

# FORGING THE FRAMEWORK

Evolving Law, Policy, and Doctrine for  
the US Military's Domestic Response



Army University Press  
US Army Combined Arms Center  
Fort Leavenworth, Kansas

Edited by  
Jonathan D. Bratten

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Diane R. Walker, Editor  
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## Foreword

As I write this foreword during the spring of 2025, I am reflecting greatly on the actions of April 1775. Two hundred and fifty years ago, brave members of the Massachusetts militia willingly met the British Army in Concord and Lexington. By this time, our National Guard was already more than 138 years young. April 1775 represents the beginning of the nation’s great experiment in democracy—which continues to this very day.

Probably the most publicly visible of all Army missions, domestic response receives less attention from historians than military operations against an armed enemy. The sheer quantity of books on the Gettysburg campaign alone dwarfs the entirety of scholarship on the role of the US military in domestic operations. This is partially due to discomfort: from the very beginnings of the American experience in the seventeenth century, colonists had a deep distrust of standing armies because of how they could be used against their own people. This opposition to a permanent military establishment led to reliance on the state militia, later enshrined in law as the National Guard.

Yet this mistrust of domestic military forces remained balanced against the need for a larger national response framework for crises. Until the post-Civil War era, the US Army and the militia remained the only large body of easily accessible and organized manpower. Consequently, the US government and state governments established early precedents to rely on uniformed personnel during natural disasters, civil unrest, or simply anytime there was a lack of manpower. Thus early in the American experiment, leaders made the decision that the Army and the National Guard would have a dual role: one of domestic response and one of wartime operations. Indeed, in response to insurrection during the Civil War, “all enemies foreign and domestic” was added to the oath of enlistment. This dual role is complex, encompassing local, state, and federal laws, civil liberties, ethics, and the relationship of governments to the people. Since these are constantly evolving, a work like this one is so valuable.

Those with no experience in the National Guard might be surprised at how often domestic response missions come up in a soldier or airman’s career. Such assignments can be simultaneously the most rewarding—bringing a feeling of giving back to the community—and the most stressful.

I, like many of you, have served in an array of Defense Support of Civil Authorities missions to include Y2K preparation as well as flood, tornado, COVID-19, and early summer 2020 and January 2021 responses.

I fully understand and appreciate the National Guard's dual role. This requirement to provide a dual-capability will not change any time soon. New domestic challenges to include the cyber and space domains will require the National Guard to change but still provide the United States with a credible combat capability in support of the joint force.

We hope this work will be an aid to officers, noncommissioned officers, and enlisted members across the force and will spark conversations about situations that troops might find themselves in. The American people expect their service members to be citizens as well as soldiers. Therefore, it is even more incumbent upon us to understand the complexities of domestic response to meet future missions. In a rapidly changing world and information environment, this need is more pressing than ever.

Jon A. Jensen  
Lieutenant General (Retired)  
Director, Army National Guard (2020–25)  
May 2025

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# Chapter 1

## Introduction

Jonathan D. Bratten

While on a scholar in residence tour to the US Army Center of Military History in 2022, I was asked to develop a Defense Support of Civil Authorities (DSCA) staff ride prototype for the National Guard Bureau. In the process of conducting research, I realized that while many publications discussed how the DSCA process works, few addressed how that process transformed into its modern framework. This planted the seeds for this anthology.

This book provides historical context for the federal government's current robust framework for DSCA. Most legislation and policy that impacts the military forces' role in DSCA has a historical background that highlights the issues inherent in DSCA operations. Specifically, DSCA legislation and policy are designed to address the role of military forces in domestic response, friction between state and federal authorities during a disaster or emergency, release authority for uniformed personnel, state and federal troop duties during a disaster, and difficult situations that uniformed personnel are often put in during these types of missions.

Today's US Army and Department of Defense have a sophisticated—albeit complex—system that outlines nearly every level of responsibility in the DSCA framework. From emergency management assistance compacts across states to a layered local, state, and federal response network—as well as the role of the dual status commander—the current DSCA system has evolved to reduce the many friction points inherent in emergency response. This system is a product of historical events and did not come into being easily. Currently, no overall historical study provides an in-depth examination of what has led to the Army's current DSCA framework.

This gap in the field of study might lead some to believe the US Army has always had a clear-cut system with defined chains of command and divisions of responsibility, along with established lines of funding at the state and federal levels. Historical studies show that this has largely not been the case across the last 300 years. Indeed, until the twentieth century, the process of requesting, deploying, and utilizing US military forces to support civil authority was chaotic at best. At worst, it led to fatalities. Events led to changes in law, interpretation of law, executive orders, new policies, and military doctrine and regulation changes. This anthology is

designed to fill that information gap and provide the historical context for today's DSCA system.

*Forging the Framework* was written and assembled as a professional development aid for all US Army components as well as local, state, and federal emergency management personnel across the country. This book can be used at the unit level as commanders engage their soldiers on the complicated tasks related to DSCA or at various Army schoolhouses. The overall goal is to help improve understanding of DSCA fundamentals and the agency's grounding in law, legislation, and policy.

The case studies in this anthology cover major historical events that inform the DSCA framework. It does not address every aspect of the US military's role in disaster relief, emergency management, or domestic unrest. Four excellent US Army Center of Military History volumes provide a comprehensive look at the US Army's role in DSCA: Robert Coakley, *Role of Federal Military Forces in Domestic Disorders, 1789–1878*; Clayton Laurie and Ronald Cole, *Role of Federal Military Forces in Domestic Disorders, 1877–1945*; John Ohly, *Industrialists in Olive Drab: The Emergency Operation of Private Industries During World War II*; and Paul Scheips, *Role of Federal Military Forces in Domestic Disorders, 1945–1992*.

To provide sufficient information in a format that was not overly long, *Forging the Framework* authors had to leave out some key historical areas and topics that did not have a bearing on the overall thesis of this anthology. The issue of the military's intervention in cases of racial violence, while covered in nearly all chapters, deserves far more attention—particularly the 1919 Red Summer, when returning World War I veterans were attacked in the streets and in their own communities because of race. However, as the *Role of Federal Military Forces in Domestic Disorders, 1877–1945* authors stated in their chapter on the Red Summer, those 1919 military interventions followed the same trend as the Army's involvement in labor disputes. Sadly, the violence did not eliminate legal system injustices that created those issues in the first place.<sup>1</sup>

This anthology is arranged in chronological order to show how the DSCA framework developed over time. In Chapter 2, I describe the colonial militia's historic role in defense support to civil authorities during the era prior to the American Revolution. This era lays the proper groundwork to understand state military forces and DSCA. It also establishes important precedents that underpin the DSCA legal concept, such as the primacy of civil authority over military and the authority for mobilizing troops. Luke

Hargroder's Chapter 3 covers the significant Early Republic events that led to the Insurrection Act of 1807—namely, Shay's Rebellion and the Whiskey Rebellion. This chapter also discusses subsequent revisions of the Act during and after the Civil War, as well as how military forces helped restore civil order in this era. In Chapter 4, Aaron Heft examines the origination of the 1878 Posse Comitatus Act in its outgrowth via anti-Reconstruction backlash from white supremacists in the South. Chapter 5 deals with US military use during labor disputes in the 1890s to the 1930s, specifically with the 1894 Pullman Strike and the discussion of state versus federal jurisdiction. The chapter addresses how issues in this era prompted federal and state law changes, led to the first regulations for military forces called up for DSCA, and set the stage for further federal involvement.

In Chapter 6, Ryan Hovatter covers the growing niche for military domestic response under the role of civil defense forces following World War II. During the Civil Rights and Vietnam era, the nation dealt with widespread violence that culminated with the 1988 Stafford Act as the nation's crisis response evolved. Then in Chapter 7, Meghann Church takes on the 11 September 2001 impact through the Homeland Security Act of 2002 as well as the post-9/11 framework, Homeland Security Presidential Directive, and continuously evolving policy to address the 2020 stresses of COVID-19 and domestic unrest. Joseph Miller caps off the volume in Chapter 8 by examining the 2020 events and looking to the future, anticipating how DSCA policy might change to address evolving challenges such as climate change, disinformation, and cyber-attacks.

*Forging the Framework* shows how commanders and soldiers have navigated complex situations involving DSCA and how developing policies have helped to minimize uncertainty and confusion over time. Although the present framework is by no means perfect, it is the result of these lessons observed and sometimes learned. DSCA operations are some of the most complex conducted by military organizations, presenting a blend of issues such as American distrust of domestic military involvement, racial, class, and ethnic tensions, federal versus state authority, and civil versus military primacy. And like the Army's central mission to protect the homeland, the DSCA mission will not go away anytime soon. The authors hope this anthology will help leaders, soldiers, and civilians gain a greater understanding of how historical events have shaped DSCA policies, laws, and regulations and that this, in turn, will aid in future decision-making.

## Notes

1. Clayton D. Laurie and Ronald H. Cole, *The Role of Federal Military Forces in Domestic Disorders, 1877–1945* (Washington, DC: US Army Center of Military History, 1997), 301.

## Chapter 2

# Militia Beginnings: “To Assist the Civil Magistrates in the Execution of Such Wholesome Laws and Statutes as You Shall Think Proper to Enact”

Jonathan D. Bratten

The role of citizen-soldiers supporting civil authorities to preserve order and enforce the law has a long heritage in the United States, older than the country itself. During the colonial era, English militia in the thirteen colonies that would eventually become the United States first assumed the role of support to the civil governments in emergencies. This took the form not only of armed defense against external enemies, but also keeping the peace, suppressing revolts, and acting as a generic law enforcement body.

This chapter examines the colonial era and how militia supported civil authorities during emergencies and established precedents in this early period that set the stage for how military forces would later be used to support civil authorities following independence. In addition, these colonial era examples inform today’s Defense Support to Civil Authorities (DSCA) concepts. The effectiveness—or ineffectiveness, as was often the case—of these forces would also shape future United States policy and laws.

### **Historical Background**

During the colonial era (1630–1774), the English colonies in North America had no standing or permanent military force. Until 1763, when the Crown began to expand the North American establishment to protect and consolidate its recent acquisition of Canada, England rarely stationed its very few regular soldiers in the colonies. Prior to that point, the crown’s army was too small and the North American colonies too poor to merit the attention.<sup>1</sup> Colonies, counties, and towns did not have organized police forces, either. Therefore, the colonial militia usually was responsible to uphold the laws and preserve public order, in addition to defending the colony from external threats. In 1735, the North Carolina governor succinctly requested that the colonial legislature look more closely to the upkeep of the militia. The militia, he said, was not only necessary for common defense, but also “to assist the Civil Magistrates in the Execution of such wholesome Laws and Statutes as you shall think proper to enact.”<sup>2</sup> As well as protecting the colony from external threats, the militia stood as a safeguard of colonial law.

Most colonies had some form of mandatory militia service for its white, free, male citizens between the ages of 16 and 60. Ages often differed and by 1775, some colonies were beginning to bend the rules to allow African Americans and American Indians to serve. Regardless of the colony, most directions for militia use were straightforward. North Carolina's 1667 charter ordered the governor to establish military units "to suppress all intrigues and rebellions [and] to make war offensive and defensive with all Indyans, Strangers, and Foreigners."<sup>3</sup> The Massachusetts 1691 charter directed the colony's governor to "traine instruct Exercise and Governe the Militia there and for the speciall Denfence and Safety of Our said Province or Territory" and "to use and exercise the Law Martiall in time of actuall Warr Invasion or Rebellion as occasion shall necessarily require."<sup>4</sup> However, most colonial charters were mute regarding how the militia would be used in actions other than armed defense of the colony. Governors and proprietors were instructed to uphold and enforce the laws via a judiciary system with officers of the law, such as sheriffs or magistrates, but the charters seldom spelled out the militia's role.

Militia organization and readiness varied by colony. Massachusetts had by far the strongest militia by 1775, with at least one regiment per county and the beginnings of a full-time force in volunteer, paid formations that eventually took the form of the Minute Regiments.<sup>5</sup> In comparison, Quaker-run Pennsylvania eschewed a militia force until 1747 when it



Figure 2.1. "The First Muster" painting by Don Troiani. Courtesy of the National Guard Bureau.

established the *Associators*, a volunteer force.<sup>6</sup> Southern militia establishments tended to be inwardly focused in the years after the Yamasee War (1715–17), as the emphasis shifted from protection against external threats to preventing revolts of enslaved people.<sup>7</sup>

Colonial governance also influenced the way the militia developed over time. Proprietary colonies, those run by private corporations, tended to have less stringent militia laws than Royal colonies overseen by the Crown and Parliament. Virginia, the first of the colonies, had established a strong compulsory militia service in the early 1600s during the Virginia colony's wars with American Indian nations. As a proprietary colony, militia service waxed and waned according to external threats. With the colony's governance focused on profit, it was not until the Virginia Company went bankrupt in 1624 and the Crown took over that the colony developed a standing militia system.<sup>8</sup>

As each colony evolved and grew, so did its militia structure. With New England's proximity to New France, warfare between the home nations brought this region into conflict far more than any other in the thirteen colonies. The fundamental purpose of New England militia regiments was to defend settlements against Native American and French attacks.<sup>9</sup> By virtue of its settlement into strict towns and counties, New England militia tended to be far more regimented than in the rest of the colonies, and militia life was a deeper part of the community.<sup>10</sup>

Conversely, southern colonies tended to have a more inward focus. In the early eighteenth century, manpower shortages in the Carolinas caused these colonies to often rely on armed Black militiamen. As African chattel slavery grew to be the primary economic driving force in the south and as the American Indian threat receded, however, the colony outlawed Black service. As the enslaved populace grew, so did the slavers' fears of rebellions from those who were forced to work in plantation labor camps. Southern militia grew more focused on suppressing revolts from enslaved people by using slave patrols rather than outwardly focused on defense.<sup>11</sup>

Despite their differences, most colonies had one thing in common: using the militia to police the populace, uphold the law, and preserve order. From Massachusetts to Georgia, colonies called on their militia in cases of civil unrest, to suppress revolts, and for generic law enforcement.

Much has already been written concerning the role of colonial militias in their traditional role as a military force for use in public defense in wartime or in engagements with Native American nations. This chapter

addresses the lesser-known use of the militia as a domestic police force or labor pool for the civil authorities in the colonial era. As colonies developed, so did their needs for additional law enforcement and civil assistance mechanisms.

## Keeping the Peace

Lacking the modern construct of a police force, colonial-era towns, counties, and colonies often turned to the militia to preserve public order when the sheriff and magistrate could no longer do so via writ or arrest—most often in the case of public unrest or civic disorder. Calling up the militia was not a simple task, however. Although Royal governors could call up the militia, the legislatures had to financially and materially support the soldiers, which caused conflicts in the chain of authority for militia mobilizations. Governors and legislatures might not always agree on the need for militia activation. Additionally, if the civil authority wanted to use the militia or regulars as an enforcement mechanism against citizens of the British Empire, there was an added complication. English law mandated that military force could only be used against British citizens if requested and approved by the local magistrate. This proved problematic regarding civil unrest in the colonies since most magistrates were locals themselves and might be in common cause with those causing unrest.

Additionally, many members of the military saw riot service as dishonorable. This strong civil-military divide was evident when Maj. Gen. Jeffery Amherst refused to use British Regulars against antimilitary rioting during the Seven Years War (1754 to 1763). He wrote that to do so would be “entirely foreign to their [the regulars’] command and belongs of right to none but the civil power.”<sup>12</sup> In Amherst’s understanding of the law, the civil and military spheres should not mix. Commander-in-chief of British forces in North America Maj. Gen. Thomas Gage felt his predecessor’s pain in 1765; British regulars at Fort Loudon, Pennsylvania, arrested six backcountry rioters who had attacked and robbed a wagon train. Even though this appeared to be a military case, the regulars’ commanding officer had not received the local magistrate’s permission to arrest British citizens. In the resulting standoff, hundreds of angry, armed backcountry men surrounded the fort. The regulars had to let the offenders go because the officer had acted “entirely outside the channel of the civil law,” as an irritated Gage noted.<sup>13</sup> In US law, the primacy of the civil authority over military authority in the use of force against its own citizens descends from this practice.

Civil unrest, or mob activity as it was sometimes called, was common throughout the colonies in this era, as well as in England and France. Civil unrest was sometimes in response to a disturbance of social norms and often against an unpopular Crown or colonial legislature law. Mob activity was seen not so much as anarchy but as a way of expressing grievances. Indeed, the most well-known of these colonial mobs, the Sons of Liberty, became a catalyst toward independence in the 1770s. Many colonial legislators saw public unrest as a type of political speech. Lacking representation in Parliament, colonists had to voice their displeasure with Crown policies via public unrest. Depending on who or what the mobs were targeting, the civil authorities had varying responses that might involve the militia in different ways.

When targeting acts by the Crown or Crown representatives—impressment in the Royal Navy, for example—colonial legislatures might overlook mob activity or even give it an approving nod.<sup>14</sup> Indeed, a prominent citizen—who was also an officer in the militia—led a 1754 mob against the Royal timber surveyor in Exeter, New Hampshire. Since the Crown’s monopoly on certain timber was largely unpopular in the colonies, the authorities looked the other way.<sup>15</sup>

The main test of the militia’s ability to keep the peace came in the 1760s when Parliament passed a collection of laws meant to regulate trade in North America and help pay down the national debt following the expensive Seven Years’ War. The American Revenue Act of 1764—known as the Sugar Act—and the Duties in American Colonies Act of 1765—commonly known as the Stamp Act—were incredibly unpopular pieces of Crown legislation in the colonies. Landed gentlemen, merchants, and common people alike opposed these taxes, which were meant to help reduce the tax burden on those in the mother country, who paid fifty times more taxes on average than the colonists.<sup>16</sup> Even some Royal governors objected to them.<sup>17</sup> Consequently, 1765 was a year of widespread civil unrest across the colonies on a scale heretofore unseen in the North American colonies. Stamp act “riots,” as they were referred to, flared from Massachusetts to Georgia. However, the violence in the riots was usually focused only on symbols of the Act—customs houses, officials, or the stamps themselves. The violence did not normally spread beyond isolated, targeted incidents.<sup>18</sup> Colonial legislatures responded in varying ways. During the 1765 Stamp Act riots in Hartford, Connecticut, for example, one branch of the legislature voted to call out the militia, but the senior branch vetoed it.<sup>19</sup> Because



Figure 2.2. “The Stamp Act Riots in New York” sketch. Courtesy of the New York Public Library.

of the unpopularity of the legislation, colonial governments had to tread carefully with their response.

Royal governors might take steps to get around the colonial legislatures if they deemed the threat mobs posed to law and order—or to Crown authority—were significant enough to warrant the public backlash. If there was widespread common cause with the rioters, however, magistrates and governors might find it hard to call out the militia since so many militiamen were themselves the rioters. In 1747, Massachusetts Governor William Shirley ordered the Boston militia regiment to turn out in response to civil unrest in the city due to Royal Navy impressment. The Boston regiment not only failed to respond, but many members of the militia took part in the unrest. Shirley was incensed at the Boston regiment, deriding its failure to enforce the “Execution of the Civil Authority.”<sup>20</sup> He then called up the militia regiments outside Boston and ordered them to enter and secure the city. But even this tactic had mixed results, since only officers primarily responded to Shirley’s request. Few enlisted men answered the call, reluctant to take up arms against their fellow countrymen. During the 1765 Stamp Act riots, the Boston militia were once again ineffectual because they were part of the mob.<sup>21</sup> When Lieutenant Governor Thomas Hutchinson threatened the crowd that he would “raise the Militia,” he received the

facetious answer that “they were already raised.”<sup>22</sup> Citizen-soldiers often saw their primary allegiance to their fellow citizens.

Indeed, overt support to civil disobedience *from* the militia was not uncommon in some quarters during the Stamp Act civil unrest. The New Jersey Sons of Liberty met directly after the muster of militia at Springfield on 7 March 1766; “after the Business of the Day was finished, the Sons of Liberty convened together, to consult Affairs relative to the Stamp Act, and resolve on Measures to defend our Rights and Privileges.”<sup>23</sup> The author of this report did not state how many in the militia were also Sons of Liberty, but the choice of the militia muster location and day of the meeting were significant and indicate some level of tacit approval from the people entrusted with the statutory obligation to enforce the law. When news arrived that Parliament had repealed the Stamp Act in June 1766, the Sons of Liberty marched in celebration *alongside* the militia officers and colonial government in Newport, Rhode Island.<sup>24</sup>

Passive resistance by militiamen was also not uncommon. Boston militia did eventually respond to the 1765 Stamp Act riot but were selective in their patrols and the actions they took. They were absent during the most violent aspects of the riot, which targeted customs officials.<sup>25</sup> In 1765, Rhode Island’s governor attempted to mobilize the militia to counter a mob protesting the Sugar Act, but mobilization took too long for the militia to be of any use.<sup>26</sup> Even if militia officers wanted to enforce the laws, they were often powerless to resist public opinion. In one reported 1765 incident in South Carolina, a militia colonel publicly stated that he would not be intimidated by mob violence and that he would enforce the Stamp Act; a visit from the Sons of Liberty caused him to change his mind.<sup>27</sup> Gage grumbled in 1765 that the Stamp Act unrest was due to the agitation of the “Rich and Most Powerfull People.”<sup>28</sup> Magistrates, justices, and militia officers tended to be from that class, which would help account for the tepid militia response.

Even for colonial legislatures and assemblies, however, disorder could be taken too far. This occurred when unrest targeted legislators or magistrates themselves, mobs became publicly destructive, or public violence threatened to turn into a popular uprising. To protect against such results, most colonies passed legislation between 1722 and 1774 giving magistrates more authority to curb riots and public disorder using the militia. Most of these were in response to specific incidents. In 1763, Pennsylvania backcountry settlers calling themselves the Paxton Boys attacked a

Conestoga Indian community, savagely murdering men, women, and children. Governor William Penn sent a message to General Gage requesting regular troops in Carlisle “to support the Civil Authority in the execution of the Laws in case of need, and to give a check to these daring attacks on Government.”<sup>29</sup> In 1764, this mob marched against Philadelphia, which had gathered Indians together for protection. Governor William Penn warned the Pennsylvania Assembly that he could not call on British regulars for assistance unless all local options were exhausted—a precedent examined in later chapters of this book.<sup>30</sup> This caused the Pennsylvania legislature to mobilize its volunteer Military Association, which stopped the mob outside Philadelphia and gave Benjamin Franklin time to mediate the situation. Gage authorized British regulars to guard the refugee Indians in Philadelphia and give them safe passage. Pennsylvania passed a riot act in 1764 and a vigilante act in 1770.<sup>31</sup> Similarly in response to 1747 unrest, Massachusetts enacted a riot act in 1750 that specifically charged militia field officers and captains to keep the peace.<sup>32</sup> If civil unrest threatened the existence of the colony or was reacting *against* popular opinion, then civil authorities called the militia for assistance.

In some cases, the militia still proved unreliable—causing governors to turn to the British regular military establishment for assistance. This had been nearly impossible prior to the French and Indian War (1754–63) since there were rarely more than a handful of regulars in the colonies. After Britain gained new lands from that conflict and the resulting 1763–66 conflict with American Indians referred to as Pontiac’s Rebellion, however, there were thousands of British regulars in the colonies.

The first major use of regulars as law enforcement came in 1766. Land use riots between aggrieved tenant farmers and wealthy landlords led New York’s governor to call up the militia. Unlike the targeted protests concerning Parliament’s taxes, this unrest was directed at wealthy colonial landlords, many of whom were also the local magistrates. Civil authorities in this case had no qualms about calling out militia to disperse the groups of protestors. Since most of the militiamen were themselves small tenant farmers and therefore sympathetic to the rioters, the militia did not turn out. Indeed, one of the rioters later convicted had been a lieutenant in the militia.<sup>33</sup> At the governor’s request and with the assent of the local magistrate, Major General Gage sent regulars from the 28th Foot in Albany to Poughkeepsie because the militia could not, in Gage’s words, “be depended upon.”<sup>34</sup> Notably, in this case, the civil authority had requested the general’s assistance, unlike the earlier Fort Loudon incident. Detachments

of regulars from several different regiments fought skirmishes across New York and New Jersey throughout the summer of 1766, arresting the ringleaders and preventing the riots from coalescing into a rebellion. Notably, the king pardoned the central New York ringleader, which later contributed to much Loyalist sentiment in this region during the Revolutionary War, especially as the landowners mostly sided with the revolutionaries.

As the British increased the number of regular regiments in North America after 1764, civil authorities more frequently called on the regulars for support. This brought regulars and colonists into closer, and often violent, contact. The militia's inability to counter the 1766 unrest in New York and New Jersey had far-reaching consequences as conflict between regulars and colonists was a contributing cause of the Revolutionary War a decade later.

Civil unrest could sometimes result from social issues, not only political or economic policies. Militiamen often found themselves in an awkward position when social issues divided communities. In 1774, Massachusetts authorities opened a smallpox hospital in Marblehead, much to the displeasure of the local populace. Resulting civil unrest endangered public health and caused the selectmen to station forty Massachusetts militiamen around the town to restore order.<sup>35</sup> Indeed, Massachusetts militia were used throughout the seventeenth and early eighteenth centuries to enforce public health decrees. To prevent yellow fever epidemics, Massachusetts militia units enforced a quarantine on ships in Boston harbor at multiple times in this era.<sup>36</sup> Placed between public health and the community, militia tended to obey orders and side with public health.

During the colonial era, militia played a vital, albeit complex, role in preserving public order. Because civil unrest was often viewed as a check on imperial power, militia members were often involved in the same unrest that they were called on to put down. This delicate balance was but one part of overall colonial governance complexities that—in the interplay between the colonies and the Crown—contributed to the drive for independence. Following the Revolutionary War, civil unrest was no longer considered a vital mechanism to express dissatisfaction with governance. Instead, it was seen as a danger to public order and a threat to minority groups. The role of the militia in the early Republic reflected this shift in thinking.

## **Suppressing Revolts and Putting Down Insurrections**

When civil unrest got out of control, colonial rulers could title it an insurrection. Insurrections were not uncommon in this era. They fit into

two broad categories: a public, armed revolt of masses against the colony's government (as opposed to targeted rioting against an act or order, largely restrained in scope) and an uprising of enslaved peoples against their slaves. The militia played a significant—and, unsurprisingly, complex—role in dealing with both types of insurrections.

The first major insurrection of North America colonists came in 1675 in Virginia, when insurgents under Nathaniel Bacon attempted to overthrow the Royal governor. The conflict was triggered by Virginia and Maryland militia units that attacked peaceful American Indian villages in error. When Indian retaliatory raids began, Virginia Governor William Berkeley declined to respond, reluctant to escalate the conflict until he could raise sufficient military force. Responding to the governor's perceived inaction, Virginia legislator Nathaniel Bacon rallied support from



Figure 2.3. “Bacon’s Rebellion: The Burning of Jamestown” sketch. Courtesy of the New York Public Library.

around the colony for a harsher response against Native nations; this soon led to massacres of peaceable American Indians by Bacon's followers. Bacon then led his own troops to oppose the Virginia militia called out by the governor. In the autumn of 1675, Bacon seized the Virginia capitol at Jamestown, burned it, and forced the House of Burgesses to make him commander of Virginia's militia. While some militia commanders swore loyalty to Bacon, others remained loyal to Virginia. Fighting lasted through the end of 1676, with Berkeley retaining authority. While the Virginia militia was not crucial to Berkeley's success—his use of naval forces was key to his eventual victory—the militia did play a prominent and complex role in Bacon's Rebellion.<sup>37</sup>

By the 1680s, governance in English North America had coalesced into the Dominion of New England, an administrative and military union of the New England, New York, and New Jersey colonies. Sir Edmund Andros governed the Dominion and grew increasingly unpopular due to his autocratic tendencies and perceived impiety toward New England Puritans. Anti-Catholic New Englanders also were suspicious of his service to Catholic King James II. By 1688, conspiracies of a Catholic-American Indian alliance had grown to a fever pitch in the colonies. These conspiracies and rumors spread from New England all the way to Virginia. By 1689, these conspiracies—combined with the news of the Glorious Revolution in England, where Catholic King James II had been replaced by Protestant William of Orange—coalesced into open rebellion across the New England and Mid-Atlantic colonies.<sup>38</sup>

The first act of rebellion was in largely Catholic Maryland, ironically, where militia commander Henry Jowles led the troops of two counties to demand that Lord Baltimore enhance protection for colonists from combined attacks by Catholics and Indians. Maryland's proprietors successfully defused the uprising by demonstrating that there was no conspiracy and increasing military presence in vulnerable areas. Historian Owen Stanwood noted that the militia was the first to “take the law into their own hands during the crisis” rather than a mob.<sup>39</sup> A great many colonists viewed their 1689–90 actions as protecting English law from outside intervention rather than acts of full rebellion.<sup>40</sup>

In the spring of 1689, Protestants in Boston became the first to rise in full revolt directly against Andros. As ever in popular uprisings, the Massachusetts militia played a complex role in this revolt. One of the ringleaders, John Nelson, was a prominent merchant and former militia officer.<sup>41</sup> At the time of the uprising, Governor Andros was on a military expedition

in the District of Maine, then a part of Massachusetts, with a small force of regulars and more than 1,500 militia. The troops were operating against a French outpost and their American Indian allies. Regular officers were placed in command of militia units, which rankled many militia officers. They aired their grievances in 1688 letters to friends in Boston, including accusations that many of Andros's regular officers were Catholics.<sup>42</sup> These letters added to the anti-Catholic fervor in New England. By April 1689, militia soldiers from Maine and Massachusetts were deserting Andros's expedition by the hundreds. On 18 April, Boston residents received word that a strong force of militant and armed deserters was headed toward their city. Worried that they would "make a great Stir and produce a bloody Revolution," prominent city residents banded together to form a "Com-



Figure 2.4. Sketch of the deposition of Governor Andros. Courtesy of the New York Public Library.

mittee of Safety" which—with the aid of armed Bostonians—assumed authority from the Andros government.<sup>43</sup> Andros was placed under arrest and sent back to England. Although not a formal militia action, their role as a catalyst in the Boston rebellion points to a pattern of militia influence around the colonies. As citizen-soldiers, they reflected the views of colonial society.

Reacting to news of the Boston rebellion, New York communities began to follow suit. Once again, the militia reflected public opinion. Long Island and Westchester County militia marched on New York City to demand greater protection from Catholics and American Indians. Lieutenant Governor Francis Nicholson replied on 31 May 1689 by threatening that if the militia did not cease its demands, he would turn guns on New York City itself and "set the town a fire."<sup>44</sup> This immediately prompted New York City's leading citizens to arm themselves—much as Boston's had—and demand Nicholson's resignation. "To prevent bloodshed," Nicholson handed his authority over to the county militia.<sup>45</sup> Capt. Jacob Leisler, second in command of his Westchester regiment, took possession of the fort on 2 June, "whereupon I resolved not to leave till I had brought all the traine bound [band] fully to joine with me" to enforce "the present Protestant power that now Raigns in England."<sup>46</sup> Leisler acted as the colony's authority figure until he fell victim to the backlash against the 1689 rebellions and was executed in 1691—even though, as he said, he was merely enforcing the change in status quo.

As the Dominion of New England crumbled through the spring and summer of 1689, Maryland became the last of the colonies to experience a full rebellion. Although the lords proprietor had calmed tensions that spring, new rumors of a Catholic plot to incite the Indians to attack circulated around the colony. John Coode raised the Charles County militia and marched on St. Mary's, the colonial capital. On 1 August, the proprietors' officials surrendered governance to the rebels.<sup>47</sup> As with the New England and New York rebellions, the rebels did not seek to break from England but rather restore what they saw as the legitimate and proper authority of English law. They held this in common with the revolution then occurring in England, which would see William III installed as monarch. In these North America actions, the militia mirrored the society around them and even across the ocean and saw their actions as congruent with their identity as Englishmen.

In 1719, South Carolina residents grew unhappy with the lords proprietor of the colony. They urged Governor Robert Johnson to renounce

his oath and help them build a rebel government, but he refused. When Johnson called on the militia for support, they abandoned him and sided with the popular will of the people in the colony. He was forced to flee South Carolina. The militia continued to support the rebellious government under Governor James Moore II until the Crown took over ownership of the colony, ending the dispute. Johnson returned as governor in 1729 with apparently no ill will from the people. The militia could often be placed in this nebulous gray area between the lawful government and the people of the colony. In this case, the militia sided with the people, foreshadowing 1775 events.<sup>48</sup>

By the 1760s, land ownership had become a contentious issue in North Carolina, much as it was in upstate New York. Colonists in the backcountry appealed to authorities concerning inequities regarding land rent, lack of law enforcement in the backcountry, and property seizure for debt, but their complaints went nowhere. Much like the 1689 rebellions, these individuals—referred to as “Regulators” because of their efforts to change the colony’s laws—saw themselves as true Englishmen lobbying for their rights.<sup>49</sup> This was not the view of Governor William Tryon, who denounced them as riotous. As the Regulators turned to violence in May 1768, Tryon attempted to call up the militia to protect government officials.<sup>50</sup> However, militia units were unwilling to serve. The Orange County militia refused to take a loyalty oath in September 1768 in support for the Regulators.<sup>51</sup> By 1771, Regulator violence increased and the North Carolina Assembly passed a riot act that allowed Tryon to “Command that Necessary draughts be made from the different Regiments of Militia” and lead them against rebellious groups.<sup>52</sup> Still, Tryon was only able to raise half of the colony’s full militia strength. Militia and Regulators met near Alamance Creek on 16 May and exchanged fire. Within a few hours, the Regulators were defeated. Tryon pardoned all Regulators except their leaders. He tried twelve for treason; the court found six guilty and executed them.<sup>53</sup> While the North Carolina militia remained divided over the Regulators, enough responded to Tryon’s call that he was able to end the Regulator Rebellion.

The other main type of insurrection was rebellion of enslaved people. Revolts of enslaved people increased in the eighteenth century, coinciding with a spike in the population of enslaved persons across the southern colonies. In South Carolina, the number of enslaved persons surpassed that of free white people. While there had been noticeable militia service of enslaved people in South Carolina in the seventeenth and even early

eighteenth centuries, South Carolina's legislature had passed laws by the 1720s that kept enslaved people from bearing arms.<sup>54</sup> The 1730s was a decade of increased violence and saw southern militia activity shift from external threats to internal. In 1730, Virginia militia were placed on patrols to observe enslaved community action as there was widespread fear in the colony of a revolt from this quarter. Militiamen were instructed to whip and incarcerate any enslaved persons out at night without a note from their owners.<sup>55</sup> When South Carolina's government ordered a full census of enslaved people in 1738, militia officers were the recording authority.<sup>56</sup>

The most significant enslaved people revolt during the colonial era occurred in Stono, South Carolina, on 9 September 1739. An unknown number of conspirators met near Stono River, stole firearms from a store, killed the store owners, and began moving south toward Georgia. Along the way, they burned houses and killed most whites they met. The number of rebels increased as they went, growing to between 60 and 100 by the late afternoon they halted north of the Edisto River. En route, the rebels encountered Lieutenant Governor William Bull, who escaped and rapidly alerted the militia. At around 1600, Bull and about 100 South Carolina militia engaged the rebels near Jacksonborough ferry. In a short but sharp battle, the militia killed, captured, or dispersed the rebels. Planters pardoned any enslaved people they thought had been coerced, then shot and beheaded rebel ringleaders. Militia remained on duty over the following weeks to pursue remaining rebels.<sup>57</sup>

One of the most significant outcomes of the Stono Revolt was the 1740 Negro Act, which made slave patrol duty mandatory for South Carolina militia. The Act severely restricted the few freedoms that enslaved South Carolinians enjoyed while also curtailing the civil liberties of white Carolinians. To defend against an enslaved persons uprising, South Carolina became an inwardly focused colony, and its militia reflected this.<sup>58</sup> Militia service for slave patrols became more frequent and common, and ceased to focus on colonial defense.

Militia's role in suppressing rebellions during the colonial era was complex and nuanced. When the rebellion reflected the larger social consciousness of the colony—such as the 1689 rebellions—militia members not only aided the rebels but often were the first to take up arms. Militia could be fully caught in the middle of revolts that divided a colony, as with the Regulators in North Carolina. Militia reactions to slave revolts were rapid and lethal. These examples reflect the nature of the militia as

citizen-soldiers who were representative of the societies they were drawn from. With no African American service in southern militias after the 1720s, white militia would naturally respond with extreme force and brutality to prevent a larger uprising from developing among enslaved people. The paranoia surrounding slave revolts that developed in the deep South often caused militia to work with former adversaries like American Indians to preserve order within their stratified society.

## **The Militia as Law Enforcement and First Responders**

Militia were often used in lieu of a police force for generic law enforcement duties. Called up by a magistrate or sheriff, these missions varied in scope and difficulty. These missions often straddled the line between law enforcement and what today would be called DSCA missions. Colonial militia served as a body of manpower which could be used in a variety of circumstances where the colonial legislature did not want to pay for a full-time force.

The following examples from colonial era newspapers show a cross-section of militia uses across the colonies. Like all newspaper reports, however, they are not universally representative. The newspaper articles reflect newspaper editor bias in what they reported and chose not to report.

After a rash of April 1723 fires in Boston, fifty militia soldiers were alerted to guard against possible arson amid larger fears of an uprising from enslaved people.<sup>59</sup> As a precaution, two New Jersey militia companies were present in 1727 when that colony executed an American Indian named Weequehela—to prevent attacks from his friends and relations.<sup>60</sup> In 1732, Rhode Island militia officers and men helped the local sheriff track down an escaped convict.<sup>61</sup> After an 18 November 1740 fire ravaged Charleston, South Carolina, the magistrates placed the town's two militia companies on guard duty to prevent looting.<sup>62</sup> During a 1747 riot in Newark, New Jersey, the local sheriff “raised thirty men of the militia” to safeguard a prison from being attacked by the mob; many were wounded in the resulting altercation.<sup>63</sup> After a string of 1763 robberies along a road in Georgia, the colony’s governor assigned the militia to patrol the road and apprehend the thieves.<sup>64</sup> A detachment of twenty-five New Jersey militia stood guard over the 1766 trial of an Englishman convicted of killing an American Indian and were present at his execution, presumably to prevent inflamed parties from either side from disrupting the proceedings.<sup>65</sup>

From 1767 to 68, horse thievery and other lawless activity plagued the Backcountry regions of North Carolina, South Carolina, and Georgia. Magistrates authorized the governors to use militia for law enforcement patrols during this time. South Carolina militia apprehended several dangerous thieves in August 1767, and Georgia justices of the peace used Georgia militia to pursue and capture a band of horse thieves that same year.<sup>66</sup> In an interesting case of intercolonial cooperation, Georgia militia crossed into South Carolina and captured horse thieves at the town of Ninety Six after killing the ringleader in a brief skirmish.<sup>67</sup> In March 1768, magistrates called out the North Carolina militia to guard a jail where several Backcountry thieves were being housed.<sup>68</sup>

Even during wartime, the militia had a law enforcement role. During the French and Indian War (1754–63), eight men attacked two South Carolina Provincial Regiment recruiting officers in 1758. Provincial troops were often militia members placed on active service with the British Army; while not regulars, they served in a semi-permanent status with pay. A party of South Carolina militia immediately pursued the assailants.<sup>69</sup> When most regular and provincial troops were on a 1759 expedition against the Cherokee, South Carolina militia were assigned to patrol Charleston streets at night—with mixed results. “Notwithstanding the Vigilance of the Militia of this Town,” robberies continued at their usual levels, bemoaned the local newspaper.<sup>70</sup> The paper expressed relief when provincial troops resumed this duty several months later.<sup>71</sup> In 1759, the Massachusetts governor put his militia officers on notice that it was their duty to seize all members of their command who failed to muster for a military expedition and turn them over to colonial authorities.<sup>72</sup>

Often, state or local governments used militia units to defend in situations other than war. Piracy and privateering threatened many merchants and coastal cities in the eighteenth century. In 1706, Maryland militia helped rescue sailors from a ship driven aground by a French privateer.<sup>73</sup> In August 1745, South Carolina militia were called out when a Spanish privateer threatened merchant shipping in Charleston harbor.<sup>74</sup> Similarly in 1748, Pennsylvania Associators units manned a battery of guns against Spanish privateers in Lewes and were placed on alert in case of a landing there.<sup>75</sup>

Beyond law enforcement, militia were used as a public resource to fill capability gaps. For example, a 1723 *New York Gazette* editorial recommended that New York City take concrete measures to fight fires in the city, including that at the end of each militia muster “they may be for half

an Hour trained to the extinguishing of fire.”<sup>76</sup> The editorial also suggested that the militia alternate streets in the city for this exercise so the public would become familiar with the equipment and gain confidence in fire-fighting engines.<sup>77</sup>

Sometimes the militia was used to keep the regulars in order. In 1762, Spanish sailors were forced to dock at Portsmouth, Virginia, due to damage sustained from a recent storm. British sailors from HMS *Arundel* attacked the Spanish sailors, driving the Spanish to barricade themselves in a house. The riotous British sailors then set fire to the house and were fetching gunpowder to blow it up when Virginia militia arrived from Norfolk, restored order, and arrested several of the British sailors.<sup>78</sup> On 15 January 1764, drunken Royal American Regiment regulars attacked a New York City jail to free Maj. Robert Rogers—at his request—wounding the jailer with a bayonet and forcing many other prisoners out of their cells as well. Major Rogers, whose self-promoting book on ranging tactics inspired formation of the Army Rangers in World War II and who was in jail on suspicion of murder—escaped on horseback.<sup>79</sup> The regulars behaved in “the most riotous manner” until the city militia turned out “by Beat of Drum” and arrested six regulars when “Quiet was soon restored.”<sup>80</sup> These incidents presaged 1775 events where the militia acted as the law enforcement arm for civil authorities, even if against British regulars. Operating in the gray zone between law enforcement and a military force was the norm for militia units in the colonial era.

