurp states rights. As Martha Derthick states in her book, The National Guard in Politics, there "was Congressional reluctance to compromise states rights."⁹ This reluctance was in spite of the increasing federal funding provided to the militia. In his book, Wealth of Nations, Adam Smith observed that government becomes involved increasingly in the defense function as a society "advances in civilization."¹⁰ This has certainly been true in the United States. From the formation of locally funded militia companies within the concept of "unorganized militia" which later became state supported militia organizations, as the nation developed and warfare increased in complexity, the funding of the militia has been increasingly by the federal government. This funding came with more federal supervision and standards for the National Guard. As noted earlier, Congress and, in particular,

the House of Representatives was sensitive that in the process, states rights regarding the National Guard be maintained.

Additionally, the leadership of the National Guard and many in Congress were concerned about maintaining unit integrity during the federalization process and transition back into the militia role following federal duty. There are frequent references to this concern in the reports of the National Guard Association meetings following the World War. This concern was justified based on the problems they experienced reforming the National Guard following federal service in the World War. The members of the National Guard serving in the Active Army for the World War were discharged without any provision for reforming their previous National Guard units under the Militia clause.

By the early 1930's, it was becoming increasingly critical for the United States to resolve its organizational problems for reserve components. On the international front, Japan had become militarily aggressive and had occupied Manchuria in 1932. For the second time in a decade, Germany was falling apart politically and militarily. Public disorders were common between rival political groups in Germany. It had become increasingly difficult to form parliamentary majorities in the Reichstag without including Hitler's new party.

At the beginning of this decade, during a period of isolationism, the United States ignored world problems and focused most of its energies on internal problems. By 1932,

the depression had reached its low point: monthly wages were about sixty percent of what they were in 1929, industry was operating at half of the 1929 volume, more than 5,000 banks had closed since 1920, average monthly unemployment was twelve million people. Perhaps the only military operation of this period occurred in 1932 when General Douglas MacArthur, Army Chief of Staff, commanded troops in Washington, DC, to disperse the "Bonus Army" composed of World War I veterans who camped out in Washington to force Congress to pass a bill for payment of their bonus certificates.¹¹

This bleak economic picture soon began to affect U.S. military forces. As Congress looked for ways to reduce the budget, one of its targets was military expenditures. This forced the General Staff to place emphasis on the role of the reserve components--particularly the National Guard. In warning Congress against any reductions in military appropriations, the General Staff defended the role of the National Guard as the foundation for the mobilization of a mass citizen army, implying "no longer was it the despised militia of former years."¹² In 1933, the Active Army was 130,000 men while the Guard was 185,000, with the states providing about one-third of the financial support for the Guard.¹³ States still held much of the governmental power in the United States as the Federal Government had not yet taken its role as a strong advocate of social equity and enacted the New Deal legislation.

The National Guard was perceived to have strong political endorsement in Congress. In his book, The Impact of the Great Depression on the Army, John Killigrew noted that in spite of the fact that the Chairman of the House Appropriations Subcommittee, Representative Ross Collins "was not enamored with the National Guard, it need fear little in the annual battle of the budget because of its powerful political support in the Congress."¹⁴

Support for the Guard in these subcommittee hearings came from a not unexpected source when, in late January 1932, the Governor of New York, Franklin D. Roosevelt, sent a strong letter to protest to Congress against any contemplated cuts in National Guard funds. The Governor reminded Congress that "if it wanted to reduce military spending, it should look at the supply and construction items of the bill rather than in the essential training sections."¹⁵

There were several possible solutions for strengthening the reserve component system in the United States, some excluding the state role of the National Guard. A solution supported by many in the War Department was the complete elimination of organized militia and establishment of an "expansible Regular Army" based on the German cadre system. Colonel and Brevet Major General Emory Upton, a proven professional and veteran of the Civil War provided the impetus to the expansible Regular Army proposal after he visited Europe in 1876 and "was impressed immensely by the German cadre system, where the nucleus of all

