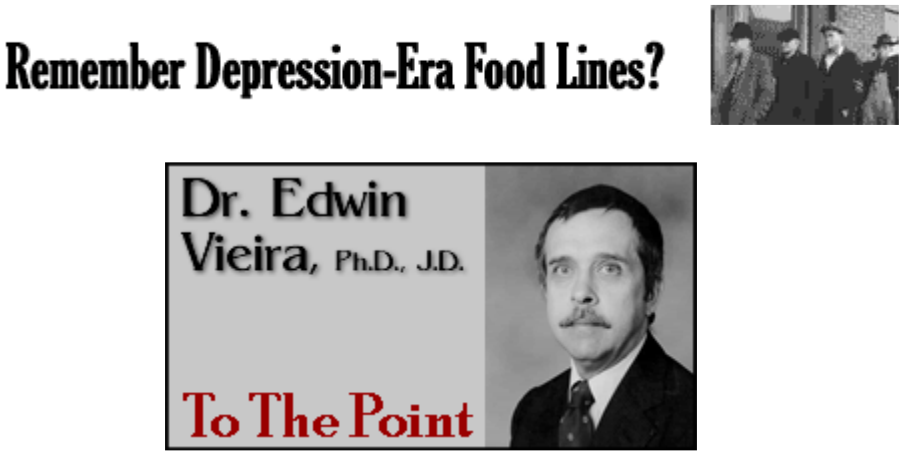

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"THE MILITIA OF THE SEVERAL STATES" GUARANTEE THE RIGHT TO KEEP AND BEAR ARMS

PART 4 of 8

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Dr. Edwin Vieira, Jr., Ph.D., J.D.
April 3, 2006
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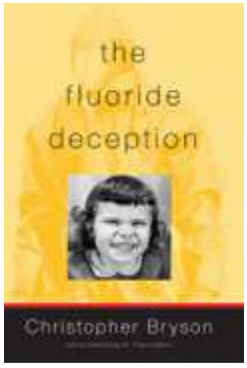
Continuing the analysis of the Militia in the Constitution begun in PART ONE, PART TWO, and PART THREE of this commentary, we turn to...

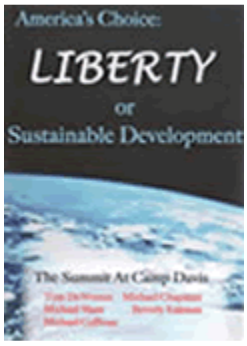
4. *The unique role of "the Militia of the*

Although extreme in nature, this scenario is not impossible. And its very possibility proves that "the Militia of the several

"Homeland Security" -- For What and For Whom?

More Vieira Articles:



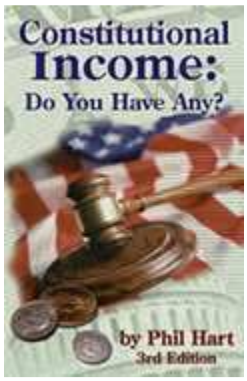


several States" in "homeland security." Congress has a constitutional power and duty, when "necessary and proper," "[t]o provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions." Article I, Section 8, Clauses 15 and 18. The Preamble shows this to be a grave responsibility. For among the six overarching purposes of the Constitution set out there, no less than three parallel the mission of the Militia to provide "homeland security": namely, to "establish Justice" ("execute the Laws of the Union"), "insure domestic Tranquility" ("suppress Insurrections,") and "provide for the common defence" ("repel Invasions.") Doubtlessly, the Founding Fathers foresaw that "the Militia of the several States" would provide the primary forces to serve the Preamble's purposes, and for that reason specifically empowered Congress to "call[them] forth" for those ends. The perfect juxtaposition of purposes and powers can have no other plausible explanation.

Similarly, the Constitution requires the President to "take Care that the Laws be faithfully executed." Article II, Section 3.

And it appoints him the "Commander in Chief * * * of the Militia of the several States, when called into the actual Service of the United States." Article II, Section 2, Clause 1. Again in perfect parallel, the Constitution empowers Congress "[t]o provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions"--in the performance of each of which functions the Militia must inevitably be involved in "faithfully execut[ing]" "the Laws," under the President's command. That the Constitution not only imposes on the

States" must constitute a governmental institution potentially independent of and superior to all others...



President the duty to "take Care that the Laws be faithfully executed," but also requires Congress to make available to his own command a most potent means to perform that duty, in terms explicitly echoing it, cannot possibly be just accidental.