## **Summary and Analysis**

Whether preserving the peace, suppressing rebellions, or acting as law enforcement, the colonial militia filled many roles in different ways. Their actions reflect their nature as citizen-soldiers in a rapidly developing society with evolving norms about what it meant to be an English citizen, with all the associated rights and privileges.

Rather than always acting as the colony’s military defense force, militia tended to reflect broader issues in society. The militia’s response to civil unrest or even rebellion was tempered not by loyalty to England or even their colony, but by each soldier’s perception of what it meant to be a citizen and how their rights might be affected. They acted as representatives of the people and their society. Examples from the rebellions of 1689 to the Stamp Act riots show how the militia—commanders and soldiers—used their agency to make a political statement about who they were as Englishmen. If citizen-soldiers were politically aligned with a

group that had grievances—and the implicit backing of approving colonial officers—they would ignore Crown authority. Militia support of the 1775 rebellion of the thirteen colonies fit this tradition and helped create the Continental Army.

Actions of militia in this way demonstrated their agency as actors in a class-based society. When there was general political and civil unrest across lower classes of people in a colony—such as the 1766 unrest in New York or the Regulator wars in North Carolina—lower class enlisted militia soldiers would side with those causing unrest. Until the arrival of regular British soldiers in the 1760s, this posed a significant challenge to those in positions of power with higher social status. After 1763, the militia held less agency as a social forcing function since magistrates, officers, and political officials could use the regulars as a police force. This, in turn, shaped colonial views on a standing army which had significant repercussions in America's early Republic era. Much of the distrust of a large, permanent, regular US Army can be traced to the colonial era.

Reliance on the regulars had an important byproduct, as well. Although colonial militia were less reliable at controlling civil unrest than regulars, using the militia for this role was less inflammatory in the long run. Use of British regulars post-1763 increased tensions between the colonies and the Crown and stoked colonial fears of having more regulars garrisoned in North America. This drove many colonists toward political action groups like the Sons of Liberty, and also enlivened interest in militia service in 1773–75. Although more effective at defusing civil unrest, use of the regulars in this manner became one of the colonists' grievances that led to the Revolutionary War.

While colonial militia were not always reliable, the institution still played a major role in preserving laws and keeping societies in order during the colonial era. It became the default for community policing, a practice that continued well into the next century until the creation of civil police forces. The militia also functioned as a body of labor to be used in times of emergency when there was no other support at hand. The editorial that called on the New York City militia to be used as firefighters sounds similar to the National Guard of the 2020s, which saw use as everything from bus drivers to schoolteachers during labor shortages.<sup>81</sup>

Additionally, British common law mechanisms set the example for future US legislation and policy concerning military force against US citizens. Civil authorities controlled the use of military force. This, com-



Figure 2.5. “Stand Your Ground” National Guard Heritage painting by Don Troiani. Courtesy of the National Guard Bureau.

bined with civilian leadership of the military, became an established part of American society. Citizen-soldiers answered to their municipal, state, and national elected officials rather than to a military authority. Legal and functional precedents established in this era also set the pattern for future US laws. Pennsylvania authorities had to exhaust all means at their level during the 1764 Paxton Boys crisis before they could call for regulars to support them—similar to US civil unrest examples discussed in Chapters 4 and 5 of this volume. This era set legal precedents in the development of the DSCA framework.

When Capt. John Parker stood with his company of Lexington militia on their town green on 19 April 1775, he was not there as a member of a belligerent nation. He stood there as a representative of Lexington’s board of selectmen, charged with upholding the safety and security of the town’s residents and property. He did not block the road to Concord; rather, he placed himself in the best position to ensure that the British Regulars respected the laws of the town. Seeing this armed force as a military threat rather than a civil policing formation, British Regulars attacked. This engagement marked the beginning of the American Revolution. In its truest

form, the Lexington Green engagement was not so much a military clash of arms, but an example of defense support to civil authorities.

### **Thought Questions**

1. How did the use of militia in the colonial era differ from National Guard use today? How are they similar?
2. What was the role of the militia in colonial society?
3. How did issues such as class, race, debt, and property ownership shape militia experiences in the colonial era?
4. How did politics influence the actions of colonial militia?

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## Chapter 3

### From Independence to the Secession Crisis, 1783–1861

Andrew L. Hargroder

On Monday, 15 April 1861, President Abraham Lincoln issued the famous proclamation that called for 75,000 militia to subdue a massive rebellion in the American South. Since November 1860, when voters elected Abraham Lincoln as the sixteenth president of the United States, the nation had descended into the greatest constitutional and political crisis in its history. Lawmakers in seven southern states rejected the results of the 1860 election, then moved quickly to secede from the United States and form a new government—the Confederate States of America—in a desperate bid to preserve and perpetuate their slave society.<sup>1</sup>

Working independently of and in concert with the secession movement, ardent proslavery and anti-Lincoln contingents pursued violent means to dissolve the Union. Secessionists plotted to assassinate President-Elect Lincoln in Baltimore; paramilitary groups organized and threatened to capture Washington, DC, if Virginia or Maryland seceded; armed insurgents forcibly seized US military posts throughout the South, often weeks before their states seceded; and on 12 April 1861, South Carolinian artillery batteries in Charleston opened fire on US troops garrisoning the federal post of Fort Sumter. The movement that birthed the Confederacy, known as the Secession Crisis, was a violent insurrection against the United States that inaugurated the Civil War.<sup>2</sup>

Three days after Confederate guns fired on Fort Sumter, President Lincoln invoked long-standing emergency powers to restore order and preserve the Union. The US Constitution and a series of laws culminating in the Insurrection Act of 1807 provided the framework within and the process by which President Lincoln could “call forth” the states’ militias and federal military forces to repel invasions, suppress insurrections, and execute the laws of the United States. Although the 15 April Proclamation did not name each of these laws, President Lincoln drew his language directly from them.<sup>3</sup>

Scholars have long recognized the significance and influence of these early republic laws on Lincoln’s 15 April 1861 Proclamation, and on emergency declarations issued by US presidents in the twentieth and early twenty-first centuries. The American public has also grown more familiar with these laws, several of which received national attention during some of the most contentious and tumultuous moments in recent history. In late

May 2020, as tens of thousands of Black Lives Matter protesters gathered—and some rioted—in Washington, DC, President Donald J. Trump threatened to invoke the Insurrection Act and mobilize federal troops to quell the unrest. On 6 January 2021, thousands of protesters supporting President Trump’s re-election stormed the US Capitol to disrupt Congress’s certification of electoral college votes. Among key leaders who sought to overturn the results of the 2020 Election through violence was Stewart Rhodes, founder of the Oath Keepers paramilitary group, who believed that President Trump would invoke the Insurrection Act to remain in power. In the days that followed 6 January 2021, more than 25,000 National Guard servicemembers federalized and converged in the nation’s capital to ensure the peaceful transition of power. These events and others resurfaced the complicated issues of military power and civil unrest.<sup>4</sup>

Despite its valued place in American historiography, the extensive scholarly and public discourse on emergency military powers during civil unrest has focused almost entirely on the laws of the founding period or the Civil War and Reconstruction eras. They largely ignore the period between the 1807 act and Lincoln’s Proclamation in April 1861. That era, commonly known as the antebellum or Jacksonian period, witnessed some of the most tumultuous moments and rapid developments in US history. This era witnessed the rise of the Second-Party System, the Louisiana Purchase, war and conquest for the North American continent, the Second Great Awakening, Indian removal, social reform movements, mass immigration, the expansion of slavery, and the dissolution of the Union. This era also included some of the most important events in the nation’s history of civil unrest. From the German Coast Uprising (1811) through the Mormon Rebellion (1858), civil unrest in the early republic greatly and persistently challenged American attitudes, laws, policies, and practices toward the roles, uses, and abuses of domestic military power.

The purpose of this chapter is to provide a brief military history of civil unrest from the end of the Revolutionary War in 1783 through the early months of the American Civil War in 1861. It blends historical narrative with analysis to explain how civil disturbances influenced domestic military power in American society. Americans responded to nearly every notable incident of unrest by creating or revising statutes or developing practices and beliefs regarding military power. Although these laws, beliefs, and practices varied widely, they generally governed how and under what circumstances state and federal forces may aid civil authorities during moments of domestic unrest—known as Defense Support of Civil Authorities (DSCA). Although national and state military forces respond-

ed to many different emergencies throughout this period, including natural disasters and pandemics, this chapter focuses exclusively on federal and state military responses to revolts, riots, and various forms of civil unrest.

This chapter is divided into two chronological sections, each one dedicated to a particular timeframe within the period of the early republic. The first and longer section covers the Founding Era, from the end of the Revolutionary War through the 1810 West Florida Rebellion. Americans during this period forged their DSCA framework out of a need to balance deep skepticism of centralized power and a professional standing army with grave apprehension of internal and external threats. The US Constitution, Second Amendment, and Militia Acts of 1792 and 1795 established the framework within which the federal government could federalize the militia in response to national emergencies. Two 1806 and 1807 amendments—the latter commonly referred to as the “Insurrection Act”—built on this existing framework by expanding executive powers to call on federal military forces during similar emergencies. Presidents George Washington, John Adams, Thomas Jefferson, and James Madison held varied and opposing views on executive military powers. Regardless of their beliefs, they all relied on the established legal framework to call on the militia and federal military forces to subvert or quell civil unrest.<sup>5</sup>

Section Two examines the period between the 1811 German Coast Uprising and the outbreak of civil war in 1861. By the 1810s, many Americans remained confident that their states’ militia could best defend their communities from internal unrest. After the War of 1812, however, a variety of factors and events compelled many Americans to develop more nuanced and expansive views of domestic military power. Between the late 1820s and the late 1850s, the country began to splinter over the expansion of slavery, American Indian removal, labor, immigration, urban growth, and civil rights. Particularly in towns and cities, Americans increasingly took their grievances to the streets in mass protests. Although many demonstrations proved peaceful, dozens devolved into violent mobs that overwhelmed local officials and killed scores of bystanders. In more rural areas and the borderlands, too, armed vigilantes frequently committed heinous acts of violence under the pretense of lawful assembly or self-defense. Moreover, in the American South, enslaved people frequently revolted against their enslavers. Fearing the tumult of a second Haitian Revolution within the borders of the United States, slaveholders appealed for a larger and enduring federal troop presence throughout much of the South. These Americans grew far more accepting of the nation’s standing army than historians have recognized. Although the civil disturbances of the

early and mid-nineteenth century did not influence major revisions to federal law, they compelled many Americans to support more active roles for states' militias and federal troops in quelling domestic unrest. The reliance on federal and state military forces continued as American divisions over slavery and national expansion reached their apex during the Civil War.

In Chapter 1 of this book, Maj. Jonathan Bratten notes that the DSCA system is “a product of historical events and did not come into being easily.” Indeed, the United States has a long and complicated history of domestic military power and civil unrest. Since the nation’s founding, Americans have embraced a wide range of policies, practices, and beliefs about the role of military power during national emergencies and civil disturbances. At one end of the spectrum, Americans remain deeply skeptical about using federal troops to quell civil unrest, and instead prefer local law enforcement or the National Guard. On the other end, Americans have persistently and often eagerly called on the full might of federal power to violently suppress their fellow citizens. The central question is not whether Americans trusted or distrusted a standing army; rather, it is under what circumstances, against whom, and for what purposes do Americans justify the domestic use of military force as acceptable? Americans often differed greatly on the answers to this question as they responded to real and imagined threats to US sovereignty, economic stability, and social order.

## **From Newburgh to West Florida: 1783–1810**

The nation’s first DSCA framework originated from the uncertainty and instability that pervaded the United States after the Revolutionary War. American victory against Great Britain achieved the country’s independence but left unresolved the questions of whether the United States would establish an enduring government and a cohesive nation. With uncertainty surrounding the very meaning of “American” and “citizenship,” further questions arose regarding the government’s proper role in defending its citizens and its sovereignty. Between 1787 and 1807, national leaders established a series of laws and policies—compromises over these contested issues—that defined how the government could employ military force to quell civil unrest. The most important of these core texts were the US Constitution, the Second Amendment, the Calling Forth Act of 1792, the Militia Acts of 1792 and 1795, and two amendments in 1806 and 1807. The last of these, commonly known as the Insurrection Act, looms large in the public imagination but remains one of the least-understood statutes. Historians Michael Rouland and Christian Fearer recently explained that Americans often imagine or refer to the Insurrection Act as a singular

piece of legislation. Rather, it was the combination of preceding texts that created the country's first framework for employing military force during domestic emergencies, a system that continues to shape policies and practices in the early twenty-first century.<sup>6</sup>

One of the greatest challenges that the republic's leading lawmakers and public figures faced after the Revolution was that the government under the Articles of Confederation lacked the powers and resources to defend the nation against foreign and domestic threats. When hostilities against Great Britain formerly ended in 1783, much of the public remained averse to the establishment of a national standing army. Despite the mixed performance of militia throughout the war, many Americans maintained great confidence that state militia were the most effective and virtuous force to confront internal and external threats. Against the counsel of George Washington and others, Congress under the Articles of Confederation created a meager national army and relegated it to the borderlands. Lawmakers gave the First American Regiment a decidedly limited mission: to protect settlers, trade networks, and "facilitate the surveying and selling of the . . . [public] lands in Order to reduce the public debt and to prevent all unwarrantable intrusions."<sup>7</sup> Though important, the Army's limited mission on the frontier reflected Congress and public skepticism toward its domestic role; state governments and their militia would shoulder most of the power and responsibility to meet future threats the nation might face.

However, violence on the frontiers, economic devastation wrought by the Revolutionary War, and high taxes levied by state governments caused domestic unrest to which the military system under the Articles proved repeatedly slow or inadequate to respond. The first notable incident in the history of the US Army responding to civil unrest occurred near present-day Vincennes, Indiana, in July 1787. The upheaval near Vincennes challenged the government's claims to the frontiers and provided an opportunity to deploy the national army in defense of that sovereignty. However notable, the Vincennes Uprising proved less consequential and disturbing to national leaders than the events that contemporaneously unfolded farther east.<sup>8</sup>

Throughout 1786 and 1787, farmers and backcountry settlers in many states resisted tax collection, court orders, and state government policies that disproportionately affected small farmers as well as the poor, rural, and landless, many of whom had served during the Revolutionary War. Led by Daniel Shays, western Massachusetts dissenters formed groups called Regulators and rebelled against foreclosures and taxes that



Figure 3.1. This early 20th century sketch portrays Daniel Shay's forces fleeing from federal troops after attempting to lay siege to the Springfield arsenal, 25 January 1787. Courtesy of Wikimedia Commons.

were significantly higher than any imposed during Britain's imperial rule. The Massachusetts governor called on the militia to suppress the rebellion, but many of them sympathized with the Regulators; they refused to make arrests, or abstained from mustering. With the First American Regiment consigned to the borderlands, Congress moved to expand the Army from less than 1,000 to 2,040 soldiers. However, antagonism between state and federal officials hindered this effort and Congress only raised two companies of artillery. To the great embarrassment of state and national leaders, a new militia largely funded by coastal merchants finally subdued Shays' Rebellion in the spring of 1787 at the Springfield Armory.<sup>9</sup>

The popular unrest of 1786 and 1787 revealed debilitating weaknesses within the American military system under the Articles. The most alarming defect was that the states held too much autonomy; the military system was too decentralized to rapidly quell domestic uprisings or meet invasions by foreign adversaries. Many state and national leaders recognized the need for a stronger central government and a new martial

framework.<sup>10</sup> Throughout the summer of 1787, delegates from around the country met in Philadelphia for the Constitutional Convention to revise the Articles of Confederation. After several months, the delegates reached an uneasy compromise in the form of the country's national Constitution. One of the central debates concerned the military powers of the new government. Federalists secured enhanced authority for the federal government to mobilize resources for war and domestic unrest, including the power to create and maintain a professional standing army in peacetime. Anti-Federalists succeeded in dividing military power both within the branches of the federal government and between the states and federal government. Between 1787 and 1792, lawmakers codified these compromises in the Constitution, Bill of Rights, and Militia Act of 1792. These represented the core texts that informed the US government's first framework for responding to national emergencies.<sup>11</sup>

When Constitutional Convention delegates met at the Pennsylvania Statehouse, they brought with them a host of varying interests, experiences, and fears that shaped their views of military power. Their experiences from the Revolution remained impactful, but so too did their anxieties about the instability and unrest that defined the mid-1780s. As a result, the threats and realities of Native American resistance, British and Spanish power in North America, slave revolts, unruly state legislatures, and economic decline informed many debates in the Convention and during ratification. Though these concerns were important, the upheaval of 1786 and 1787, particularly Shays' Rebellion, and the prospect of a creating a peacetime military establishment more heavily influenced the contests over the nation's first laws concerning military power and civil unrest.<sup>12</sup>

The US Constitution transferred significant military power from the states to the federal government. No longer burdened by the requisitions process under the Articles of Confederation, Congress and the executive held powers under the Constitution to mobilize, regulate, arm, and lead—in effect, to federalize—the states' militias during national emergencies. Two sections established the federal government's framework for responding to domestic unrest: Article 1, Section 8 and Article 2, Section 2. In the first section, Clause 15 established Congress's authority “To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions.” Clause 16 gave Congress the power “To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Offi-

cers, and the Authority of training the Militia according to the discipline prescribed by Congress.” Article 2, Section 2 established: “The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States.”<sup>13</sup> Together, these clauses established the federal government’s authority to federalize and lead the states’ militias in quelling insurrections and enforcing the laws of the United States. They also initiated a heated debate over military powers during the Constitution’s ratification that eventually resulted in the Second Amendment to the Bill of Rights.

Contrary to prominent twentieth century legal interpretations and to popular belief, the Second Amendment guaranteed neither an individual’s right to own a firearm nor a collective right to armed revolution against the federal government. Although the first claim has more basis in historical fact, the second is, at best, highly suspect. In its proper context, the Second Amendment accomplished three important ends: first, it enshrined the fundamental right of citizens (“the people”) to bear arms in the defense of their state and community through militia service; second, it conveyed Anglo-American and Enlightenment principles that hailed the militia over a standing army as the ideal military force of a free, republican government; and lastly, it was the compromise that ensured enough Antifederalist support for the Constitution’s ratification, despite their objections to the military clauses in Articles 1 and 2. Together, the Constitution’s military clauses and the Second Amendment established the states’ militias and the “citizen-soldier”—not the national army and professional soldier—as the centerpieces of the United States’s first military system.<sup>14</sup>

After the states ratified the Constitution, the new government began legislating the Armed Forces of the United States within the parameters established by the Constitution and the Bill of Rights. In early May 1792, the Second Congress passed two of the most important of these laws: the Calling Forth Act and the Militia Act. Whereas the Militia Act created the country’s first national militia system, the Calling Forth Act established the process and conditions by which the president could lawfully “call forth” the states’ militia into federal service to repel invasions and quell civil unrest. Sections 1 and 2 detailed, among several provisions, that the president may lawfully call up states’ militias when requested by a state legislature or executive during an insurrection or notified by an associate or district judge when opposition to federal laws proved “too powerful to be suppressed by the ordinary course of judicial proceedings.”<sup>15</sup> Section 3 established that, in both preceding cases and before using military force, the President “shall” issue a proclamation to “command such insurgents to

disperse, and retire peaceably to their respective abodes, within a limited time.”<sup>16</sup> As an additional check against executive power, Congress delegated this authorization for only two years.

The Calling Forth Act of 1792 remains one of the most important statutes in the military history of civil unrest. Congressional lawmakers who drafted the bill attempted to strike a delicate balance between delegating appropriate military authority while also implementing checks against potential abuses of executive power. The act also outlined a deliberate process faithful to republican principles by which state and federal lawmakers and executives would, theoretically, play a direct role in assessing threats, determining the appropriate scope of military response, and authorizing the use of force. The question remained how faithfully public officials would adhere to these standards in the face of evolving threats to the republic.<sup>17</sup>

Throughout the 1790s, the French Revolution polarized much of the country into distinct factions between those who supported and those who opposed the revolution’s principles and its radical turn. This polarization effectively created the nation’s first political parties, the Federalists and the Democratic-Republicans, and fostered a tumultuous political climate that lasted for decades. National leaders grew deeply fearful of subversive agents lurking around every corner to undermine the republic’s political stability. Through this lens, Federalists and Democratic-Republicans generally viewed dissent against their policies as schemes of French (“Jacobin”), Haitian, Native American, Spanish, or British origin. To counter these perceived and real threats, leaders of both parties used military power in varied ways. Although many civil disturbances occurred during this



Figure 3.2. “Whiskey Rebellion” illustration by R. M. Devens shows a tarred and feathered tax collector forced to ride the rail. Courtesy of the New York Public Library Digital Gallery.

era, the Whiskey Rebellion, the Haitian Revolution, and the Burr Conspiracy emerged as the most important. They compelled national lawmakers to pass three notable amendments to the core texts governing military response to civil unrest, all of which expanded executive powers. By 1810, the federal government maintained its central framework and reliance on the militia when responding to civil unrest. With Congress's passage of the 1807 amendment, however, the United States entered a new era characterized by increasing use of federal troops during domestic disturbances.<sup>18</sup>

Throughout the summer of 1794, the United States witnessed the largest uprising since Shays' Rebellion. Staunch opposition to the whiskey excise tax began nearly as soon as it was implemented in 1791. Within several years, protests and resistance to the tax in western Pennsylvania counties reached a boiling point. In July 1794, armed dissenters twice confronted a regional tax collector named John Neville at his home. During both incidents, the mob and Neville's posse—which included several enslaved men and a small detachment of US troops—exchanged fire, resulting in several casualties. These confrontations sparked the Whiskey Rebellion, a massive uprising that engulfed much of western Pennsylvania and spilled into the backcountry of Maryland, Kentucky, and Virginia. Fearing an outbreak of civil war and viewing the revolt as a threat to government sovereignty, President George Washington and his cabinet immediately set



Figure 3.3. Painting of President George Washington reviewing the Western Army at Fort Cumberland, Maryland; attributed to Frederick Kemmelmeyer. Courtesy of The Metropolitan Museum of Art.

into motion the process for mobilizing military force outlined in the Calling Forth Act. After nearly one week of careful deliberation with judicial, federal, and state officials regarding the best course of action, President Washington issued a proclamation ordering the rebels to disperse. Two months later, the uprising dissipated after continued negotiations and the federal mobilization and deployment of almost 13,000 militiamen from various states.<sup>19</sup>

One of the most immediate consequences of the Whiskey Rebellion was Congress's revision of a core law that governed the federal military response to civil unrest. On 28 February 1795, Congress passed a new Calling Forth Act and repealed the law of 1792. The new law closely resembled the former, except for key provisions that gave the president more unilateral and indefinite authorization to federalize the states' militias to enforce federal laws, repel invasions, and quell insurrections. Congress's willingness to broaden executive power reflected the heightened sense of anxiety concerning the government's vulnerability after the Whiskey Rebellion.<sup>20</sup>

Although rancorous politics continued to define much of American life, civil unrest incidents did not compel any major changes to federal laws governing domestic military power for the rest of the 1790s. Indeed, national lawmakers did not pass important amendments to these statutes until 1806 and 1807, when several events threatened the possibility of large-scale civil unrest. Although the United States confronted varied challenges during Thomas Jefferson's second term, historians generally note that threat of collusion between foreign adversaries and internal enemies most influenced the amendments of 1806 and 1807.

By 1805, the US government had faced both real and perceived affronts to its sovereignty in North America and on the high seas from Great Britain, Spain, and the Barbary states; Native Americans in the South and West remained defiant to US expansion; President Jefferson's Administration struggled to maintain neutrality as the Napoleonic Wars threatened to drag the United States into a conflict with Britain or France; and a newly independent Haiti emerged in the Caribbean. Given the complex geopolitical environment, many national leaders feared that British, Spanish, or Haitian agents would incite enslaved people, indigenous nations, or disloyal American citizens to rebel against the US government. These fears reached a climax in the winter of 1806–07, as rumors circulated that former Vice President Aaron Burr was raising an army to seize the western states and launch an expedition into Spanish Mexico. Known as the



Figure 3.4. Sketch of the Burr Conspiracy. Courtesy of Wikimedia Commons.

Burr Conspiracy, this event prompted national intrigue and culminated with a federal trial over whether Aaron Burr committed treason against the United States.<sup>21</sup>

The circumstances surrounding the “conspiracy” and the extent of Burr’s guilt or innocence remain mysterious and contested among historians. For this chapter, what is important is that the Burr Conspiracy, threat of unrest on the western frontiers, and possibility of war with Spain compelled national lawmakers to pass two amendments. Though lesser known, the first law passed through Congress in April 1806. Sometimes referred to as the Volunteer Act of 1806, it broadened executive military powers in two notable ways: first, the law authorized the president, to require state governors to mobilize their militia and “hold [them] in readiness at a moment’s notice” for up to six months; second, the statute authorized the President to “call into [federal] service” all or a portion of that mobilized militia “when he shall judge the exigencies of the United States require it.”<sup>22</sup> Although

Congress had passed similar acts in 1797 and 1803, the 1806 law gave the president broader authority to determine the “exigencies” that required the mobilization and federalization of militia, and it expanded the length of militia service from three months to six months.<sup>23</sup>

The second revision, the act of 1807, is widely known as the Insurrection Act. Throughout the fall and winter of 1806–7, the Jefferson Administration went to great lengths to detain Aaron Burr and foil the alleged plot. Despite available executive powers, President Jefferson and several national leaders understood that the circumstances did not justify the federalization of militia under the Calling Forth Act. Historian Robert Coakley noted that the lack of clear authority in this context motivated Jefferson to issue a broad proclamation in late November 1806. Since no insurrection or obstruction of federal laws was actively underway, this proclamation called on virtually every civil and military, federal, and state official to remain vigilant in enforcing all laws related to “vessels, arms, military stores, or other means provided or providing for the same” with the aim of disrupting or preventing the alleged plot.<sup>24</sup> In the meantime, Jefferson urged Congress to pass a law authorizing the president to mobilize and employ US military forces, not just militia, to quell an insurrection or enforce federal laws. Burr was detained in mid-February 1807 and escorted to Washington, DC, by a detachment of US regulars. As Burr traveled east to stand trial for treason, Congress deliberated and passed the Insurrection Act on 3 March 1807.<sup>25</sup>

The Insurrection Act spelled out instances when US land and naval forces could be used:

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in all cases of insurrection, or obstruction to the laws, either of the United States, or of any individual state or territory, where it is lawful for the President of the United States to call for the militia for the purpose of suppressing such insurrection, or of causing the laws to be duly executed, it shall be lawful for him to employ, for the same purposes, such part of the land or naval force of the United States, as shall be judged necessary, having first observed all the pre-requisites of the law in that respect.<sup>26</sup>*

In the context of the Burr Conspiracy and tensions with Spain, the act was one of several that authorized President Jefferson to use a wider range of military power to protect the Union in the face of varied threats. As contemporary readers may know, however, the law had significant impli-

cations far beyond Thomas Jefferson's presidency. The 1807 act notably expanded executive powers by authorizing the president to mobilize and employ federal military forces when responding to insurrections or the obstruction of laws—a power that Congress only limited once since it was passed. Because of its significance to American legal history, the Insurrection Act has provided a lens through which many scholars have examined federal military responses to civil unrest. Historians, legal scholars, and journalists have used this approach to explore varied civil disturbances that compelled US presidents to invoke the law over the last two centuries. However useful this methodology, focusing on presidential use of the Insurrection Act limits scholars and the public from understanding the wider military history of civil unrest in the United States.

The 1807 act signaled a shift in how many Americans viewed the role of domestic military power. The core laws of the 1790s prioritized the role of the states' militias during civil unrest and codified a deliberate process for state and national officials to follow before resorting to force. Indeed, this was a process that Presidents Washington, Adams, Jefferson, and Madison generally followed when they employed military force during civil disturbances. Beginning with Thomas Jefferson's Presidency and increasingly after the War of 1812, however, some public officials began to view certain kinds of civil unrest as too volatile to risk delaying a forceful response and too dangerous to check with only state militias. The Burr Conspiracy ranked among these instances and proved the immediate catalyst for passing the 1807 act. In the wake of the Haitian Revolution, however, many public officials viewed slave revolts as one of the most daunting threats to domestic stability and to the American republic.

Several historians have recently examined how the Haitian Revolution and its reverberations profoundly influenced American fears of instability and civil unrest in the southern United States. Before the nineteenth century, slave rebellions throughout the Western Hemisphere threatened the plantation system and the lives of enslavers. But when Haitians established a free, black republic, their actions exceedingly raised the bar for potential slave revolts. For enslaved people in the United States who learned of the revolution, defiance promised the possibility for freedom, as well as self-government, access to citizenship, and fulfillment of revolutionary promises of liberty and equality. As refugees fled from Haiti to port cities in the American South, their stories inspired a wave of resistance. Between 1791 and 1811, enslaved people organized and rebelled for their freedom in numbers and intensity not seen since the Stono Rebellion (Chapter 2). They coordinated at least twenty plots and revolts in the 1790s; the most

numerous and largest occurred in Louisiana, the Carolinas, and Virginia. Haiti's influence reached far into the nineteenth century, inspiring generations of what historian Brandon R. Byrd calls "American Toussaints"—luminaries like Gabriel Prosser, Denmark Vesey, David Walker, Nat Turner, and others who championed the promise of Haiti's revolution and sought to fulfill that promise in the United States through their own rebellions.<sup>27</sup>

The first recorded large-scale slave conspiracy in the United States inspired by Haiti occurred near Richmond, Virginia, in 1800. Gabriel and Nanny, husband and wife and the enslaved property of Thomas H. Prosser, planned a widespread revolt that was supposed to involve thousands of enslaved men and women in and around Richmond. The Virginia militia foiled the plot before Gabriel and others could spring to action, but news of the revolt stunned the region and nation. The alleged plan called for the ringleaders to secure allies among Catawba Indians and poor whites, march on Richmond to seize arms and ammunition, capture Governor James Monroe, and demand their freedom. They intended to eliminate any resistance along the way, sparing only Frenchmen, Quakers, and others who aided their cause. Another disturbing revelation for slaveholders was that the enslaved conspirators factored recent budget and troop cuts to the Regular Army into their decision-making. This news indicated that many enslaved people closely followed foreign and domestic policy issues and viewed the absence of federal troops as a weakness to exploit. Although Gabriel's Rebellion did not compel any federal legislation, each major plot or revolt that followed, from the 1811 German Coast Uprising to John Brown's Raid, compelled Southern lawmakers to revise state slave codes and militia laws.<sup>28</sup>

Beyond reforms at the state level, threat of slave revolts in the newly acquired Louisiana Territory encouraged some American officials to accept a more active Regular Army role in domestic affairs. When President Jefferson took office, Napoleon Bonaparte sought to expand France's influence in North America and crush Haitian resistance. American officials feared that Napoleon's ambition and Haiti's ongoing revolution would entice large groups of "republican blacks" to infiltrate Louisiana through New Orleans. These Haitians would facilitate the "sudden emancipation" of slaves on the border with the United States. Minister Robert Livingston and many others were gravely concerned about the future of Louisiana if it remained under French control. Samuel Purviance, a congressman representing North Carolina, predicted that "the tomahawk of the savage and the knife of the negro would confederate in the league (with France), and there would be no interval of peace."<sup>29</sup> After securing Louisiana Territory

in 1803, the prospect of a slave uprising prompted several Jeffersonian officials, once fearful of a standing army, to change their views. Louisiana Territorial Governor William C. C. Claiborne and New Orleans Mayor John Watkins both justified the heavy presence of US regulars based on the territory's slave population. Fearing conspiracies, slave rebellions, and their potential to destabilize the region, American officials began to view the use of federal troops as an acceptable tool to quell civil unrest, allowing Congress to pass the 1807 Insurrection Act with little controversy.<sup>30</sup>

By 1808, Congress had finalized the first series of laws and policies that defined the United States's early DSCA framework. The US Constitution, Second Amendment, Calling Forth Act and Militia Acts of 1792 and 1795, and amendments in 1806 and 1807 provided a limited legal system within which the federal government could employ state and federal military forces during civil unrest. This framework represented a compromise over American cultural and ideological views of military power, which included deep ambivalence about the domestic use of regulars and a preference for using state militias to confront the republic's foreign and domestic threats. Many of these beliefs, particularly cultural reverence for the militia, held firm throughout the American republic's early and tumultuous decades. As the United States expanded throughout the nineteenth century, however, growing and evolving threats to its internal stability fundamentally challenged many of these core principles. To meet and counter these dangers, American civilian and military leaders developed more expansive beliefs about the use of domestic military power.

## **From the German Coast Uprising to the Secession Crisis: 1811–61**

By 1812, continued British incursions against American sovereignty, Tecumseh's movement for a Pan-Indian alliance to curb US expansion, and the German Coast Uprising brought the United States to the verge of a national crisis. These tensions climaxed in mid-June 1812, when the United States declared war against Great Britain. Beyond the War of 1812, a series of conflicts in the 1810s opened a half-century of rapid US expansion. From 1811 to 1861, this expansion, its consequences, and additional factors produced repeated crises within American society, culminating in disunion and civil war. These crises included civil disturbances, ranging from slave uprisings to nativist riots, that fundamentally challenged what many Americans believed about the role of domestic military power. Commonly known as the Antebellum Period, this era witnessed no sig-

nificant change to federal legislation governing military support to civil authorities. The repeated internal crises of this period did, however, compel many Americans to develop more nuanced and expansive views of domestic military power. These changing beliefs influenced the creation of significant state and local policies and altered federal military practices for quelling civil unrest. This shift in policies and practices held enormous implications by 1861, when the United States splintered over the future of the nation and slavery's place within it.

Between the German Coast Uprising of 1811 and the Nullification Crisis of 1832–33, civil disturbances—particularly slave revolts in the American South—compelled a profound shift in attitudes and practices regarding domestic military power. Many Americans continued to rely on their states' militias, but increasingly embraced the role of federal troops in halting civil unrest. In January 1811, hundreds of enslaved people revolted in the Mississippi River parishes outside New Orleans. With little time to inform President Madison, Territorial Governor Claiborne acted quickly and deployed available forces to quell the uprising. Although militia and vigilantes brutally terminated the revolt, the German Coast Uprising marked the first time that US Army regulars directly maneuvered against enslaved people in rebellion. This important precedent inspired confidence among many slaveholders and public officials. As the Third System of Fortifications on the coast compelled the Army's growth throughout the South, many white southerners also became more accepting of regulars in their communities. This marked a significant cultural shift away from traditional fears of a standing army and toward a more tolerant view of domestic military power.<sup>31</sup>

The increased role and presence of the Army in the South also changed how US forces supported civil authorities. The wider embrace of regulars and the urgency to quell slave revolts broadened the use of federal troops from an executive to a local prerogative. Presidents during this era, especially Andrew Jackson, continued to use US troops to respond to civil unrest or political dissent, most notably during the Nullification Crisis. However, state officials also increasingly and directly requested assistance from Army officers. From the East Florida Revolt (1820) through Denmark Vesey's Plot (1822) to Nat Turner's Revolt (1831), local officials and state politicians frequently appealed for US troops to intervene during conspiracy scares or active revolts. Their use of regulars to prevent or quell slave revolts marked the beginning of a practice known as Immediate Response Authority, specifically when reacting to civil unrest.<sup>32</sup>

In addition to America's growing acceptance of federal troops, this period also witnessed the cultural and operational resurgence of the volunteer militia. Although the War of 1812 and particularly the Battle of New Orleans (1815) reinforced American reverence for the citizen-soldier, the first national militia system established by the Militia Acts of the 1790s fell into decline by the 1820s. By the late 1830s, however, factors like civil disturbances compelled state lawmakers around the country to reform militia laws, raise new units, fund state arsenals, and establish military academies. Many of these reforms aimed to enhance the preparedness, organization, and proficiency of state militias when called into service. Although states' militia responded to a wide variety of emergencies in this era, one of their most important roles was to quell civil unrest. Throughout the South, militia responded swiftly and brutally to conspiracy scares and slave revolts; in northern states, particularly growing cities, militia served as police forces to quell urban riots.<sup>33</sup>

Between 1831 and 1861, the enhanced role of federal troops and the resurgence of volunteer militia played an important role in many US communities as they experienced more frequent, larger, and more violent episodes of civil unrest. Although these incidents more often occurred in urban centers east of the Mississippi River, they nonetheless spanned nearly every corner of the nation, from the Blackburn Riots in Detroit (1833) and the Philadelphia Nativist Riots (1844), through "Bleeding Kansas" and the Mormon Uprising (1858). The regular army remained an important although small auxiliary to suppress unrest and execute federal laws throughout this period. However, militias in towns and cities assumed increasingly important operational roles to deter and quell civil disturbances in the decades before the Civil War.