wartime military formations existed in peace, the ranks filled by reserves at the touch of war."¹⁶ His thoughts on this subject were detailed in The Military Policy of the United States, which was published as a government document in 1904 at the direction of then Secretary of War Elihu Root. Publication assured Upton an influence persisting long into the twentieth century.¹⁷ This Upton plan for an expansible Regular Army was proposed to Congress in January, 1919 by the War Department. During 1919 and 1920, Republican Senator James W. Wadsworth of New York, Chairman of the Senate Military Affairs Committee, held hearings which eventually resulted in the 1920 National Defense Act. The Committee eventually rejected the Upton plan proposed by the War Department and sent to the full Senate a plan proposed by then Colonel John McAuley Palmer. Colonel Palmer was detailed to the committee from the War Department along with Lieutenant Colonel John W. Gulick who would later serve as Executive Officer, Office Chief, Militia Bureau. It was also supported by Major General John P. O'Ryan, Commander of New York's 27th Division, the first National Guard graduate of the War College. Colonel Palmer was detailed to this committee by the War Department based on a request from Senator Wadsworth who had heard that Colonel Palmer was very articulate and knowledgeable about the concept of an army composed of citizen soldiers. Senator Wadsworth was not disappointed in Colonel Palmer and came to admire him.

Colonel Palmer was the son of Major General John M. Palmer of George Thomas's XIV Corps and the Army of the Cumberland, hero of Stone's River, Chickamauga, and the Atlanta campaign. His father was a citizen soldier, appointed a colonel after raising a regiment from his district. The elder Palmer contributed directly to the younger's military thought. He knew his own father's thoughts regarding citizen soldiers and realized that Emory Upton's strictures against amateur soldiers were exaggerated. His father had been an officer whom any professional would respect. While formulating his thoughts on the use of citizen soldiers versus standing armies, he returned to his father who set him further along non-Uptonian lines.

If American citizen armies, extemporized after the outbreak of war, could do as well as Washington's Continentals and as well as the citizen armies of Grant and Lee, what might they not do if organized and trained in time of peace?"¹⁸

Colonel Palmer's formal association with this problem came early in his career. In 1912 as a captain he served on a small committee of General Staff officers at the War College which examined the problem of overcoming the Militia Clause limitations. The committee proposed that militia organizations divest themselves of militia status and thus overcome the militia clause limitations by volunteering.¹⁹ He discovered in the late 1920's Washington's 1783 "Sentiments on a Peace Establishment," which he revealed in his book, Washington, Lincoln, Wilson: Three War Statesmen, in 1930. He went on to

become somewhat of a recognized expert in the matter of citizen soldiers, publishing several books on the topic.²⁰

In the words of Senator Wadsworth,

Colonel Palmer stressed the fact that we have always been suspicious of large standing armies; that a standing army, no matter how large, cannot alone bear the brunt of a great war; that such an army would threaten our democratic institutions in time of peace; that we must always rely upon what he termed a "citizen" army, and that if we were to establish a military policy which would fit in with our traditions and meet our psychology, it must rest upon the citizen army idea. He cited the Swiss system as an example of the latter as contrasted with the Prussian system.²¹

This second possible solution suggested by Palmer was a plan proposing the National Guard be "a creature of the federal government" during peacetime but available to assist the states in emergencies. This would have reversed the traditional federal/state command of the Guard. Senator Wadsworth favored this federal peacetime command of the National Guard. However, the bill he drafted with the assistance of Palmer was defeated by the House of Representatives who perpetuated the traditional status of the National Guard of State command during peacetime.²² An insight into the factions within the House of Representatives regarding the National Guard is provided by examining the voting records on this bill. Congressmen from the northeastern states generally voted for the measure with other areas opposing.²³

Senator Wadsworth's support of this plan was consistent with the attitude of his Guard constituents in New York. This group, headed by General O'Ryan, favored a restricted wartime role for the Guard. In their view, it should serve as a

stopgap force, returning to office and armory as soon as volunteers were ready. There was strong support for either turning the Guard over to the federal government or creating a wholly new federal reserve.²⁴ This plan was also endorsed during testimony before Senator Wadsworth's committee in 1919 by General Milton Reckord, later to become Adjutant General of Maryland. General Reckord had commanded a National Guard infantry regiment in France during World War I, and served in practice, if not always in name, as chief lobbyist for the National Guard Association (NGA) from the mid-nineteen twenties until the mid-fifties. General Reckord had become friends with Brigadier General John McAuley Palmer, his brigade commander during World War I in France. When Palmer returned to Washington and subsequently was working with Senator Wadsworth's committee, he sought support from his previous subordinate, now a general officer in the Maryland National Guard. As will be noted later, General Reckord continued to pursue some resolution of these problems with the legal structure of the Guard.²⁵

The defeat of the proposal to transform the Guard into a federal being with availability to the states during emergencies left the National Guard leadership and informed elements in Congress with the problems of legal structure unresolved. The National Guard was still separate from the Army except in wartime.