Moreover, the Constitution imposes on "[t]he United States" the duty to "guarantee to every State in this Union a Republican Form of Government" and to "protect each of them against Invasion; and * * * against domestic Violence." Article IV, Section 4. That "the Militia of the several States" would likely be "call[ed] forth" to satisfy this "guarantee" none of the Founding Fathers could possibly have doubted. For they also empowered Congress in Article I, Section 8, Clause 15 "[t]o provide for calling forth the Militia" for three purposes highly pertinent to Article IV, Section 4: namely, "to execute the Laws of the Union"--in this case, to "guarantee to every State in this Union a Republican Form of Government"; "to * * * suppress Insurrections"--in this case, to

"protect each of them * * * against domestic Violence"; and "to * * * repel Invasions--in this case, to "protect each of them against Invasion." Thus, hardly surprising is that the Framers of the Second Amendment, many of whom had been among the delegates to the Constitutional Convention that drafted or the State Conventions that ratified the Constitution, asserted that "[a] well regulated Militia" is "necessary to the security of a free State." For Articles I and IV had earlier made abundantly clear that "the Militia of the several States"--considered on the basis of 150 years of experience to be "well regulated," if any Militia could be--were empowered to provide that security to every State through

the "guarantee" of "a Republican Form of Government."

Furthermore, the Constitution presumes that, in the direst extreme, when "actually invaded, or in such imminent Danger as will not admit of delay," the States will be able to "engage in War" through their Militia, which, unlike "Troops," the Constitution allows them to keep and govern "without the Consent of Congress." See Article I, Section 10, Clause 3.

Perhaps most notable, however, is that, because "the Militia of the several States" may be "call[ed] forth * * * to execute the Laws of the Union," and because the Constitution is "the supreme Law of the Land," the Militia may be "call[ed] forth" to "execute the [Constitution]" itself. See Article I, Section 8, Clause 15, and Article VI, Clause 2. In a normal situation, this would occur pursuant to such "provi[sions]" as Congress had made, and under direction of the President as Commander in Chief. Article II, Section 2, Clause 1. But the Constitution protects America in abnormal situations, too--especially inasmuch as abnormal situations doubtlessly will confront this country with the most immediate and gravest dangers.

Now, usurpation and tyranny by individuals holding, but misusing, the highest public offices are bound to be abnormal situations. And beyond question such usurpation and tyranny will necessarily constitute the most serious possible violations of the Constitution, because they attack, and threaten to overthrow, the very rule of law from the top down. Therefore, the Constitution must fully empower "the Militia of the several States" to suppress them--and, *in extremis*, must even justify the Militia in

"calling [themselves] forth" for that purpose, just as they did at Lexington and Concord in 1775. For, as a *constitutional* institution, "the Militia of the several States" are themselves a *governmental* institution--to which, in the absence of other governmental institutions willing or able to act, the responsibility and discretion to take charge must devolve. SALVS POPVLI SVPREMA LEX.

So, if (for example) the man holding the office of President, and a majority of men holding the offices of Representatives and Senators in Congress, and a majority of men holding the offices of Justices of the Supreme Court should all league together in a conspiracy of usurpation and tyranny, they would be breaking the law. Indeed, their acts of usurpation and tyranny could not be imputed to their offices or to the government at all, but would amount to nothing but the depredations of mere private criminals. See, *e.g., Ex parte Young*, 209 U.S. 123, 158-60 (1908); *Poindexter v. Greenhow*, 114 U.S. 270, 290-91 (1885). Under these circumstances, the Constitution would ex necessitate empower and require "the Militia of the several States" "to execute the Laws of the Union" against the conspirators and their henchmen and hangers-on, according to whatever valid statutes were in existence--because obviously a criminal gang controlling Congress would not

"call[ ] forth" the Militia to suppress its own illegal activities; a gangster perverting the office of President would not command the Militia to arrest himself; and the gang's co-conspirators on the Supreme Court would always falsely rule "unconstitutional" whatever the Militia did to rectify the situation. Just as obviously, any purported

statutes to further their usurpation and tyranny that such gangsters claimed to enact in the guise of Members of Congress, or tried to execute in the guise of the President, or attempted to enforce in the guise of Justices of the Supreme Court would be null and void from the beginning. For "[a]n unconstitutional act is not a law; * * * it imposes no duties; it is, in legal contemplation, as inoperative as though it had never been passed." *Norton v. Shelby County*, 118 U.S. 425, 442 (1886).