The United States experienced a wide range of civil disturbances throughout the early and mid-nineteenth century. The simultaneous rise of Jacksonian democracy, urbanization, immigration, industrialization, and social reform movements created conditions—particularly in urban centers—ripe for protests, mass politics, and mob violence. One of the most impactful civil disturbances in this period was in Rhode Island in 1842, when citizens revolted against the state government that had remained largely intact since its 1663 charter with England's King Charles II. Led by Thomas W. Dorr, these dissenters aimed to make Rhode Island more democratic for white working-class men by eliminating the landholding requirement for suffrage. The movement resulted in a split government then escalated tensions nearly to the point of armed conflict between Rhode Island militia until federal troops intervened. The Dorr Rebellion

proved significant to the military history of civil unrest because of litigation that ascended from its tumult all the way to the Supreme Court. The central question in *Luther v. Borden* (1849) was whether the courts held the authority to decide the legitimacy of a state government during a political crisis. Supreme Court justices ruled that Congress and the president, through the military powers bestowed to that office by Congress, ultimately held the authority to decide the political question of whether a state government was legitimate while that state was amid an exigency like insurrection. This ruling proved consequential one generation later when southern slaveholding states began to secede from the Union and Abraham Lincoln looked to legal precedent for solutions to preserve the nation.<sup>34</sup>

Beyond the Dorr Rebellion, Americans frequently clashed in major cities over politics, immigration, labor, and religion from the 1830s through the 1850s. Two of the more common types of civil disturbances were labor strikes and nativist riots. Some of the larger or more destructive of these events included the C&O Canal Strike at Williamsport, Maryland (1834), the Snow Riots in Washington, DC (1835), the “Buckshot War” in Pennsylvania (1837), and a series of nativist and Know-Nothing riots that unfolded in nearly every major US city from New Orleans to New York in the 1840s and 1850s. State militia and federal troops intervened in many of these events at the request of civil authorities, including the C&O Canal Strike, the Snow Riots, the Philadelphia Nativist Riot (1844), and Washington Know-Nothing Riot (1857). By the late 1850s, prompted by the frequency and intensity of urban riots, public officials created some of the nation’s earliest police departments but continued to call on state militia and federal troops to restore order or protect critical infrastructure.<sup>35</sup>

Despite the importance of labor strikes and nativist riots, public disputes over slavery proved the most prevalent, persistent, and increasingly violent in American life between 1831 and 1861. In the southern states, enslaved people continued to rebel against their enslavers, despite rampant brutality by vigilantes and state militia and continued intervention of federal troops to both prevent and quell revolts. Throughout the nation, mobs routinely attacked and sometimes murdered white and black abolitionists, like Elijah Lovejoy in 1837. In northern states, large and small communities defied slave catchers and law enforcement officers, harbored fugitive slaves, and rioted against Fugitive Slave Act enforcement. In many of these instances, including the Blackburn Riots (1833), Christiana Riot (1851), and Burns Riot (1854), civil authorities requested federal troops to restore order. This resistance enraged southern slaveholders, who sought to harness more federal power to retrieve and return freedom-seekers to

slavery. After Congress passed the Fugitive Slave Law of 1850, Attorney General Caleb Cushing issued a legal opinion to the Senate that justified US marshals calling on federal troops as a “posse comitatus” to more effectively enforce the controversial law. This extension of military powers to federal marshals remained consistent with the larger trend of broadening officials’ access and authority to call on military forces during civil unrest throughout the early nineteenth century.<sup>36</sup>

National division over slavery further intensified in Kansas, where white Americans, for the first time, fought and killed each other over slavery. In 1854, Congress passed what is known as the Kansas-Nebraska Act, allowing inhabitants to decide whether their states should be free or slave. Many citizens contested that issue through violence. For years, anti-slavery “Jayhawkers” and pro-slavery “Border Ruffians” vied for political control in Kansas. Sometimes they fought small, pitched skirmishes, but they more frequently engaged in guerilla violence along the Kansas-Missouri border. By 1856, President Franklin Pierce called on US Army elements to conduct peace-keeping operations and resolve these disputes before violence could further escalate. Although the role of federal troops proved controversial or sensitive at times, the Army’s presence in Kansas remained consistent with the increasing reliance on regulars to prevent or quell civil unrest in the early nineteenth century.<sup>37</sup>

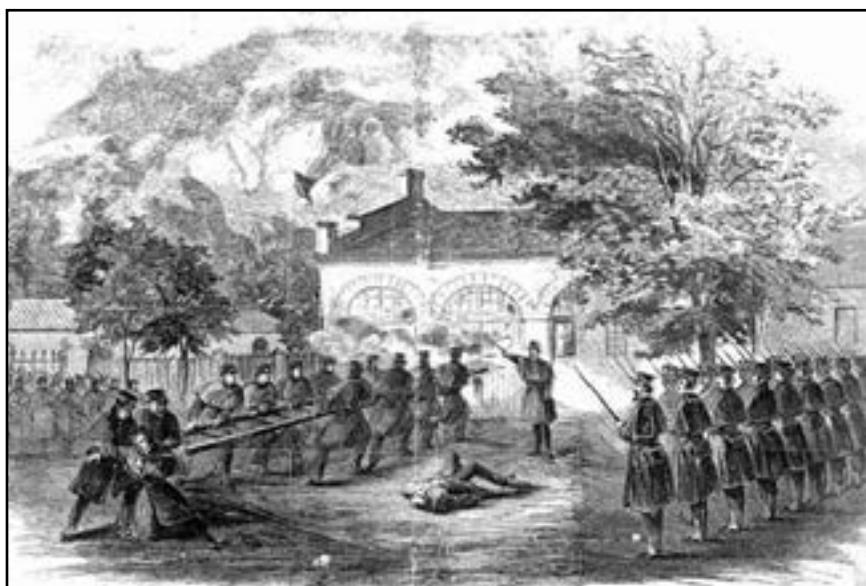


Figure 3.5. Sketch of US Marines attacking John Brown’s makeshift fort during his raid on Harper’s Ferry. Courtesy of the National Park Service.

In the winter of 1859 and 1860, US tension over slavery reached yet another peak. On 16 October 1859, abolitionist John Brown led a raid on Harper's Ferry, Virginia, to seize the US arsenal and, from there, launch a slave revolt that would overthrow the institution of slavery. Largely due to the rapid response of Virginia militia and US Marines, John Brown's mission failed. Despite the raid's failure, Brown's trial and execution starkly polarized Americans over the question of slavery and made the possibility of disunion seem more likely. Anti-slavery and abolitionist northerners rallied behind Brown as a martyr for freedom; meanwhile, pro-slavery southerners mobilized for the threat of border war that they were certain would unfold if a Republican won the upcoming presidential election. When Abraham Lincoln emerged as the victor in the election of 1860, slaveholding states began to secede and launched an insurrection against the United States.<sup>38</sup>

## Summary

By 15 April 1861, when Abraham Lincoln called on 75,000 volunteer militia to preserve the Union and suppress the rebellion in the South, Americans had experienced nearly seventy-five years of increasing military involvement in domestic strife. From Shays' Rebellion in 1787 to the 1861 outbreak of civil war, Americans had considerably changed their beliefs, laws, and practices governing military power in response to civil unrest. At the nation's founding, national leaders established core governing texts—including the US Constitution, Second Amendment, Calling Forth Act of 1792, and Militia Act of 1792—that limited the use of federal troops, restricted executive powers, and emphasized the role of the militia as the nation's principal warfighting institution.

Over the next several decades, however, as the United States struggled with one political and social crisis after the next, public officials and lawmakers revised these core statutes to increase executive military authority when facing grave threats to the young republic. These revisions culminated in an amendment in 1807, commonly known as the Insurrection Act, which authorized the president to call on federal troops to enforce laws and suppress insurrections. For the next fifty years, in the face of evolving threats from within and without, Americans grew more accepting of federal troops responding to civil disturbances, though they remained heavily reliant on their local officials or state militias.

And so, in the spring and summer of 1861, as the United States faced its greatest crisis, President Lincoln federalized the militia and Congress

passed yet another revision to the Calling Forth Act of 1792, providing the President more authority to use the militia and federal troops to help save the Union. Over the next ten years, the struggle to preserve the American republic, end slavery, and incorporate millions of formerly enslaved people into the American polity further expanded the role of military forces in domestic affairs that had begun in the early nineteenth century. In the following decades, as Americans contested the legacies of the Civil War and Reconstruction, it would be the prerogative of future generations to determine for what purposes and to what extent they would accept the use of military forces in response to civil unrest.<sup>39</sup>

### **Thought Questions**

1. How did external or foreign threats to the United States during the early republic influence public perceptions of internal threats? How, in turn, did those perceptions influence domestic policy in response to incidents of civil unrest?
2. How did Americans' views of domestic military power change between the Revolutionary War and the beginning of the Civil War? In what ways did they remain the same?
3. Why were there so few revisions to the 1792 Calling Forth Act and the 1807 Insurrection Act during the first half of the nineteenth century?

## Notes

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C. Banks and Stephen Dycus, *Soldiers on the Home Front: The Domestic Role of the American Military* (Cambridge, MA: Harvard University Press, 2016); Domenico Montanaro, “What is the Insurrection Act that Trump is Threatening to Invoke?,” *NPR*, 1 June 2020, <https://www.npr.org/2020/06/01/867467714/what-is-the-insurrection-act-that-trump-is-threatening-to-invoke>; Congressional Study Group on Foreign Relations and National Security, “The Insurrection Act and Putting Troops on American Streets: Session 5 of the Congressional Study Group,” Brookings Institution, 30 December 2020, <https://www.brookings.edu/articles/the-insurrection-act-and-putting-troops-on-american-streets/>; Howard Altman, “26000 National Guard troops came to D.C. and protected the inauguration without incident; now the drawdown begins,” *MilitaryTimes*, 21 January 2021, <https://www.militarytimes.com/news/your-military/2021/01/21/26000-national-guard-troops-came-to-dc-to-protect-the-inauguration-now-the-drawdown-begins/>; “RHODES, Elmer Stewart III,” Case Number 1:22-cr-15, Capitol Breach Cases, United States Attorney’s Office District of Columbia, accessed 16 July 2024, <https://www.justice.gov/usao-dc/defendants/rhodes-elmer-stewart-iii>; and Alanna D. Richer and Lindsay Whitehurst, “Trump at center of Oath Keepers novel defense in Jan. 6 case,” *Associated Press*, 1 October 2022, <https://apnews.com/article/capitol-siege-riots-donald-trump-conspiracy-government-and-politics-def7c6a17cac57d1b3dff64e923afef7>.

5. Robert W. Coakley, *The Role of Federal Military Forces in Domestic Disorders, 1783–1878* (Washington, DC: US Army Center of Military History, 1988), 43–44, 71–73, 77–80; Sarah Burns, *The Politics of War Powers: The Theory and History of Presidential Unilateralism* (Lawrence, KS: University Press of Kansas, 2019), 79–105; Stephen I. Vladeck, “Emergency Power and the Militia Acts,” *The Yale Law Journal*, 114 no. 1 (October 2004), 157–65; Theodore J. Crackel, *Mr. Jefferson’s Army: Political and Social Reform of the Military Establishment, 1802–1809* (New York: New York University Press, 1987), 143–47; Nancy Isenberg, *Fallen Founder: The Life of Aaron Burr* (New York: Penguin Group, 2007), 307–9; James E. Lewis Jr., *The Burr Conspiracy: Uncovering the Story of an Early American Crisis* (Princeton, NJ: Princeton University Press, 2017), 90, 98; and Andrew Burstein and Nancy Isenberg, *Madison and Jefferson* (New York: Random House Trade Paperback Edition, 2013), 485–91.

6. Michael R. Rouland and Christian E. Fearer, “Calling Forth the Military: A Brief History of the Insurrection Act,” *Joint Force Quarterly* 99 (2020), 124–34.

7. Congressional Resolution, 3 October 1787, as found in Captain A. R. Hetzel, *Military Laws of the United States* (Washington, DC: George Templeman, 1846), 38–39; Robert Wooster, *The American Military Frontiers: The United States Army in the West, 1783–1900* (Albuquerque, NM: University of New Mexico Press, 2009), 4; and Robert Wooster, *The United States Army and the Making of America: From Confederation to Empire, 1775–1903* (Lawrence, KS: University Press of Kansas, 2021), 10–16.

8. In early 1786, Kentucky vigilantes crossed the Ohio River and indiscriminately attacked Native communities like the Piankeshaws who were friendly with American settlers. These attacks escalated cycles of violence as Native warriors and American militias launched retaliatory raids on civilians and settlements. By October, a large expedition of Kentucky militia commanded by George Rogers Clark had abandoned its mission of pursuing the Wabash tribes and gone rogue near Vincennes, Indiana. About 150 militiamen from Clark's command seized control of the town and harassed its inhabitants for months. Settlers appealed to Congress throughout the winter of 1786 and 1787, and in April, Congress authorized the use of US troops to restore order. Congress ordered Secretary of War Henry Knox to employ the First American Regiment "to take immediate and effective measures for dispossessing a body of men who have in a lawless and unauthorized manner taken possession of Vincennes in defiance of the proclamation and authority of the United States." By mid-July 1787, the First American Regiment had deployed to Vincennes, promptly dispersed the "lawless banditti," and drew a heroes' welcome from settlers. Reference Harold Allison, *The Tragic Saga of the Indiana Indians* (Paducah, KY: Turner Publishing Company, 1986), 56–61.

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10. Russell Weigley, *History of the United States Army*, 80–84.

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## Chapter 4

### Domestic Operations in the Reconstruction South: “Nothing but the Strong Arm of Your Government Will Bring Them to Feel That They Must Obey the Law”

Aaron L. Heft

Repairing the tremendous divide in the nation in the aftermath of civil war would require a laborious effort by military and civilian leaders. The US Army of the Civil War era, the largest American military force fielded to that point in history, experienced a transition from a combatant army to a peacekeeping force that might seem familiar to soldiers and leaders of later generations. Even before Appomattox, the US Army was thrust into civil operations, which bedeviled volunteer citizen soldiers and West Point graduates alike. This wartime experience operating in a civil capacity shaped the Reconstruction period and provided the Army's most extensive civil operations experience to that date. While wartime civil operations provided lessons learned for future commanders, it was the Army in Reconstruction experience that led to one of the most significant pieces of legislation to shape the field of defense support to civil authorities: the Posse Comitatus Act.

As the US Army defeated rebel forces across the South, units in the field re-established federal governance in formerly rebel-controlled areas. These military operations to rebuild communities previously controlled by secessionist forces created what historian Eric Foner referred to as a “rehearsal for reconstruction.”<sup>1</sup> Maj. Gen. Benjamin Butler’s administration of New Orleans as commander of the Department of the Gulf in 1862–63 was one of the most well-known periods of temporary military government during the Civil War. General Butler’s forces encountered situations and challenges that mirrored many faced by the later military governments during the Reconstruction era. US soldiers in New Orleans controlled the port and metropolitan area of the city but faced a variety of complex wartime security problems, from lingering Rebel leadership to partisan and conventional forces in the area of operations.<sup>2</sup> Beyond their required tactical defensive role, Butler’s troops also needed to deal with secessionist sentiment in the area occupied by his forces.

The US Army became responsible for overhauling a city that had been operating under the previous illegitimate rebel government. This meant removing hostile officials and replacing them with military or loyal Unionist representatives, replacing rebel currency and banking systems,

and redistributing assets from the former rebel command.<sup>3</sup> Later, Butler and other local commanders like Maj. Gen. Nathaniel Banks also dealt with the complex problem of reinstating civilian rule. Through local councils and elections, they struggled to balance the needs of white secessionists and Unionists, free communities of color, and formerly enslaved.<sup>4</sup> Butler's notable hard hand in incidents—like the public rebuke and humiliation of New Orleans women who disparaged US Army soldiers or his silencing of newspapers that published articles in support of the Confederacy—caused a roar of disapproval from the local populace. Although General Butler's domineering behavior was appropriate and even common in military circles, his heavy-handed approach was inappropriate in civil operations. Butler struggled to balance the requirements of maintaining order and civil obedience in the newly restored New Orleans society, employing a military response to civilian problems that he had not experienced as a field commander. His behavior caused an uproar which counteracted many of the gains made in restoring order and daily life in the city. He was eventually removed from his position by civilian authorities in Washington, DC, who looked for a more balanced approach.<sup>5</sup>



Figure 4.1. Sketch of General Benjamin Franklin Butler holding the mob at bay in New Orleans. Courtesy of the Library of Congress.

Butler's forces were not the only US Army troops engaged in reconstruction areas formerly in rebellion. In Tennessee, which harbored a large Unionist population even after secession, Federal forces began rebuilding a loyal government as soon as Federal forces captured Nashville in February 1862. After Andrew Johnson was appointed military governor, the administration removed former Confederate officials who refused to swear oaths of allegiance from office, and abolished slavery within state boundaries.<sup>6</sup> US Army forces in South Carolina helped the formerly enslaved establish free communities with self-governance in abandoned plantations and islands off the coast, even allowing northern abolitionists to establish schools in the communities to encourage literacy.<sup>7</sup>

Across the South, arriving US Army forces brought on new administrations of blended military and civilian rule. These governments exposed the military to the complex array of post-war problems with rebuilding the South post-war and exposed critical friction points with local civilians in matters concerning individual rights, race, and the judicial process. The experiences of the wartime military governments reverberated through the Reconstruction South from 1865 to 1877.

## **Administering Reconstruction—The Army as a Military Government**

As the smoke cleared from Southern battlefields, the victorious federal government went forward with returning order to the Southern territory and population formerly in rebellion. Abraham Lincoln's assassination and former Tennessee military governor Andrew Johnson's ascension to the presidency placed the role of the Army in reconstruction into question. Though Johnson had been an aggressive leader in rebuilding Unionist Tennessee, in his role as president, he saw the close of the war as the end of the need for heavy federal involvement in Southern state governments—after the governments formerly in rebellion apologized and repudiated their actions. Johnson viewed the states' 1861 secession as legally valid; while he was adamant that individuals who rebelled should be punished, he wanted participating states to be granted the power to rebuild the post-war South.<sup>8</sup> Johnson's view drastically limited the role of federal military forces during this period, which became known as Presidential Reconstruction.

Initially, President Johnson directed US Regulars and Volunteer forces still in federal service to provide a hands-off approach to rebuilding the South. In June 1865, the War Department issued orders to divide the eleven Southern states into four military divisions, with a field commander

overseeing each division from a military headquarters with subordinate units responsible for smaller districts within the division.<sup>9</sup> He pushed for the semi-sovereignty of state governments with a parallel military administration providing support and oversight as the divisions rebuilt.<sup>10</sup>

Under Johnson's plan, federal troops served the needs of the local government and ensured that local governments operated in a manner consistent with the outcome of the war, but the rule of civil governments would take priority. President Johnson severely limited the authority of military tribunals with General Order 26, which ordered that "civilians are to be tried where civil tribunals are in existence which can try them, their cases are not authorized to be, and will not be, brought before Military Courts."<sup>11</sup> With pressure like this from Washington, many commanders felt their ability to enforce the law in the South was severely hampered. While military leaders could rapidly apprehend those who violated the rights of the formerly enslaved or acted out against US government policies, civilian courts or law enforcement often reduced, stymied, or even entirely dropped any charges. Military commanders found that while they often had the men and means to enforce the reconstructed social order in the South, Johnson's plan handed power back to the same individuals who were in rebellion just a few months prior.

US Army officers also provided significant oversight and staffing to the Congressionally mandated Bureau of Refugees, Freedmen, and Abandoned Lands, commonly known as the Freedmen's Bureau. Under the supervision of Maj. Gen. Oliver O. Howard, the organization provided social support for the formerly enslaved and destitute in the post-war South, assisting with housing, food, and general safety.<sup>12</sup> Officers of the Freedmen's Bureau were charged not to provide welfare per se but "to enable them as speedily as practicable to become self-supporting citizens of the United States, and to aid them in making the freedom conferred on them by proclamation of the commander and chief . . . available to them and beneficial to the Republic."<sup>13</sup> The Bureau investigated abuses of the formerly enslaved and assisted with education and employment needs. The Bureau sometimes also distributed supplies from federal military stocks to avert medical and food crises.<sup>14</sup> Officers in the Bureau noted, however, that they were hamstrung in many cases by the post-war reduction of forces, which often resulted in high turnover rates within the organization. Eventual shifts to civilian staffers also limited the Army's role in the Freedmen's Bureau, and many federal troops remaining in the South were consolidated into garrisons.



Figure 4.2. Sketch of the Office of the Freeman's Bureau in Memphis, 1866. Courtesy of Wikimedia Commons.

While Southern governments began to rebuild in 1865 and 1866, the need for agencies to enforce both local and federal government laws became apparent. Though ex-Confederate officials were initially barred from participating in government, many found their way into positions of power where they established restrictive codes for freed people and largely ignored federal authority. They were opposed to seeing US troops in their communities. Masses of returning Confederate Army veterans aided these politicians by providing a ready supply of manpower to reestablish many local militias, complete with the trappings and uniforms of the failed rebellion.<sup>15</sup> With ex-Confederates in political and military roles in the South, despite emancipation and Constitutional amendments, many formerly enslaved persons faced the same violence and repression seen before the war.

Early militia units in 1865 to 1866 under Presidential Reconstruction reorganized to enforce “Black Codes,” acting to continue the same racial hierarchy that existed before the war. In Alabama, the “militia com-

panies undertook to patrol the country to scare the negroes with a show of force” and “patrols rode through the negro settlements to keep them in order.”<sup>16</sup> In Mississippi, Interim Governor William Sharkey called to reestablish the state militia in late 1865 to create “a force for the apprehension of criminals and the suppression of crime.”<sup>17</sup> While innocuous in its phrasing, the law provided a mechanism for the government to arrest and incarcerate African Americans in disproportionate levels. The establishment of codes forbidding vagrancy and other minor offenses, enforced by these roving law enforcement and militia arms, provided an apparatus to restrict movement of and incarcerate African Americans who had not found employment or stable residence in the post-war South. Though slavery remained illegal, governments could circumvent this law by arresting “vagrant” African Americans and forcing them into chain gangs and other state sponsored labor, without pay.<sup>18</sup> Both local military commander Maj. Gen. Henry Slocum and former Maj. Gen. Carl Schurz adamantly opposed this formation, identifying that the organization was “made up of young men who had fought for the confederacy” and would clash with the local federal forces while continuing brutal suppression of freed people.<sup>19</sup> Slocum directed Sharkey that the local federal forces could be called on to support his administration and ordered the arrest of anyone organizing a militia force.<sup>20</sup> Despite the concerns of local military commanders, President Johnson overturned Slocum’s order and upheld the state government’s right to raise and field its own militia.

Conditions in the South deteriorated in 1865 to 1866, and outbreaks of violence targeting the formerly enslaved drove Congress to combat Presidential Reconstruction. In April and July 1866, Congress passed the Civil Rights Act and Freedmen’s Bureau Acts despite an initial Presidential veto.<sup>21</sup> These acts reasserted the role of the federal military forces following massacres of freed people by irregulars and militia forces in Louisiana and the Carolinas. Published by the Army as General Order 50, the Civil Rights Act targeted the Black Codes and racial discrimination in the South by placing ultimate authority with federal courts and, in turn, enforcing these decisions in the hands of federal forces.<sup>22</sup>

Under the parameters of this act, “land and naval forces of the United States, or of the militia,” could be called forth by federal officials in the South to overrule local court decisions and enforce federal rulings.<sup>23</sup> The subsequent Freedmen’s Bureau Act also allowed the head of the Bureau to use federal forces to ensure enforcement of their mandates and, more generally, the civil rights of the formerly enslaved.<sup>24</sup> While Army leadership viewed this as a clear decision on their role in the administration of

the post-war South, President Johnson issued a proclamation shortly after declaring an official end to the insurrection formerly existing in the Confederate states and stating that “suspension of the privilege of the writ of habeas corpus are, in a time of peace, dangerous to public liberty, incompatible with individual rights of the citizens,” further muddying the role of the Army in reconstruction.<sup>25</sup>

Congress took its most aggressive step in defining the military’s reconstruction role when it passed the First Reconstruction Act in March 1867. Proclaiming that “no legal State Governments or adequate protection for life or property now exists in the rebel States [excluding Tennessee] . . . [the] rebel States shall be divided into military Districts and made subject to the military authority of the United States.”<sup>26</sup> General Order No. 10 rewrote the military structure of the South, establishing five military districts: 1st District (Virginia), 2nd (North and South Carolina), 3rd (Georgia, Alabama, and Florida), 4th (Mississippi and Arkansas), and 5th (Louisiana and Texas).<sup>27</sup> Subsequent additions to the act clearly defined

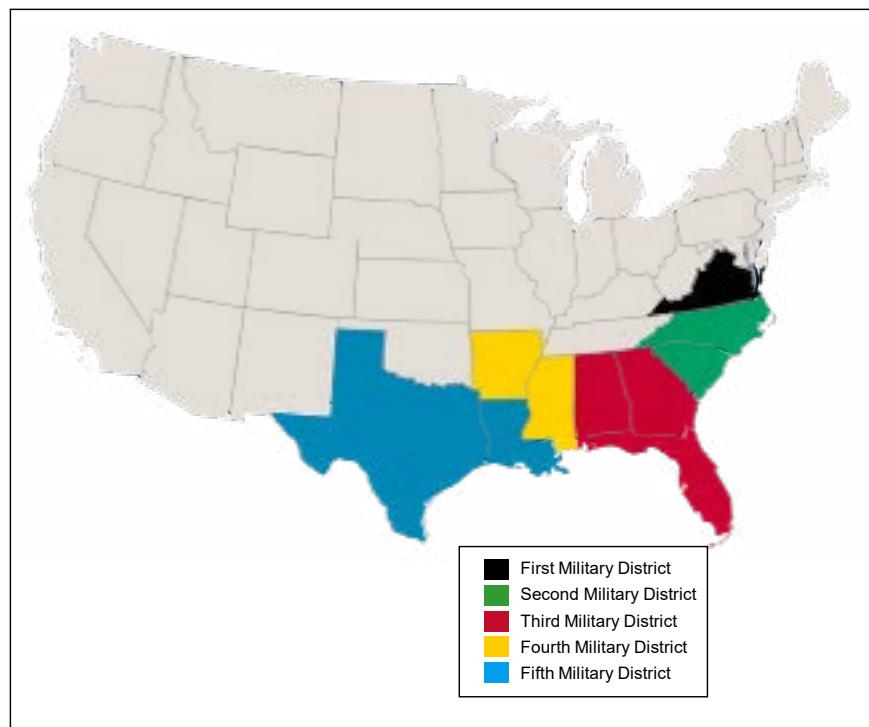


Figure 4.3. Map of Reconstruction Districts. Courtesy of Wikimedia Commons.

the federal military as the ultimate authority in legal, governmental, and security issues. District commanders were empowered to resume military courts and tribunals, remove local government officials as they saw fit, and oversee local elections to ensure “all persons be entitled to vote.”<sup>28</sup> Before the former rebel states would be allowed to resume self-governance, they would have to establish state constitutions through conventions of male citizens “of whatever race, color, or previous condition.”<sup>29</sup> Once again the military would be the guarantor of civil rights in the states across the Reconstruction South.

Congressional action in Military Reconstruction, as this period is often labeled, vastly increased the role of federal military forces, but often alongside a dearth of resources. The government took steps almost immediately to improve the security situation of the formerly enslaved and Unionist Southern populations. Army officers like Maj. Gen. Daniel Sickles attempted to limit the sway of ex-Confederate militia regionally through general orders prohibiting any arms-bearing organizations in their districts, but these initial measures achieved limited effect. On 15 March 1867, the War Department issued General Order 15, which formally disbanded militia forces “organized or in service” in the ex-Confederate states in the five military districts, allowing their reactivation only with the approval of Congress.<sup>30</sup>

Across the South, the presence of US troops significantly reduced large incidents of organized violence. Secretary of War Stanton formally instructed leaders to place forces in populated urban areas and potential sites of violence to discourage incidents like those of 1865 to 1866. In the 3rd Military District, Maj. Gen. John Pope built off Stanton’s guidance and established what amounted to a tiered quick reaction force. This established staging areas for both civilian and military response forces during political rallies or events, allowing for rapid response based on the level of disturbance or violence encountered, and limiting military response to situations which went beyond civilian law enforcement’s capabilities.<sup>31</sup>

Active federal troop presence did not eliminate violence in the military districts, and limited troop coverage in many areas meant that minor violence continued, including at least one major attack on formerly enslaved persons in Mobile in 1867. Successive reductions in US Army strength post-war meant that less than 20,000 soldiers were available to police in the South. When wartime volunteer units were discharged and the number of United States Colored Troops (USCT) regiments composed of

African American soldiers—thought to be a potential point of friction with white Southerners—were reduced, even fewer veteran units were available.<sup>32</sup> Despite these force limitations, the South’s security situation was greatly improved by the expanded federal forces’ role in maintaining order.

Southern District commanders began exercising their power in the political realm almost immediately as well. Citing the powers granted under the Reconstruction Acts, commanders removed leadership unwilling to guarantee the rights of all citizens regardless of color or station. In the 5th Military District, Maj. Gen. Phillip Sheridan identified civilian officials responsible for the earlier violence in 1866 and promptly removed dozens of office holders for various offenses, ranging from judicial imprudence to intimidation of the African American population. Sheridan further exercised his powers by removing Louisiana Governor James Wells and Texas Governor James Throckmorton, both of whom failed to respond to the legitimate concerns in their states and generally impeded the work of the federal government.<sup>33</sup>

Like Sheridan, Maj. Gen. Daniel Sickles of the 2nd Military District had no issue with restructuring the government of his district as he saw fit. When local officials in Fayetteville, North Carolina, attempted to obstruct a trial of locals accused of murdering an African American, Sickles removed all of them from office and conducted the trial in a military court.<sup>34</sup> Sickles also enacted sweeping social reforms in the Carolinas, including actions directed at improving African Americans’ economic and legal situation. While Sheridan and Sickles’ actions showed Army commanders were committed to the reconstruction of the South, it also exposed the most prominent issue in this phase of Reconstruction. Despite their adherence to the Reconstruction Acts legislation enacted by Congress, both Sheridan and Sickles were relieved from their posts by President Johnson.<sup>35</sup> Dissent between the president and Congress, the near-constant veto of the legislation, and subsequent override of the vetoes provided a challenging political situation for field commanders to navigate.

General Ulysses Grant, serving as general in chief and later acting secretary of war during this era, tried to ensure that military commanders adhered to the direction of elected officials, advising his district commanders on the proposals for the relief of individuals or enactment of local orders. Still, like his subordinates, he often found himself caught between the president and Congress.<sup>36</sup> Individual political opinions of many district commanders also came into play when enacting policy in their districts.

Maj. Gen. Winfield Hancock, who replaced Sheridan in the 5th district, removed many of Sheridan's appointees and attempted to follow a plan for reconstruction more in line with the president's wishes than Congress.<sup>37</sup> General Edward Canby, who replaced Sickles, upheld his predecessors' decisions—as did others, much to the dismay of the president and former Confederates.<sup>38</sup> The 1867–68 period was a tumultuous time for Army leadership in the reconstruction South as military district commanders balanced the demands of the government's divided path to bring the formerly rebellious but still recalcitrant Southern states back into the United States.

By 1868, the civilian legislatures and governments of many former Confederate states had been deemed ready for self-governance. Alabama, Arkansas, Florida, Georgia, Louisiana, North Carolina, and South Carolina ratified the Fourteenth Amendment, which allowed their readmission to the United States and the effective end of military government in their states. The remaining three states, Virginia, Texas, and Mississippi, were redesignated as separate military districts; their military governments would remain in place until they were readmitted to the United States in 1870.<sup>39</sup> With this governance transition, the Army of the Southern Military Districts transitioned roles from the Reconstruction lead administrator a role supporting state governments. While the Army's Reconstruction efforts did not end with this transition of power, it signaled a shift to a different type of operation in the future.

## **Policing Reconstruction—Southern Reaction to the Army and Militia**

With recognized governments established across the former Confederate States, many regular army duties shifted back to state entities. Southern governments demonstrated varied levels of commitment to the ideals represented by the US government in the war, and their behavior in protecting and ensuring representation for their constituents was reflected in the actions of their administrations in the first few months after a return to self-governance.

As the national public tired from the continued use of the regular army as a government and police force in the South, one of the first steps in this transition was removing the restriction on raising state militia forces. In General Order 22 of 1869, the Army announced that Congress would repeal its previous ban on the formation of militia units in North Carolina, South Carolina, Florida, Alabama, Louisiana, and Arkansas.<sup>40</sup> With this adjustment, regular army commanders in the field would be encouraged to

allow state military forces to conduct presence patrols, assist in elections, and support posses requested by law enforcement officials.

The Southern states had some model examples of building an effective state militia force for use in reconstruction. In Tennessee in 1867 and again in 1869, a bi-racial State Guard actively performed the duties embodied by regulars in much of the rest of the South. With a sizeable Unionist population and more than 20,000 USCT veterans hailing from the state, the leeway given to Tennessee in forming a recognized government and active militia allowed for a relatively professionalized force in the immediate post-war years.<sup>41</sup> In 1867, Governor William G. Brownlow utilized detached State Guard companies to patrol western and middle Tennessee, preventing ex-Confederate groups from disrupting elections. Many of these units, including mixed-race companies and companies officered by African Americans, were instrumental in protecting first-time African American voters and ensured the continuation of a republican government in the presence of an ex-Confederate insurgency.<sup>42</sup>



Figure 4.4. Photo of a company of United States Colored Troops. Courtesy of the New York Public Library.

In 1869, facing a resurgence of violence from armed groups like the Ku Klux Klan, Governor Brownlow declared martial law and again mobilized the State Guard. He and his replacement, Governor Dewitt Senter, deployed them in a counterinsurgency operation. Organizing the Guard in a more formalized regimental structure than in 1867, companies were deployed to trouble areas to help discourage Klan activity and controlled by a senior staff in Nashville. State Guard forces in this deployment never came to a decisive engagement with the Klan, but their presence ensured several months of peace in the areas where they deployed.<sup>43</sup> Though not as effective in preventing violence as their 1867 employment, Tennessee's second major State Guard deployment demonstrated to other Southern states that problems could be addressed with limited to no support from federal military forces.

Like Tennessee, other southern states faced a similar threat from irregular forces under monikers like the “white knights” and Ku Klux Klan. In Arkansas, Governor Powell Clayton similarly mobilized his state militia, including African American and white troops, sending them into action against the Klan while placing ten counties under martial law.<sup>44</sup> Arkansas militia troops patrolled trouble areas, arrested Klan members and others accused of violence, and engaged in gunfights with irregular Klan forces. Klan resistance in the state dissolved as Arkansas tried, imprisoned, executed, or drove Klan ringleaders over the border. Clayton's actions were so rapid and effective that they led one historian to characterize them as “the South's most complete suppression of Ku Klux Klan violence during the Reconstruction era.”<sup>45</sup> All of this was accomplished without the use of federal troops.

The effective actions of Arkansas and Tennessee state forces against ex-Confederate irregulars inspired Governor William Holden of North Carolina to use similar tactics in his state following an 1869 rise in Klan violence. Holden requested representatives to strengthen the state's militia laws in November 1869. After several prominent Republican politicians were murdered, Holden declared Klan-controlled Alamance County in insurrection and deployed state forces under former Tennessee Guardsman George Kirk to suppress the Klan and restore order.<sup>46</sup> Kirk recruited heavily from Black and White US Army veterans in the region and built a force familiar with the terrain and tactics required to suppress the insurrection. In the resulting Kirk-Holden War, as it was known in North Carolina, state troops decapitated Klan leadership; more than 100 Klansmen were arrested and imprisoned, bringing a near end to Klan violence in the affect-

ed counties. Though later political outcomes overshadowed the incident, Holden's employment of veteran commanders with counterinsurgency experience—as well as African American veterans of the North Carolina's USCT regiments who were committed to ensuring their continued freedom and safety—saw a rapid end to the problems in his state.<sup>47</sup>

Not all states were as successful in their internal operations to suppress the insurgency. In Mississippi, Georgia, and South Carolina, state leadership was reluctant to use their primarily African American militias to battle Klan-like violence for fear of retribution by conservative white populations.<sup>48</sup> In Georgia in 1869, Senator Henry Wilson petitioned newly elected President Ulysses Grant for federal troops, stating that conditions in Georgia had deteriorated to such a state that the army was required to restore order. In 1870, the federal government revoked Georgia's provisional statehood and reinstated military governance of some state functions. Georgia was reapportioned as a separate military district under Maj. Gen. Alfred Terry. Terry used his powers to remove former Confederates from leadership positions, deploy troops to trouble spots, and bring back a relative level of safety to the region.<sup>49</sup>

Continued violence across other Southern states caused Grant to ask Congress for additional powers. The resulting Enforcement Acts of 1870–71 increased the reach of the military in the Southern states, allowing local officials to again employ regular army forces as posse comitatus. The Enforcement Acts additionally tasked the army to enforce the 14th and 15th amendments to ensure civil rights for African American citizens and others targeted by the Klan and associated groups.<sup>50</sup> War Department General Orders of 1871 instructed Southern commanders to act in “breaking up and dispersing bands of disguised marauders . . . against the peace and quiet or lawful pursuits of the citizens in any state.”<sup>51</sup> With these acts, the regular army joined militia offensives against the Klan across the South. In South Carolina, reinforcements from neighboring state garrisons assembled to begin operations in October 1871. Following multiple presidential proclamations calling for an end to violence and conspiracy in several South Carolina counties, Grant suspended the writ of *habeas corpus* in the affected regions.<sup>52</sup> With the local US marshall in nominal command of the force, the Army detachments served as a posse comitatus. Regulars tracked down and detained more than 600 individuals associated with the Klan in rapid, sweeping deployments. The Army gathered information, staged raids, and took prisoners, all of which led to numerous convictions in Columbia's federal court.<sup>53</sup> While these op-

erations successfully disrupted clandestine operations in the region, they drove many Southerners looking to circumvent the new political situation in the South to do so by other means.

Clandestine resistance in the South soon transitioned to more visible but similarly minded attempts to retain the old social order. In the wake of Klan violence, white Southerners formed other illegal armed organizations and “rifle club” formations—in parallel with existing lawful militias in Southern states. Rifle clubs served as an armed, often uniformed, military apparatus composed of ex-Confederate soldiers backing conservative candidates in Southern political contests. By donning the moniker of a social club centered around marksmanship, these groups attempted to divert attention from their insurrectionary role against the legitimate state militia. In Charleston, the Carolina Rifle Club cited the fear of violence in the historic slave revolts in Santo Domingo and Hati and a need to serve as the “sole defense of the white population against . . . negro disturbances and aggression.”<sup>54</sup> Stealing arms from the state armory and regularly breaking up Afri-



Figure 4.5. Thomas Nast sketch of “The Lost Cause Worse Than Slavery.” Courtesy of the Library of Congress.

can American political rallies they deemed “riots,” rifle clubs attempted to intimidate African Americans from exercising their Constitutional rights. Intimidation from rifle clubs became so rampant that Congress launched an investigation into their effect on the 1876 presidential election and documented the response from both White and Black Unionists regarding their conduct. Rifle clubs commonly committed murders, assassinations, and assaults on Republican meetings and rallies. One Edgefield, South Carolina, citizen wrote the attorney-general in Washington, DC, stating “the same old rebel spirit is in these men . . . nothing but the strong arm of your government will bring them to feel that they must obey the law.”<sup>55</sup> Rifle clubs served as a powerful counter-Reconstruction weapon.

Rifle clubs and other armed illegal groups accompanied conservative politicians and voters to polls and rallies across the South in the early 1870s. In doing so, these groups intimidated White and Black Unionist voters from going to the polls. The intimidation slanted the outcome of elections, shifting the balance of power in Southern states to allow the return of many conservative white governments that did not truly represent most of the population. In many cases, contested elections and rival armed groups made it difficult for the federal government to identify the legitimate winner in local contests. In Louisiana, 1872 elections devolved into two armed camps demanding that the federal government recognize their respective legislatures and leaders. Brig. Gen. William Emory, Department of the Gulf commander, deployed his troops in a show of force but refused to side with or seat either of the rival groups.<sup>56</sup> In one instance, a federally recognized state governor ordered the state militia disarmed when they refused to follow the orders of their newly appointed commander. State militia agreed only to surrender arms to an impartial federal garrison, not anyone from the governor’s administration.<sup>57</sup> Federal forces in the state were forced to play a difficult balancing act of keeping the peace while waiting for guidance from Washington on which faction was deemed legitimate.

Louisiana’s complicated situation was repeated across the South as armed groups of conservative whites worked to influence elections and shift the balance of power. In Arkansas, the race for governor devolved into claims of fraud and coercion in late 1872. After Governor Elisha Baxter took office, unrest continued in the state, and he eventually called out the state militia to contain supporters of his rival, Joseph Brooks.<sup>58</sup> After a lower state court ruled in 1874 that Brooks was the true victor of the election, he assembled a small armed force, including the sheriff, which seized arms from the state armory and moved to oust Governor Baxter

from the state house. Baxter returned with his own armed militia, and Little Rock devolved into an armed standoff. Both Baxter and Brooks called to Washington, DC, for support, and limited federal troops were deployed to prevent outbreaks of violence between the two forces. As federal troops awaited further instruction from Washington, militia groups engaged in clashes around Little Rock, and ground commanders repeatedly reached back to Washington requesting guidance.<sup>59</sup> Finally in May 1874, Grant issued formal support for Baxter, and both armed camps dispersed rather than face active federal military intervention. Again, in Little Rock, the presence of federal military forces prevented a potential outbreak between rival militia factions.

Delays in sending federal troops compounded the issue. Conditions in Louisiana had not much improved by 1874, and armed extra-legal militia commanded by ex-Confederate Col. Fred Ogden rallied in New Orleans to unseat the elected governor, William Kellogg. At the rally, defeated lieutenant governor candidate D. B. Penn read a proclamation calling for “all males between the ages of 18 and 45 years . . . to arm and assemble under their respective officers for the purpose of driving the usurpers from power.”<sup>60</sup> Penn declared these men the militia of the State of Louisiana and, supporting his claimed legitimacy, assaulted the legitimate militia and police at the State House. After a brief pitched battle where dozens were killed and wounded, the overwhelmed state militia surrendered to Ogden and Penn’s insurrectionists.

Kellogg pleaded with President Grant for support, and federal troops were sent to New Orleans to restore order. The insurrectionist faction subsequently turned over control of the city to the commander of the federal detachment but protested their removal, stating that Penn was the “rightful authority” installed by a people who could bear no more the “yoke of this odious usurpation.”<sup>61</sup> While the continued presence of federal forces in New Orleans did allow the return of Governor Kellogg, public support was waning for military interventions in the South. From 1874 through 1876, the South saw increased violence and insurrection similar to New Orleans, and many questioned if order could be maintained without a continual presence of militia or regular forces.