Pressure for reform of the National Guard was coming from two sources: Congress and the National Guard Association. For the National Guard, the problem was to find a way to lead

a double existence--to be militia, with the militia's traditional state affiliation, and simultaneously to be part of the Army in peace and war. As early as its annual conference of 1921 in New Orleans, the National Guard Association had begun seriously considering the question of acquiring this peacetime federal status for the Guard.²⁶ It was discussed again at Denver in 1923 and at Philadelphia in 1924. During the National Guard convention in January, 1926, in St. Augustine, Florida, the National Guard Association (NGA) unanimously approved the adoption of a resolution which provided for the appointment of a committee to prepare and present to Congress "legislation which would make the National Guard at all times a component of the Army of the United States."²⁷ From the St. Augustine NGA convention until the NGA convention in Louisville, Kentucky that Fall, no progress was made on the proposal. The Louisville NGA convention adopted "Resolution 14," a portion of which follows:

*** That we hereby reaffirm our position heretofore declared with regard to our status, and that we favor appropriate amendments of the National Defense Act so that the federally recognized National Guard shall at all times, whether in peace or war, be a component of the Army of the United States, its status under the Constitution being preserved, so that its government when not in the service of the United States shall be left to the respective states, and that all federally recognized officers thereof shall be duly appointed and commissioned therein.²⁸

Accordingly, the serving NGA President, Major General William G. Price of Pennsylvania, requested the Secretary of War, Dwight Davis, to appoint a joint committee to study this

proposition and draft the requisite legislation.²⁹ Upon this recommendation, Secretary of War Davis appointed under a Special Order, No. 1756, of July 5, 1927, a Special War Department Committee to meet in Washington, D.C. in October, 1927 for the purpose of considering resolution No. 14.³⁰ The members of the joint committee were:

Brigadier General Charles McPherren, Oklahoma, President
Colonel Lytle Brown, C.E., U.S. Army

Lieutenant Colonel Charles W. Harris, Arizona

Lieutenant Colonel Clark G. Wren, Texas

Major Fred W. Llewellyn, J.A.G.D., U.S. Army

The joint committee was to submit its findings to the Secretary of War. The Secretary of War directed that the entire report be submitted to the NGA at its next conference in St. Paul, Minnesota for review and comment.³¹ Therefore, General McPherren submitted the report to the conference on the opening day of the 1927 NGA convention, held in October 1927 in St. Paul. There was not general agreement among NGA members regarding the proposal. Due to this disagreement, but officially attributed to the lack of time to study the proposal, the 1927 NGA convention deferred action on the proposal and passed Resolution No. 25 to the effect that the NGA President, Colonel G. Angus Fraser of North Dakota, appoint a committee which would study the War Department proposal and report to the following year's convention in November 1928 at Hot Springs, Arkansas.

Members of this committee were:

Colonel G. Angus Fraser, North Dakota, Chairman

Major General Alfred Foote, Massachusetts, I Corps Area

Major General William N. Haskell, New York, II Corps Area

Brigadier General Milton A. Reckord, Maryland, III Corps
Area

Brigadier General Robert J. Travis, Georgia, IV Corps Area

Major General Benson Hough, Ohio, V Corps Area

Brigadier General Ralph Immell, Wisconsin, VI Corps Area

Lieutenant Colonel Clark C. Wrenn, Texas, VIII Corps Area

Brigadier General George A. White, Oregon, IX Corps

The records of the 1928 NGA convention indicate there was considerable debate regarding the proposal following the report of this NGA committee. The report recommended legislation based on the Army Clause of the Constitution rather than the Militia Clause. The committee also disapproved of the plan proposed in the report of the Special War Department Committee for the reason that it was believed that, if enacted into law, the "National Guard of the United States" would become a Federal force, and cause the loss by the states of much of the control and supervision of the Guard and infringe on the power of the states regarding organization and employment of the Guard. The committee report questioned the constitutionality of the plan and referred to the constitutional construction and interpretation placed upon the power "to raise and support

armies" by the United Supreme Court in the case of *Arver v. U.S.*, 245 U.S., 366;36 S.C., 159.³²

This conference committee also considered other plans, notably the so-called Shaw Plan and the Coburn Plan.³³ The committee did feel the Joint Committee had developed a unique approach to the problem. It was pointed out that "the 'Dick Act of 1903' and the 'Act of June 3, 1916' based the legislation to be enacted on the Militia Clauses of the Constitution and not on the Army Clause and, "therefore, the Joint General Staff Committee has brought forth something new and something that would be of vital importance if followed to its ultimate conclusion."³⁴ This utilization of the Army Clause as the possible basis for legislation to provide the National Guard its federal role was a reversal of the positions of the Louisville and St. Paul conferences which focused on using the Militia Clauses to develop the necessary legislation.