Although extreme in nature, this scenario is not impossible. And its very possibility proves that "the Militia of the several States" must constitute a governmental institution potentially independent of and superior to all others, when the highest of those others are taken charge of, coopted, or corrupted by usurpers or tyrants. True "homeland security"--the purposes for which the Constitution says the Militia may be "call[ed] forth"--does not, can not, mean the security of some individuals who happen temporarily to hold public office, some regime, or some political party. And it does not, can not, mean the security of the greedy, unscrupulous special-interest groups--or "factions", as the Founding Fathers called them--that use officeholders, regimes, and parties to feather their own nests at the expense of common Americans, as they do today by prating about "democracy" while they rig elections, prostitute public offices, loot the public treasury, and dispatch America's youth as soldiers to kill and die in foreign lands in service of policies designed to line their own pockets. No. "Homeland security" means the security of "a Republican Form of Government" and of "a free State" right here in America--"a free State" composed of We

the People, administered for the benefit of We the People, and in the final analysis guaranteed by We the People with their own arms in their own hands.

So, to be constitutionally legitimate, any contemporary program of "homeland security" must be fashioned, first and foremost, around "the Militia of the several States." Not the Armed Forces--not the National intelligence agencies--not some Cabinet Department in Washington, D.C., constructed according to the blueprints of a Ministry of the Interior of an East-European Stalinist satellite of the 1950s--and most assuredly not para-militarized National, State, and local police departments and agencies that answer to such a Beria-ized bureaucracy.

Today, however, notwithstanding the torrent of near-paranoiac propaganda pouring from Washington about the desperate need to

achieve "homeland security," even (or is it especially?) at the cost of sacrificing what the Preamble calls "the Blessings of Liberty to ourselves and our Posterity," neither Congress, nor the President, nor any State has thought to require, to request, or even to propose that the vast majority of Americans participate in some minimal program of "homeland security," as every pre-constitutional Militia Act teaches that every constitutional Militiaman should. Has everyone among Washington's power elite simply forgotten that the Militia Clauses of the Constitution exist? Or do they want We the People to forget? In either event, does this situation not represent exactly the kind of danger that the Constitution empowers "the Militia of the several States" to address?

5. *The basic principles of "the Militia of the several States."* The foregoing has largely taken for granted the true constitutional meaning of "the Militia of the several States." The Constitution, of course, contains no glossary in which a definition of that term can be found. So how can one be sure of precisely what definition the Constitution adopts?

To ascertain what the phrase "the Militia of the several States" meant to the Framers in 1787 when the Constitution was drafted, and to We the People in 1789 when the Constitution was ratified, one must determine what it meant in the common parlance of the times and theretofore--because the Constitution did not create "the Militia of the several States" out of whole cloth, or leave them to be newly invented by Congress or the States.

A procedure popular among defenders of the Second Amendment who are attempting to define "the right of the people to keep and bear Arms" is to assemble a mass of quotations on the subject from various Founding Fathers. This, however, is a somewhat unreliable method, because it begs the question. Without an independent, objective definition, how can one know whether any particular Founding Father's statement is correct?

True, people often talk loosely about "the Founding Fathers' intent" as expressed in *the Constitution*. But what they really mean (or

should mean), is the Constitution's intent, as expressed in its language. This language is definitive, because it constitutes the most formal and objective statement of the Framers' and We the People's intent: namely, "the supreme Law of the Land." Thus, rather than relying on merely anecdotal evidence and perhaps fallible personal opinions to determine what "the Militia of the several States" means, one must look to the relevant laws: the Militia Acts of the Colonies and independent States during the pre-constitutional period, from the mid-1600s to the late 1700s. These Acts provide the best historical--and, more importantly, legal--evidence of the principles on which the Militia were formed and operated. Not only that. The Militia Acts display a remarkable consistency--even unanimity--in these principles, from New Hampshire in the North to Georgia in the South, proving that the definition of "the Militia of the several States" is not some vague or plastic verbal formula that was and now can be manipulated for political purposes, but a concept with as much surety and fixity of meaning as any to be found in the Constitution.

E.g., Title 18, United States Code, Sections 241 and 242.

Quite the opposite: Some students of criminal politics would contend that such a situation

actually existed in the 1930s, with Franklin Roosevelt's hammerlock on both the Presidency and Congress, against which the Supreme Court struggled on only a few occasions, until Roosevelt succeeded in changing its composition after 1937. For part 5 click below.

Click here for Part ----->1, 2, 3, 4, 5, 6, 7, 8,

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He has written numerous monographs and articles in scholarly journals, and lectured

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He is also the co-author (under a nom de plume) of the political novel CRA$HMAKER: A Federal Affaire (2000), a not-so-fictional story of an engineered crash of the Federal Reserve System, and the political upheaval it causes. www.crashmaker.com

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