While state or federal military intervention in the reconstruction of the South was almost always militarily successful, it often was deemed a political failure. The legitimacy of governments held up “at the point of a bayonet” appeared to be in question, and many across the country were tired of the repeated deployment of military forces.<sup>62</sup> The Tennessee government of Governor Brownlow, which had skillfully employed state

militia to keep elections free in 1867 and quell Klan violence in 1869, was ousted in the next round of elections. The successful counterinsurgency of the Kirk-Holden War in North Carolina was reversed when Holden was impeached by Klan legislators, reversing hard-fought victories for the state's African American populations. As new governments backed by extra-legal militias and rifle clubs in Louisiana and South Carolina moved into office and suppressed African American voters, the future of military involvement in the South came into question.

## **Restricting Federal Authority—The Posse Comitatus Act**

By the 1876 election, the public questioned the consistent presence of federal troops and their role in enforcing civil matters in the South. One historian suggested that for more than twelve years, many in the nation believed “only outside intervention could assure the freedmen a modicum of justice” for the South.<sup>63</sup> Many felt that while the behavior of some Southerners was inexcusable, the military’s role to ensure equality and safety had dragged on too long. Even those in the military felt the strain of continued involvement in Southern politics, and some commanders longed for a return to more traditional duties—especially as conflict with native populations in the West increased. As the nation looked to return to a pre-war status quo, public support for military involvement in the South rapidly waned.

While Army leaders continued to execute their duties in the South, there was a growing dialogue among officers and soldiers that the Army’s place was elsewhere. As early as 1871, Army officers commented in the *Army Navy Journal*: “The Army are not anxious to resume that semi-military, semi-political control of Southern Affairs with which they were for a time burdened.”<sup>64</sup> Commanders were frustrated by the constant infighting in Southern governments and the immediate public outcry to their actions in the field. When they sided with Republican officials, white Southerners cried out at their perceived oppression. When federal troops failed to support the same officials, the units were criticized by northern politicians and activists far removed from the actions on the ground. The commander in chief acknowledged the dilemma in an January 1875 message to the Senate: “The task assumed by the troops is not a pleasant one to them . . . the Army is not composed of lawyers capable of judging at a moment’s notice of just how far they can go in the maintenance of law and order.”<sup>65</sup> Despite this, federal troops and militia in the South continued to play a daily role in supporting government operations, despite continued yearly reduction in their numbers.

The northern population's support for military intervention in the South similarly began to wane. Northern Republicans remained strongly committed to Reconstruction, remarking that the shift in Southern politics was bringing "to the front the worst political element of the South, the fierce, aggressive element that of old ruled the country."<sup>66</sup> Many Northern Democrats, however, claimed the military's role in elections was less an assurance of fair voting practices, and more a continued attempt to ensure Republican supremacy in the South. Some Northern newspapers claimed Radical Republicans wanted to keep a presence in the South to ensure continued success in presidential elections. An 1878 *York Gazette* article noted that a Republican candidate "with a strong regular army at his back" could use soldiers distributed through the Southern States "to so intimidate voters as to carry elections, or at any rate to count in their candidate whether elected or not."<sup>67</sup> Despite the inaccuracy of these claims, distaste for a continued military presence was reaching a peak in many Northern communities.

Others acknowledged the South's continuing troubles and called for a national convention on Reconstruction, meant to drive toward reconciliation. These calls, such as this 1874 *New York Daily Herald* comment, often echoed sympathy for white Southerners: "We have given them no motive for Reconstruction; but on the contrary, we have left them every temptation to war upon the Union."<sup>68</sup> Because of shifting politics in Washington, some Northerners lost the will to continually suppress Southern attempts to subvert the Constitution, and Southern Democrats engaging along political lines had allies against Reconstruction in the North.

Southern Democrats continued to attack federal authority in the South through both non-violent and illegal means. Newspapers balked at the continued presence of federal forces, and their role in elections. Some Southerners claimed the posse comitatus was too often being invoked across the South to place illegal governments in power, and that "every maxim of free government was violated and trodden under foot by the federal interference."<sup>69</sup> Southern politicians riled up crowds with similar claims and encouraged the expansion of militias, both legal and extra-legal, to support their goals in the states. In July 1876, an African American South Carolina militia company in Hamburg, South Carolina, had an altercation with a white citizen while drilling. A few days later an armed mob of local white citizens attacked the militia company, executed several militiamen, and devastated the town.

Additional acts of violence carried out by other extra-legal formations, including rifle clubs, swept across the state and escalated tension

over the outcome of the state's gubernatorial election.<sup>70</sup> Southern Democrats expanded the role of rifle clubs during the South Carolina gubernatorial election, raising nearly 300 separate armed and drilled quasi-military organizations under officers with military rank. Initially the organizations picketed Republican meetings and broke up conventions; when their candidate lost at the polls, they attempted to seat ex-Confederate Wade Hampton as governor by force.<sup>71</sup> Federal troops deployed across the state to quell potential insurrection, but Hampton and his supporters maintained a separate government and called for the surrender of the statehouse into 1877.

The disputed 1876 presidential election sealed the fate of military intervention in Reconstruction. Because Hayes needed Southern electoral votes to secure his victory, he negotiated with Southern opposition leaders like Wade Hampton. Hayes withdrew remaining federal forces from the South following his election, leaving the military sphere in the South to



Figure 4.6. "Shall We Call Home Our Troops" sketch from the *Birmingham News*. Courtesy of the Library of Congress.

the control of state militia formations.<sup>72</sup> As federal troops withdrew from the South, many heralded the return of the old Southern order. In some states, military arms continued to include African Americans working to protect their hard-earned rights and liberties; North Carolina ensured the continued legality of white and black National Guard units in its 1877 military bill.<sup>73</sup> Others like Louisiana and South Carolina rebranded the rifle clubs, white leagues, and other extra-legal formations as the recognized state militia, with ex-Confederate leaders as commissioned officers.<sup>74</sup>

While the federal military forces withdrawal and return to status quo in the South was seen as a boon to many white Southerners, many feared the return of federal intervention. To ensure this would not be the case, Southern politicians worked to limit the powers brought on by the Enforcement Acts of 1870–71. As the 44th Congress debated reducing the Army's size as part of the 1877 Appropriations Bill, Tennessee Congressman John Atkins proposed a bill rider to ban the use of federal military forces in matters related to state elections. This was paired with a spirited debate on the use of standing armies to execute laws.<sup>75</sup> Because of heated debate on the rider, as well as resistance to the massive troop reduction proposed by the bill itself, the measure failed in the Senate. Later attempts to restrict federal troops also were unsuccessful, including one by a Mississippi congressman to ban the expenditure of funds to transport troops to suppress insurrection; however, the movement continued to gain momentum across the North and South.<sup>76</sup>

As the 45th Congress convened in March 1877, one of the highest priorities was to pass an Army appropriations bill. Similar to the 44th Congress debates, congressmen argued about the size of the Army and its role in a post-war South. As Democrats and Republicans attempted to find an agreeable compromise, Kentucky Senator J. Proctor Knott proposed an amendment to the bill which was widely lauded in Southern circles. Knott's amendment originally called for a ban on using "any part of the Army of the United States as a posse comitatus or otherwise under the pretext or for the purpose of executing the laws, except in such cases and under such employment of said force may be expressly authorized by Congress," and included a restriction on funding and punishment for violators.<sup>77</sup> His proposed amendment placed into writing the intent of many Southern Democrats to limit the Army's role in the South, and threatened the passage of much-needed appropriations.

Debate raged over the "Posse Comitatus amendment," with Northern politicians accusing Southerners of having a "chronic fear" of the return

of federal troops and presidential intervention in politics.<sup>78</sup> Southerners retorted that Northerners were protecting an executive branch “guilty of using troops under circumstances not authorized by law.”<sup>79</sup> While Knott argued that his bill rose above party lines and would not “interfere with the protection of any citizen in the exercise of the elective franchise,” many remained unconvinced.<sup>80</sup> After much debate and several minor verbiage changes to the amendment, the wider appropriations bill was adopted by both Senate and the House. On 7 July 1878, the Army issued General Order No.49, highlighting the section of the Appropriations Act and outlining that commanders would no longer “permit troops under their command to aid the civil authorities as a posse comitatus or in execution of the laws.”<sup>81</sup> This order, combined with reduced troop strength and withdrawal from the South, signaled the end of military involvement in Reconstruction.

The amendment was met with mixed response across the United States, by both civilians and soldiers. During debate on the bill, Southern papers argued that “Republicans are vigorously fighting Mr. Knox Amendment . . . to hang on to every despotic statute and to have, as far as possible, a military government over the country.”<sup>82</sup> Some Northern newspapers lamented the bill would “leave the community powerless in the hands of rioters and mobs by tying the hands of the president and preventing his acceding to the request of any governor of a state for aid.”<sup>83</sup> Yet others, tired of the requirements to maintain order in the South, commented that the amendment “was intended . . . to put a stop to the infamous and anti-Republican practice of sending troops into several states at the call of some hireling of an administration” and merely set in place a more stringent requirement for both parties.<sup>84</sup>

Unlike its civilian counterparts, the military acknowledged that despite the political posturing, there were still consistent calls from civil authorities for support across the South and North. In a 29 June 1878 *Army Navy Journal* opinion piece, one officer commented:

As to the posse comitatus prohibition with which the new Army act winds up, Congress seems to have been very happy over it, but the Army can hardly be less happy. The felicitation is mutual. It only remains to see how state authorities will enjoy it.<sup>85</sup>

The officer listed thirteen governors and mayors who had, in the week after the bill passed, called on the Army to assist civil authorities. He closed: “Let it not be said that the Army went uncalled for, as it of course did not go without explicit orders on this duty.”<sup>86</sup> Clearly there were mixed opinions on the efficacy and legality of the Army’s role in Reconstruction.

## Summary and Analysis

During Reconstruction, the US Army transitioned from large-scale combat operations to stability operations, a process of civil administration and counterinsurgency familiar to Global War on Terror veterans. While the Army's role in the South immediately after the war seemed obvious and essential, the nation's political climate shifted as operations continued. Some leaders viewed the continued presence of the force as an "occupation" incompatible with the country's values, while others viewed the force as the only guarantee of their newly won freedom. In the end, legislation dictated that state militia—and later the National Guard—under the direction of state governors would fill future requirements for military forces to intervene in state matters.

As noted in other chapters of this book, armed rebellion of citizens was not an uncommon experience in the United States. No civilian or military leader had anticipated or prepared for the wholesale removal of government systems and social practices in the aftermath of the Civil War. The Army's role to suppress the rebellion soon transitioned to administration and rebuilding, attempting to support policies and procedures directed from Washington through its massive administrative apparatus. While sometimes successful, federal military intervention was not a long-term



Figure 4.7. *Harper's Weekly* sketch of a Bureau agent standing between a group of whites and a group of freedmen. Courtesy of the Library of Congress.

solution. Power quickly transitioned from officers in uniform to elected or appointed civilian bodies and state-run military forces.

Faced with a growing insurgency in the South, regulars and militia forces attempted to quell violence within both legal and physical boundaries in the former Confederacy. New historiography has shed light on the effectiveness of some of the militia forces—many of them more racially representative of their region—in combatting the domestic terror of groups like the Ku Klux Klan and rifle clubs. Both federal and state forces were most successful in establishing small operating bases or outposts for quick reaction forces to combat local opposition. Military tribunals and courts effectively handed down punishment to captured criminals, ensured access to polls for newly enfranchised populations, and helped many African Americans take an active role in defending their newly won rights.

While insurgency failed to return political power to white supremacist leaders, political action eventually hampered the military's effectiveness in the South. Democrat politicians replaced racially diverse militia with ex-Confederate organizations, vacated convictions of those who oppressed and attack the African American population, and limited use of troops in elections, guaranteeing their re-ascendance to power. Eventually, the Posse Comitatus Act ensured that federal military forces would not be employed in state matters, allowing a resumption of racial violence and oppression seen prior to the Civil War. The progress made under the watchful eye of federal forces in the initial post-war era ended abruptly with the rise of Jim Crow. African Americans in the South who had briefly been given the right to vote and represent themselves in government were forced down under the yoke of a new racially oppressive system. Nearly ninety years later, activism from the African American community, bolstered by federal and military intervention discussed in a later chapter of this book, finally destroyed the Jim Crow system.

Reconstruction demonstrated the volatile effect that political change can have on US military forces operations. The political power shift both at the state and federal level dramatically adjusted the military forces mission in the South. Today's soldiers recognize how military leaders can be frustrated by conflicting instruction from federal and state authorities. Just as in modern times, US Army and state forces in Reconstruction attempted to help uphold the Constitution and the rights of American citizens, regardless of their race or creed.

## **Thought Questions**

1. In what ways did the US Army's administration of government functions in Reconstruction mirror current military policies and procedures? In what ways were the actions different from the Army's current policies or procedures?
2. How is control over the modern National Guard different from the militia of the 1860s and 1870s? Do governors exercise more or less authority than they did during this era? Does the federal government have the same span of control today as it did then?
3. Many politicians at the time claimed the politics of individual Army officers affected how they carried out their duties during Reconstruction. Is this still a common concern or complaint in DSCA operations?
4. Several National Guard organizations today carry references to rifle clubs or other extra-legal military organizations of the Reconstruction era in their Lineage and Honors. How does this place the National Guard in the narrative of Reconstruction? How do references to extra-legal military formations affect interpretation of Reconstruction by modern members of those organizations?

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# Chapter 5

## **Labor Disputes, the US Army, and the National Guard, 1877–1921: “This Thing Will Appear Again, and . . . Society May Be Shaken to its Foundations”<sup>1</sup>**

Jonathan D. Bratten and Aaron L. Heft

No examination of the evolving nature of law and policy surrounding Defense Support of Civil Authorities (DSCA) would be complete without addressing the period between 1877 and 1921. During this era, the United States dealt with changing views on labor, workers’ rights, and the role of government. As the nation began to piece itself together following the American Civil War, labor became a key issue. New ideas about workers’ rights mixed with industrial growth, westward expansion, a boom-and-bust economic cycle, and mass migration from Europe and Asia to create an era filled with labor disputes. Many of these disputes turned violent or carried with them the threat of violence. Civic leaders turned increasingly to the US Army or state militia to restore order in these cases.

This chapter will examine how military involvement in labor disputes during the Gilded Age and at the turn of the century created a precedent for future Army doctrine and civil legislation regarding the use of military forces in domestic crises. Additionally, this chapter will show how the Army’s experience as a constabulary force during this period fostered much-needed change, professionalized the force, and helped establish the modern National Guard.

### **An Army for Strike Duty**

Post-Reconstruction, the Regular Army had shrunk to a strength of just over 2,000 officers and 25,000 men, with only a few western posts maintaining more than 1,000 soldiers. Most enlisted soldiers came from backgrounds of poverty or recent immigration. In stark contrast, men enlisted in the militia might be professionals in a trade, educators, or skilled craftsmen.<sup>2</sup> Small though it was, the Army remained the largest supply of federal manpower available for maintaining public order. This meant that soldiers faced a variety of missions, from keeping peace between Native Americans and settlers to acting as a de-facto police force in an era of increased social unrest.<sup>3</sup> In an 1877 New York Chamber of Commerce speech, General of the Army William Tecumseh Sherman described the regulars as “the great High Sheriffs of the nation, necessary and essential parts of every

organized court or government, especially such as ours.”<sup>4</sup> Sherman’s words were couched for effect: the Army was under budget scrutiny even as it assumed wider missions. Congress and the American people felt the militia could bear much of the burden of ensuring public safety.

Following the American Civil War, militia across the United States fell into varying levels of unpreparedness. Many veterans had tired of war and wanted to put that period of life behind them. In the South, as discussed in Chapter 4, militia service was a violent landscape where state militia clashed with paramilitary irregulars. Finally in the 1870s, the various states began to reorganize their militia. Although most state laws still defined the unorganized—or enrolled—militia as young men eligible for military service, most people recognized that this force could not be called on for emergencies. Instead, states began organizing units of volunteer militia, first into companies and regiments, then brigades. By 1879, Pennsylvania boasted an entire division.<sup>5</sup> Many states began referring to their forces as the National Guard, which was eventually codified into law in 1903.<sup>6</sup>

State militia units tended to reflect the community from which they drew their soldiers. Because of this, militia soldiers ranged from upper class young professionals to day laborers.<sup>7</sup> Militia demographics are important for this chapter as “strike duty,” as it was called, often put these soldiers face-to-face with co-workers, family members, and friends. A 1917 *The National Field* editorial noted that National Guard members often had to act as a guardsman and a union man at the same time: “A pretty severe test for any man—whether he shall think of his own or his country’s interests first!”<sup>8</sup> Additionally, they were required to exert and maintain public order in their own communities, where they returned when strike duty was over.

Demographics differed by region, however. Unlike the Regular Army, the National Guard was not monolithic and varied state by state, especially in the nineteenth century. While eastern units were more cosmopolitan in their makeup, western units tended to be more segregated by ethnicity and class. This could play a major role in their performance during strike duty.

Militia involvement in strikes, then, could be fraught. Given Army manpower shortages, and the legal framework for domestic response, state troops would be heavily involved in quelling civil unrest due to labor disputes in the late nineteenth and early twentieth century. Consequently, thirty percent of militia activations between 1877 and 1892 were for strike service.<sup>9</sup>

## Changing Laws

By the 1870s, the US and state governments had developed additional legal framework for the use of the militia and the Regular Army—more than during the pre-Civil War era, which had merely consisted of the Insurrection Act and the Constitution. The Constitution, specifically Article 4, Section 4, stated: “The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion, and on application of the legislature, or of the executive (when the legislature cannot be convened), against domestic violence.”<sup>10</sup> As discussed in Chapter 2, the civil authority could approve using the military in cases of civil disturbance.

In 1874, Congress passed *Revised Statutes* (RS) 5297, 5298, 5299, and 5300, which codified into law federal assistance to civil authorities. RS 5297 continued the pattern that federal troops could not intervene in a state unless requested by that state’s legislature, provided the state had exhausted all available resources at their disposal (law enforcement and militia). RS 5298 permitted the president to employ federal or state troops in instances where insurrection threatened federal laws. RS 5299 gave the federal executive the authority to intervene with military force to protect civil rights. Additional federal laws such as the Railway Acts of 1862, 1864, and 1866 designated railways as “military roads” and “post routes” and provided federal protection for their operations.<sup>11</sup>

As noted in Chapter 4, all these laws and policy were subject to the Posse Comitatus Act, which required an extensive and lengthy political process before federal troops could be dispatched to a state. The ensuing civil unrest caused by labor strife stressed this complicated web of policy. To further complicate matters, no policies outlined the role and authority of state versus federal troops when both were on scene. And while the aforementioned laws authorized the use of troops, they did not require the military to receive additional training in riot control or other tactics.

The following case studies lay out historical events that helped bring a change to laws, policy, or military doctrine regarding DSCA. They provide a glimpse of the Army and National Guard’s role in this era.<sup>12</sup> Each case study examines what happened and why, who was involved, and then looks at how these historical events impacted policy and laws.

This selection of case studies is not representative of the civil unrest in the 1877–1921 era. As noted in the previous chapter, race relations caused far more and far deadlier violence during this period and beyond. People of color—both Black and Native American—would continue to

be massacred through 1921 and up to World War II. The intense racial violence included armed groups targeting Black members of local or state governments to “redeem” them in the post-Reconstruction era, as well as rioting mobs taking out their anger on vulnerable minority communities. In 1898, a state militia-backed mob expelled the last Black representatives in the government of Wilmington, North Carolina. In 1921, white rioters in Tulsa, Oklahoma, targeted the city’s Black community, burning whole blocks and killing as many as 300. While some National Guard personnel attempted to stop the violence, many stood by and watched. In all these cases, the bloodshed did not change the social and legal constructs of injustice in these communities. Nor did the military response change laws, policies, or regulations concerning the use of military force during civil unrest. Therefore, these incidents and those of the Red Summer of 1919 are not included in this chapter.<sup>13</sup>

### **Challenges to the System: The Great Railroad Strike of 1877**

The first major test of DSCA policy related to labor relations came in the summer of 1877, when labor unrest in the railroad industry exploded into protests across the United States. Following an across-the-board pay reduction, Baltimore and Ohio Railroad workers initiated strikes during July in West Virginia that closed rail yards and raised public support against the industry.<sup>14</sup> Labelled as “riots” by state officials, these events tested the fledgling state volunteer militia’s ability and resulted in a call for federal troops like those used in the Reconstruction South.<sup>15</sup> Additionally, the incidents tested the framework of civil-military authority. Summer disagreements in Maryland between federal officers, state officials, and railroad executives led to arguments about the employment of federal troops, ultimately resulting in the replacement of a federal officer tasked with security on the railroads with one who was more supportive of railroad management demands.<sup>16</sup>

Across the eastern seaboard, protests and shutdowns from railroad workers threatened to swell into a unified movement, causing concern among industry and government leaders alike. While the performance of state militia forces varied drastically, most failed to successfully muster and prevent violence. A 21 July 1877 Baltimore newspaper article commented: “The flash of musketry lit up the streets.”<sup>17</sup> Many commanders believed that force needed to be met with greater force, setting the stage for increased violence. The 1877 protests highlighted shortcomings of the post-Civil War state militia system and prompted many states to reform or abandon their existing force structure.

Actions in July in Baltimore highlight the mixed effectiveness of relying on partially committed and funded volunteer forces. On July 20, the city's two infantry regiments, the 5th and 6th, were called into service by Gov. John Lee Carroll to respond to a growing crowd of protestors at the Cumberland Railyard at the request of railroad leadership.<sup>18</sup> The units were ordered to report to their respective armories, equip their men, and march approximately one mile to Camden Yards in downtown Baltimore, where they would entrain and move by rail to the "riots."<sup>19</sup> The 5th Regiment, a self-funded and experienced local militia under Capt. William Zollinger, approached the rail yard largely unopposed but a mere block from Camden Station faced a large crowd blocking their way. Zollinger, a Civil War veteran and experienced leader, ordered his men to fix bayonets and "carry arms" using their muskets as levers to move part the crowd and enter the station. For the next several hours, Zollinger and his men posted guards, picket lines, and roving patrols to help prevent and extinguish fires set by the crowds; they largely succeeded in containing the crowds without violence.<sup>20</sup>

On the other side of Camden Station, the 6th Regiment commanded by Col. Clarence Peters reacted quite differently. Peters, a peacetime militia officer with no formal training, and his men, were surrounded in their armory in a largely working-class neighborhood after receiving the order to move to Cumberland. The troops struggled to exit the building, even-



Figure 5.1. An artist's depiction of the Sixth Maryland Regiment firing on rioters in Baltimore which ran in the 11 August 1877 *Harper's Weekly*. Courtesy of Wikimedia Commons.

tually firing out of the armory windows into the crowd to clear the way.<sup>21</sup> Once in the street and marching to the station, the companies of the 6th were surrounded by the crowd and—after being pelted with brickbats and stones—opened fire on the protestors, killing ten and wounding thirteen civilians.<sup>22</sup> Peters's command disintegrated as they faced continued harassment by the crowd. Some of the troops hid their uniforms and weapons and fled to their homes. Less than one company of men made it to Camden Station to join the 5th Regiment.

The disparate reaction of the two Maryland National Guard units demonstrated the inefficiencies of Maryland's militia system. Within days of the end of the violence, Governor Carroll relieved the 6th Regiment officers and formally disbanded the unit for behavior; he cited cowardice and working-class sympathies that “inspired a want of confidence . . . at a time when the city was in a comparatively defenseless condition.”<sup>23</sup> In contrast, the 5th Regiment was recruited to full strength and placed on active service for several more weeks; the state raised two new regiments headed by Civil War veterans to perform temporary duty suppressing the strikes.<sup>24</sup> Following the violence in Baltimore, the governor called for a better funded and greatly expanded militia system in the state to respond to continued violence; within the next three years, the Maryland National Guard's force structure grew to address these demands.<sup>25</sup>

In Pennsylvania, home to one of the largest bodies of volunteer militia in the country, 1877 failures responding to labor unrest drove a systematic change in the National Guard of Pennsylvania (NGP). In 1878 and 1879, Pennsylvania state leadership enacted legislation and funding to improve the NGP's structure, equipment, and training—attempting to address failures identified in the state militia's riot response. Following the post-1877 restructure, one Regular Army inspector remarked, “I know of no other state . . . that can put into the field on as short notice so large, so well-equipped, and so efficient a body of men and I doubt if any other state has as good an organization as far as it relates to the division staff and the logistics organization.”<sup>26</sup> This was all a result of the failures experienced during the 1877 railway strikes.

With the news of successful labor negotiations in West Virginia a few days prior, newly announced 19 July 1877 changes to Pennsylvania Railroad policies resulted in widespread unrest across Pittsburgh's railroad yards—part of what was described as “the most eventful year in the history of the service.”<sup>27</sup> On the morning of 19 July, brakemen and flagmen seized switches in the railyard and prevented trains from running out of the yard. Men brought in to replace them were turned away with threats

or violence, and the number of strikers in the yard rapidly expanded as more rail workers arrived to join the protest.<sup>28</sup>

Pennsylvania Railroad staff requested local law enforcement and the mayor's assistance to help quell the increasing unrest, but few police were available to respond. By late evening, the swelling crowd barricaded the railyards. Maj. Gen. Alfred Pearson, commander of the NGP's 6th Division, was in Pittsburgh and reported the deteriorating conditions to NGP leadership, including the failures of police and the Allegheny County Sheriff to control the situation. Early morning on 20 July, Allegheny County officials stated that they had exhausted "all adequate means at my command" to quell the "tumultuous mobs" and formally requested NGP aid to support civil authorities.<sup>29</sup> With Gov. John Harnanft across the country on vacation, State Adjutant General James Latta ordered Pearson to take charge of the deteriorating situation in the interim with one or more regiments, while Latta would make his way to Pittsburgh to supervise the deployment in person.

Pearson's deployment of troops was fraught with issues from the start. Although the 6th Division ranked as "equal with any in the state," only 200 of the projected 1,000 guardsmen had turned out by afternoon on 20 July. Their delay had allowed the small crowd of protestors to swell to a reported 4,000 strikers. Pearson cabled Latta and requested troops be sent from Philadelphia as he "fear(ed) the majority of the troops sympathize with the strikers" and he could not muster enough men from his division voluntarily.<sup>30</sup>

The NGP mobilized troops in Philadelphia and elsewhere in the state, many departing their armories without full equipment and some without uniforms. As Philadelphia "divisions" (numbering less than a full regiment in strength) arrived on 21 July, guardsmen were immediately ordered to fix bayonets and advance on the barricaded rail yard. The crowds of strikers launched projectiles, and some fired in the direction of the guardsmen. Firing muskets in response, the guardsmen killed fifteen civilians, including women and children. The situation deteriorated as the guard troops occupied railroad buildings to prevent their destruction, creating isolated posts cut off by surging crowds angered by their presence and the escalating violence.<sup>31</sup>

Philadelphia's 1st Division under Maj. Gen. R. M. Brinton positioned in the railroad's "roundhouse" was surrounded and provoked by strikers through the evening. His forces fired on strikers attempting to employ a captured cannon against the guardsmen; the 1st Division was eventually abandoned by Pittsburgh's 6th Division as units withdrew or deserted

during the night. The guardsmen were plagued by ammunition and supply shortages; the men had been issued just twenty cartridges and no rations as they deployed toward the railyard.<sup>32</sup>

On the morning of 22 July—with as few as three rounds remaining in some of the men's cartridge boxes and suffering continued attacks on their position—the Philadelphia troops forced their way through the crowds and back to safety, taking several casualties on their march out of the city. Rioting spread across Pittsburgh in response to the guard deployments, setting fires and destroying much of the railroad property. Brinton and his command “acceded to the wishes of the strikers” and remained in camp outside the city where they had retreated.<sup>33</sup>

Eventually Gov. James Hartranft arrived with contingents of federal troops and additional guardsmen, bringing order and an end to the strikes. The response had illustrated massive issues with the NGP's organization and strength. Throughout the crisis, large numbers of men failed to report, and excess general officers had few to no men in their commands. The state had to recruit emergency regiments formed from Grand Army of the Republic posts, veterans organizations, and untrained men.<sup>34</sup>

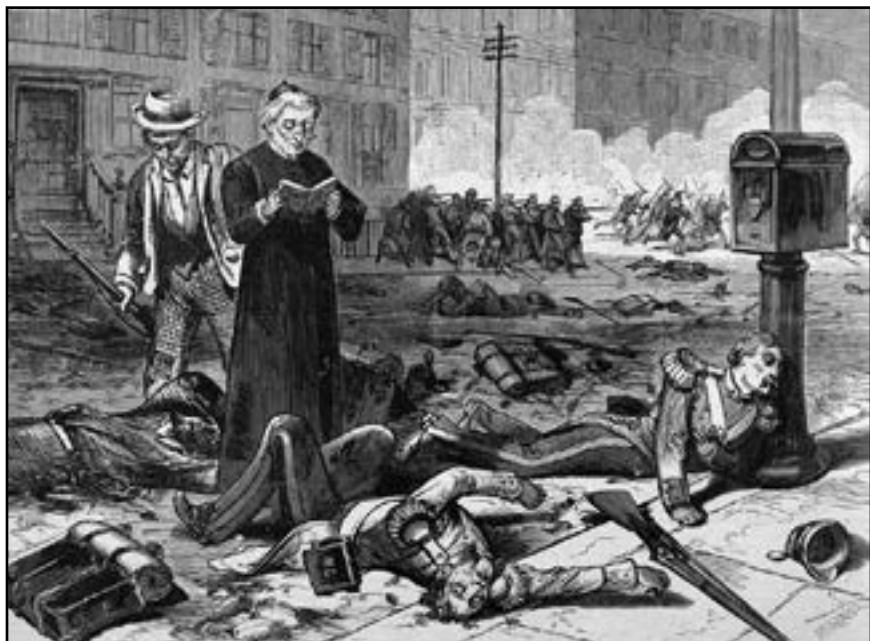


Figure 5.2. This depiction of the violence in Pittsburgh from Frank Leslie's 4 August 1877 *Illustrated Newspaper* conveys the shock felt by many at what appeared to be a complete breakdown of governance and order. Courtesy of University of Nebraska-Lincoln, Digital Initiatives & Special Collections.

In the aftermath of Pittsburgh, similar labor disturbances occurred in Luzerne and Carbon counties, necessitating additional deployment of guardsmen, which increased manpower and supply issues. The state was required to recruit volunteers for three-month periods to maintain a military presence as many guardsmen could not be away from their jobs and homes for extended orders. The additional recruitments strained the commonwealth's military supply stocks, requiring expensive additional contracts from the federal arsenal in Philadelphia to equip the additional troops.<sup>35</sup> A 24 August 1877 newspaper article commented on "the humiliating fact that the highly eulogized *National Guard* of Pennsylvania failed to perform their duty" in the state's time of need.<sup>36</sup> Unlike neighboring Maryland, which disbanded units after their failures in similar Baltimore labor responses, the NGP leadership set out to dramatically reform the Pennsylvania National Guard and its response to DSCA operations in the wake of 1877.

### **From Failure to Organizational Learning: NGP Rebirth**

General James Latta used his 1877 report to Governor Hartranft to not only account for NGP failures but to lay out a detailed plan for rebuilding the organization. Latta and Hartranft drastically reshaped the NGP in the wake of Pittsburgh into a national example of a militia force ready for response to civil unrest. Their plan addressed major failures in organization, equipage, and training which had been made evident in the deployment to troops in July. In 1878, the legislature published an act that streamlined the organization, followed by an 1879 appropriations bill to fund the requested changes.<sup>37</sup> As Hartranft, a decorated general officer during the Civil War, left the governorship in 1879, he again donned his uniform and actively helped reshape the NGP.

Latta's first major reform was to abolish Pennsylvania's many smaller divisions in favor of a single division under the command of "one major general, with three or four brigades" to eliminate the "crowding together of general and field officers with a force only equal to a colonel's command."<sup>38</sup> At Pittsburgh, Latta saw the many smaller independent units struggle with quality and command issues. He reshaped the state's forces under the 1878 act to form fewer but larger units that would give "to each a duty to perform within the scope of his grade and charged them with a real responsibility."<sup>39</sup> Regiments were also required to conduct medical examinations for new troops, and discharge those who failed to report for training.<sup>40</sup> Latta applauded the 1879 changes, stating that the NGP now displayed an

“improved physique and age” and had consolidated “what were heretofore scattered division commands into working brigade organizations.”<sup>41</sup>

The state also addressed supply issues in the response at Pittsburgh. From 1878 to 1879, the state completely re-equipped the NGP. Gone were the distinctive dress and parade uniforms of dubious functional quality, replaced by a fatigue uniform that almost directly matched regular army troops, produced by the same contractors and arsenals as regulars.<sup>42</sup> The state used the new appropriations bill to replace surplus Civil War field equipment with updated knapsacks, cartridge boxes, and other state-of-the-art equipment. The state issued the Springfield breechloading rifle to all commands to address Latta’s concern that in “the many emergencies we are so often called upon to meet, the difficulty of . . . procuring ammunition of the proper caliber, render this subject one of great importance.”<sup>43</sup> While the new equipment helped give the NGP the appearance of a professional organization, only training would improve performance.

The NGP reevaluated its training in response to performance during the labor unrest. By 1878, NGP officers were required to undergo selection boards prior to assuming their commands to ensure that elected officers were “those of capacity and character” and were not in power “simply because of good fellowship.”<sup>44</sup> To prevent mass killings from volley fire, rifle practice became a central theme of training, with the focus on the individual marksman.<sup>45</sup> The state standardized and embodied one of the first examples of riot control training in statewide training manuals. First written by the 5th Brigade’s General Henry Huidekoper, who had commanded an NGP division during the 1877 labor protests, “A Manual of Service” outlined not just standard NGP drill and ceremony, but specifically organization, deployment, and action in response to “mobs.”<sup>46</sup> Huidekoper’s manual directly displayed lessons learned from Pittsburgh, including how to ensure troops were not surrounded in railcars or buildings, deploy marksmen to eliminate armed mob members firing from buildings, and deploy skirmishers to keep space between the main body and the mob. Lastly, Huidekoper cautioned that “more battles are lost by not fighting at the right moment than because of disparity in numbers,” echoing the NGPs assessment that an early response in Pittsburgh would have quelled tensions before they were inflamed.<sup>47</sup>

In the years following the Great Railroad Strikes of 1877, the National Guard of Pennsylvania was called out for several strikes and labor related deployments. Demonstrated by its performance at Homestead in 1892, as well as 1894 and 1902 mining strikes, this was a distinctly different organization than that which mobilized to Pittsburgh fifteen years

prior. Organized and well-disciplined troops rapidly deployed to trouble spots prevented outbreaks of violence like those in 1877. Citizens at Homestead welcomed the NGP after several were killed during violence between strikers and Pinkerton agents, and NGP troops across the entire state prevented destruction and death during a multiweek, brigade-sized deployment in 1902.<sup>48</sup> While 1877 DSCA operations identified NGP failures, subsequent legislation, funding, restructuring, and training helped correct issues and created a model for other states to follow.

Of note, improvements were not replicated at the federal level. The Army did not develop a doctrine for dealing with civil unrest until 1894; by that time, Pennsylvania had two brigade manuals on the subject.<sup>49</sup> Additionally, the 1877 strikes did not solve issues of civil-military authority and state versus federal authority. There was precedent for temporary state control over federal units, which would be tested later.<sup>50</sup> Above all, the 1877 strikes set a strong precedent for the domestic use of federal troops.

### **The Framework Fails: The Pullman Strike of 1894**

Historian Robert Wooster pointed out that by the 1890s, the Army had moved beyond merely enforcing the laws and was actively siding with owners and managers in labor disputes. During this era, Army officers tended to side more with elitists, classifying all strikers and union workers as communists, anarchists, socialists, or some form of dangerous “other.”<sup>51</sup> An 1892 union journal reported that labor leaders were concerned the Regular Army was cooperating with owners: “The armies of the Union, with shotted guns, stand guard to see that they remain on top.”<sup>52</sup> The use of military units as law enforcement increased strain on civil-military relations.

Social divides had grown even more severe since the 1870s. Most Regular Army officers came from middle- or upper-class backgrounds. The army was reluctant to take more than a few enlisted soldiers on as officers in this era, making the social divide inside the army even worse. Army officers readily accepted free rail passes in luxury company cars from railroad bosses.<sup>53</sup> No surprise that many officers tended to side so violently with owners of capital. Maj. Gen. Nelson A Miles described the contrasting opinions:

Men must take sides either for anarchy, secret enclaves, unwritten law, mob violence, and universal chaos under the red or white flag of socialism on the one hand, or on the side of established government, the supremacy of the law, the maintenance of good order, universal liberty, all under the shadow and folds of “Old Glory,” on the other.<sup>54</sup>

For these officers, the issues of fair wages, equal pay, and workers' rights had been pared down to a black and white view of chaos against order.

It was against this backdrop that the nation entered another period of economic instability. The Panic of 1893 caused economic turmoil, which then resulted in mass labor disputes with management for more equitable wages.

In the wake of the Panic, demand for luxury Pullman sleeping cars and wages for Pullman Company employees both dropped. Rent remained high in the Illinois company town of Pullman (20 to 30 percent higher than Chicago norms), as did upper management salaries. On 10 May, labor negotiations with management fell apart, and local unions went on strike with the backing of the American Railway Union (ARU). By 21 June, the ARU agreed not to handle Pullman cars unless owner George Pullman entered arbitration. Eugene Debs, head of the ARU, said every union man would strike if the boycotters were replaced. The situation escalated rapidly after 26 June, when union members were fired for refusing to attach Pullman cars to Illinois Central trains. Fellow Chicago railway union workers then went on strike, followed shortly after by workers from the Northern Pacific and Santa Fe lines. This disrupted rail traffic in twenty-seven states. The General Managers' Association (GMA), which represented twenty-four railroads across the country, appealed for federal assistance.<sup>55</sup>

Under federal law, the executive could not order federal troops to Chicago unless requested by the Illinois legislature and governor, or if federal property was threatened. Both Chicago Mayor John Hopkins and Illinois Gov. John Altgeld supported the strikers and kept police from interfering with the strike while it remained peaceful.<sup>56</sup> Chief of Police Michael Brennan wrote: "Until July 4, there was little to no trouble at any point within the limits of the city of Chicago."<sup>57</sup> The GMA, which had no support from the state, began bringing in private detectives to break the strike, despite an 1893 Illinois law that outlawed their use in labor disputes. They also appealed to US Attorney General Richard Olney—himself a former lawyer who had represented large railroad companies. Olney appointed Edwin Walker of the GMA as the special attorney for the national government to handle the Pullman Strike.<sup>58</sup>

Olney immediately informed Walker that he saw force "which is overwhelming and prevents any attempt at resistance" as the solution to end the strike.<sup>59</sup> On 1 July, Olney issued injunctions against ARU leaders under the auspices of Revised Statutes 5298 (protect the mail and interstate commerce) and the 1890 Sherman Anti-Trust Act. Federal district

court and circuit court judges issued the injunction against Debs and his associates, privately commenting that using the judiciary in labor disputes was inadvisable as it was partisan action.<sup>60</sup>

Also on 1 July, strikers derailed a train on the outskirts of Chicago. The next day Walker sent this message to Olney: “It is the opinion of all that the orders of court can not be enforced except by the aid of the Regular Army.”<sup>61</sup> US Marshal John W. Arnold telegraphed Washington, DC, leaders that regulars were needed to allow the passage of mail trains and enforce federal court orders. At the same time, Arnold complained that his own deputy marshals were causing trouble with the strikers and inciting violence.<sup>62</sup>

Maj. Gen. Nelson A. Miles commanded US regulars in that district and the regulars sent to Chicago. In conversation with President Grover Cleveland—who was reluctant to side with Olney—Miles commented that “he was subject to orders but that in his opinion the United States troops ought not to be employed in the city of Chicago at this time.”<sup>63</sup> Secretary of State Walter Gresham also advised against the deployment; however, General of the Army John Schofield—acting as personal advisor to President Cleveland—approved of Olney’s request and Cleveland relented. Miles and Schofield made plans to mobilize the entire garrison at Fort Sheridan to the Chicago lakefront. Trains carrying federal troops arrived on the night of 3 July to the great protest of Governor Altgeld, who insisted he had not exhausted the resources at his disposal.<sup>64</sup>

The federal forces entered a situation where the chain of command was vague, at best. In 1877, President Rutherford B. Hayes had placed federal forces at the disposal of the governors of affected states. Cleveland could hardly do so now, with the governor of Illinois rejecting federal support. The issue was not helped by an 1892 publication from a former army judge advocate, which reaffirmed this precedent. This was in clear violation of General Schofield’s 12 May 1894 General Order 15, which *prohibited* federal troops being placed under the command of state or local officials. The tense environment did not encourage cooperation and coordination.<sup>65</sup>

The peaceful strike radically changed with the introduction of federal troops, seen in dispersed detachments supporting police and marshals. Chief of Police Brennan later testified: “On July 4th trouble began. The workingmen had heard of the federal troops and were incensed. . . . There was trouble at Halsted Street and Emerald Avenue and on the Lake Shore tracks.”<sup>66</sup> On 5 July, a day after he arrived to take command in Chicago, General Miles wired the War Department with a succinct account of what

he saw on the ground, conditions that worried him. Only force, he thought, would disperse the strikers. Miles reported a mob of several thousand moving along the Rock Island Railroad, “overturning cars, burning station houses and destroying property.”<sup>67</sup> He closed his report with one telling question: “Shall I give the order for troops to fire on mob obstructing trains?”<sup>68</sup> Meanwhile, strike director Debs called for no violence: “Have every man stand pat. Troops cannot move trains.”<sup>69</sup> Tensions and violence escalated as the strike spread to ten other states.