As in the St. Paul Convention, this Hot Springs NGA convention directed the NGA President to appoint a committee to study the proposal and report to the following year's convention at Los Angeles.³⁵ December 4, 1928, the NGA President appointed a special committee with an officer from each Corps area:

Major General Benson W. Hough, Ohio, Chairman, an attorney who had spoken favorably during the Hot Springs convention about the possibilities of this line of

approach using the Army Clause as the basis for
legislation rather than the Militia Clause

Brigadier General Albert A. Greenlaw, Maine, I Corps

Colonel Howard J. Kingsbury, New York, II Corps

Brigadier General Milton A. Reckord, Maryland, III Corps

Brigadier General Robert J. Travis, Georgia, IV Corps

Brigadier General Ralph M. Immell, Wisconsin, VI Corps

Lieutenant Colonel Lawrence Kingsland, Missouri, VII Corps

Brigadier General Charles McPherrren, Oklahoma, VIII Corps

Colonel Eugene Moshberger, Oregon, IX Corps

During the October 1929 NGA Convention at Los Angeles, the committee chairman, General Hough, read the committee report. Verifying his influence regarding the wording and rationale of the proposed amendment, General Reckord was called to the rostrum to give the substance of the change, section by section, as it was read by General Hough. The essential elements of their report were these points:

1. Is a Federal status at all times desirable, and if so can such a status be acquired legally and at the same time reserve to the several states control of their respective military establishments in time of peace?

2. Do the Constitutional provisions of eighteen or more states, to the effect that state officials cannot hold more than one office at the same time serve as a barrier to state officials holding a commission in the National Guard?

3. Will the control and government of the National Guard of the States by the states when not in the service of the United States be in any way impaired, relinquished or weakened?

4. Can the National Guard of the United States as a reserve component of the Army of the United States, be ordered into active military service of the United States in the event of a national emergency--so declared by the Congress--and "as is" without change in organization or personnel?³⁶

The committee felt its research and study had provided the answer to the first question as yes. Federal status was desirable. Question two was no. State officials would not be barred from National Guard membership by their state laws prohibiting dual appointments. They felt state control of the National Guard would not be weakened by the dual federal status. The provisions affecting question four, in the committee's opinion, would allow smooth transition of the National Guard into active military service while retaining the organization.

Not everyone agreed that this type legislation was required. Many felt that the leadership of the National Guard were looking for a major revision while only minor changes were needed at most. This opinion was summarized a few days prior to the Los Angeles Convention when on October 3, 1929, the Executive Officer, Office Chief, Militia Bureau, Colonel John W. Gulick, gave a lecture at the Army War College in Washington, D.C. entitled, "The National Guard as a Federal Force." In this lecture, Colonel Gulick noted that,

"During the past two years a committee appointed by the National Guard Association has made a detailed study of several plans which have for their object the making of the National Guard a part of the Army of the United States all of the time. It is doubtful if such a plan can be made effective without surrender on the part of the states of certain rights which they now enjoy in the control of the National Guard."³⁷

Colonel Gulick went on to state,

The "draft" provision which is seriously objected to by the National Guard, may be eliminated by amending Section 111, national defense act, so as to authorize the President to "order" the National Guard into Federal service "as is" in the event of a national emergency declared by Congress, and to return the National Guard to its state status upon the conclusion of the emergency.³⁸

However, the committee report was adopted by the Los Angeles Convention and the NGA began to lobby for its passage. The proposed amendment was sent to Congress and introduced in the House where it was referred to the Military Affairs Committee. It was unanimously reported out of committee and passed the House in the 71st Congress. However, it was killed in the Senate.

With the election of Franklin D. Roosevelt with his New Deal, the committee work done by the National Guard Association was not in vain. In 1933, in response to the economic crisis, President Roosevelt called a special session of Congress. On March 9, 1933, only five days after his inauguration, the President began to submit bills to this special session. This special session of Congress was known as the "Hundred Days" even though it only lasted 99 days--from March 9 through June 16, 1933. It was during this "Hundred Days" that many of the "New Deal" laws were passed, such as the Agricultural Adjustment Act (AAA), the Tennessee Valley Authority (TVA) Act, and the National Industrial Recovery Act (NRA). During this special session, Congress committed to turnaround bills from the President within 24 hours; therefore, it frequently waived its

normal rules regarding required readings and publication of proposed legislation.