As state and federal tension continued, Governor Altgeld irately telegraphed President Cleveland on 5 July to outline the situation in Cook County and the rest of the state, advising that he had the situation under control and that no one in the county or state had asked for federal or even state troops. Altgeld emphasized that the state government had been entirely ignored, as were the revised statutes and the Constitution. This began a back and forth between the governor and president about the role of state and federal governments in events involving a disturbance of the peace. This disagreement prevented unity of command at the national and local levels.

On 6 July, Mayor Hopkins requested state troops to deal with the rapidly growing violence that had overwhelmed Brennan’s police. Governor



Figure 5.3. Pullman strikers outside the Arcade Building in Pullman, Chicago. The Illinois National Guard can be seen guarding the building during the 1894 Pullman Railroad Strike. Courtesy of Wikimedia Commons.

Altgeld ordered the Chicago and Aurora militia brigades to state service, cautioning Brig. Gen. Horace Wheeler: “There is no glory in shooting at a ragged and hungry man.”<sup>70</sup> In response to the request, 4,000 Illinois militia came on duty in Chicago and began patrolling the city—including opening the rail lines at the stockyards to allow food to move into Chicago.

The first and only major fatal confrontation took place on 7 July, when a militia detachment opened fire on a rioting mob which had not dispersed after a bayonet charge and had instead counter-charged. The commander gave the order to fire, causing around twenty-five casualties. Reinforced by police, the militia finally cleared the mob.<sup>71</sup> Although this marked the only major clash during the Pullman strike, this example showed how chaos and confusion could cause untrained troops to panic and resort to deadly force. It also demonstrated that even with compassionate intent, military forces could fall back on lethal means.

With 2,000 federal troops, 4,000 militia, 3,500 police, and 5,000 US marshals and deputies, the chain of command became complicated and confused. Troops and law enforcement reacted to the same disturbances with very little coordination. Eventually, the marshals put themselves at the disposal of General Miles and his federal troops. The GMA—motivated not from efficiency but self-interest—requested that all military and law enforcement in the city subordinate themselves to federal control, *de facto* making Miles the dual-status commander. Hopkins and General Wheeler refused. By 10 July, Hopkins and Miles agreed to a baseline of cooperation. Federal forces focused on reopening rail traffic while police and state troops kept order in the city. Each force remained under command of its respective leader. This marks one of the first instances of debate over the delineation of command during DSCA operations.<sup>72</sup>

Another critical development in the DSCA history occurred on 9 July, when General Schofield published General Order 23, one of the first federal tactical guidelines for dealing with civil unrest. It remained virtually unchanged until 1937. Importantly, General Order 23 did not address chain of command issues or additional training. The order stated that mobs should be viewed and treated as a “public enemy;” tactics and weapons used against this enemy would be determined “by the immediate commander of the troops, according to his best judgment of the situation and authorized drill regulations.”<sup>73</sup> Although Schofield and Miles disagreed on many things, they were united in their belief that a mob was prelude to anarchy and disorder. Thus, in their minds, the remedy was force. Commanders “are not called upon to consider how great may be the losses

inflicted upon the public enemy, except to make their blows so effective as to promptly suppress all resistance to lawful authority, and to stop the destruction of life the moment lawless resistance has ceased.”<sup>74</sup> Despite evidence to the contrary, their answer to violence was more violence.

Much of the issue in the Pullman strike came down to military commander interpretation of the situation on the ground. Miles saw the issue as support to civil authorities and arranged his regulars around the city to protect federal property. Schofield saw it as an insurrection and chided Miles for his troop dispositions: “When the civil power ceases to be effective, and the President is required to exercise his authority as commander-in-chief of the army, his acts become purely military, untrammelled by any civil authority whatever.”<sup>75</sup> Miles, who disagreed with Schofield on tactics and would replace Schofield as general of the army in 1895, tended to agree that military problems should be solved by military men.

By mid-July, the Pullman strike was effectively over—defeated by the now-desperate situation of the strikers, law enforcement and military forces efforts, and leadership arrests. Strike leader Eugene Debs later said: “The strike was broken . . . not by the army and not by another power but simply and solely by the action of the United States Court in restraining us from discharging our duties as officers and representatives of our employees.”<sup>76</sup> Whether the military had created the space for the courts to act is up for debate.

For the purposes of this analysis, the Pullman strike revealed substantial issues in the national DSCA response framework. Early deployment of regulars precipitated a violent response from previously peaceful strikers—a response that rebounded on the militia, which might have calmed issues had they been brought in first. Leaders had never established command authority for military forces. The divide between Governor Altgeld and President Cleveland prevented effective cooperation and communication. Attorney General Olney’s connection to the GMA meant that federal assets were directed toward protecting company property. Like the confusion, mismanagement, and logistical amateurism displayed by the US Army during the Spanish-American War four years later, the Pullman strike response convinced many in the Army that major institutional reforms were needed.

Further 1890s civil disturbances muddied the waters concerning command authority. The Pullman strike experience caused Schofield to enshrine his General Order 15 into the *Army Regulations of 1895*, making it doctrine that federal troops could not be commanded by state or local

officials. This publication also codified the request procedure for civil authorities and the tactics commanders to request federal troops.<sup>77</sup>

The problem was far from solved, however. In 1899 and 1900, the regulars were brought in to restore order following strikes and ensuing violence in Idaho. This time the federal commander placed his troops at the disposal of state authorities. At their direction, federal troops made mass arrests and illegal incarcerations, violating not only General Order 15 but the Posse Comitatus Act and the US Supreme Court's decision in *Ex parte Milligan*.<sup>78</sup> Commanders still wielded too much immediate authority on the scene and could—and did—ignore regulations, with little repercussion.

One outcome of the disorganization and confusion surrounding the use of federal troops during 1800s labor disputes was a complete reorganization of the US Army—a reorganization that shocked Miles and others who believed in greater military autonomy. Plagued by an almost-myopic internal focus, aversion to professional study, and careerism, the Army only fared as well as it did against Spain in 1898 because Spanish forces were incompetent and demoralized and thanks to US Navy dominance. Otherwise, the US Army's performance was a disaster. Far more men died of disease than combat, even in the mobilization camps at home. The Army was ripe for reform, and lawyer Elihu Root meant to be the instrument of that reform.

Appointed as secretary of war in 1899, Root brought reforms that tightened civilian control over the Army. He abolished the general of the army position, replacing it with a chief of staff position on the newly created army staff. He established the Army War College and additional service schools. Under his tenure, Congress passed the Militia Act of 1903, which increased Army supervision of the National Guard, provided for better training and equipment, and enhanced National Guard professionalism.<sup>79</sup> All of this gave more authority to the secretary of war and enhanced civilian control over the military. For the older generation which believed military matters should be handled by military personnel, this was a severe shock.

From a legal framework perspective, the Supreme Court upheld the federal government's right to bypass state governments and "brush aside all obstructions to the freedom of interstate commerce or the transportation of the mails. If the emergency arises, the Army of the nation and all its militias, are at the service of the nation to compel obedience to its laws."<sup>80</sup> This established a firm legal precedent and undermined many of the restrictions of the Posse Comitatus Act.

## The Limits of Reform: Colorado Coal Field War of 1914

Secretary of War Root's reforms at the turn of the century came amid a marked change in the national consciousness about the role of government—and military force—in labor disputes. Progressives believed government should establish justice for all rather than protect the interests of corporate managers. President Theodore Roosevelt reflected that view in 1907:

The troops are not sent to take the part of either side in a purely industrial dispute as long as it is kept within the bounds of law and order. They are to be neither for nor against either the strikers or the employers. They are to prevent riot violence and disorder under and in accordance with the Constitution and the laws of the land. Better twenty-four hours of riot, damage, and disorder than illegal use of troops.<sup>81</sup>

Under Roosevelt's administration (1901–09), military actions related to labor were far more limited and less preferential to industry managers, marked by restraint and impartiality.<sup>82</sup> Because of Root's reforms and Progressive legislation, the National Guard took over more domestic missions, which allowed federal forces to prepare for overseas missions.<sup>83</sup>

While effective, this federal policy change did not end bloody interventions by state or federal forces. Although presidents like Roosevelt—



Figure 5.4. National Guard with M1895 machine gun during the Coalfield Wars, 1914. Courtesy of Denver Public Library, Digital Collection.

and later Woodrow Wilson—were largely able to keep labor violence to a minimum, they could only do so through strict control of federal forces. National Guard or state-hired law enforcement remained largely outside federal control. Nowhere was this more apparent than in the Colorado coal fields in 1914, when labor unions and coal managers clashed repeatedly.

Colorado's governor deployed the Colorado National Guard at the behest of the managers, under the direct control of Adjutant General Maj. Gen. John Chase, a former coal mining company manager.<sup>84</sup> Chase at first demonstrated restraint, but as time went on—and as toughs hired by the mine company replaced more labor-sympathetic guardsmen who came off their terms of service to return to work and school—he became more aggressive and draconian toward the strikers.<sup>85</sup> On 20 April 1916, the local Guard commander sent a platoon of forty guardsmen to investigate a striker camp at Ludlow. The anti-striker platoon leader, 1st Lt. Karl Linderfelt, was concerned that his small force might be overrun and placed a machine gun team overlooking the camp.<sup>86</sup> Seeing this, the strikers assumed an assault was imminent, seized weapons, and manned defensive positions. Someone opened fire and the one-sided battle began, ending with twenty to seventy strikers killed, hundreds wounded, and the region in open war.<sup>87</sup>

Colorado appealed to President Wilson, who authorized Secretary of War Garrison to deploy federal forces across the region. Garrison chose not to have regulars work alongside the guardsmen, who had their credibility as honest brokers removed by the Ludlow massacre. Instead, the regulars replaced the guardsmen and patrolled the region to keep both sides from resorting to violence. By the fall of 1914, the strike had failed, and workers went back to the mines. Garrison withdrew federal forces which had successfully maintained an uneasy peace without favoring one side or the other.<sup>88</sup>

Public outcry was severe against the Rockefeller-owned mining company, resulting in massive New York City demonstrations against the Rockefeller family. Failed anarchist attempts to assassinate family members led to the creation of the New York Police Department's first bomb squad.<sup>89</sup> Beyond more public discourse concerning the rights of laborers, few reforms came out of the Ludlow Massacre. The Colorado National Guard convened an investigation which exonerated all the officers involved, and no institutional changes were made within that organization following one of the bloodiest incidents in American labor history.

## **Federal Authority Reaches its Limit: West Virginia Coal Fields Strike, 1921**

During and immediately following America's 1917 to 1919 involvement in World War I, the federal executive and legislative branches passed sweeping wartime measures that permitted federal and state authorities to request and receive assistance from military personnel regardless of component to keep the peace. "Direct access," as it was called, ignored not only the Posse Comitatus Act, but also *Ex parte Milligan* and other supreme court cases. This was all done in the name of wartime expediencies and to prevent enemy sabotage, either directly by spies or indirectly from labor shutdowns. The result was that from 1917 to 1920, federal forces were indiscriminately used in labor disputes and to keep the peace during racial violence.<sup>90</sup>

One reason was that the usual state force for civil unrest missions was unavailable. The National Guard had been nearly entirely federalized in 1917. This was the first time a president had exercised this authority, and the War Department was still developing policy for this exigency. When the National Guard was federalized, each soldier was automatically discharged from the National Guard and entered service in the Army. Thus, when Guard units were demobilized in 1919, soldiers were simply discharged. It would take years for the states to rebuild their national guards, and the War Department would never make this mistake again.<sup>91</sup>

By the 1920s, the War Department was rolling back its wartime "direct access" measures and making it more difficult for states to receive support from federal troops. There were a few exceptions, however, such as when states still did not have an organized national guard. That was the case in West Virginia in 1921. The state did not reorganize its first company of the 150th Infantry until August, with eleven companies organized by October.<sup>92</sup> All of that was far too late for the collapse of law and order in the state following violence between coal mine owners and operators, and the workers.

Trouble had been simmering for years in the coal fields of West Virginia and, under direct access, the Army had been heavily involved. By the summer of 1921, the West Virginia government was unable to contain the violence and once again requested US Army assistance. This time, President Warren G. Harding refused Gov. Ephraim Morgan's request for support, stating that he would no longer continue the practice of direct access and would only give support once the state had demonstrated it had exhausted all available options. In desperation, Morgan authorized the



Figure 5.5. In this still from a newsreel, three union miners prepare to surrender their weapons to a federal soldier following the 1921 Battle of Blair Mountain. Courtesy of Wikimedia Commons.

nearly unheard-of peacetime action of mustering the enrolled militia—that is, calling up untrained and unorganized citizens who fell under the mandatory service militia law—for state service. Perhaps unsurprisingly, these actions exacerbated issues as the West Virginia State Militia only added to the violence.<sup>93</sup>

By August, the situation was out of control. Outraged by the daylight murder of a prominent local hero and pro-union law enforcement officer, miners formed an army of 15,000 to 20,000 that flooded the region around Blair Mountain. Due to swift action by US Army officers, the army of strikers was convinced to stand down and disperse rather than face charges of armed rebellion—and attack from US Army Air Corps aircraft that had been flown into the region, a first in DSCA operations.<sup>94</sup> Army forces returned to their bases and rendezvous points.

All these efforts were undermined when West Virginia authorities inflamed the situation by arresting ringleaders, sparking an all-out war around Blair Mountain that lasted for several days, complete with machine gun fire and civilian planes dropping improvised bombs. About sixteen

people were killed before federal troops arrived, established a cease-fire, and dispersed the warring parties from 4 to 8 September.<sup>95</sup> This ended the largest armed domestic confrontation since the Civil War.

The legacy of the military's involvement in the West Virginia coal fields strikes is not in legislation, but in policy and procedure. It marked a return to the pre-WWI legal status quo and reliance on the nation's laws and legislation when requesting troops. Government willingly surrendering authority is always notable. Here, the federal authorities relinquished powers to intervene in a state's affairs almost at will. States would answer civil unrest with their state police and national guard before making a request for federal assistance. The Blair Mountain fighting was the last incident of federal forces intervening in a civil unrest situation until the 1932 Bonus March in Washington, DC. Later chapters in this book will examine how World War II and the end of isolationism impacted the development of DSCA laws, policies, and procedures.

## Conclusion

The era of military involvement in labor disputes does not always show the US Army and National Guard in the best light. It can be difficult to read about situations where the national government appeared to be on the side of big business rather than the average American worker. And, indeed, this was a perception that shaped public opinion about the Army and the National Guard during this era. It drove the Army to largely divest itself of the domestic response mission, leaving it to the National Guard. The legacy of this era was reform across the Army, creation of a robust National Guard with dual state and national missions, and the seed for future doctrine to address domestic response.

The Pullman Strike and the War of 1898 precipitated the most significant reforms to the US Army since its inception. Root's reforms brought about sweeping organization, leadership, education, and training changes—as well as more civilian oversight and control over the War Department and the Army, which began to influence how the Army was used in domestic operations. It marked a sharp break from the post-Civil War army and is widely considered to be the birth of the modern US Army.

Following the Great Railway Strike of 1877, prominent business leaders and politicians saw the US Army in a new light: as a peacekeeping constabulary. Secretary of War George McCrary went as far as recommending that garrisons be stationed near each industrial city. While some soldiers agreed, others were unsettled by what they had seen. Many sympathized with the plight of the strikers. Maj. Gen. Winfield Scott Hancock remarked

that while he was proud of what his men had accomplished with minimal bloodshed, he found the duty distasteful. The solution, he remarked, was that “the states have a well-organized militia, of force and power.”<sup>96</sup> In other words, domestic response was not the federal authority’s job.

This would not be accomplished until the Militia Act of 1903—a direct result of the Root reforms and the militia’s complicated role responding to domestic unrest. Further changes in legislation through 1916 brought greater organization, discipline, training, and equipment for the National Guard. As a result of progressive legislation based on shifting views of labor, the National Guard took on the dual mission it maintains today as the nation’s military reserve force and protector of domestic peace and order.

Because of heavy federal investment in the National Guard, each state had a robust, well-trained, and well-equipped state force for domestic response in the 1920s and 1930s. However, use of those forces was expensive for state governments and many states opted for preventative rather than reactive measures when dealing with labor relations that might turn violent. By the 1930s, use of the National Guard as mediators during labor strikes became more common, at least on the east coast and Midwest.

During 1932 coal field strikes in eastern Ohio, Gov. George White used Ohio National Guard officers as his observers at various striking locations. Guard officers conducted investigations and provided recommendations on whether troops should be deployed. In most cases, they resisted appeals from managers to inject troops into the volatile strike zones as the officers wished to avoid inciting more violence. Officers only recommended deployment of troops if law and order had truly broken down beyond the ability of local and state law enforcement to deal with it. When deployed, Ohio guardsmen demonstrated discipline and restraint in their operations, avoiding the mass violence seen in prior decades.<sup>97</sup>

Two years later and 750 miles to the northeast, Maine National Guard officers served a similar role during the nationwide textile strike of 1934. Gov. Louis Brann made his intent clear in deploying Guard units to possible trouble spots around the state:

The right of a citizen to work must be absolutely safeguarded. . . . The plants have a right to operate . . . the employees . . . have a right to organize and have a right to have a place in which to organize and have a right to deal collectively and through their chosen representatives with the plant management. The State will protect these various rights.<sup>98</sup>

In keeping with the governor's intent, officers took time to build relationships with strike leaders and management representatives. Labor historian John Salmond noted: "The Guard was always careful to consult with local union leaders, to assure them that its function was protective, not punitive, and to work out with them mutually acceptable rules of strike behavior."<sup>99</sup> While National Guard presence was usually a negative factor for strikers, proactive actions from Guard officers—many of them locals themselves—helped minimize or prevent violence. Both Ohio and Maine experienced far less violence during 1932 and 1934 strikes than neighboring states, in part due to the National Guard's role as mediators.

Changes also came in doctrine and training. Schofield's 1894 General Order 23 provided the first glimpse of army regulations for DSCA missions, which would be further developed in future doctrine. These had been preceded by state militia training manuals for civil unrest. There would be no official army manual for civil disturbances until after World War I, and the earliest training course for DSCA missions was not logged until 1922. However, the use of federal and state troops for civil unrest missions caused numerous officers to pen unofficial guidelines. These guidelines eventually formed the basis for Field Manual 27-15 in 1935. Like General Order 23, guidelines for civil disturbances delineated a tactical response to crowds and rioters.<sup>100</sup> Still, this was a beginning and formed the basis for future Army doctrine, policy, and regulations.

This era also highlighted issues with using military forces for DSCA in the event of large-scale combat operations (LSCO). With the National Guard now the Army's reserve force by World War I, its wartime mission took priority over DSCA missions. This meant that states had to find a substitute. Many states formed state guards to backfill their National Guard units. Although state police forces had been formed as early as the 1880s, the national mobilization of the National Guard for World War I caused most states to build state police forces.<sup>101</sup> In this way, state police largely replaced the National Guard as the first responders for civil unrest. Nationally, the federal government formed the United States Guards, units charged with protecting industry and transportation from sabotage, strikes, or civil unrest.<sup>102</sup> In the event of LSCO, state and federal government authorities would need a plan to cope with domestic disorder or natural disasters without military assistance.

The years 1877 to 1921 proved formative for developing the procedures and policies enacted during the post-World War II era. By the 1930s, the Franklin D. Roosevelt Administration recognized that govern-

mental agencies would need to work together during DSCA operations and passed the Economy Act of 1933, which authorizes federal agencies to order goods and services from one another.<sup>103</sup> This was one of the first steps to establish governmental reimbursement for the cost of disaster relief. The most critical reforms surrounding DSCA would come after World War II, as the nation confronted the nuclear era and continued to struggle with domestic crises related to race relations.

## **Thought Questions**

1. Guard soldiers and leaders are often called on to enforce unpopular laws in their own communities. What are some methods to navigate this kind of difficult situation?
2. At the turn of the century, both the Regulars and the National Guard were seen as being tools of big business. Are there modern perceptions of military service, and how might those perceptions influence a domestic response mission?
3. Even under the current DSCA framework, command relationships can be difficult to figure out. What are some ways to help overcome the miscommunication brought about by unclear command relationships?
4. This chapter highlighted a varying set of tactics, techniques, and procedures—some doctrinal, some thought of in the heat of the moment. Think about your DSCA experience, or that of your unit. What unconventional techniques or procedures have you used? Were they successful? Have those been shared to the unit?

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80. Laurie and Cole, *The Role of Federal Military Forces in Domestic Disorders*, 150.

81. Laurie and Cole, 179.
82. This restraint was markedly absent when dealing with racial issues. Roosevelt's summary discharge of 167 Black 25th Infantry soldiers of the in Brownsville, Texas, after a period of racial violence in 1906 was one of the worst decisions of his presidency. These dishonorable discharges were overturned by Congress in 1972 following an investigation.
83. Laurie and Cole, *The Role of Federal Military Forces in Domestic Disorders*, 201.
84. Mark Walker, "The Ludlow Massacre: Class, Warfare, and Historical Memory in Southern Colorado," *Historical Archaeology* 37, no. 3 (2003): 68, <http://www.jstor.org/stable/25617081>.
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# Chapter 6

## From Bayonets to Helping Hands: Evolving Responsibility for Crisis Response

Ryan P. Hovatter

The four decades spanning the Eisenhower to the Reagan administrations was an era of considerable change in the US military's role in domestic support, especially for the National Guard. The period is characterized by a violent transition to desegregate schools and society, mass protests for civil rights and an end to the Vietnam War, and natural disasters of increasing scope and magnitude. It is marked by standoffs between presidents and Southern governors over legal use of the National Guard and by deadly overreactions by guardsmen in cities and on college campuses. Presidential executive orders, policy and doctrine changes, new laws, and re-interpretations of old laws during this era fundamentally changed how the military operates in support of civil authorities.

Because of events discussed in this chapter, the Department of Defense, the US Army, and the National Guard Bureau instituted significant changes: more specific riot control training and equipment to the force, replacing the rifle and bayonet with the baton as the primary tool in riot duty, and instituting a policy of restraint and last resort use. During this period, the fear of nuclear attack became increasingly imminent—fear that soon faded as the United States emerged from the Cold War as the world's sole superpower. It was during this era that a “dual use” approach developed for using federal assets to defend against an armed enemy and for disaster relief. The creation of the Federal Emergency Management Agency (FEMA) and the enactment of the Stafford Act of 1988 reflected a shift in American public safety priorities, toward military assistance with regional disasters.

This chapter covers a period from the end of the Second World War to the Stafford Act, including two decades when the military was focused not only on defending Europe against Soviet aggression but also mired in the Vietnam War. The National Guard was not heavily involved in Vietnam, and mobilizations to Europe waned after the Berlin Crisis of 1961. While the Regular Army and other services responded to many of these domestic crises, the preponderance of these missions went to the National Guard, whether in state or federal status.

## Toward a Modern Emergency Response Framework

The modern federal emergency response framework owes its existence to the national preparedness movement beginning in 1940. The movement's focus was to prepare the United States for wartime mobilization and protect the American people at home. As wars spread throughout Asia and Europe, President Franklin Roosevelt revived the Council of National Defense, a First World War-era federal agency responsible for co-ordinating resources and industrial support for the war effort. The council asked states to establish local councils, but there were tensions between the federal, state, and local governments over unclear authority and a lack of resources.<sup>1</sup> Opaque lines of authority and a lack of resources would continue to plague the emergency response framework until the Stafford Act of 1988.

In 1941, as the German Luftwaffe bombed London and submarine wolf packs roamed shipping lanes between Europe and the Americas, Roosevelt created the Office of Civilian Defense (OCD) to replace the Council of National Defense.<sup>2</sup> In theory, the OCD was the primary center to coordinate federal civilian defense activities with state and local governments.<sup>3</sup> Like its predecessor, however, the OCD did not control forces or manage funds. Its first director, James Landis, even suggested disbanding the organization toward the end of the war as an attack on the homeland seemed far from possible. Harry Truman concluded that civil defense was the responsibility of state and local governments and dissolved the office soon after succeeding Roosevelt as president.<sup>4</sup> While the OCD was broad in scale—and its unpaid director did not have the power to implement anything substantial—it made a lasting contribution to preparedness through civil defense plan development (which included air raid drills and black outs) and stockpiling of materiel.

The military establishment agreed with Truman that civil defense was a local responsibility. In 1947, the War Department's Civil Defense Board led by Maj. Gen. Harold Bull released a report stating that civil defense was the responsibility of civilians and should not involve the military.<sup>5</sup> Many in the military community even compared the plans and spending on civil defense to a modern-day Maginot Line.<sup>6</sup> Although ineffective, the Office of Civil Defense and its predecessor, the Council of National Defense, were influential in creating a single authority over emergency response. They laid a foundation for defense preparedness.

Thinking among defense experts changed in August 1949 when the Soviet Union tested its own nuclear weapon. The United States lost its nuclear dominance in an instant. Congress enacted the Federal Civil Defense Act of 1950, which created the Federal Civil Defense Administration to formulate national policy that would guide states in civil defense. Although Truman still believed that civil defense was a state and local function, he acknowledged the federal role in coordination.<sup>7</sup> The Federal Civil Defense Administration and its successor, the Office of Civil Defense and Mobilization, prioritized survival in case of nuclear attack, focusing on building fallout shelters, executing civil defense drills, and informing the public about nuclear survivability. Every American soon became acquainted with 1950s “duck and cover” videos, which taught children and adults what to do in case of a nuclear explosion.<sup>8</sup>

While these commissions and boards were steps toward federal control and management of civil defense, they did little to affect how the National Guard and military trained and responded to state and local missions. As the Second World War ended, states began rebuilding their National Guards and resumed their mission of assisting state and local authorities to restore order during civil unrest and disasters.

The post-war Soviet nuclear threat and broader threat of the spread of communism led many in the defense community, including President Dwight Eisenhower, to push for the National Guard and Army Reserve to be more integral to defense plans. Guard backers argued that the National Guard was not only the first source for domestic response, but the primary homeland defense forces, and the nation’s combat reserve. In contrast, many Department of Defense leaders, including service secretaries and top generals, believed the National Guard should be used solely for homeland defense and domestic response while US regulars and their federal reserve prepared for war.

Assistant Secretary of Defense for Manpower and Personnel John A. Hannah firmly believed the National Guard’s primary role was civil defense.<sup>9</sup> In a 1954 speech in Lansing, Michigan, he posed that the National Guard was “bound to change” from a combat reserve to a home guard unit:

Can you imagine Michigan consenting to have its National Guard units sent away if Detroit and Lansing and Grand Rapids were under aerial bombardment? Do you think our police and other public safety organizations could handle the situa-

tion without the National Guard to provide disciplined leadership and control?<sup>10</sup>

Even the reporter covering the speech noted the absurdity of Hannah's presumption about modern warfare, asking rhetorically why the National Guard needed combat divisions with tanks, artillery, and other equipment for combat if its only purpose was for civil defense.<sup>11</sup>

Hannah's vision of a state National Guard headquarters *controlling* operations during an emergency are the opposite of how the Guard—and the military as a whole—support civil authorities today. The Army's 2019 *Defense Support of Civil Authorities* doctrine explicitly states that “civil authorities are in charge” and warns: “Military forces operating freely within civilian jurisdictions risk upsetting the constitutional balance between civil authority, the military, and the private sector.”<sup>12</sup> However, there were occasions when National Guard commanders did control civil operations. The most important example occurred in 1954 when Alabama Governor Gordon Persons declared martial law in Phenix City after a criminal ring in bed with corrupt local government officials assassinated a reform candidate for Alabama attorney general. Governor Persons charged his adjutant general with policing the town, which was notorious for corrupt officials involved in organized crime. The governor released the last of the Alabama guardsmen on 17 January 1955 after 214 days.<sup>13</sup>

By the 1980s, the concept of using the military to impose martial law would seem part of the distant past. While the need for military response was not eliminated, the Stafford Act of 1988 finally codified a response framework. This chapter, divided into two parts—civil disturbance and disaster response—provides a history of domestic operations, laws and policies governing domestic support, and how operations, policy, and law influence each other to forge today’s framework.

## Long Hot Summers

The 1950s was an era of great social change throughout the United States. As the US Army implemented President Truman's racial integration plan in 1948, the Supreme Court handed down one of its most monumental decisions. The court determined, in the 1954 *Brown vs. the Topeka Board of Education*, that racially separated schools—no matter how equal—were unconstitutional.

The first use of the Guard to enforce school desegregation occurred in September 1956 when Ku Klux Klansmen threatened the peace in Clinton and Oliver Springs, two small towns just west of Knoxville, Tennessee.

see. Governor Frank Clement ordered his adjutant general, Joe Henry, to enforce the court order to desegregate. Henry himself led the operation. "We are not concerned with who attends school," Henry told reporters, "but with keeping law and order."<sup>14</sup> The armed guardsmen, totaling 633 men with 7 tanks and numerous jeeps, kept the peace for nine days before handing off responsibility to the sheriff and his augmented force of 150 deputies.<sup>15</sup> Despite an armed lynch mob and violence, there were no deaths and some Black children attended the desegregated school.

During the same week in 1956 and some 300 miles away in southwest Kentucky near the Ohio River, Kentucky Governor A. B. "Happy" Chandler similarly used his National Guard to ensure a peaceful school integration in the small town of Sturgis. As had the Tennessee governor, Chandler ordered his adjutant general, Maj. Gen. Jacob Williams, to enforce the court order. Williams took personal charge of about 900 guardsmen who kept the peace and facilitated school integration with relatively little violence. Historian John Mahon concluded: "The Tennessee and Kentucky experience demonstrated two facts about the Guard: that an adjutant general determined to carry out the orders of his governor could do it effectively, and that guardsmen could be relied on to do their duty, even when it ran counter to their cultural background."<sup>16</sup> Mahon's analysis proved correct again and again, but whether the adjutant general would follow the orders of the president who countmanded the unlawful orders of a governor was a matter yet to be tested.

While the Kentucky and Tennessee governors exhibited leadership, doing what was legally and ethically right, Arkansas Governor Orville Faubus chose to make a stand for segregation at Little Rock in September 1957. Little Rock was a quiet little city that few expected to become the symbol of the fight to integrate schools. Arkansas National Association for the Advancement of Colored People (NAACP) President Daisy Bates encouraged and recruited nine Black students to be the first to attend the all-White Little Rock Central High School in September 1957. The city's mayor, Woodrow Wilson Mann, supported the integration. Governor Faubus, however, was seeking support from a more radical base of voters to shape his next 1958 gubernatorial primary campaign and strongly opposed what he termed forced integration. Faubus ordered his adjutant general, Maj. Gen. Sherman T. Clinger, to prevent the nine Black high school children from entering the school.<sup>17</sup> In a not-so-delicate dance between disobeying the law, keeping President Dwight Eisenhower off his back, and appealing to the segregationists, Faubus announced he was emplacing Ar-

kansas National Guard troops at Central High before the first day of class began on Tuesday, 3 September, because he feared disorder.

In the late evening of 1 September, Lt. Col. Marion E. Johnson formed a ring around Central High with 279 guardsmen and some state police. While some clutched unloaded M1 Garand rifles with fixed and sheathed bayonets, the majority wielded riot batons. When the Little Rock Nine, as they would forever be remembered, attempted to enter the school on the morning of 4 September, the Arkansas guardsmen prevented them from doing so.<sup>18</sup> An unforgettable image shows one of the nine, Elizabeth Eckford, walking past Arkansas guardsmen closely followed by a mob of White women shouting racist epithets and threatening physical harm.

Little Rock immediately became a national battleground for integration. Faubus assured Eisenhower that he was not opposing the Supreme Court ruling; however, he continued to use the Guard to prevent the Black students from attending school over the following two weeks on the pretense that he was merely keeping the peace.<sup>19</sup>

Federal district Judge Ronald Davies was not buying it. He declared that the governor had defied the law by obstructing integration and issued a 20 September injunction ordering Faubus to remove the National Guard and refrain from any further obstruction.<sup>20</sup> Faubus withdrew the guardsmen that weekend, but federal marshals and local police could not stop the growing violence.<sup>21</sup> In a 24 September telegram, Little Rock Mayor Woodrow Wilson Mann urged President Eisenhower to send federal troops to “restore peace and order:”

I AM PLEADING TO YOU AS PRESIDENT OF THE UNITED STATES IN THE INTEREST OF HUMANITY LAW AND ORDER AND BECAUSE OF DEMOCRACY WORLD WIDE TO PROVIDE THE NECESSARY FEDERAL TROOPS WITHIN SEVERAL HOURS.<sup>22</sup>

Mann repeatedly called the White House to implore the president to not only send federal troops but to federalize the National Guard to remove them from Faubus’s power.<sup>23</sup>

Eisenhower was cautious when it came to school integration, suggesting to start with graduate school education and expand to an earlier grade each year thereafter. At that rate, it would have taken sixteen years to integrate all school grades. The president hoped the courts and the states would deal with the issue. Although Eisenhower was reluctant to insert himself in the civil rights debates, he did sign the Civil Rights Act

of 1957 into law on 9 September. This milestone act, which was the first civil rights legislation since 1875 during Reconstruction, was fresh on his mind as he dealt with Faubus.<sup>24</sup> More importantly, the president would not allow a governor to defy the orders of a federal court.<sup>25</sup>

While Eisenhower could send federal troops to support a governor, there was no precedent to support a mayor's request. However, he did have another immediately available option. The president could issue an executive order based on the Insurrection Act of 1807, codified in Title 10 of the US Code.<sup>26</sup>

Section 332, regarding the "use of militia and armed forces to enforce federal authority," authorized the president to call into federal service the National Guard of any state, "and use such of the armed forces, as he considers necessary to enforce those laws" when he considered that unlawful obstructions made it impracticable to enforce the law by ordinary judicial proceedings.<sup>27</sup> Section 333, "Interference with State and Federal Law," similarly authorized the president to use the militia or the armed forces, or both, to suppress domestic violence or conspiracy, which "hinders the execution of the laws" and when "any part or class of its people is deprived of a right, privilege, immunity, or protection named in the Constitution."<sup>28</sup> A complimentary authority in Section 334 gave the president the power to order the mob to disperse.<sup>29</sup>

Invoking these Insurrection Act sections, Eisenhower issued Executive Order 10730 on 24 September, directing the Arkansas National Guard into federal service and to "take all appropriate steps to enforce any orders of the United States District Court" with respect to enrollment and attendance at Little Rock's public schools.<sup>30</sup>

Eisenhower placed Maj. Gen. Edwin A. Walker, a Regular Army officer, in command of all federalized troops in Arkansas and ensured the order was transmitted to all 10,000 Arkansas guardsmen. In addition, Army Chief of Staff General Maxwell Taylor sent 1,000 paratroopers from the 101st Infantry Division, which had already been on alert, to immediately secure Little Rock Central High School until the Arkansas Guard could form a task force and relieve the regulars.

The Arkansas Guard assembled the task force at Camp Robinson, a few miles north of the city. Built around the 153rd Infantry Regiment with attached military police and signal companies, the task force numbered close to 1,600 troops.<sup>31</sup> The rest of the Arkansas guardsmen were to hold at their home station armories. Within days, the regulars shifted duties

to guardsmen, and by 27 November, two months after the paratroopers drove to Little Rock, the regulars had all returned to their usual duties training for combat.<sup>32</sup>

Major General Walker slowly reduced the number of guardsmen securing Central High. Although the Black students were still physically abused and had faced five bomb threats by January 1958, senior Army leaders believed that managing their safety was the school and community's job. As far as they were concerned, the Army had completed its mission. Defense Secretary Wilbur M. Brucker removed all guardsmen from school grounds on 24 April. After eight months of federal service, Eisenhower released the last Arkansas troops on 29 May 1958, the day after school ended.<sup>33</sup>

The unprecedented executive order created a dilemma for the Arkansas guardsmen—whether to follow orders of their governor or their president. Historian John Mahon noted that since the federal government paid 95 percent of the Guard's bills and since any soldier who refused would be absent without leave and subject to penalties, the Arkansas Guard followed the president's orders.<sup>34</sup> It may not have been as cynical as answering to a bill payer or avoiding punishment. Since the 1933 National Guard Mobilization Act, Guard troops have been an integral US Army component and have had a dual oath to their governor and to the president. The decision must have weighed heavily on Arkansas Adjutant General Clinger.<sup>35</sup> While neither the Arkansas governor nor lieutenant governor responded to the order, Clinger did. Twelve years later, Maj. Gen. Winston P. Wilson, chief of the National Guard Bureau, remarked on the loyalty of guardsmen: "Many of them believe in segregation, but they follow orders from the president and do their duty."<sup>36</sup> This statement could be equally said about Major General Walker and many Regular Army soldiers.

A US president has invoked the authority to call forth the armed forces to enforce federal authority under the Insurrection Act in approximately thirty instances since the 1794 Whiskey Rebellion.<sup>37</sup> Most notable are the four instances in which a president did so to ensure lawful desegregation of schools in opposition to governors.<sup>38</sup> Eisenhower paved the way with his executive order federalizing the entire Arkansas National Guard—most importantly because the activation removed control of the state's National Guard from its governor. President John F. Kennedy followed suit and activated a state's entire national guard on three occasions: once in 1962 to quell violence when the first Black Mississippi college student, James Meredith, matriculated at the University of Mississippi, and



Figure 6.1. National Guard soldiers patrol at the University of Alabama to support desegregation efforts on the campus, 1963. Courtesy of the National Guard Bureau.

twice more in 1963 to ensure school integration in Alabama. It was in this last call up under the Insurrection Act in June 1963 that Brig. Gen. Henry V. Graham, a career Alabama Guardsman, stood before his governor who was blocking the entrance of two Black University of Alabama students.<sup>39</sup> “It is my sad duty to ask you to step aside under the orders of the President of the United States,” Graham said under a salute.<sup>40</sup> Indeed, the National Guard followed the orders of the president on all four occasions when the president removed them from the governor’s control.

Another important and glaring issue with all four of these responses was that the federal force—both guardsmen and regulars—was almost entirely made up of White soldiers. The National Guard from the southern states remained as segregated as their communities and would not integrate until the Civil Rights Act of 1964 forced them to, and although Black soldiers made up 20 percent of the Regular Army, commanders kept their Black soldiers at home station or at least out of public view.<sup>41</sup> Ostensibly this was a prudent measure to protect the Black soldiers and prevent further provocation of the racist crowds, but it was not just the National Guard that the Defense Department needed to worry about. Less than

five years after leading the federal response at Little Rock, Major General Walker was outed as a racist agitator. He quit the army to focus on his real passion—keeping Blacks from integrating into all-White schools. Walker led a mob in the far-more-violent episode at Oxford, Mississippi, when James Meredith walked up the steps of the University of Mississippi administration building to register for the 1962 Fall semester. Meredith criticized the racial makeup of the troops guarding him as he faced bombs and violence in his first month at school, stating that the only Black soldiers he saw were on unarmed garbage detail.<sup>42</sup> While Meredith's criticism was just, Army leaders defended their position, explaining that they kept Black soldiers away from the violence to avoid fanning the flames and keep them out of harm's way. The Army's stance was partially justified since racist Whites had no respect for Black soldiers. Only two years after Meredith enrolled in the university, Ku Klux Klansmen murdered a Black US Army lieutenant colonel traveling through Georgia on leave.<sup>43</sup>

Racial enmity continued into the 1960s, but the nature of civil protest changed as African Americans fought to receive the same civil rights as White Americans. By the end of the decade, many African Americans abandoned nonviolent protest in favor of direct confrontation with police in what some historians and journalists now call Black uprisings or rebellion. During the eight-year period between 1964 and 1972, the civil rights fight and growing public dissatisfaction with the Vietnam conflict led to America's largest internal violence since the Civil War.<sup>44</sup> Since the military was largely focused on war in South Vietnam, the National Guard's role was to assist law enforcement in quelling violence at home.