It was during this special session that the National Guard Bill, as it came to be called, was introduced by the Chairman of the House Military Affairs Committee, Congressman John J. McSwain, Democrat from South Carolina, who had served as an infantry captain at Camp Beauregard, Louisiana, during the World War. Designated House Resolution 5645 (HR5645), it was referred to Congressman McSwain's Military Affairs Committee. HR5645 "National Guard Bill" was favorably reported out of the committee accompanied by Report 141, a history and discussion of the fundamentals of the bill. The report concluded by stating,

It is our belief that the present bill conforms as nearly as possible to the ideals and principles comprehended by Washington in his magnificent statement entitled "Sentiments on a Peace Establishment."³⁸

The Manager of the Bill on the part of the House was Congressman Lister Hill, Democrat from Alabama, who had served in France during the World War in the 17th and 71st Infantry Regiments. During the floor debate on June 5, 1933, Congressman Hill termed the bill "the child of the National Guard Association" and recounted the purposes of the bill. Among these were to solve the problem of the Militia Clause of the Constitution limiting the National Guard to service within the boundaries of the United States and to "enable the National Guard to go into service of the United States in the event of war as an organization and to come out as an organization." The debate was generally favorable to the bill. The only real objection

was not the provisions of the bill but to the motion for suspension of the rules to allow its quick passage as was utilized for bills sent to "The Hill" by President Roosevelt. However, this objection was overcome, the rules were suspended, and the bill was Passed 169 to 1. The National Guard Bill was referred to the Senate Committee on Military Affairs where it was favorably reported to the full Senate accompanied by Senate Report No. 135, a brief report that focused on the problem of utilization of the Guard overseas. A portion of Report 135 states,

*** As militia under the militia clause of the Constitution, they may be called out to repel an invasion, but in light of our entire military experience, it will be too late and too costly to wait until invasion has begun in order to use this trained force.⁴⁰

The Senate passed HR5645 with some minor amendments which the House agreed to and passed. The completed legislation which amended the Defense Act of 1916 as amended was signed into law by President Roosevelt on June 15, 1933, the day before Congress went out of special session on June 16, 1933. The long search for the resolution of the legal problems of service outside the United States, transition of the National Guard into and out of federal status as units, and retention of the Guard's responsiveness to state emergencies was over.

Some of the major provisions of this bill resulted in:

1. There was to be no more drafting of National Guardsmen. The National Guard of the United States, in its capacity as a

reserve component of the Army, was organized and was to be administered under the Army Clause.

2. In place of the former draft into federal service, as individuals, the Guard would be ordered into federal service as units. Such an order could not be given unless Congress declared a national emergency and authorized the use of troops in excess of those of the Regular Army.

3. The organization of the units existing at the date of the order was to be maintained intact, insofar as practicable.

4. Upon being relieved from federal service, all individuals and units would revert to their National Guard status.

5. The word "Militia" was eliminated from the War Department organization by changing the name of the supervisory agency to National Guard Bureau.

6. The act emphasized that the Army Chief of Staff's supervision should extend to the Guard.

7. It made unnecessary the commissioning of National Guard officers in the Officers' Reserve Corps. In the future, they were to be commissioned in another reserve component, the National Guard of the United States.⁴¹

8. The National Guard obtained a clear cut and unequivocal role in the defense system, an achievement symbolized in the redefinition of the Army of the United States. In the previous Act of 1916, the Army of the United States had been defined as consisting of:

- a. The Regular Army (i.e., the United States Army)

- b. The Volunteer Army
- c. The Officers Reserve Corps
- d. The Enlisted Reserve Corps
- e. The National Guard while in the service of the United States.

Following the 1933 amendment, the National Guard was promoted from fifth to second place in this ranking.

- a. The Regular Army
- b. The National Guard of the United States
- c. The National Guard while in the service of the United States
- d. The Officers Reserve Corps
- e. The Organized Reserve
- f. The Enlisted Reserve Corps⁴²

As these debates about the legal status of the National Guard are now reviewed after the passage of more than fifty years, one wonders what difference it would have made if the 1933 Amendment had not been developed and subsequently became a law. For wartime employment, one tends to agree with Colonel Gulick's assessment. He felt that minor changes to the 1916 Defense Act to remove reference to "draft" and substituted the term "order" would have been accepted. He also thought that some method of clearly emphasizing the intent of Congress that as much as possible National Guard units were to be kept in their peacetime configurations during war would have made the National Guard just as effective for war as under the laws

provided by the 1933 Amendment. However, the National Guard leadership felt continued existence under the Defense Act without some modification was not acceptable.