The first significant civil disturbance began in the Watts section of Los Angeles when California Highway Patrol officers arrested a young Black man for suspected intoxicated driving on 11 August 1965. A crowd gathered and more officers reported to the scene. One patrolman mistakenly struck a bystander with his billy club, and officers dragged a Black woman into the street who they accused of spitting on them. The crowd reacted by throwing rocks at passing police cars, beating White motorists, and flipping over cars and setting them aflame. The following day began calm, but by evening Black rioters had resumed destroying property, followed by looting and arson. Their aim was to destroy the property of White "exploiters" from the Black neighborhoods.<sup>45</sup>

The governor called in the National Guard and by noon on 13 August, 40th Armored Division elements were controlling crowds, protecting



Figure 6.2. National Guard soldiers protect firefighters during the 1967 riots in Detroit. Courtesy of Wikimedia Commons.

firefighters, and manning roadblocks. The violence shocked Americans as news sources reported 35 deaths, more than 1,000 injured, and \$200 million in property damage. Especially concerning to the Defense Department was how freely National Guard troops used their weapons against rioters. By 22 August, when the riots ended, more than 13,000 California Guard troops were on state active duty.<sup>46</sup>

The nation's worst violence since the Civil War occurred during the "long hot summer" of 1967 as violence and destruction spread across more than 100 cities.<sup>47</sup> One of the most important riots spurred drastic changes in how the military would respond to civil disturbances. A 23 July 1967 early morning police raid on a Black night club in Detroit set off protests which quickly developed into widespread looting, arson, and vandalism. The Michigan governor sent in 8,000 46th Infantry Division guardsmen the next evening to support the overwhelmed police. Gunfire from rioters prompted guardsmen with loaded weapons to shoot back. In response to the governor's request for federal troops, President Lyndon B. Johnson sent paratroopers from the 82nd and 101st Airborne Divisions. By the end of the riots, 10,399 federalized Michigan guardsmen and 5,547 Regular Army soldiers were in Detroit. The 43 dead, more than 1,000 in-

jured, and \$500 million in property damage alone were troublesome, but the National Guard's overreaction to suspected snipers had caused further death and destruction.<sup>48</sup> Newspapers across the country carried headlines such as "Sniper Battles Rage in Embattled Detroit." The Associated Press described National Guard soldiers and tanks pouring "burst(s) of .50-caliber machine-gun bullets into the darkness for more than half an hour after scattered shots struck from its side," killing and maiming several innocent people, including a four-year-old girl and a fifty-one-year-old woman.<sup>49</sup> By 27 July, the violence had subsided. Forty-three people were dead, thousands injured, more than 7,200 arrested, and hundreds of buildings were in ruins.<sup>50</sup>

President Johnson immediately appointed a National Advisory Commission on Civil Disorders headed by Illinois Gov. Otto Kerner. Johnson charged the committee to explore "What happened? Why did it happen?" and "What can be done to prevent it from happening again?"<sup>51</sup> As the commission members gathered with Johnson in the Oval Office, Cyrus Vance, former secretary of defense and advisor to the president, told them he was shocked at the National Guard's lack of training for riot-control duties. While the commission's scope included investigating the background and "racial disorders" such as African American population problems with employment, education, health, and safety, the commission members agreed with Vance that they needed to reform the National Guard.<sup>52</sup>

The Kerner Commission report was very critical of overreaction and indiscriminate firing by National Guard troops. The commission found that most "sniper" claims were shots fired by police and guardsmen.<sup>53</sup> The report further reported that nine deaths were likely caused by the National Guard. In comparison, the police were responsible for up to twenty-one deaths and only one person was killed by a Regular Army soldier.<sup>54</sup> The commission warned that the National Guard's performance posed a serious challenge to the nation, noting that "because of the limitations of state police and the restrictions on the use of Federal forces, the National Guard is the only organization with sufficient manpower and appropriate organization and equipment which can materially assist local police departments in riot control operations."<sup>55</sup> The commission recommended increased riot training, a review of National Guard officer standards, and the procurement of special equipment for non-lethal response, like riot shields and clubs. The commission also noted how problematic it was to have a largely White force confronting Black rioters. The Guard needed more Black soldiers.<sup>56</sup>

In rapid succession, many changes occurred in command and reporting throughout the Department of Defense. Following Kerner Commission recommendations, the Defense Department designated the Army as the primary responsible agency for civil disturbances. The Army established a domestic emergency branch within the Army Operations Center. The National Guard Bureau changed the name of the Office of Military Support of Civil Defense to the Office of Military Support to Civil Authorities; the small name change was crucial to affirmatively subordinate military support to civil authorities.<sup>57</sup>

The Army and National Guard Bureau further changed training and regulations to emphasize restraint. Less than one month after the riots, in August 1967, the National Guard Bureau mandated thirty-two hours of riot training to be accomplished within two months, followed by annual refresher training. The National Guard Bureau reported that by 1 October 1967, approximately 403,000 Army guardsmen and 26,000 Air guardsmen had received the training.<sup>58</sup> The National Guard also acquired more appropriate equipment for riots: tear gas, riot helmets with face masks, shields, batons, shotguns, and bullhorns.



Figure 6.3. US Army soldiers in gas masks and armed with rifles confront anti-war “protesters” in a staged demonstration of riot control techniques at Fort Belvoir, Virginia, October 1967. Courtesy of the Library of Congress.

The Defense Department's drastic change in tone permeated through the Army and National Guard as the two components published more than a dozen directives in the eight months following the Detroit Riot. One of the first was Training Circular 19-3 *Control of Civil Disturbances* on 15 January 1968—as a stopgap until Field Manual 19-15 *Civil Disturbances and Disasters* could be revised. The Army quickly revised and published the new field manual on 31 March 1968. This edition emphasized that military forces and firepower would be used as drastic last resorts.<sup>59</sup>

The riot training, doctrine changes, and equipment came just in time as 1968 proved an especially violent year. The racially motivated 4 April 1968 assassination of Martin Luther King Jr. spurred riots in many cities, large and small. Arsonists even set fire to large sections of Washington, DC. As city police and fire fighters became overwhelmed, President Johnson ordered Regular Army troops from the 3rd Infantry and 6th Armored Cavalry to secure the White House and Capitol grounds. Johnson also called forth the entire DC National Guard. With the long hot summer in mind, he urged that the “police, troops, and National Guard be cautioned to the man, to use the minimum force necessary in their efforts to restore order. I don’t want anybody killed.”<sup>60</sup> Because of the importance to restore order in the capital, Army Vice Chief of Staff General Ralph E. Hines Jr. took command of Task Force Washington.<sup>61</sup>

The military forces involved in the Martin Luther King riots showed remarkable restraint compared to the 1967 Detroit Riots. While more than 156,000 bullets were fired during the Detroit Riots, no more than 500 bullets were fired during the 1968 Washington, DC Riots—even though there were more than 9,000 troops on the scene.<sup>62</sup> In Baltimore, where nearly 7,000 guardsmen and 4,143 regulars responded, only four bullets were fired.<sup>63</sup> Military forces instead relied on CS gas, firing 724 canisters in Baltimore and 5,248 in Washington.<sup>64</sup> In Fiscal Year 1968, 104,665 National Guards troops were deployed throughout the country—including 25,064 in active federal service for the riots in Detroit, Chicago, Baltimore and Washington, DC.<sup>65</sup> Particularly unique to the DC Guard was that twenty-five percent of its troops were Black. One Black DC guardsman, Warren Freeman, recalled: “Yesterday I was running the streets with Joe and John and Paul and Richard; today I’ve got to keep these same people from running the streets . . . and tomorrow, when the disturbance is over, riots have been quelled and fires put out, Joe, John, Paul and Richard are the same guys I have to see and deal with.”<sup>66</sup> The high proportion of Black troops made things awkward for guardsmen taunted as “guarding

the white man's property," but also injected an unquantifiable amount of empathy with the rioters.

Perhaps it was the shift of activism against escalating the Vietnam War and the draft, but the racially motivated riots gave way to activism at colleges and universities across the country in the late 1960s to early 1970s.<sup>67</sup> The anti-war protests and the Guard's response led to an "us vs. them" mentality. Although unjustifiable, it is easy to understand as radicals from groups like the Weather Underground and Black Panthers set off bombs at university Reserve Officer Training Corps (ROTC) buildings across the country.

After President Richard Nixon announced on 30 April 1970 that American troops had expanded the already unpopular Vietnam War into neutral Cambodia, protests began the very next day at many universities across the country. During May alone, National Guard detachments served on riot duty at twenty-one different universities in sixteen states. The worst of the violence occurred at Kent State University. After two days of increasing violence between protesters and local police that left store windows broken and streets blocked by bonfires, Kent Mayor Leroy Satrom asked Ohio Governor James Rhodes for a state of emergency declaration and National Guard support on the afternoon of 2 May 1970. Ohio Adjutant General Maj. Gen. Sylvester Del Corso personally led a task force of 1,000 guardsmen from the 145th Infantry and 107th Armored Cavalry. The guardsmen arrived at ten in the evening as the wooden ROTC building was aflame with more than 1,000 demonstrators on the scene.<sup>68</sup> Del Corso ordered guardsmen carrying M-1 Garand rifles affixed with bayonets to form in a skirmish line around the burning ROTC building. Throughout the night, protesters hurled rocks and bottles at guardsmen, who fired tear gas to disperse the crowds.

The next day, Sunday, 3 May, started easy with no mass protest. Governor Rhodes had announced in a press release that he had sought a state of emergency declaration from the state courts, although he never did get it. Mayor Satrom, the local police, the university, and the National Guard all believed that they were acting under martial law.

On 4 May, as the guardsmen marched down the street to campus, students attacked them with rocks and other missiles and provoked them by burning an American flag, waving the Communist flag of North Vietnam, and chanting: "We don't want your fucking war."<sup>69</sup> By noon, more than 3,000 people had gathered in the University Commons, where 100

guardsmen stood near the burned-out ROTC building. Brig. Gen. Robert Canterbury, the highest-ranking Guard representative present, believed he was in charge under martial law and ordered the crowd to disperse. Guardsmen and a police officer with a bullhorn used a jeep to drive across the Commons to announce the dispersal order; they were met with rocks and other projectiles. Canterbury responded by preparing his guardsmen to forcibly remove the protesters. Nearly 100 Guard troops advanced in a line wearing gas masks, wielding loaded rifles with bayonets, and firing tear gas into the crowd. They were soon surrounded by screaming and violent protesters, some of whom yelled “Shoot!” to the guardsmen. Then at 12:22 in the afternoon, twenty-six guardsmen opened fire—twenty-nine shots in thirteen seconds that left four people dead and nine wounded.<sup>70</sup>

Responding to understandable public outrage, Nixon appointed a commission to investigate the riot and response. The commission condemned the students who burned down the ROTC building and, more importantly, condemned the guardsmen for being so quick on the trigger. Its *Campus Unrest* report echoed Kerner Commission recommendations for the National Guard: more riot control training, special equipment, non-lethal weapons, and restraint.<sup>71</sup> The report implored: “The Kent State tragedy must mark the last time that, as a matter of course, loaded rifles are issued to guardsmen confronting student demonstrators.”<sup>72</sup> The 1972 Army Field Manual 19-15, *Civil Disturbances*, finally replaced the bayonet with the riot baton as the primary tool for civil disturbances and put the bayonet into the “extreme force options” category alongside machineguns.<sup>73</sup> The National Guard still supplemented state and local police forces; however, law and order missions fell drastically throughout the 1970s.

In 1970, the National Guard conducted ninety-two law-and-order missions with a total of 60,316 guardsmen. In 1974, that number had fallen to twenty-five missions involving 21,139 guardsmen. In 1977, there were only 5,605 guardsmen involved in nine civil disturbances missions.<sup>74</sup> This era saw the eclipse of National Guard-led civil disturbance operations to National Guard-supported operations led by more robust, trained, and capable law enforcement.

## **The Helping Hand: Disaster Response Framework**

The downward trend in using the National Guard to quell civil disturbance indirectly correlated with growing reliance on the Guard for disaster relief and rescue missions. The modern disaster response framework

began with the federal effort to prepare for wartime or adversary-induced emergencies, specifically chemical or nuclear attacks. The states were left to prepare for and respond to natural disasters. At the same time, however, there was growing aversion to using uniformed troops and martial law to quell riots as well as rising governor and citizen demand for faster, more efficient emergency relief. This led to law and policy changes that shifted responsibility to the federal government to coordinate and fund disaster relief. A series of laws and reinforcing Defense Department policies culminated in the comprehensive Stafford Act of 1988 that defined the response framework still used today.

Writing in the summer of 1956, two political scientists noted that National Guard “community service” efforts markedly changed in the decade following the Second World War.<sup>75</sup> Formerly, when the Guard was activated for disaster response, the emphasis was on patrolling to prevent looting. After the war, the National Guard became more involved with flood victim evacuation, establishing relief centers or shelters, distributing supplies, and providing medical treatment. The essay described how troops used their technical skills and military equipment, such as aircraft, communications systems, and amphibious and heavy equipment vehicles, to assist civil authorities during an emergency. The authors noted: “This sort of record of community service in recent years is an important factor in the increased prestige which the Guard has come to enjoy.”<sup>76</sup> Their statement could have been written just as easily today as in 1956.

Development of the US disaster response framework and increased use of the military and National Guard in disaster response began during the post-war era. The federal government’s role in disaster relief was initially spelled out in the Federal Disaster Relief Act of 1950. The law authorized the president to provide supplementary assistance when a governor requested help. This law set in motion, albeit slowly, federal disaster relief to states. Military support generally came from a state’s National Guard and was paid out of state coffers. The federal government contributed so little to disaster relief that the American Red Cross outspent the federal government on disasters by a ratio of 1.6 to 1 in 1953.<sup>77</sup>

In the early 1960s, the Department of Defense was primarily focused on nuclear deterrence. The armed forces were tailored to fight the Soviets in Europe while defense support to American citizens at home was based around protection from nuclear attacks. President John F. Kennedy was the first president to truly elevate civil defense to public discussion.

During his presidency, the Soviets based nuclear missiles in Cuba—leading to a crisis that very nearly started nuclear war between the two greatest nuclear-armed countries. Protection from the nuclear threat was a top priority for Kennedy’s administration—visible with the ubiquitous three yellow triangles superimposed over a black circle that became a recognized symbol for fallout shelters.

Lyndon B. Johnson shared Kennedy’s zeal for civil defense. Led by Robert McNamara, the Department of Defense convinced the administration of the effectiveness of Mutually Assured Destruction, appropriately referred to as MAD. The idea was that since both the United States and the Soviet Union had enough nuclear weapons to annihilate each other (and the world), that neither side would ever use them.

In 1963, Secretary McNamara directed the military to support civil defense, for the first time stressing the interdependence of military and civil defense.<sup>78</sup> “The ultimate success,” the 1963 annual report noted, “requires positive response from State and local governments.”<sup>79</sup> The National Guard not only had the most experience in coordinating with civil authorities but was also closer to the populace, with armories in small towns and cities alike.

In this era when nuclear threats seemed more like an existential threat to all of humanity, people understandably focused on tangible efforts to protect their lives and property. With a Defense Department focused on war abroad and defending the homeland from nuclear attack, the public’s attention shifted toward disaster response as a series of major natural disasters rocked the nation.

The years of 1964 and 1965 brought natural disasters to the forefront of American minds. During the destructive 1964 hurricane season, National Guard troops in state service evacuated and provided relief to Gulf state residents. Additionally, a particularly deadly Indiana storm spawned forty-seven tornadoes on Palm Sunday, 11 April 1965. The Indiana governor responded by bringing nearly 4,000 Army and Air Guard troops into state service.<sup>80</sup>

Perhaps the most important disaster of the decade occurred on the evening of Good Friday, 27 March 1964, when a massive 9.2-magnitude earthquake shook Alaska. Anchorage bore the brunt of the largest earthquake since the first Richter scale recordings in the 1930s.<sup>81</sup> The earthquake was so large that the Seattle Space Needle, more than 1,200 miles away,

visibly swayed. Tsunamis soon hit the North American western coastline as far south as Oregon and California. Some 129 people died because of the earthquake and tsunamis. Thousands of aftershocks reverberated across the United States with nearly every state registering the quake.<sup>82</sup>

Within minutes, Alaska Adjutant General Maj. Gen. Thomas P. Carroll left Juneau for Anchorage, where he established his command post in the Public Safety Building. Some 1,350 Alaska Guard troops were just finishing their annual training near Fort Richardson and reported within an hour to assist local authorities with casualty evacuation and security, as well as establishing communications between the different agencies. Air guardsmen began reporting within twenty minutes to Kulis Air Base, adjacent to Anchorage International Airport. They had not even received a call. When Air Guard troops at Kulis realized the airport's control tower had collapsed, they moved a C-123 cargo plane near the airport operations center and used their aircraft radio to act as air traffic control for several hours. Guardsmen reconnoitered areas for damage and accessibility, airlifted responders and



Figure 6.4. Alaska National Guard troops responded to a 1964 earthquake in Anchorage, Alaska, that damaged more than a dozen blocks of the city. Courtesy of the US Army.

evacuees, distributed food, and handled a myriad of other responsibilities.<sup>83</sup> President Johnson declared Alaska a national disaster area and charged the secretary of the interior to take over federal support responsibilities from the military on 28 March. The Guard Bureau chief extended the Alaska Guard's training orders until 2 April, when most ground support had begun to end.<sup>84</sup> Historian William Boehm described the Great Alaska Earthquake response as an early model for joint disaster response.<sup>85</sup>

Congressmen and civil defense planners joined the call for a broader and faster federal response, including advanced storm warning systems and rapid monetary relief.<sup>86</sup> The Defense Department also instituted critical changes to support faster response. In June 1964, the secretary of the army assigned the forty-eight state adjutants general and their state National Guard headquarters to "coordinate, plan and control operations for the military support of civil authorities responsible for civil defense," referred to as Military Support of Civil Defense within the continental United States. By the end of 1965, the mission expanded to include the National Guard of Alaska, Hawaii, and Puerto Rico. In addition, the National Guard Bureau established an Office of Military Support of Civil Defense and received funding to employ three full-time federal civilian employees in each of the larger states and two in the smaller ones. By the end of June 1965, 145 technicians were employed across 45 states to coordinate with civil authorities.<sup>87</sup>

Still, the system was not yet equitable. State governments bore the full cost when Guard troops were used in state active-duty status. The federal government only paid guardsmen if they were already at drill or annual training. There was yet no system of federal reimbursement to the states.

President Richard Nixon instituted reforms after Hurricane Camille ravaged the Gulf Coast region in August 1969. In National Security Decision Memorandum 184, he established a "dual-use approach" to citizen preparedness programs which redefined civil defense policy to include preparedness for natural disasters. He further replaced the Office of Civil Defense with the Defense Civil Preparedness Agency under the Department of Defense.<sup>88</sup> During Nixon's presidency, Congress appropriated more funds toward natural disaster preparedness than civil defense preparedness against nuclear attack.<sup>89</sup>

Defense Secretary Donald Rumsfeld fought against support for disaster response. Rumsfeld, who served his first term as secretary from 1975 to 1977, believed federal defense funds should pay to prepare for nu-

clear attacks and that local governments would bear costs associated with natural disasters. President Gerald Ford initially supported the dual-use approach but, by 1975, sided with Rumsfeld and ended Nixon's policy.<sup>90</sup> Newspapers of the day described a "change in emphasis" from Nixon and Defense Secretary Melvin Laird's dual civil defense planning approach, which covered both peacetime disaster and nuclear attack emergencies.<sup>91</sup>

Donald Anderson, eastern area director for the Pennsylvania Council of Civil Defense, defended the Civil Defense program against Rumsfeld's attacks in a 1976 article:

Despite mistakes, this program inspired by a nuclear fear has contributed to American government. Because of it, the old practice of declaring martial law to deal with peacetime disasters has passed forever. . . . But it is the loss of control by elected officials and not isolated acts of tyranny that make martial law a bad thing.<sup>92</sup>

In the same article, two National Science Foundation professors urged continued focus on federal disaster response:

Today, regrettably, the United States is more vulnerable than ever to great disasters. . . . Social, economic, and political trade-offs are placing millions of people . . . where one day they will be hit by a hurricane wind and storm surge . . . without adequate means to escape when danger threatens.<sup>93</sup>

Additionally, Anderson argued for Congress to combine the Defense Civil Preparedness Agency (war emergencies) with the Federal Disaster Assistance Administration (federal natural disaster assistance).

Disaster planning provided results that were far more tangible for the American public.<sup>94</sup> Despite Rumsfeld's efforts, the trend to move away from civil defense preparedness toward disaster preparedness was irreversible. Even President Ford came around to recognizing the importance of Department of Defense disaster assistance. On 19 January 1977, his last day in office, Ford signed an executive order establishing the Humanitarian Service Award, which could be awarded to members of the armed forces for participation "in a military act or operation of a humanitarian nature."<sup>95</sup> The outstretched hand on the medal symbolizes aid and assistance.

The 28 March 1979 civilian nuclear disaster at Three Mile Island near Harrisburg, Pennsylvania, showed the need for more effective coor-

dination and planning.<sup>96</sup> There was no plan for such an emergency, and the federal response was frustratingly slow. The emergency was so unparalleled that agencies responsible for defense, public safety, and disaster response did not know how to respond. The governor did not even call up the Pennsylvania National Guard to cordon the site or evacuate nearby citizens. A short-lived scandal spread through Congress when President Jimmy Carter's Commission on Three Mile Island learned that Pennsylvania Adjutant General, Maj. Gen. Richard M. Scott had drafted a message assuring his Guard troops and their families that he would "not assign Pennsylvania National Guard personnel to missions or in areas where the possibility exists that they may be exposed to dangerous levels of radiation or fallout."<sup>97</sup> Scott clarified that his message was only drafted to reassure families in case they were called into dangerous areas and stated that his guardsmen would have done their duty, despite inadequate protection gear. The Pennsylvania National Guard was so ill-prepared for this unique emergency that if troops had been required to enter the contamination zone, they would have entered wearing gas masks, two pairs of pants, ponchos, gloves, and headgear.<sup>98</sup>

While President Carter had already been working to establish a single federal agency to coordinate federal disaster relief, this event pushed him to speed its creation. On 20 July 1979, Carter issued Executive Order 12148 establishing FEMA. The new agency absorbed five government agencies under one organization in the "single largest consolidation of civil defense efforts in United States history."<sup>99</sup> While FEMA's primary role was nuclear defense planning, the Carter administration urged it to also focus on disaster preparedness.<sup>100</sup>

Congress codified the dual preparedness efforts in December 1981 by amending the 1950 Civil Defense Act to include peacetime as well as wartime disasters. This amendment was the first time Congress explicitly authorized civil defense funds "to prepare for peacetime disasters."<sup>101</sup> President Ronald Reagan buttressed this dual-use policy with his National Security Division Directive 26, which outlined that the civil defense policy would enhance nuclear war deterrence by ensuring continuity of government and survivability of the population, with "an additional, desirable benefit: improved ability to deal with natural disasters and other large-scale domestic emergencies."<sup>102</sup> This dual-use approach is in keeping with Defense Department priorities today: to protect the homeland and prepare for war, while performing peacetime operations as a secondary mission.

While FEMA was the lead agency, control and direction would be provided by state and local emergency operations centers (EOCs).<sup>103</sup> Of the 3,063 EOCs across the country in 1984, only 350 met the FEMA standard of having a nuclear fallout shelter, backup power generator, fourteen days of fuel supply, electromagnetic pulse-protected communications equipment, and adequate ventilation, sanitation, and water. While some of the standards were specifically geared toward nuclear survivability, the report noted, “some of these EOCs have been used effectively in natural disasters and other peacetime emergencies.”<sup>104</sup> By 1984, nearly every state and Puerto Rico had an EOC.

Congress passed the most significant legislation regarding a coordinated federal emergency response on 23 November 1988, amending the previous Disaster Relief Act and creating the Robert T. Stafford Disaster Relief and Emergency Assistance Act, commonly known as the Stafford Act. The Stafford Act remains the most definitive law governing the federal government’s disaster response role. The act authorized the president to direct the Department of Defense and other agencies to provide personnel, equipment, supplies, facilities, and managerial, technical, and advisory services to support state disaster relief efforts. If a governor anticipated that his resources would be exceeded, he could request federal assistance from the president. The president could declare a major disaster or emergency after a governor of an affected state requested assistance. Most importantly, the Stafford Act provisioned that the federal share would be not less than 75 percent of costs.<sup>105</sup>

Following the establishment of FEMA and Stafford Act passage, the number of significant federal disaster declarations increased exponentially with each decade. Between 1950 and 1959, there were only ninety-four disaster declarations. The 1960s saw 186, and there were 446 declarations in the 1970s. The 1980s may have been an anomaly, with a dip to only 286 declarations, but there were 737 in the 1990s and 1,265 in the first decade of the twenty-first century.<sup>106</sup> Although some of these declarations did not involve military support, the numbers demonstrate state reliance on federal funding and support.

The first major test after the Stafford Act occurred during 1992, part of a string of early nineties natural disasters and civil disturbances that tested the limits of state assistance. Some of the natural disasters were so massive in scale that they required regional action, rather than from a single state.<sup>107</sup>

Lt. Gen. John B. Conway, National Guard Bureau chief, described 1992 as “a bad year for natural disasters.”<sup>108</sup> Only months after Los Angeles riots that brought thousands of National Guard troops into the streets, performing urban riot control for the first time in twenty years, three major storms struck Florida, Louisiana, Hawaii, and Guam.<sup>109</sup>

The worst of the storms was Hurricane Andrew, which crossed the southern portion of Florida on 23 August 1992, causing the most extensive property damage of any storm in US history.<sup>110</sup> Florida Gov. Lawton Chiles immediately placed Florida Guard troops on state active duty to restore order. Eventually 6,250 (6,000 Army and 250 Air) Florida guardsmen served a total of 195,700 man-days; equivalent to one month’s orders per guardsman.<sup>111</sup> The devastation was so extensive that the Florida National Guard could not handle the mission on its own. Eventually, the Defense Department deployed more than 20,000 service members from other branches to assist with providing shelter, medical care, food, and water in South Florida. In fact, *National Geographic* featured a US Marine on the cover of its April 1993 edition titled “Andrew Aftermath.” While the Army wanted to federalize the Florida Guard to simplify command, Governor Chiles and the chief of the National Guard Bureau fought back and won. The Florida Guard remained under state control and performed vital law enforcement missions. Had they been federalized, the Posse Comitatus Act would have prevented them from arresting lawbreakers.<sup>112</sup>

The year 1993 was another banner year for National Guard use in domestic support operations. The Great Flood of 1993, occurring in May, was the most severe Mississippi River flooding in 500 years. Nearly 10,963 guardsmen from Midwestern states were called into federal service—piling sandbags, searching for victims, and purifying drinking water.<sup>113</sup> By the end of fiscal year 1993, 31,182 Army Guard troops had performed 414,442 man-days and 2,870 Air Guard troops had completed 46,386 man-days.<sup>114</sup>

The 1992 to 1993 natural disasters spurred two major disaster relief changes. First, the Department of Defense consolidated its civil defense and disaster and emergency response into one effort. Redefined as Military Support to Civil Authorities (MSCA)—a term the National Guard had used since 1968—the new directive incorporated previous policy regarding Military Assistance to Civil Authorities (MACA) and Military Support of Civil Defense (MSCD).<sup>115</sup> Then in 2010, the department substituted the word *Military* with *Defense* in the current Defense Support of Civil Authorities (DSCA) name.<sup>116</sup> A 1993 Department of Defense directive recog-

nized that “Army and Air National Guard forces, acting under State orders (i.e., not in Federal service), have primary responsibility for providing military assistance to State and local government agencies in civil emergencies.”<sup>117</sup> Second, the directive outlined that the Army National Guard State Area Commands (STARCs, later renamed Joint Force, Headquarters, or JFHQ), when ordered to active duty, would be the primary Defense Department focal point for delivering military support at the state and local levels.<sup>118</sup> The directive ensured that the National Guard Bureau resourced the STARCs for MSCA planning and response tasks.<sup>119</sup> The policy also gave commanders “immediate response” authority to assist civil governments, when requested, “to save lives, prevent human suffering, or mitigate great property damage.”<sup>120</sup> More importantly, state governors created a network of mutual assistance compacts, which allowed Guard troops to cross state lines to assist when a governor requested it.<sup>121</sup> Emergency management assistance compacts, which became law in October 1996, will be covered further in Chapter 7 of this anthology.<sup>122</sup>

## Summary

The 1950s through the 1980s saw dramatic federal involvement in state-led civil support operations. By the end of the era, the military had a new way of supporting civil authorities. No longer focused on ridding itself of this important mission or arming troops for war in American streets, the military and especially the National Guard prepared to enter the twenty-first century as a better trained and led last-resort force with clear rules and authorities.

Use of the National Guard and military to assist with both civil disturbances and emergency response had positive effects, even if both were negatively or unethically employed. Congress changed laws and the Department of Defense altered policy and tactics to shape a more responsive force and ensure ethical application. Presidents Eisenhower and Kennedy tested individual loyalty by calling forth the Arkansas, Mississippi, and Alabama National Guard, putting officers and soldiers at odds with their governor. The test worked on all four occasions, reassuring Department of Defense representatives that they should not question National Guard loyalty, and validating the executive powers specified in the Insurrection Act.

The Stafford Act codified federal participation in domestic disaster relief effort, authorizing the president to direct the Department of Defense to support disaster relief efforts. With federal cost sharing assurance and FEMA primacy in managing disaster relief, states simply requested more

support, boosting the number of National Guard-supported disaster relief missions. As the decades progressed, states relied less on their National Guards to control civil disturbances as they developed more robust police forces. This and public aversion to military use in law enforcement led the National Guard to shift from its centuries-old mission of primarily supporting local law enforcement in the suppression of civil disturbances—changing instead to its widely known current mission of disaster response. The Guard entered the twenty-first century focused on responding to natural disasters, but new and unforeseen challenges lay ahead in a changing world.

## **Thought Questions**

1. How do the biases held by National Guardsmen and the military affect DSCA response?
2. How do commanders determine when an order is unlawful?
3. How should the National Guard differentiate itself from the police that it often reinforces?

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84. Although the federal response had ended, the Alaska National Guard continued to support the state’s recovery. Nearly one month after the earthquake, on 25 April, Major General Caroll accompanied Alaskan Governor William Egan aboard an Air Guard C-123 transport aircraft to discuss rebuilding efforts with local officials in Valdez. Caroll advised the governor to stay the night since the weather was getting worse and said he would return the next day. Just after

takeoff, the airplane inexplicably crashed into the sea, killing Caroll and the other three guardsmen aboard.

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# Chapter 7

## Unprecedented Events: “There Has Never Been Another Time in Our Nation’s History

### When the National Guard Has Been in Greater Demand”<sup>1</sup>

Meghann L. Church

Preparedness is at the heart of modern-day emergency management. The South Carolina Emergency Management Division (SCEMD) preaches preparedness to the ethers of the internet regardless of the season. Warm spell in February? Be ready for severe weather and possible tornados. First 100-degree heat index in May? Only two more months until the start of hurricane season, better go get an extra case of water. Beautiful taste of fall in November? How to equip the house for an ice storm. Coupled with daily memes that range from comparing tornado watches and warnings to baking cookies, to the fundamental question of, “does anyone else’s Furby talk to them about preparing for emergencies?”<sup>2</sup> The organization’s dedication to the cause is apparent.

But what can be done when preparation isn’t enough? How can leaders train for unprecedented scenarios? Two jetliners crashing into skyscrapers in Manhattan, anarchy in a city after levees fail to keep out a nineteen-foot storm surge, or a flood that statistically only happens once in a thousand years. These are more than any one state or federal agency could possibly handle, but when all eyes turn to the National Guard, its “always ready, always there” motto takes on a more personal meaning for a part-time force. This chapter explores Defense Support of Civil Authorities (DSCA) framework changes from the early 1990s, the attacks on 11 September 2001, and the 2005 hurricane season, and how lessons learned from this era led to significant federal and state level changes, effectively altering how the country views disaster response.

Two of the worst US natural disasters happened in September and October 1989. Say the name Hugo in the Carolinas and, at minimum, there will likely be a pause of some recognition. Hurricane Hugo, a fast-moving Category 5 storm mangled the greater Charleston area after making landfall on 21 September. The massive storm continued its demolition north on I-77, turning loblolly pines into towering toothpicks all the way to Charlotte, where skyscrapers had windows blown out and a 400-foot antenna tower collapsed onto a local television station.<sup>3</sup> At Shaw Air Force Base in Sumter, South Carolina, some 100 miles inland, wind gusts topped 100 miles per hour; wind-blown snakes covered the streets of Charleston.<sup>4</sup> The

events essentially were the beginning of the 24-hour weather news cycle. The Weather Channel introduced a young Atlanta meteorologist, Jim Cantore, whose name later became synonymous with live, on-site reporting of significant weather-related events. South Carolina officials point to Hurricane Hugo as a defining moment of DSCA response in the state. A woman interviewed in Charleston during the cleanup told a reporter, “The National Guard’s here now. We’re not worried.”<sup>5</sup> More than 7,000 South Carolina National Guard soldiers and Air Force personnel—over half of the state’s force—were involved in Hugo recovery.

Less than a month later, as spectators on the opposite side of the country took in an early evening game three of the World Series at Candlestick Park, the Loma Prieta earthquake struck the San Francisco Bay area, registering 7.1 on the Richter scale and lasting fifteen seconds. About two and a half minutes later, a 5.2-magnitude quake continued to devastate the area.<sup>6</sup> Within an hour, the California Air National Guard’s 129th Air Rescue and Recovery Group had its first HC-130 Hercules in the air conducting damage assessment, and every California Army National Guard unit was alerted for state active duty (SAD).<sup>7</sup>

While preparation for emergencies or natural disasters is not a new concept, much of today’s framework for responding to these events through state and federal government channels has only existed for the past thirty years. As discussed in previous chapters, National Guard roots in supporting civil authorities date back to the colonial era. Since then, several agencies have been created to assist states in their times of need. But with each event comes new challenges, testing the framework of DSCA and how quickly organizations, including the National Guard, can react, adapt, and respond.

## **New Compact Outlines How States Can Help Each Other in Times of Need**

After Hurricane Andrew—one of the “most destructive hurricanes in United States history”—came ashore in Florida, strengthened in the Gulf of Mexico, and made a second landfall in Louisiana in 1992, it “became apparent that even with federal resources, states would need to call on one another in times of emergencies.”<sup>8</sup> As Chapter 2 relates, inter-state cooperative agreements hearken back to the colonial era. By 1993, the Southern Governors’ Association (SGA), in coordination with the Virginia Department of Emergency Services, created the Southern Regional Emergency Management Assistance Compact (SREMAC). A few months later in January 1994, the group de-regionalized and became the Emergency Management Assistance Compact (EMAC). When Hurricane Opal struck

the following year, twenty-five Mississippi personnel responded to Florida's request for aid, the first deployment of assets to a neighboring state.

The National Guard deploys through EMAC in SAD or Title 32 (federally funded) state-controlled status. SAD is based on state policy and funded by individual states, with soldiers and Air Guard personnel remaining under control of the governor. Title 32 refers to full-time National Guard duty performed by a member of the National Guard. This allows governors, with approval from the federal government, to order a member to duty to perform operational activities. As discussed in Chapter 4, under SAD or Title 32 status, National Guard troops are under command and control of the governor and the Posse Comitatus Act does not apply.<sup>9</sup> For the National Guard, posse comitatus only applies if members are in a Title 10, or federal active duty, status. In this case, the National Guard has been federalized and is under command and control of the president of the United States.<sup>10</sup>

Before EMAC, states commonly entered into memoranda of agreement with one another to provide mutual use of National Guard forces.<sup>11</sup> When the Bureau of Alcohol, Tobacco, and Firearms (ATF) in Austin, Texas, requested the Texas National Guard (TXNG) counterdrug unit to provide military assistance with its ongoing Branch Davidians investigation in Waco, Texas, the TXNG personnel were placed in SAD status to assist both the ATF and Federal Bureau of Investigation (FBI).<sup>12</sup> The counterdrug units conducted five surveillance overflights beginning on 6 January 1993 and ending on 6 February 1993, as well as an aerial diversion on 28 February 1993, the day of the complex raid. While this all falls within the scope of SAD, it raised concerns afterward that the Texas governor had not been properly briefed on the extent of the National Guard's mission and its support to the ATF and FBI. To compound problems, the Texas adjutant general requested and received assistance from the Alabama National Guard with aerial photography without consent of the Texas governor. At the time, a memorandum of agreement outlining the use of National Guard personnel across state lines for law enforcement purposes had not been ratified by Congress. Because Texas and Alabama state laws vary greatly on command, control, and authority of military forces across state lines—and the memorandum of agreement did not stipulate which state's governor had command and control, it appeared that Alabama did not have proper authority to conduct missions in Texas.<sup>13</sup>

The issue of requesting state-to-state assistance to support law enforcement would happen again when the Georgia National Guard requested assistance from other states during the 1996 Summer Olympics in Atlanta,

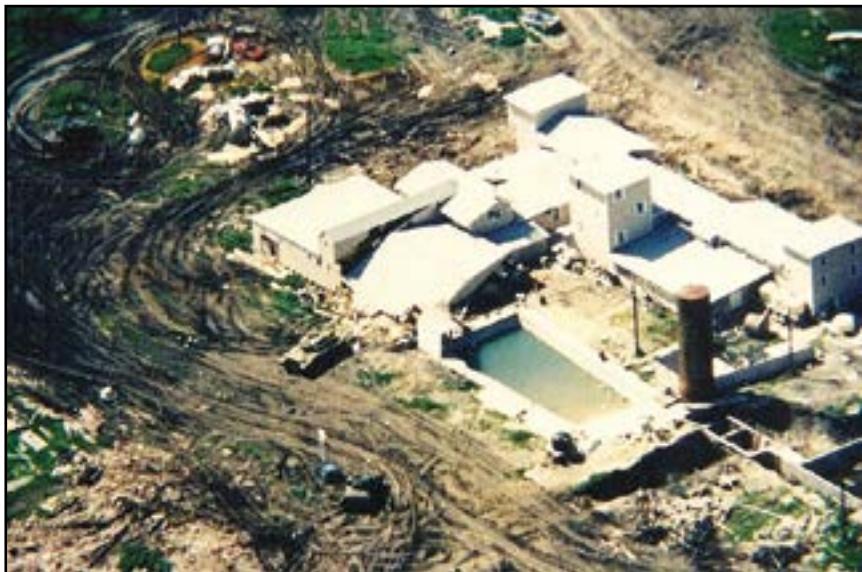


Figure 7.1. A tank brings down the back wall and roof of the Mount Carmel gymnasium in Waco, Texas, on 19 April 1993, nearly two months after the raid on the complex. Courtesy of the Federal Bureau of Investigation.



Figure 7.2. Lt. Gen. Edward D. Baca, National Guard Bureau chief from 1994 to 1998, talks with Georgia National Guard soldiers from the 190th Military Police Company who were tasked to support the 1996 Olympic Games in Atlanta, 1 July 1996. Courtesy of the Georgia National Guard.

Georgia. Nearly 14,000 National Guard soldiers and Air Force personnel from forty-seven states were placed in Title 32 status to support law enforcement.<sup>14</sup> Again, this deployment raised issues of legality and command and control.

On 19 October 1996, Congress passed Public Law 104-321, a *Joint Resolution Granting the Consent of Congress to the Emergency Management Assistance Compact*, which gave governors the ability to request state-to-state aid, including from the National Guard, in response to state or national emergencies ranging from natural disasters to acts of terrorism.<sup>15</sup> Since its enactment, all fifty states, the District of Columbia, Puerto Rico, Guam, US Virgin Islands, and the Northern Mariana Islands have enacted legislation to become EMAC members.<sup>16</sup> While the response can include state, local, and even private sector resources, state emergency management agencies are responsible for implementing EMAC.<sup>17</sup> This legislation resulted from decades of uncoordinated cooperation and helped solve one of the more significant legal issues of state emergency assistance.

The 2005 response to Hurricanes Katrina, Rita, and Wilma was the largest deployment of state-to-state aid to date, lasting 215 days.<sup>18</sup> For Katrina and Rita alone, the National Guard deployed 46,488 members from the 54 states and territories to affected areas in Louisiana, Mississippi, Alabama, Florida, and Texas.<sup>19</sup> Within two weeks of the 2005 responses, it became apparent that procedures written in 1996 needed to be updated, including reimbursement guidance, plans and procedures, and education on just what EMAC entails.<sup>20</sup>

EMAC's 1996 development and implementation helped streamline the current DSCA response. When called on by fellow states and territories, EMAC provides the infrastructure to help deal with large-scale emergencies in an expedited, efficient, and coordinated manner across state lines. Will every DSCA event require an EMAC request? No. But the National Guard's ability to respond to requests for assistance, coupled with mutual aid agreements between states and mission-ready packages, helps ensure National Guard units are properly prepared when neighbors call for help.

## **Homeland Security Concept Develops in Years Leading up to 11 September 2001**

While Congress approved legislation to establish EMAC in the latter half of 1996, the period between 1995 to 1996 also saw a series of terrorist attacks both at home and abroad. These attacks, including use of

nerve gas on a Japan subway, the Oklahoma City bombing—which the Oklahoma National Guard responded to, and a bombing at a Saudi Arabia military facility, had a significant impact on lawmaker decision-making.<sup>21</sup> In September 1996, Congress passed the National Defense Authorization Act, including the Defense Against Weapons of Mass Destruction Act that required the Department of Defense (DoD) to provide “civilian agencies at all levels of government training and expert advice on appropriate responses to the use of a weapon of mass destruction (WMD) against the American public.”<sup>22</sup> The concept of homeland security was beginning to take hold by 1998.

The DoD plan for “Integrating National Guard and Reserve Component Support for Response to Attacks Using Weapons of Mass Destruction” identified a significant void in the US response to chemical, biological, and radiological capabilities and created rapid assessment and initial detection elements.<sup>23</sup> The plan warned that if responders were not in the geographic proximity, “they were likely to be too late.”<sup>24</sup> Thus, the National Guard stood up the first ten Weapons of Mass Destruction-Civil Support Teams (WMD-CST) in 1998. At the time of this book, there were fifty-seven WMD-CSTs across fifty-four US states and territories able to rapidly respond to state and federal emergencies.<sup>25</sup>

Through the end of the Bill Clinton Administration and the start of the George W. Bush Administration, presidential decision directives developed counterterrorism and preparedness offices, but none created a centralized authority for homeland security. At the same time, the US Commission on National Security in the Twenty-First Century, chartered by the DoD, began to reexamine US national security policies. One recommendation was a cabinet-level national homeland security agency.<sup>26</sup> It was then that homeland security was defined as, “the protection of the territory, critical infrastructures, and citizens of the United States by federal, state, and local government entities from the threat or use of chemical, biological, radiological, nuclear, cyber, or conventional weapons by military or other means.”<sup>27</sup> Although legislation was introduced on 29 March 2001, hearings continued at the beginning of the Bush Administration.

While the federal government continued to posture the nation to respond to potential acts of terrorism, the National Guard remained one of the most significant assets that governors could use in times of crisis to provide aid, resources, and assistance by virtue of state and federal missions. When that call came on 11 September 2001, the Guard and its partners responded.

Remembered as a cool, sunny fall morning on the east coast, the terrorist attacks that day fundamentally changed how the nation viewed safety and security. At the time of the attacks, Joint Forces Command (JF-COM), established in 1999, oversaw continental US land defenses and the North American Aerospace Defense Command (NORAD), created in the late 1950s to protect from long-range Soviet bombers, protected the land, sea, and air around North America.<sup>28</sup> In December 1994, command of 1st Air Force, headquartered at Tyndall Air Force Base near Panama City, Florida, was transferred to the Air National Guard (ANG). That meant the ANG would provide units and personnel for federal missions from three sectors: the northeast, southeast, and western regions of the country with six squadrons. The Quadrennial Defense Review in 1997 recommended a reduction from six squadrons to four that would man the four corners of the country. The 1st Air Force and NORAD commanders both impressed on the Pentagon that ideally there should be ten sites.<sup>29</sup> The eventual compromise was seven, so at the time of the 9/11 attacks, the seven alert sites were at Otis ANG Base, Massachusetts; Langley Air Force Base, Virginia; Homestead Air Force Reserve Base, Florida; Ellington ANG Base, Texas; Tyndall Air Force Base, Florida; March Air Force Base, California; and Portland International Airport, Oregon.

Communication breakdowns compounded the confusion immediately after first indications that something was happening in the sky over Manhattan. Boston Air Traffic Control (ATC) heard the hijacker of American Airlines Flight 11, which originated in Boston, take over the aircraft. Realizing the urgency of the situation, Boston ATC skipped all levels of bureaucracy and directly called Air National Guard assets in Falmouth, Massachusetts. The control tower at Otis Air Force Base told Boston ATC that they needed to contact the Northeast Air Defense Sector (NEADS) for authorization but indicated they would prepare pilots and aircraft.<sup>30</sup> There was momentary confusion when Boston ATC contacted NEADS for assistance; NEADS was in the middle of a Vigilant Guardian exercise. By the time the first two F-15s from Otis Air Force Base were in the air, Flight 11 had already struck the north tower of the World Trade Center. As United Flight 175 crashed into the second tower, NEADS received a call from New York ATC alerting them of a second hijacking. An ANG C-130 crew departing Andrews Air Force Base received an unusual call from Washington ATC as they banked over the Potomac River asking if the crew could see an aircraft that they had lost communication with. Within seconds, the crew saw American Airlines Flight 77 descend from left to right. Unaware of what was happening in New York, the crew turned around in



Figure 7.3. A KC-135E Stratotanker (lower left) from Maine's 101st Air Refueling Wing flies with the F-15 Eagles from Otis Air Force Base in Massachusetts above Manhattan shortly after the 11 September 2001 terrorist attacks. Courtesy of the Maine National Guard.

time to see the aircraft bank sharply and crash into the Pentagon.<sup>31</sup> To further complicate matters, the Secret Service contacted the 113th Wing, part of the Washington, DC, ANG at Andrews Air Force Base, to get fighters in the sky over the nation's capital. The group was not part of NORAD and had no way to communicate with 1st Air Force or NEADS. When United Flight 93 crashed in Pennsylvania, the White House joint operations center contacted the 113th directly and gave scramble orders, instructing pilots to "turn away all errant aircraft, and for those refusing to respond, pilots were to use 'whatever force is necessary to keep them from hitting a building downtown.'"<sup>32</sup> There was no time to arm the F-16s with missiles, which meant the pilots went out with enough training bullets for a single, five-second burst. The pilots knew the order to stop the hostile aircraft meant the possibility of ramming the airliner.<sup>33</sup>

The nation was not prepared to face a multi-front attack that did not originate outside the continental United States but instead within the country's borders. During the Cold War, NORAD focused primarily on external threats to air defense. With NORAD pointed away from US borders and protocol from 1st Air Force indicating that they were only authorized to assist law enforcement during hijackings (not to intercept hijacked air-

liners) and follow for five miles while monitoring flight paths, there was no clear guidance on how to proceed. By the time President Bush authorized to shoot down hijacked commercial airliners and the Pentagon received the directive, the message followed the proper chain of command to NORAD and 1st Air Force. However, NEADS did not pass along the order because of questions regarding rules of engagement. Meanwhile, the two pilots flying over Washington, DC were issued orders to neutralize threats. Thankfully, those orders never had to be executed.<sup>34</sup>

Following the attacks, the US government, military, and intelligence agencies began to look for vulnerabilities that enabled the disaster. One area under scrutiny was airport security. The hijackers were cleared through security checkpoints at various airports the morning of 11 September 2001. As outlined in the 9/11 Commission report, one hijacker set off metal detectors twice, was scanned with a hand wand, then still proceeded to his flight.<sup>35</sup> It is believed that knives or box cutters were used as weapons to gain access to cockpits.<sup>36</sup> One National Guard mission in the days following the attacks was airport security across the country to deter further attacks and restore confidence in air safety. This Title 32 mission



Figure 7.4. New York Army National Guard soldiers from the 27th Infantry Brigade patrol LaGuardia Airport as part of the federal Operation Noble Eagle security mission. National Guard soldiers provided armed security in airports following the 11 September attack until authority passed to the newly formed Transportation Security Agency. Courtesy of the New York National Guard.

lasted eight months, with 8,200 soldiers on duty, before authority passed to the newly formed Transportation Security Administration (TSA).<sup>37</sup> The TSA, created out of lessons learned from the attacks, works to prevent similar attacks in the future. At the time of this book, the Aviation Safety Network reported no hijacking incidents on commercial airlines in the United States since 9/11.<sup>38</sup>

## **The Department of Homeland Security Takes Shape Following Terrorist Attacks**

In the wake of the 11 September 2001 terrorist attacks, there was near-universal agreement within the federal government that homeland security required a major reassessment, increased funding, and administrative reorganization.<sup>39</sup> President Bush established the Department of Homeland Security via executive order in October 2001 and selected Pennsylvania Governor Tom Ridge to lead it. A subsequent March 2002 executive order created the Homeland Security Advisory Council to advise the president on all homeland security matters.<sup>40</sup> Created shortly thereafter, the Homeland Security Advisory System used a color-coded and tiered system to alert the American public about terrorist threats. The Homeland Security Act of 2002 officially established the new department on 25 November 2002, and Congress selected Ridge as its first secretary in January 2003.

One of Secretary Ridge's first initiatives was to release Ready.gov, a preparedness website. The Ready Campaign began with a national public service advertising campaign produced by The Ad Council in partnership with Homeland Security to "educate and empower Americans to prepare for and respond to natural disasters and potential terrorist attacks."<sup>41</sup> To address multiple previous breakdowns in the way information was shared and communicated between the federal, state, and local governments, Homeland Security Presidential Directive-5 (HSPD-5) established a single, comprehensive national incident management system (NIMS) to manage domestic incidents on 28 February 2003.<sup>42</sup> The system covered prevention, preparation, support, response, and recovery from terrorist attacks, major disasters, and other emergencies.<sup>43</sup> Another aspect of HSPD-5 was the National Response Plan (NRP), which was designed to integrate federal disaster response, preparedness, response, and recovery into an all-hazards plan.<sup>44</sup>

Much like EMAC streamlined the way states request aid across borders, HSPD-5 used a national approach to domestic incident management to help all levels of government work together efficiently and effectively.

The NRP also recognized and emphasized the roles and state and local authority responsibilities in domestic incident management, noting that the federal government would assist when state and local resources were overwhelmed, or when federal interests were involved. HSPD-5 also helped fund state and local government planning, equipment, training, and exercise activities. President Bush's administration continued to stress that state and local governments must be the first line of defense against disasters and attacks.

With a new framework in place, there was hope that the lessons learned from 9/11 would vastly improve the country's disaster preparedness. Hurricane Katrina would be that test. The Committee of Homeland Security and Governmental Affairs wrote:

Following the terrorist attacks of September 11, 2001, this country went through one of the most sweeping reorganizations of the federal government in history. While driven primarily by concerns of terrorism, the reorganization was designed to strengthen our nation's ability to address the consequences of both natural and man-made disasters. In its first major test, this reorganized system failed. Katrina revealed that much remains to be done.<sup>45</sup>

The combined tests brought by Hurricanes Katrina, Rita, and Wilma served as a strong reminder that the nation had made some improvements, but not enough.

## **Department of Defense Changes Led to NORTHCOM Creation**

On 21 September 2001, the Joint Chiefs of Staff proposed to Secretary of Defense Donald Rumsfeld the creation of a unified command for homeland defense, the idea being that a single military commander could direct military support to preempt or respond to future attacks against the United States or its territories.<sup>46</sup> Unified command was adopted during World War II, combining US and British forces, and even before the war ended, the Joint Chiefs of Staff decided the concept would remain in the post-war era. President Harry Truman established the first seven unified commands on 14 December 1946: Far East Command, Pacific Command, Alaskan Command, Northeast Command, Atlantic Fleet, Caribbean Command, and European Command.<sup>47</sup> The general concept was that the unified command would consist of army, army air, and naval forces, commanded by a single officer and supported by a joint staff made up of officers from each branch of service.

On 1 October 2002, US Northern Command (NORTHCOM) began operations as the tenth command, created for homeland security. At the time of this book, NORTHCOM was coordinating the protection of North America from external threats using Army, Navy, Air Force, Marine Corps, and Coast Guard personnel as necessary. By the second anniversary of the 2001 attacks, the first NORTHCOM commander, Air Force General Ralph Eberhart, declared that it had reached full operational capability.<sup>48</sup>

Though the DoD already had doctrine outlining how to handle disasters before NORTHCOM was created, the command refined its doctrine for DoD and civil authority interaction with each disaster it faced. While the National Guard would be the primary provider of military assistance, NORTHCOM stood ready if those forces were overwhelmed or to fill a particular need.<sup>49</sup> Prior to 9/11, multiple agencies had overlapping responsibilities, which led to communication breakdowns because no one, and sometimes everyone, was in charge. NORTHCOM became the lead agency to communicate between military and civilian authorities responding to both acts of terrorism and natural disasters. To provide better external air defense, NEADS helped create two rotating National Guard detachments in the National Capital Region.<sup>50</sup> When the Southeastern Air Defense sector was inactivated in 2006, NEADS took on air defense of everything east of the Mississippi River.<sup>51</sup> By 2009, the name was changed to the Eastern Air Defense Sector (EADS).

One day after the command was established, NORTHCOM faced its first test when Hurricane Lilli struck the Gulf coast, working with FEMA to coordinate aid with no initial issues.<sup>52</sup> In February 2003, NORTHCOM responded to the Space Shuttle Columbia disaster, then later in the year provided firefighting support during wildfire season in the western portion of the United States and disaster relief following Hurricane Isabel. The following year the command responded to wildfires and three consecutive hurricanes—Charley, Frances, and Ivan—along the east coast and Gulf of Mexico. The most significant test came the following year as NORTHCOM began tracking Hurricane Katrina after it became a tropical depression on 23 August 2005.

## **Back-to-Back Hurricanes Challenge National Guard Readiness**

In the evening of Thursday, 25 August 2005, Hurricane Katrina made landfall in southeast Florida near the Miami Dade/Broward County line as a Category 1 hurricane. The same day, Gov. Katherine Blanco declared a state of emergency in Louisiana and Adjutant General Maj. Gen. Bennett

Landreneau activated 2,000 National Guard soldiers. Gov. Haley Barbour followed suit, declaring a state of emergency in Mississippi, and activated his state's National Guard. When the storm reached the warm waters in the Gulf of Mexico, it intensified rapidly. On 27 August, the Louisiana National Guard had three Joint Operations Centers (JOC) staffed at maximum levels and began EMAC coordination for early aviation support.<sup>53</sup> Another 2,000 Guard members were activated—the most ever for hurricane response in Louisiana—as Louisiana and neighboring Alabama had also declared states of emergency. Katrina reached Category 5 status on 28 August, with winds peaking at 175 miles per hour. By the time the storm made landfall in southern Plaquemines Parish at 0610 on 29 August, the Louisiana Air National Guard, Mississippi National Guard, and Alabama National Guard stood ready to respond.

It is important to understand that these assets were prepared for a normal hurricane response; instead, Katrina arrived as a significantly stronger Category 3 storm. One hour before landfall, the US Army Corps of Engineers received a report that the levees and floodwalls in and around New Orleans had been breached. As the storm reached the Gulf of Mexico, Katrina pushed a 28-foot storm surge toward the coast of Mississippi and a 10- to 19-foot surge to Louisiana.<sup>54</sup> The failed levees in New Orleans significantly altered the scope of the response. In a Senate hearing before the Committee on Homeland Security and Governmental Affairs, Major General Landreneau recalled:

As the day progressed, and Katrina moved inland, we knew we had a significant problem in Southeast Louisiana. When we learned of the multi-failures in the Federal levees, we then recognized we were coping with a catastrophic incident. Louisiana's 5 levels of redundancy within its communication systems were either down or had reached capacity, so our ability to receive timely and accurate information was degraded.<sup>55</sup>

While hundreds of thousands of residents evacuated New Orleans before landfall, approximately 100,000 residents remained. In all, levees and floodwalls failed in more than 50 percent of the city, and nearly 80 percent in St. Bernard Parish.<sup>56</sup>

Search and rescue began with National Guard soldiers and Air Force personnel in boats, and the US Coast Guard aviation assets followed as the winds subsided. By Tuesday, every resource—including prepositioned EMAC assets—were engaged, and it was clear that more help was needed. First Army Commander Lt. Gen. Russel L. Honoré, a Louisiana na-



Figure 7.5. A National Guard M817 five-ton truck fords Hurricane Katrina floodwaters on 31 August 2005 to deliver supplies for the tens of thousands of displaced citizens who sheltered at the Superdome in downtown New Orleans. Courtesy of the US Navy.

tive, was named commander of Joint Task Force-Katrina, and as the storm subsided, NORTHCOM deployed forces to the region to serve under his direction. The New Orleans Superdome, which initially held 10,000 people who could not evacuate New Orleans, quickly swelled to estimates of 30,000 refugees after the levees were breached. With First Army in the lead and Fifth Army in support, Honoré immediately began evacuating New Orleans, allowing Landreneau to focus on rescue and security issues.

Though the total mobilization was happening rapidly, it appeared that additional resources were tied up in procedure. Admiral Timothy Keating, NORTHCOM commander, testified during the Senate committee hearing about Lieutenant General Honoré's 28 August request for additional helicopters, boats medical capabilities, and communication equipment. On 29 August, NORTHCOM sent a response that they were working on it but could not execute because the request needed to come from FEMA. FEMA did eventually request the needed helicopters, but the 24- to 48-hour turnaround time for DoD assets to arrive caused a two-day delay. The helicopters did not arrive until 30 August—after the storm had made landfall.<sup>57</sup> These support and response gaps became a key lesson learned and significantly altered DSCA response procedures for future disasters.

Even though President Bush had declared a federal emergency, other federal assets including those from FEMA, were not arriving fast enough. Under the Stafford Act (discussed in Chapter 6), the president can designate an incident as either an emergency or a major disaster. Once a Stafford Act declaration is made, FEMA receives state requests for assistance, often referred to as a “pull” for assistance. State and local officials must identify their needs before the federal government can deliver, thus the “pull” from the federal government.<sup>58</sup>

While the NRP had a Catastrophic Incident Annex that outlined a strategy for providing accelerated and proactive response, the presumption is that federal pre-deployed resources are already in place. If the secretary of Homeland Security declares a catastrophic incident, then the state and local officials do not need to “pull” assistance; rather, the federal response becomes a proactive “push,” moving assets without waiting for requests.<sup>59</sup>

All of this led to a federal response that was tied up in bureaucracy and procedure and did not offer rapid support to the situation on the ground. One of the major changes because of Hurricane Katrina were changes to the Catastrophic Incident Annex. When a catastrophic incident occurs, regardless of whether it was warned or a surprise event, the government can forgo the “pull” and proactively “push” its capabilities and assistance to areas in need. When the response capability is incapacitated or has reached catastrophic proportion—as it was during the Katrina response, the responsibility now lies with the federal government to respond, restore order, and begin the recovery process. As of the writing of this book, the NRP is superseded by the National Response Framework (NRF), a guide that has been updated four times since it was originally published on 22 March 2008. The current NRF is built on more than twenty-five years of federal response guidance and lessons learned.<sup>60</sup>

Despite the challenges, Army National Guard helicopters were performing rooftop rescues and transporting critical supplies and personnel as Guard troops from Pennsylvania, Mississippi, Georgia, Florida, and Oklahoma began moving into the flood zone.<sup>61</sup> In a rapidly escalating mobilization and one of the largest National Guard deployments since the Mexican Border call-up in 1916, 50,087 soldiers and Air Force personnel responded to Hurricane Katrina.<sup>62</sup> During the Senate committee hearing, Major General Landreneau described execution of the Emergency Management Assistance Compact as “one of the most successful outcomes of Katrina” and noted that the process “opened the door and without hesitation, every state and territory began to flow resources into Louisiana.”<sup>63</sup>



Figure 7.6. On 3 September 2005, Lt. Gen. Russel L. Honoré, Joint Task Force Katrina commanding general, speaks with 82nd Airborne Division members who were mobilized from Fort Bragg, North Carolina, to evacuate the New Orleans Superdome as part of Hurricane Katrina relief efforts. Courtesy of the US Army.

Lessons learned from previous disasters helped set the stage for the Hurricane Katrina response.

Maj. Gen. William Caldwell arrived with the 82nd Airborne Division on 3 September. Honoré tasked him to “fix the airport and fix New Orleans.”<sup>64</sup> To that end, Caldwell’s troops immediately went to work, establishing manifests and security screenings at the airport; within 12 hours, around 9,000 people had been evacuated through the airport. From communications to medical support, chemical decontamination to directing FEMA with transportation, equipment, and maps, the 82nd Airborne used its operational experience to help bring order to a chaotic situation and was directly responsible for evacuating the New Orleans Superdome.<sup>65</sup>

However, since the Regulars did not have the ability to act as law enforcement because of the Posse Comitatus Act (see Chapter 4), they needed additional assistance. “We embedded National Guard personnel in every Active Duty formation that arrived,” recalled Landreneau. “These National Guard soldiers and airmen served as effective liaisons and also added a law enforcement capability in case the need arose.”<sup>66</sup> The National Guard supported their active counterparts as law enforcement because they operated in a Title 32 status, under control of Governor Blanco.

Another key aspect to the National Guard's response came from the commander of all Title 32 forces, Brig. Gen. Gary Jones. A school superintendent, he had 27,000 soldiers in his command from 44 states, Puerto Rico, and the Virgin Islands at the effort's operational peak. Early on, Jones and his team decided to maintain unit integrity and match local units with their parishes. This simplified communication for local leaders; if the local unit commander could support, they would, and if they needed additional resources, there was a chain of command in place to ensure proper resources were moved to the parishes.<sup>67</sup>

As for the emergency response system outlined through NRP, it nearly collapsed under the immensity of the storm's destruction.<sup>68</sup> Though the system had been implemented eight months prior, it was still in the initial testing phase. Communications in the affected areas were almost entirely knocked out, so emergency operations centers were not able to receive calls for help or dispatch first responders. Compounding the problem, many first responders were victims of the storm; those who could be reached were not able to respond to emergency requests because of debris and flooding.<sup>69</sup> Hurricane Katrina showed significant weaknesses in the nation's communication system.

By 7 September, all SAD soldiers and Air Force personnel were redesignated to Title 32 federal status, backdated to 29 August. Though they remained under command of their individual state governor, operational control shifted to the governor of the state where they were deployed. More than 22,000 personnel from every US military branch responded from NORTHCOM, providing support ranging from search and rescue, security, and evacuation, to recovery of deceased persons, restoration of infrastructure, and housing FEMA officials and relief workers.<sup>70</sup>

Less than a month later as responders were gaining a handle on southeast Louisiana efforts, Hurricane Rita struck southwest Louisiana. Many personnel were reassigned, and others were recalled to their home state. On 19 September, when it appeared that Rita was headed for Texas, Governor Rick Perry ordered his National Guard troops back home. Alabama, South Carolina, and North Carolina had already recalled their soldiers and Air Guard personnel as Hurricane Ophelia skirted the east coast. NORTHCOM redirected assets, providing air and watercraft requests from civil authorities for that response.<sup>71</sup> Brigadier General Jones's task force honored all requests from states that requested recall. Hurricane Rita made landfall on 23 September between Johnson Bayou and Sabine Pass, Louisiana.

The last major hurricane of the 2005 season, Hurricane Wilma, battered south Florida less than a month after Rita struck Louisiana. Wilma made landfall on 24 October as a category 3 hurricane in Cape Romano, Florida, and the eye crossed the Florida peninsula before moving into the Atlantic Ocean.<sup>72</sup> Just as the Florida National Guard had sent aid to Mississippi, the Mississippi Air National Guard deployed from Jackson Air National Guard Base, delivering 140,000 pounds of food, water, and juice to support relief efforts.<sup>73</sup> In all, the EMAC response to Katrina, Rita, and Wilma lasted 215 consecutive days.<sup>74</sup> While the National Hurricane Center has retired the names Katrina, Rita, and Wilma because of their destructive outcomes, those storms will live on in lessons learned. They had a direct effect on America's disaster response in coming years and likely saved many future lives.

## **Origins of the Dual Status Commander and Implementation of Lessons Learned**

There was discussion during the Hurricane Katrina response after President Bush sent Governor Blanco a proposal outlining the need for a dual status commander (DSC) to control both Title 10 and Title 32 forces. During the 6 February 2006 Senate hearing, "Hurricane Katrina: The Defense Department's Role in the Response" before the Committee on Homeland Security and Governmental Affairs, Lieutenant General Honoré and Major General Landreneau both shared the same sentiment: recovery efforts during the hurricane should not have been federalized. Landreneau testified that more than 8,500 National Guard personnel were already on the ground and that lines of communication, chains of command, and tasking priorities had already been established. Changing the process, he said, "would have only stalled current operations and delayed vital missions and not have provided any additional 'boots on the ground.'"<sup>75</sup> A disruption in what was already a chaotic situation would have hindered the response further.

The concept of the DSC was relatively new but had been discussed as far back as the nineteenth century (see Chapter 5). The 2004 National Defense Authorization Act allowed a National Guard officer to temporarily hold both a state and federal commission simultaneously or serve in a "dual status."<sup>76</sup> Dual status command is unique to DSCA and follows specific chain of command requirements:

The dual status command structure does not create unity of command. Missions for federal and state National Guard forces originate separately and respective forces conduct these mis-

sions separately. . . . If dual status command is used, the president and the governor sign an agreement appointing one officer to command both federal and state National Guard forces. That officer serves simultaneously in Title 10, USC and Title 32, USC duty status.<sup>77</sup>

The dual status commander may issue orders to federal forces when in a federal duty status and, conversely when in state status, issues orders from the governor through the adjutant general only to National Guard members.<sup>78</sup> More succinctly, “a dual status commander holds a federal hat in one hand and a state hat in the other but can wear only one hat at a time.”<sup>79</sup> Before Hurricane Katrina, a DSC had only been used in pre-planned events such as the Group of Eight (G8) summit in Georgia, Democratic and Republican conventions in Boston and New York respectively, and Operation Winter Freeze supporting border patrol at the US-Canadian border.<sup>80</sup>

The week-long G8 summit and conventions were considered National Special Security Events, held in specific locations. Operation Winter Freeze lasted about three months but was planned, coordinated, and managed by Joint Task Force North based at Biggs Army Air Field, Fort Bliss, Texas.<sup>81</sup> Though many viewed these missions a success, there had not been a DSC for a no-notice/limited-notice incident such as a hurricane, earthquake, tornado, wildfire, or even act of terrorism.<sup>82</sup> The offer of a DSC to Governor Blanco—dealing with the throes of a natural disaster the likes of which her state had never seen—would not only have stripped her of her power but would likely have further disrupted the coordination of efforts that were already in place. Assistant Secretary of Defense Paul McHale testified that while it was prudent to offer the Louisiana governor the option of a DSC, the DSC framework at the time was not sufficiently developed to use in a crisis event.<sup>83</sup>

The Hurricane Katrina response was criticized for lack of organization and coordinated effort between state and federal authorities, as well as procedural inefficiencies, force allocation redundancy or gaps depending on location, administrative and legal failures, and overall response timeliness.<sup>84</sup> Policy changes would be needed in addition to improved coordination between the states and federal government, National Guard forces, and federal military forces. Between 2006 and 2010, annual National Defense Authorization Acts included legislation outlined changes to the authority and control of Title 10 and Title 32 troops supporting a no-notice/limited-notice incident. In 2010, the Department of Defense and Council

of Governors came to an agreement on use of DSC in these events, and the Joint Action Plan for Developing Unity of Effort was signed.<sup>85</sup>

The Joint Action Plan, signed in early 2011, established guidance authorizing a DSC to command both National Guard and federal forces during incident response scenarios. The agreement included a mechanism in which state sovereignty and federal interests could be equally balanced and created a common operating picture regarding how military forces would be used in domestic emergencies or disasters.<sup>86</sup> Because use of DSCs was agreed on earlier that year, a DSC was authorized to command DSCA responses for both Hurricanes Irene and Isaac in 2011 and 2012, respectively. Although a DSC was not activated for either response, the hurricanes provided valuable opportunities for governors and the DoD to test the process and concept. Because of this, the 2012 NDAA codified the DSC construct into law as the default command arrangement during incident response scenarios. Less than ten months later, Hurricane Sandy was the first time a DSC received Title 10 and Title 32 forces to respond to an unplanned civil support operation.<sup>87</sup>



Figure 7.7. Lt. Gen. William Caldwell IV (center left), US Army North (Fifth Army) commanding general and Fort Sam Houston and Camp Bullis senior commander, is briefed by his staff on 12 November 2012 regarding the Department of Defense's ongoing response to Hurricane Sandy. As part of the whole of government response, US Army North worked with FEMA to support state, local, and tribal governments. Courtesy of the US Army.

Lessons learned from Hurricane Katrina directly impacted the response to Hurricane Sandy. Unlike Katrina, where the governors requested that federal disaster declarations be made, the federal government led by FEMA began coordinating four days before Sandy's arrival with states expected to be affected by the storm. The DoD through NORTHCOM issued deployment preparation orders pending DSCA operations. In the span of six days, the states and the federal government went from routine operations to alert for the impending storm. When Sandy made landfall on 29 October near Brigantine, New Jersey, President Barack Obama signed the disaster declaration. This prompted the secretary of defense, through the chairman of the Joint Chiefs of Staff, to execute an order directing NORTHCOM to provide support to FEMA in the affected states. Six states received authorization for the DSC, and two—New York and New Jersey—activated the DSC to lead military response efforts.<sup>88</sup>

## **Summary**

The four years between the 11 September 2001 attacks and Hurricane Katrina's devastation tested the DSCA framework. In just two months, some Katrina response failures had been addressed and were mitigated in both Texas and Florida for Rita and Wilma, respectively. While no plans are perfect, leaders recognized that systems in place must evolve and adapt to meet current needs. The development of NORTHCOM, creation of the Department of Homeland Security, updates to EMAC procedures, and the implementation of the Joint Action Plan that created the DSC all occurred in a span of ten years. Exercises like Ardent Sentry provided critical command and control training during a complex catastrophe using an earthquake scenario involving multiple states, and the Vigilant Shield exercise prepared NORTHCOM and NORAD for an attack with ballistic and cruise missiles.<sup>89</sup>

At the time of this book, Vigilant Guard was an annual NORTHCOM exercise, done regionally, that allowed each state's National Guard to simulate real-world response to catastrophic disasters. In March 2015, the South Carolina National Guard participated in a Vigilant Guard exercise that simulated a Category 4 storm—Hurricane Zephyr—striking the South Carolina coast. Seven months later, a low-pressure system, combined with category 4 Hurricane Joaquin parked just off the coast of Florida, inundated the state with rain. From 1 to 5 October, more than twenty inches of rain fell from Columbia to Charleston. The Lake Murray Dam on the Saluda River, which had not been opened since 1969, had to be operated;



Figure 7.8. On 9 October 2015, South Carolina-based Alpha Company, 1st Battalion, 118th Infantry Regiment members unload sandbags to help a local resident protect their property from flooding of the nearby Edisto River in Parkers Ferry, South Carolina. Courtesy of the South Carolina National Guard.

the action caused multiple dam failures downriver, forcing residents to flee their homes.<sup>90</sup> During what was dubbed the “1,000-year flood,” the South Carolina National Guard and EMAC partners were prepared thanks to years of training—including Vigilant Guard—a direct result of previous lessons learned and applied.

Though much has changed since 2001, National Guard personnel remain dedicated to their communities. The strength of DSCA lies, in part, to these troops called to serve their communities and neighboring states in times of need, as well as support the civilian authorities to which they are assigned. The United States will never be immune to natural disasters, threats against our country, or civil unrest, but the National Guard is the most effective tool to help governors maintain order—ready at a moment’s notice. While the first four years of the new century were unprecedented for the National Guard, the COVID-19 pandemic and call for security in the nation’s capital would truly test a twenty-year war weary force.

### Thought Questions

1. Regarding federal-level changes following the 11 September 2001 attacks, which is the most significant today? Have there been changes since its implementation?

2. Communication failure was a major issue in both the 9/11 and Hurricane Katrina responses. How is communication still vulnerable in disaster response today?

3. What are some pros and cons of employing a dual status commander in a major disaster response? Is there a scenario where a governor would decline a DSC under its current framework?

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# Chapter 8

## Defense Support of Civil Authorities and the 2022 National Defense Strategy: Mapping the Future and Addressing Current Issues

Joseph R. Miller

*The PRC [People's Republic of China] or Russia could use a wide array of tools in an attempt to hinder US military preparation and response in a conflict, including actions aimed at undermining the will of the US public, and to target our critical infrastructure and other systems. These threats along with the toll taken by climate change, pandemics, and other transborder challenges will increase demands on Department [of Defense], federal civil authorities, and the public and private sectors.<sup>1</sup>*

From a historian's perspective, future is a fraught term that carries significant risk of inaccurate predictions. Preparing for an uncertain future is the Department of Defense (DoD) leadership's job—and how the DoD builds its long-term strategy. Leaders forecast and plan for future requirements, both at home and abroad, but seldom plan for Defense Support of Civil Authorities (DSCA) operations. For example, Army Futures Command exists “to transform the Army to ensure war-winning future readiness,” and does very little to plan for the future of DSCA.<sup>2</sup> The broader framework of DoD planning for conflict, however, recognizes that securing the homeland—and by extension DSCA operations—is a priority, tying it to a broader strategic planning framework. This chapter looks at DSCA in the new security environment that includes the possibility of large-scale combat operations (LSCO) with a near-peer adversary, combined with the challenge of fewer information and cyber warfare boundaries, in an era of increasing climate change-induced natural disasters. This will help identify gaps shaping the future of DSCA. Army Doctrine Publication (ADP) 3-28 does a phenomenal syncing of Army doctrine with the Federal Emergency Management Agency's National Response Framework, National Incident Management System (NIMS), and 2010 national defense strategy. However, within a new era defense strategy that emphasizes homeland defense and the rise of information warfare, it is also essential to align emergency management strategy with defense strategy.<sup>3</sup> Concepts of DSCA and homeland defense were built in a post 9/11 counterterrorism framework, and there will be complications when homeland defense is also LSCO—complicated further by the cyber and information domains.<sup>4</sup>

Rather than seeking stock solutions it is better to identify potential problems so leaders can continue to adapt to evolving situations. Also, this chapter seeks to amplify the concerns of state domestic operations officers, who best understand local problems that will shape the future of DSCA. The chapter also identifies problems with recent and current DSCA operations to inform future operation. Many of today's problems trace back to the origins of the nation; however, that does not mean that future solutions to such universal challenges will be the same as in the past.

The unclassified National Defense Strategy (NDS) of 2022 elevated defending the homeland as a primary line of effort—marking a key shift in DoD perception of the US military's role—and recognized an increasing threat to the homeland. The safety of the homeland was no longer certain, and not just from threats like terrorism which threatened the lives of individuals, but capable near-peer adversaries. That shift illustrates that DSCA will become increasingly more challenging. Now and in the future, domestic operations and DSCA will always be subject to interference or influence by rivals. At the 2022 Domestic Operations conference, one of the most prominent themes was the combination of both war with a state actor and domestic emergency, through operations like cyber-attack on critical infrastructure.<sup>5</sup> One hypothetical is that US support to Ukraine may further escalate information and cyber warfare with adversaries. The NDS recognizes China's greater strength and how much more significant the risk to homeland would be if the United States were to support Taiwan in a conventional conflict. Conducting LSCO and DSCA simultaneously in the homeland would stretch US military authorities and resources in ways not tested since the Civil War and rarely tested in the homeland by a foreign power with operations such as cyber warfare. Additionally, US Army performance in DSCA operations, either real or perceived, has far-reaching implications during an era of near-peer competition and information warfare.

According to the DoD, the two key threats to national security strategy—China and Russia—are both authoritarian states which view all civil unrest as weakness, rather than the natural outcome of freedom of speech. Failures and success in US DSCA operations will be observed and likely exploited by rivals. China changed its long-term strategy to a more aggressive plan based on what they defined as US failures in both COVID-19 pandemic response and 2020 civil unrest.<sup>6</sup> Although its sense of US 2020 failures in DSCA were largely an expression of Chinese information warfare exaggerations, they demonstrate the implications of future DSCA responses.<sup>7</sup> Adversaries have used US response weaknesses described in

their state media to justify a more aggressive plan.<sup>8</sup> Homeland DSCA success can also serve as a form of soft power, because rivals exploit sensitivities to internal divisions in the information domain.<sup>9</sup>

## The Easy Button and Free Chicken

Because of America's massive response to COVID-19, civil unrest, and record number of tropical storms and wildfires, 2020 is known as "the year of the Guard." Much of that response was positive and an important chapter in National Guard history. However, in the wake of massive 2020 and 2021 National Guard responses, DSCA experts stated that the National Guard became the "easy button"—a meme-friendly expression that came to define the excessive use of the military in domestic settings.<sup>10</sup> The National Guard's role as both the local and national militia can be challenging. The DoD mission drives funding and training for the Army National Guard, so training and resources will always be provided for wartime missions. The National Guard on Title 32 orders or State Active Duty (SAD) performed the bulk of responses from 2020 to 2022, but the Stafford Act often leads civil leaders to use Title 10 (either from the US Army Reserve or Regular Army) because that is, as some commenters have called it, "free chicken."<sup>11</sup>



Figure 8.1. Hawaii National Guard soldiers and airmen assist county and state officials with search and recovery in Lahaina following wildfires on the island of Maui, 10 August 2023. Courtesy of the National Guard.

Free chicken generally refers to resources that are already funded. This has gradients. Some elements like Title 10 are free for local and federal emergency managers but do not have the same legal latitude as Title 32 forces. Stafford Act funding provides Title 32 502(f) federal funding based on presidential approval or a cost share for SAD. The Stafford Act provides for a federal cost share so leaders at the local level can be reimbursed as much as 100 percent. However, that reimbursement comes much later and poses a fiscal burden for smaller states and territories. SAD is also challenging because the benefits, authorities, and entitlements are based on state laws and are very different across the fifty-four states and territories. Because the Federal Emergency Management Agency (FEMA) budget is stressed by federal cost share, already funded Title 10 is preferential. Free chicken is different from state and federal perspectives and also from DoD and lead federal agencies perspective. As such, state and federal leaders tend to use the National Guard to respond to crises ranging from search and rescue to supplementing school bus drivers and teachers.<sup>12</sup>

Balancing the military's primary mission to maintain combat readiness and the National Guard's role as the primary combat reserve for those operations create challenges. State governors understand that they will get federal funding for DSCA missions. Federal funding for the use of local resources is ideal; in the first days of a crisis, military leadership typically brings significantly more robust planning and leadership than many emergency management agencies. The primary job for each state adjutant general is readiness, which is funded federally, but they also work for political leadership that may require state-funded responses. This creates a tension nationally between emergency response and the military role abroad. In the event of conflict with a near-peer adversary, the National Guard's dual role as the primary combat reserve of the Army and Air Force as well as the DoD's and local political leaders' primary force provider in DSCA will be significantly strained.

The Active Guard Reserve (AGR) plays an important role under immediate response authority because many National Guard rotary wing units conduct rescue missions with aviators serving on AGR Title 32 orders. A large portion of National Guard rescues occur with Californian and Alaskan Air National Guard rescue squadrons. They largely serve on Title 10 with a mission to support Alaskan Northern Command and the Indo-Pacific Command (INDOPACOM) and also fill an important need in domestic crises.<sup>13</sup> The long-range and high-altitude rescue capability of the Alaska Air and Army National Guard are the most active search and rescue missions for the National Guard—enabled by their important role

in combat search and rescue in US Northern Command (NORTHCOM) and INDOPACOM. In 2022, flooding in Yellowstone National Park occurred during Army National Guard aviation battalion annual training. The unit used its annual training to conduct real-world rescue and sorties; because the rescues served as training for their wartime mission, they could function under immediate response authorities.<sup>14</sup> As an example of how overlapping state and federal missions can help build readiness in a variety of specialties throughout the National Guard, Louisiana National Guard engineers cleared firebreaks during a state firefighting mission that reinforced their military training.<sup>15</sup> However much the National Guard's wartime mission provides exceptional capabilities at home, there is tension between the wartime training requirements and the realties surrounding emergency response. This requires balance rather than continually using the military as the easy button during domestic crises.<sup>16</sup> Both FEMA and Army doctrine emphasize use of the military in "limited critical circumstances," but those instances have become more common and state leadership has the authority to activate the National Guard—even to use them as substitute teachers and bus drivers.<sup>17</sup>

## **The DSCA Problem and National Defense Strategy of 2022**

The future of DSCA is complicated by the conflict in the information space. The unclassified Director of National Intelligence Report on the 2020 election illustrates how much adversaries like China and Russia have sought to influence US domestic responses. A RAND unclassified study reveals their efforts to spread misinformation about COVID-19. This misinformation helped foster antigovernment conspiracy theories.<sup>18</sup> According to the RAND Corporation, Russian misinformation efforts focused largely on COVID-19 until protestors threatened the Michigan State Capitol in mid-April 2020, then shifted to racial divisive content following the murder of George Floyd. Those COVID-19 protests viewed pandemic measures as treasonous government overreach and foreshadowed the US Capitol occupation in 2021.<sup>19</sup>

DSCA operations occur not only in times of peace, but also during conflict. Indeed, the Continental Army's first operation, the 1775 Siege of Boston, included efforts to contain a major smallpox outbreak.<sup>20</sup> Japan actively sought to spread wildfires using long-range balloons during World War II, and China's use of high-altitude balloons in 2022 illustrates the increased capability of adversaries to pierce US airspace.<sup>21</sup> Russia has demonstrated a propensity in conflict to target critical infrastructure with both conventional and cyber-attacks, so an active conflict would also

threaten the homeland. The term cyber-Pearl Harbor is often used to describe a massive cyber-attack, but a cyber-Katrina is perhaps a better metaphor to remind us that such an attack would also be a domestic emergency.