The present day struggle of training the National Guard overseas over the objections of some state governors would not have been significantly different than if, in fact, had the National Guard been left under the Militia Clause of the Constitution during peacetime. If this were the case, the courts would have been forced to face the issue of the authority of the federal government to prescribe training of the National Guard. This might have been preferable than the weaker defense that under the Army Clause the President can "order" the National Guard to peacetime training duty outside the borders of the United States per United States Code, Title 10, Para 672(d).

In any case, as with most public policy solutions in our pluralistic democratic society, the 1933 Amendment was the result of the many viewpoints and opinions during its developmental stages.

Was it necessary? Was it the best solution? Any answer to these questions will be inconclusive. From our present day perspective, we have the advantage of seeing how effective the Amendment has been in assisting the Guard attain its present role in our national defense, based in thousands of communities across our nation, available to assist state and local authorities, and ready to defend our nation's freedom as a key instrument of our national strategy as it has been for over two hundred years.

ENDNOTES

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3. Constitution of the United States, Article I, Section I.

4. Frederick B. Wiener, "The Militia Clause of the Constitution," Harvard Law Review Dec. 1940, pp. 188-189.

5. Ibid., p. 197.

6. Ibid., pp. 197-198.

7. James D. Noteboom, The Origins of the Militia Provisions in the United States Constitution, an unpublished manuscript (Salem, OR: Military Department, 1987) pp. 12-13.

8. U.S. Congress, H.Rept. 141, p. 2.

9. Derthick, p. 44.

10. Adam Smith, The Wealth of Nations (London: Routledge, 1913) p. 555.

11. The Timetables of American History (New York: Simon and Schuster, 1981) pp. 318-321.

12. John W. Killigrew, The Impact of the Great Depression on the Army (New York: Garland Publishing, 1979) pp. II-26 & II-27.

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16. Russell F. Weigley, Towards an American Army (New York: Columbia University Press) p. 105.

17. Ibid., p. 125.

18. Ibid., p. 229.
19. Wiener, pp. 198-199.
20. Weigley, p. 241.
21. John McAuley Palmer, Statesmanship or War (New York: Doubleday, Page & Company, 1927) pp. xiv-xv.
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23. U.S. Congress. Congressional Record. Proceedings and Debates of the 59th Cong., House (Washington: Government Printing Office, 1920) pp. 5824-5850.
24. Derthick, p. 54.
25. Ibid., p. 94.
26. Elbridge Colby, The National Guard of the United States: A Half Century of Progress, a published but unedited manuscript (Manhattan, KS: Kansas State University, 1977) p. IX-7.
27. National Guard Association of the United States, Annual Convention Report, October 17-19, 1929, Los Angeles, CA, p. 42.
28. H. Rept. 141, p. 2.
29. NGA Conv. Rpt 1929, p. 43.
30. H. Rept. 141, p. 2.
31. National Guard Association of the United States, Official Proceedings of the Sixty-Sixth Annual Convention, 3-6 May 1944, Baltimore, MD, p. 66.
32. NGA Conv. Rpt 1929, p. 66.
33. These plans were submitted by officers of the Regular Army for the committee's consideration. Of these, they reported that they felt the Shaw Plan had some possibilities. It proposed creation of an organization or force on a skeletonized basis, without personnel, which sometime in the future would be given substance under the Army Clause of the Constitution. They also felt this Shaw Plan was in possible conflict with that section of the Constitution which limits the power of the President to appoint officers since the positions in this proposed skeletonized force had not been established by law.
34. NGA Off. Proceedings, 1944, p. 67.

35. NGA Conv. Rpt 1929, p. 43.
36. Ibid., p. 79.
37. John Gulick, The National Guard as a Federal Force, (Washington: Government Printing Office, 1930) p. 4.
38. Ibid.
39. H. Rpt. 141, p. 26.
40. U.S. Congress, Senate, Committee on Military Affairs, Amend the National Defense Act, S. Rept. 135, 1933, 73rd Cong., 1st Sess. (Washington: Government Printing Office, 1933) p.1.
41. Wiener, pp. 208-209.
42. William Riker, Soldiers of the States: The Role of the National Guard in American Democracy (Washington: Public Affairs Press, 1957) pp. 84-85.

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