The legal divisions between DSCA, homeland security, and homeland defense are important bureaucratic dividing lines between the DoD and the Department of Homeland Security (DHS). However, it is dangerous to believe that those divisions will not be exploited in conflict by a powerful rival such as China or Russia. As an example of the cost of domestic responses to military readiness, Hurricane Katrina mobilization in 2005 occurred at the height of combat operations in Fallujah. Beyond the massive National Guard mobilization, the 82nd Airborne Division deployed elements of the 325th Infantry Regiment to Iraq to support counter-insurgency operations, as well as forces to Louisiana to aid in the Katrina response. This significantly changed the Army's readiness to respond to warfare abroad because it drew away Regular and National Guard forces for homeland emergency response. This would be exacerbated further in a near-peer conflict in which the priority necessarily was for the conflict rather than disaster response. This poses new challenges for civilian emergency management agencies and local governments.

FEMA was originally established to support emergency operations in the United States so the military could focus on fighting abroad. Since adoption of the Stafford Act, however, soldiers—primarily but not exclusively from the National Guard—have performed the bulk labor in personnel days during domestic emergencies. By philosophy and doctrine, FEMA exists to fill the vacuum in a kinetic strike, such as emergency response to an event like a nuclear attack so the National Guard can mobilize for fighting abroad, but the National Guard manages the bulk of FEMA responses. In theory, FEMA handles emergencies at home so DoD can focus on threats abroad, but that is not always the case in practice. Because of DSCA's professionalism and capability, civil authorities press the easy button to draw on military manpower and resources whenever a crisis unfolds. To help avoid such a response, DSCA will need to educate civilian leaders on the strengths and especially the limitations of military response to any domestic operations during a significant military conflict abroad. While the emergency management system has multiple inputs from local, state, federal and non-government organizations, an operation requiring the bulk of the reserve component abroad will seriously challenge domestic emergency management. Moreover, the use of DoD resources as the easy button degrades wartime readiness, because constant mobilization

challenges the military's ability to conduct training and for soldiers to attend professional military education courses.<sup>22</sup>

Russian operations in Ukraine illustrate the risk of disasters caused by deliberate military operations. Russia has employed cyber operations to target Ukraine's financial and power sector with the goal of causing greater hardships for the country's people. Although the 7 June 2023 destruction of the Kakhovka dam has yet to be attributed to a Russian or Ukrainian actor, it significantly delayed a Ukrainian counter offensive.<sup>23</sup> The attack forced the evacuation of thousands of civilians, endangered crops, and eliminated drinking water. While there is only inference that Russia caused the attack, it is highly likely.<sup>24</sup> The willingness to cause a humanitarian disaster for short-term military operational gains, elucidates potential DSCA challenges during a conventional military conflict against rivals.

The DoD budget by design favors the warfighting role of the Guard over DSCA missions.<sup>25</sup> While that is sound philosophy and helps create strategic discipline, it forces local and federal entities to fund and plan for DSCA. Local and federal agencies should fund both responses and training for missions outside of the military's primary mission, but this practice creates multiple standards for training and significant differences



Figure 8.2. Virginia National Guard soldiers meet 6 June 2004 in Virginia Beach, Virginia, during Cyber Shield, the Department of Defense's largest annual cyber exercise—designed to enhance defensive cyber operations capabilities. Courtesy of the National Guard.

in pay and benefits. While mission and funding may need clear divisions between DSCA and wartime roles, those divisions are not operational reality. Conflict will likely increase the need for DSCA response rather than eliminate them. The National Guard's role as the primary combat reserve and the Army Reserve's as the combat service support will likely be challenged by domestic operations at home. While 2020 was the largest use of the National Guard for domestic operations, the Guard's largest mission set remained Title 10 operations outside the Continental United States (OCONUS).<sup>26</sup> Each state has both Army (and Air Force) operational structure plus a joint domestic operations team. During regular operations, the service operations staff focuses on meeting service training standards and the joint staff prepares for domestic responses. The service staff supplements the joint domestic operations staff during declared emergencies; this common practice will be strained by large-scale military operations.<sup>27</sup> During the unrest of 2020, the National Guard also developed rapid response elements for civil unrest, which are largely made up of maneuver brigades needed in conventional military operation, so rapid reaction to unrest could be strained by large-scale military operations.

## **A Main Effort without any Forces**

The 2022 National Defense Strategy identified defense of the homeland as the DoD's main effort. NORTHCOM was established concurrently with North American Aerospace Defense Command (NORAD), and it excels at air and missile defense. However, NORTHCOM has minimal assigned operational ground forces, and those forces operate on a steady-state rather than being operationally available for the homeland, which is unique for a regional combatant command.<sup>28</sup> This complicates DSCA because NORTHCOM is the chain of command for DSCA and homeland defense; the National Guard typically serves as the primary response force, typically with a state-based chain of command. If the National Guard is activated on Title 10 orders, local governors are in command, leaving the National Guard Bureau to serve as a channel of communication. NORTHCOM is a Title 10 organization and DSCA operations occur in a variety of Title 32 statuses and remove a command hierarchy from the DoD. During a crisis requiring Title 10 forces, state and territorial leadership can activate a dual status commander (DSC) who has a dual chain of command with federal and state leadership; this bridges the divide and has been very effective.<sup>29</sup> Friction in the role is inevitable if federal and state policy differs, but the DSC is the best resource to deal with any potential friction.

In the event of an attack on the United States, homeland defense will have to transition from Title 32 to Title 10. The largest accessible force for homeland defense is the National Guard. This is why the large portion of NORTHCOM operations are carried out by the National Guard. However, a major homeland defense mission is likely to incur a simultaneous national emergency. Without a committed Title 10 force to NORTHCOM, there will likely be competing requirements. Additionally, in the 2022 NDS environment with near peers that can affect the homeland, it is likely that governors will want to preserve rather than mobilize their state-based forces. While this is like Cold War and World War situations, geographical areas of responsibility (AOR) will no longer be isolated in the multidomain environment.

According to USNORTHCOM commander General Glen VanHerk: “In this new era of rapid Global Power competition, where our competitors are aggressively pursuing advantages in the military, information, economic, and geopolitical ranges, North America is threatened from every vector and all domains.”<sup>30</sup> The National Guard’s dual state and federal roles will create friction between local and federal leadership and challenge the ability to be the source of homeland defense forces, the primary DoD force in DSCA, and the primary combat reserve when all AORs and domains can be engaged simultaneously. Also, requests for steady state requirements to respond to national emergencies, support for southwest border operations, counter drug missions, and a myriad of situationally based domestic response will drop to the bottom of DoD priorities but will not go away in a conflict. NORTHCOM also works directly with state domestic operations officers, who develop emergency plans and exercises for regionally based scenarios. In emergencies, the state domestic operations teams expand, using deployable Modified Table of Organization and Equipment (MTOE) personnel. The NORTHCOM commander’s desire for an organic force structure recognizes the challenges of the Army National Guard and the typical force provider operations in the United States.

America’s National Defense Strategy also recognizes the threat of China and Russia. Both nations can impact the homeland if direct confrontation occurs abroad. Direct conflict with rivals at the scale of China and Russia could require the federalization of the National Guard. Hard decisions will be required in terms of steady-state DSCA operations, and homeland defense performed by the National Guard in LSCO. Limitations in the surge-to-war mission (the National Guard’s primary role), or support to civil authorities, is a predictable challenge to future execution of

the 2022 NDS.<sup>31</sup> Historically, compulsory service obligations in the militia or selective service have come during each major US conflict—from the Revolutionary War through Vietnam. Compulsory service has also led to unrest and controversy, and the current era of information warfare will create more challenges.

## **The Myth of Kent State and Current Civil Unrest Problems**

The events of the 1970 Kent State shooting are covered earlier in this volume, and this section will not add substantially to that. Instead, this chapter seeks primarily to combat a common myth that the Ohio National Guard was not trained for civil unrest. In fact, the guardsmen were both trained and experienced on correct doctrinal training for riot control. Additionally, many of the soldiers at Kent State had experience with teamster strikes and some were at the 1968 Democratic Convention.<sup>32</sup> They were prepared for a riot but were not prepared for their treatment by the antiwar movement students, many of whom welcomed violence. The tenor of the protests and ire of the students at the conservative, working-class Kent State campus was very surprising for the National Guard. Additionally, Governor James Rhodes used polemics characterizing all the student protestors as members of the Weather Underground, the violent wing of the Students for A Democratic Society.<sup>33</sup>

Protests following the May 2020 murder of George Floyd by officer Derek Chauvin share many problematic characteristics. A community was outraged and viewed law enforcement—and by extension Army National Guard soldiers supporting law enforcement—negatively, like the way anti-Vietnam War student groups viewed soldiers during Kent State. Similar to Kent State, a political leader made an inflammatory public statement, tweeting that when the “looting starts, the shooting starts.”<sup>34</sup> During the 2020 Floyd protests, however, there was an active National Guard Bureau with a mandate to serve a channel of communications; this created space for states to share best practices, as well as emphasizing the challenges of inflammatory rhetoric.<sup>35</sup>

Department of the Army training requirements no longer include doctrine and funding for riot control training for units other than military police. The Army removed additional training days for National Guard soldiers to train for civil unrest. Additionally, funding for drill weekends is provided for the units’ wartime mission-essential tasks. For DSRA missions that require crowd control, the agency or jurisdiction requesting the support typically must provide funding for the units to train on skills not required in their wartime mission. So, the Army National Guard had less

funding for civil unrest training prior to its massive 2020 response than the Ohio Army National Guard in the run-up to the Kent State shooting.<sup>36</sup>

While National Guard resources were less in 2020, the recent events showed greater understanding of the complexity of domestic response. The National Guard Bureau, NORTHCOM, and US Army North created a command-and-control/channel of communications structure that allowed states to learn from one another and share situational awareness across the force. The massive response already mobilized for COVID-19 also helped, because DSCA organizations were already staffed to emergency levels and could rapidly transition to a new mission.

Additionally, the Army gained nearly twenty years of crowd control and counterinsurgency experience in the Iraq and Afghanistan conflicts. Most soldiers absorbed lessons that “the best weapons don’t always shoot.”<sup>37</sup> Counterinsurgency experience demonstrated that host-nation militant groups have complex motivations and legitimate grievances often lead people to resort to violence. The growth in military operations abroad and domestically following 9/11 (described in Chapter 7) certainly helped even though the training was no longer required by the Army. In addition, the Global War on Terror brought a massive uptick in modernization, training, and professionalization for the National Guard which decreased the likelihood of a Kent State-like incident, or rampant Guard violence as seen in Detroit in 1967.<sup>38</sup>

Because the cause that prompted protests following the murder of George Floyd was easy to understand, guardsmen could empathize with protestors. Additionally, the National Guard Bureau (NGB) was already conducting daily teleconferences with state operations officers and TAGs during the COVID-19 pandemic, which meant that sharing the best way to deescalate protestor violence was already well-established. National Guard performance has been exemplary during recent unrest, in spite rather than because of training for civil unrest.<sup>39</sup> Massive spontaneous mass protests such as in June 2020 and 6 January 2021 did not allow training requirements to be included with the request for assistance. Although problems at Kent State were like those with the June 2020 protests, there was a much more established and active channel of communications between states. Also, the 2020 protests occurred weeks after the fifty-year anniversary of Kent State. The National Guard was aware of that Kent State history and far more attentive to the complex situation.

To continue using the popular metaphor, both the 2020 and 2021 civil unrest incidents made the United States bend but not break, but that

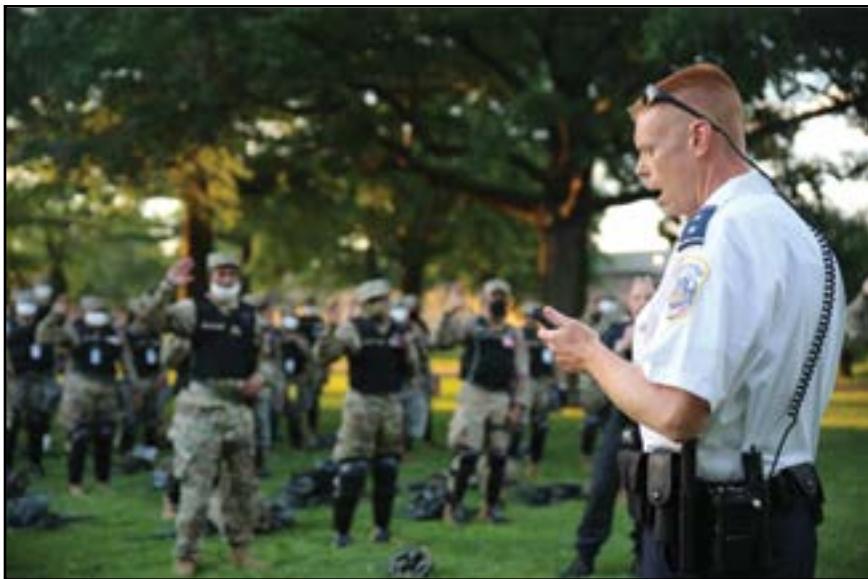


Figure 8.3. Washington, DC, assistant chief of police swears in National Guard soldiers and airmen to support local authorities during civil unrest in the nation's capital, 30 May 2020. Courtesy of the National Guard.

result was not inevitable. The National Guard Bureau and US Northern Command were massively engaged already for COVID-19 and happened to fully staff at crisis levels. While public support for law enforcement still reached low levels, the National Guard had a particularly favorable public reputation as the primary DoD force element for COVID-19 when it responded to unrest following the murder of George Floyd. In general, long service in Iraq and Afghanistan created empathy for soldiers that is not guaranteed in the future, and public support would certainly have been different for an incident such as at Kent State.

Domestic unrest can be caused by many factors, including issues outside the United States. The country's future strategy places China as a pacing threat and Russia as an acute threat. Currently and in the foreseeable future, these countries are and will be led by leaders committed to using whatever means to sow unrest in the United States. During the 2016 US election, Lakhota Internet Research Agency (LRA), a troll factory funded by Russian oligarch Yevgeny Prigozhin, supported two fake sites committed to sowing racial division. One of these was Back the Badge that claimed to support law enforcement and sought to delegitimatize claims of officers killing unarmed men and women of color, as well as similar nationalist sites like Being Patriotic and South United. Other sites such

as Blactivist, Brown Power, and Woke Blacks exaggerated accounts of attacks on communities of color and called for resistance.<sup>40</sup> These are unclassified examples of an acute threat designed to encourage unrest in the United States. At the peak, 40,000 National Guard members assisted with protests following the murder of George Floyd and 30,000 responded to January 6th.<sup>41</sup> In a kinetic conflict with a rival, it would be wise to expect more information warfare efforts encouraging civil unrest. The Regular Army and Army Reserve can only respond under the Insurrection Act, so response is primarily a National Guard function. In a conflict requiring federalization of the Army National Guard, unrest on the scale of 2020 and 2021 would severely strain the Guard's primary mission as the US Army's primary combat reserve. With the actors defined in the National Defense Strategy of 2022, the United States can no longer divide DSCA from great power competition, because rivals seek to actively influence domestic issues. Information warfare is becoming a key element in the future of DSCA operations.

## **The United States Cannot Create a 2020 Myth**

Formal military history programs seek to provide both the morale and identity of soldiers and units through commemoration, lineage and honors, heraldry, and providing critical research on their leaders' capability to understand difficult problems. The massive National Guard response in 2020 and 2021 could create a DSCA myth of a military with unlimited capabilities by remembering the contributions of the military without the challenges. Leaders should be cautious about overinterpreting the DSCA 2020 response. It was an impressive showing, and the scale of the domestic response was massive. However, support to operations abroad in 2020 remained the largest per capita mission, and there were only a few weeks in June 2020 when domestic operations outweighed operations outside of the United States. The National Guard deployed more personnel overseas in 2020 than served in DSCA operations.<sup>42</sup> During the largest domestic pandemic response in history, military operations abroad were still the primary mission.<sup>43</sup> The National Guard gets more headlines for DSCA operations, but sentiment is not reality. Historically, the largest call-ups of citizen soldiers have been the Civil War and the World Wars. Additionally, the National Guard's role as the primary combat reserve provides most of the training and equipment necessary for domestic response, so its role as the primary combat reserve is vital to DSCA. The Army Reserve and Regular Army can support—but only within legal parameters and at a significant hinderance to their primary mission.



Figure 8.4. Nevada National Guard soldier assists patients with nasal swab samples at COVID-19 community-based collection site in Duckwater, Nevada, 10 November 2020. Courtesy of the National Guard.

Additionally, there is disconnect between sentiment and reality in the 2020 traditional response to hurricanes and wildfires. Essentially, those were economy of force operations that just so happened to primarily affect states with enough resources to manage significant storms and fires.<sup>44</sup> Fires in 2020 were massive and affected multiple states; however, the largest number of rescues were in California, a state with significant Air Force rescue resources and Army rotary wing aviation. The California National Guard could handle the increased rescue missions with its own resources. Louisiana faced several powerful storms that hit largely in the same areas and, while their response took months to finish, completed the work without much help from other states.<sup>45</sup> The 2020 Atlantic tropical storm season ran out of names for storms and transitioned to the Greek alphabet, yet there was little need to send resources to other states through the Emergency Management Assistance Compact (EMAC).<sup>46</sup> While the massive 2020 response to domestic emergencies was impressive, the year stressed the resources as well as the readiness of the entire force. Much of that was due to COVID-19 requirements to physically distance, coupled with significant demands on service members to serve continually in a mission outside of their wartime specialty.<sup>47</sup>

The effectiveness of DSCA in 2020 is directly related to increased use of the National Guard as the easy button, or will at least exacerbate the problem. Using military forces in civil efforts always invites hard questions, and similar questions are important in the aftermath of the COVID-19 pandemic. To return to another popular phrase, the Army is a hammer that finds nails, but the features that make the military a good hammer also make the military extremely competent at general crisis management. Civilian leadership have no better place to turn in crisis, but large responses to domestic emergencies are not compatible with the strategic discipline to manage the acute threat of Russia and the pacing threat of China. Applying the principals of immediate response authority to every activation helps balance the need to safeguard citizens during a crisis with the need to have a military capable of fighting conflicts with the world's most significant powers. In immediate response authority, the principles are using active-duty personnel to support an emergency then quickly returning to their regular duties.

The United States should celebrate the military's response to 2020 because it was exceptional, while recognizing problems with using the National Guard as the easy button. The NGB Joint Staff's emphasis on a dialogue—and NGB's role as channel of communication rather than a chain of command—helped local events to drive policy rather than policy being driven solely from the federal perspective. This should apply in any future crisis. Restoring National Guard readiness was challenging in 2020 and the byproduct of personnel burned out by high operational tempo, which will create personnel manning difficulties in the immediate future. The National Guard has been forever impacted by the response to the pandemic, but that should not mask LSCO and near-peer conflict challenges to overall readiness that the response created.

### **Things Will Not Automatically Get Better: Climate Change and DSCA**

After the challenges of 2020, it was a common refrain that the arrival of 2021 would by itself solve the crises facing the United States. Although the response to 2020 events was impressive, few systematic changes were made to help prevent problems in the future. Natural disaster rates are increasing every year, which has stressed the DSCA system. During 2023, the United States saw record temperatures, Canadian wildfires caused significant air quality warnings across much of the eastern seaboard, and the water off the coast of Florida reached more than 100°F.<sup>48</sup> After Hurri-



Figure 8.5. North Carolina National guardsmen assist with evacuation efforts in Fayetteville, North Carolina, after Hurricane Matthew led to flooding as high as five feet in some areas, 8 October 2016. Courtesy of the National Guard.

cane Harvey in 2017, Chief of the National Guard Bureau General Joseph Lengyel described the growing challenge of more powerful hurricanes due to climate change. Climate change challenges have been incorporated into national defense strategy and doctrine, and the DoD developed strategy for climate-fueled conflict as well as safeguarding resources in the homeland. The DoD has long viewed increasing temperatures as a threat to national security. States have been struggling to keep pace with record levels of wildfires, flooding, and tropical storm activity. All of this points to an increase in DSCA missions across the United States due to climate change.

Even in years with record numbers of fires and tropical storms, National Guard response has met the urgent needs of the disaster-stricken communities, but that response has been sorely tested. Since 2020, the post-Katrina system on the Gulf coast has responded well, but no intervention will hold up to continuous storms that continue to damage and weaken the existing infrastructure. The zone of disasters is expanding. Since 2022, Kentucky, Arizona, and Vermont faced large-scale floods, which posed unique challenges for the National Guard in those states. Once in 100-year calamities are becoming an annual problem for National Guard DSCA response.<sup>49</sup>

## **Conclusion: Emotionally Mature Strategy or Doom and Gloom**

Facing harsh realities is what military leaders do, and identifying current and recent challenges will help the Guard anticipate future problems. Historians cannot predict the future, but they can see structural flaws and unsolved problems that will shape the future. Ultimately, many current DSCA-related challenges as well as defense of the homeland and identifying threats posed by China and Russia can be dealt with through strategic discipline. Both the National Guard Bureau and US Northern Command still accomplish their DSCA operations, which are not included in the US National Military Strategy. The DoD does DSCA but should not budget for it; those missions support civil authorities, and the challenges of competing with the pacing threat of China and the acute threat of Russia are far more central to national security.

The DoD's emphasis on budgeting only for the mission of fighting enemies abroad and defending the homeland is a disciplined approach. While there are serious DSCA training and execution limitations because of this discipline, the DoD must focus on the threat from China, whose centralized state helps prioritize the defense budget. US Northern Command and the National Guard have long acted flexibly in DSCA roles, but in the future, more must be done with fewer resources. The DoD recognizes the problem of DSCA and national defense in a threat environment versus near-peer rivals, which means that DoD funding for training and equipment must remain focused on the wartime mission. Lead federal agencies should remain responsible for the costs of DSCA response and training; the original vision of organizations like FEMA was to coordinate domestic response in the event of a large-scale conflict. However, the DoD's failure to fund easy button-type use of the National Guard helps prioritize DoD funding but does not solve training and retention problems. Hard decisions will have to be made, but leaders are asking the right questions, seeking improved structures, and understand current and future challenges. Addressing the challenges will be critical to future success.

In the future, DSCA and national defense will need to be nested, because it is only a matter of time before a competitor intentionally seeks to undermine a DSCA response. Worse, that rival likely will try to create national emergencies during the LSCO competition phase, even before doing so in crisis or conflict phases. State emergency planning is integrated into NORTHCOM plans, and the Department of Homeland Security and state domestic operations officers are at the forefront of that effort. During the COVID-19 response, one of the biggest challenges faced by

the National Guard was that its medical professionals could not be mobilized because they were already serving their communities as doctors, nurses, and first responders. A similar challenge on a much broader scale will occur in a large-scale conflict. States surge their Army and Air Force staffs into their domestic crisis staff during a national emergency, and a massive mobilization of the National Guard would create significant gaps in DSCA response capability. A future conflict requiring massive mobilization is more likely to cause rather than reduce national emergencies at home. Understanding those challenges and the dual role of the National Guard, as well as the other government entities involved in DSCA, will help the United States face future challenges, fill gaps as they occur, and be ready for inevitable future national emergencies.

## **Thought Questions**

1. How does studying history help with understanding the future?  
What are the limits of using history to understand the future or present?
2. Can the same organization—primarily composed of part-time soldiers—be the primary force for Homeland Defense, DSCA, and the combat reserve?
3. Are trends showing a significant shift in how state or federal forces will be allocated for DSCA in the future?

## Notes

1. Department of Defense, 2022 National Defense Strategy, 27 October 2022.
2. “Army Futures Command,” US Army Futures, accessed 4 August 2023, <https://www.army.mil/FUTURES>.
3. Department of the Army, Army Doctrine Publication (ADP) 3-28, *Defense Support of Civil Authorities* (Washington, DC: 2019).
4. Col. Jocelyn Leventhal, ed., “Defense Support of Civil Authorities,” in *How the Army Runs: A Senior Leader Reference Handbook, 2019–2020*, ed. Lou Yuengert (Carlisle, PA: US Army War College, 2020) 20-1–20-22.
5. Joseph Miller, 2022 Domestic Operations Conference, Case File and Case File Abstract, 29 November 2022, National Guard Bureau Historical Reference Collection. Much of the collection is Controlled Unclassified Information. It includes every presentation from the conference as well as a historical summary.
6. Lindsey Ford and Julina Gewirtz, “China’s Post-Coronavirus Aggression Is Reshaping Asia: Multilateral Responses Are Likely as Beijing Picks Digits,” *Foreign Policy*, 18 June 2020; Lindsey Ford and Julina Gewirtz, “China’s New Aggressiveness Will Force Its Neighbors Closer Together,” *Foreign Policy*, 18 June 2020; and Eliot Pence, “Asia Unbound: To Understand China’s Aggressive Foreign Policy, Look at Its Domestic Politics,” *Council on Foreign Relations*, 8 October 2020.
7. Habiba Ahmed, Henry Newton, Christian Stirling Haig, and Samuel Brannen, “The George Floyd Protests: A Global Rallying Cry for Democracy,” *Center for Strategic & International Studies*, 11 June 2020, <https://www.csis.org/analysis/george-floyd-protests-global-rallying-cry-democracy>; and Timothy McLaughlin, “The End of Hong Kong “ *The Atlantic*, 22 May 2020, <https://www.theatlantic.com/international/archive/2020/05/china-hong-kong-pandemic-autonomy-law-aggression/611983/>.
8. In addition to the many articles in foreign policy and strategy forums, there is growing literature on this. Rush Doshi repeatedly described how China responds to US weaknesses, and a lot of the aggressiveness of recent policy has occurred due to US failures in the domestic environment in 2020. For authoritarian leaders, public protests are viewed as a sign of weakness rather than a representation of constitutional rights, so domestic operations will always loom large in calculus of rivals. Rush Doshi, *The Long Game: China’s Grand Strategy to Displace American Orders* (New York: Oxford University Press, 2021).
9. See Mahir J. Ibrahimov, ed., *Great Power Competition: The Changing Landscape of Global Geopolitics* (Fort Leavenworth, KS: Army University Press, 2020).
10. Davis Winkie, “‘Easy Button’ Era: Have Federal Dollars Unlocked a New Age of Domestic Guard Operations?” *Army Times*, 16 March 2022; Maj. Gen. Daryl Bohac, “What We Have to Do Is Avoid Becoming the Easy Button,” *National Guard Magazine*, October 2021; Lt. Col. Scott Myers, “The US Military . . . America’s Easy Button” (research paper, US Army War College,

Carlisle, PA, 1 April 2027). This paper looks at the problem of overuse of the military abroad, particularly the use of military in conflict without declaring war.

11. “Free chicken” was a common discussion at the May 2023 J3 State Domestic Operations Officers (DOMS) course, which is a course held at the National Guard Bureau for J3 DOMS. The discussion included a trip to the Federal Emergency Management Agency. Governors typically prefer federal 502(f) funding, which comes out of the FEMA budget, while FEMA prefers Title 10 call-ups, which are funded with already allotted Department of Defense money.

12. Dialogue about the easy button and free chicken was frequent during the 2022 Domestic Operations Conference at the National Guard Bureau Professional Education Center in Camp Robinson, Arkansas. See Miller, 2022 Domestic Operations Conference, Case File Abstract.

13. See David Bedard, 176th WING, “Alaska Air National Guard Saves 5 in 3 Incidents over 4 Days,” *National Guard News*, 18 July 2023, <https://www.nationalguard.mil/News/Article-View/Article/3463223/>; and Technical Sgt. Tefany Leyva, “129th Rescue Wing Conduct Multi-Day Rescue Mission Off the Coast of Costa Rica,” *Grizzly Magazine*, 13 July 2023, <https://grizzly.shorthandstories.com/cal-guards-129th-rescue-wing-conducts-rescue-off-the-coast-of-costa-rica/index.html>.

14. Joel Anderson, “Montana National Guard’s Chinook Helicopter Assists Stuck Front Loader at Yellowstone National Park,” *County* 10, 8 September 2022.

15. Peter Drasutis, “Louisiana National Guard Mobilized to Battle Wildfires,” *National Guard News*, 28 August 2023, <https://www.nationalguard.mil/News/State-Partnership-Program/Article/3506702/>.

16. General Daniel Hokanson, “Use of National Guard Personnel Already in a Title 32 Duty Status for State Immediate Response to Domestic Emergencies,” Memorandum for the Adjutants General and the Commanding General of the District of Columbia, 6 June 2022.

17. Department of the Army, ADP 3-28, 1-12.

18. Mirian Mathews, Katya Migacheva and Ryan Andrew Brown, *Superspreaders of Malign Influence and Subversive Information on COVID-19: Russian and Chinese Efforts Targeting the United States* (Santa Monica, CA: RAND, 2021).

19. Graham Macklin, “The Conspiracy to Kidnap Governor Gretchen Whitmer,” *Countering Terrorism Center Sentinel* 14, no. 6 (July/August 2021), 2. This article outlines the plot to kidnap Gov. Gretchen Whitmer as part of a Michigan State Capitol protest against her declaration of emergency and the measures taken to control the spread of the COVID virus. Additionally, prior to the pandemic there was a large pretext in Richmond, Virginia, where protestors threatened to attack the state capitol if newly elected legislatures enacted gun control legislation.

20. Elizabeth A. Fenn, *Pox Americana: The Great Smallpox Epidemic of 1775–82* (New York: Hill and Wang, 2001).

21. Tanya Lee Stone, *Courage Has No Color, The True Story of the Triple Nickles: America's First Black Paratroopers* (Summersville, MA; Candlewick Press, 2013).

22. Staff at the National Guard Bureau, which handles domestic emergency management, complete the required FEMA training course on the National Incident Management System and the National Response framework, as well as required joint DSCA training. Most of this comes from the web-based FEMA disaster response training as well as a visit to FEMA during the Spring J3 DOMs course.

23. Andrian Prokip, “The Kakhovka Dam Disaster: Responsibility and Consequences,” *Wilson Center Focus Ukraine*, 14 June 2023, <https://www.wilson-center.org/blog-post/kakhovka-dam-disaster-responsibility-and-consequences>.

24. James Glanz, Mark Santora, Pablo Robles, Haley Willis, Lauren Leath-erby, Christopher Koettl, and Dmitryiy Khavin, “Why Evidence Suggests Russia Blew Up the Kakhovka Dam,” *New York Times*, 16 June 2023.

25. The obvious exception to this rule is the National Guard’s chemical, biological, radiological, nuclear, and explosives (CBRNE) as well as other homeland defense roles.

26. This summary is based on the 2020 annual command history portions that have been released to Congress and national media in collaboration between the National Guard Bureau (NGB) history office and NGB Public Affairs. See Joseph Miller, National Guard Bureau Annual Command Historical Report 2020.

27. Col. Shane Riley, email message to the author, 28 June 2023, with Oklahoma National Guard J3 Domestic Operations Organization Chart. Details in this section are primarily from conversations with Colonel Riley, as are the discussed problems with fully mobilizing the National Guard for future combat, in relation to its very substantial role in state emergency management.

28. General Glen VanHerk, “Deter in Competition, Deescalate in Crisis, and Defeat in Conflict,” *Joint Forces Quarterly* 101 (30 March 2021), 6; and US Northern Command, “About USNORTHCOM,” accessed 4 August 2023, <https://www.northcom.mil/About/>.

29. To simplify the flow of the chapter, assume that every use of the word “state” includes “state, territorial and the District of Columbia (DC).” In this case, DC is primarily a Title 10 force and is not included.

30. VanHerk, “Deter in Competition, Deescalate in Crisis, and Defeat in Conflict,” 10.

31. The author met with Dr. Lance Blythe at the USNORTHCOM history office and attended several USNORTHCOM senior leadership briefings, which significantly improved the quality of this chapter.

32. Jerry Lewis and Thomas Hensley, “The May 4 Shootings at Kent State University: The Search For Historical Accuracy,” *Kent State University M4Y*, accessed 4 August 2023, <https://www.kent.edu/may-4-historical-accuracy>; and Thomas Hensley and Jerry Lewis, ed., *Kent State and May 4th : A Social Science Perspective* (Kent, OH: State University Press, 2010).

33. There is also a likely problem of intelligence oversight because intelligence collected on US groups like the Weather Underground was likely shared with the governor and led to the Church Committee reforms. This movement was extremely violent and called for violent revolution but was extremely marginal. Kent State Students for a Democratic Society, “The Four Demands,” 1968, Students for a Democratic Society (SDS) Records, Kent State Shootings: Digital Archives, Kent State University Special Collections, 2, <https://omeka.library.kent.edu/special-collections/items/show/3156>. Even SDS-friendly socialist literature identified that the SDS had a “strategy to provoke northern military intervention” and, though it claimed to be nonviolent, sought violent military intervention. Geoff Bailey, “The Rise and Fall of SDS,” *International Socialist Review* 31, Fall 2003, <http://www.isreview.org/issues/31/sds.shtml>; and Barry Balleck, “Students for a Democratic Society,” in *Modern American Extremism and Domestic Terrorism: An Encyclopedia of Extremists and Extremist Groups* (Santa Barbara, CA: ABC-CLIO, 2018), 350–51. The Weatherman faction of the SDS called for a “war at home” and “material damage so as to help the Viet Cong.” Weatherman in SDS were building a “Red Army” and “toughening transformation not only physically and militarily, but also politically.” Weathermen cited Maoist guerrilla theory and Che’s (Guevara) methods. See Shin’ya Ono, “You Do Need a Weatherman to Know Which Way the Wind Blows,” *Leviathan*, December 1969, <https://www.sds-1960s.org/Ono-weatherman.pdf>. For more information on the Church Committee, see Michael Warner and J. Kenneth MacDonald, “US Intelligence Community Reform Studies Since 1947,” Center for the Study of Intelligence, Washington DC, April 2005.

34. The National Guard Bureau Public Affairs briefing on 30 May 2020 specifically addressed the 29 May Tweet from President Donald Trump’s personal Twitter account. The message was struck through in the slide because the posting violated Twitter policies for inciting violence. From National Guard Bureau Pennsylvania, “Messaging-PA,” in Senior Leader Update Briefing, 1600 TAGS, 30 May 2020, NGG History Officer Historical Reference Collection. The briefing was designated For Official Use Only, but the Tweet was publicly available unclassified information.

35. Department of Defense Directive 5105.77, National Guard Bureau, 15 October 2015.

36. Information for this portion was supported by a request for information on how regulations have changed in relation to civil unrest and civil disturbance. The 2007 version of Army Regulation 350-1 removed those requirements for all units except military police. This limits the training authority significantly. Based on discussions with the District of Columbia Domestic Operations team and the J3 DOMS course, they must build training in the request for assistance for crowd control tasks, or operations with a potential for civil unrest. National Guard soldiers previously were required to complete crowd control training as part of basic training. Such training is no longer required and was not required for guardsmen facing protestors following the murder of George Floyd and operations following 6 January 2021.

37. Maj. Gen. Eric Olson, *Some of the Best Weapons for Counterinsurgents Do Not Shoot* (Carlisle, PA: US Army War College Press, 2010), [https://www.files.ethz.ch/isn/123059/2010\\_10\\_pub1027.pdf](https://www.files.ethz.ch/isn/123059/2010_10_pub1027.pdf); and Department of the Army, Field Manual (FM) 3-24-2, *Tactics in Counterinsurgency* (Washington, DC: April 2009).

38. Civil unrest struck more than 250 US cities in 1967–68 as the nation struggled with racial issues. The 1967 civil unrest in Detroit marked a DSCA low point for the National Guard; Michigan National Guard soldiers fired more than 150,000 rounds of ammunition indiscriminately during the unrest, killing at least ten people. Barrye La Troye Price, “Use of Federal Troops in Quelling Civil Unrest in Washington, D.C., April 1968” (master of arts thesis, Texas A&M, College Station, TX, 1994).

39. See Miller, National Guard Bureau Annual Command Historical Report 2020.

40. Office of the Director of National Intelligence, Foreign Threats to the 2020 US Federal Elections, 21 March 2021; Todd C. Helmus, Elizabeth Bodine-Baron, Andrew Radin, Madeline Magnuson, Joshua Mendelsohn, William Marcellino, Andriy Bega, Zev Winkelman, *Russian Social Media Influence: Understanding Russian Propaganda in Eastern Europe* (Santa Monica, CA; RAND, 2018); and Renee DiResta, Kris Shaffer, Becky Ruppel, David Sullivan, Robert Matney, Ryan Fox, Jonathan Albright, and Ben Johnson, *The Tactics & Tropes of the Internet Research Agency* (Austin, TX: New Knowledge, 2018)

41. See Miller, National Guard Bureau Annual Command Historical Report 2020, and Joseph Miller, National Guard Bureau Annual Command Historical Report 2021, 24 May 2023, National Guard Bureau Historical Collection, 45.

42. National Guard Bureau Joint Operations Center, “National Guard 2020 Year in Review,” 30 April 2021, <https://www.nationalguard.mil/Portals/31/Resources/Fact%20Sheets/2020%20Year%20of%20the%20Guard.pdf>. The report is Controlled Unclassified Information.

43. This was also the largest emergency response when measured by total personnel and number of days, commonly referred to as mandays or, more recently, personnel days. The Katrina response had a higher peak day. Also, the first weeks of June saw a roughly 80,000 service member call-up for both COVID-19 and civil unrest.

44. Peter Drasutis, “La. Guard Continues Mounting Response to Ongoing Wildfires,” *Louisiana National Guard News*, 25 August 2023, <https://geaux-guard.la.gov/la-guard-continues-mounting-response-to-ongoing-wildfires/>.

45. Joseph R. Miller, “Annual Report of the National Guard Bureau, 2020,” 26 May 2021, National Guard Bureau Historical Reference Collection. The document is Controlled Unclassified Information but this reference is Unclassified.

46. National Oceanic and Atmospheric Administration, “With #Alpha, 2020 Atlantic Tropical Storm Names Go Greek,” 18 September 2020, <https://www.noaa.gov/news/with-alpha-2020-atlantic-tropical-storm-names-go-greek>; and National Guard Bureau Public Affairs, “2020: Year of the Guard,” July 2022.

47. See Miller, “Annual Report of the National Guard Bureau 2020.”

48. The National Oceanic and Atmospheric Administration began detecting increasing ocean temperatures in July 2023. “The Ongoing Marine Heat Waves in U.S. Waters Explained,” *National Oceanic and Atmospheric Administration News*, 14 July 2023, <https://www.noaa.gov/news/ongoing-marine-heat-waves-in-us-waters-explained>. National Guard Bureau Joint intelligence Directorate (NGB J2) provided consistent warnings of increased temperatures in its 2023 products. NGB J2, “Current IAA Brief: Marine Heat Waves Impact the Gulf of Mexico,” NGB JOC OPSUM, 3 August 2023, SD 3000 (information used is Unclassified, but document is Controlled Unclassified Information); and NGB J2, “Current IAA Brief: Record High Global Temperatures Impacting Various Arenas,” NGB JOC OPSUM, 13 July 2023, SD 3000 (information used is Unclassified, but the document is Controlled Unclassified Information).

49. See Joseph R. Miller, “Annual History of the National Guard Bureau, 2021,” July 2022, <https://www.nationalguard.mil/Portals/31/Resources/Fact%20Sheets/2020%20Year%20of%20the%20Guard.pdf>.

## About the Authors

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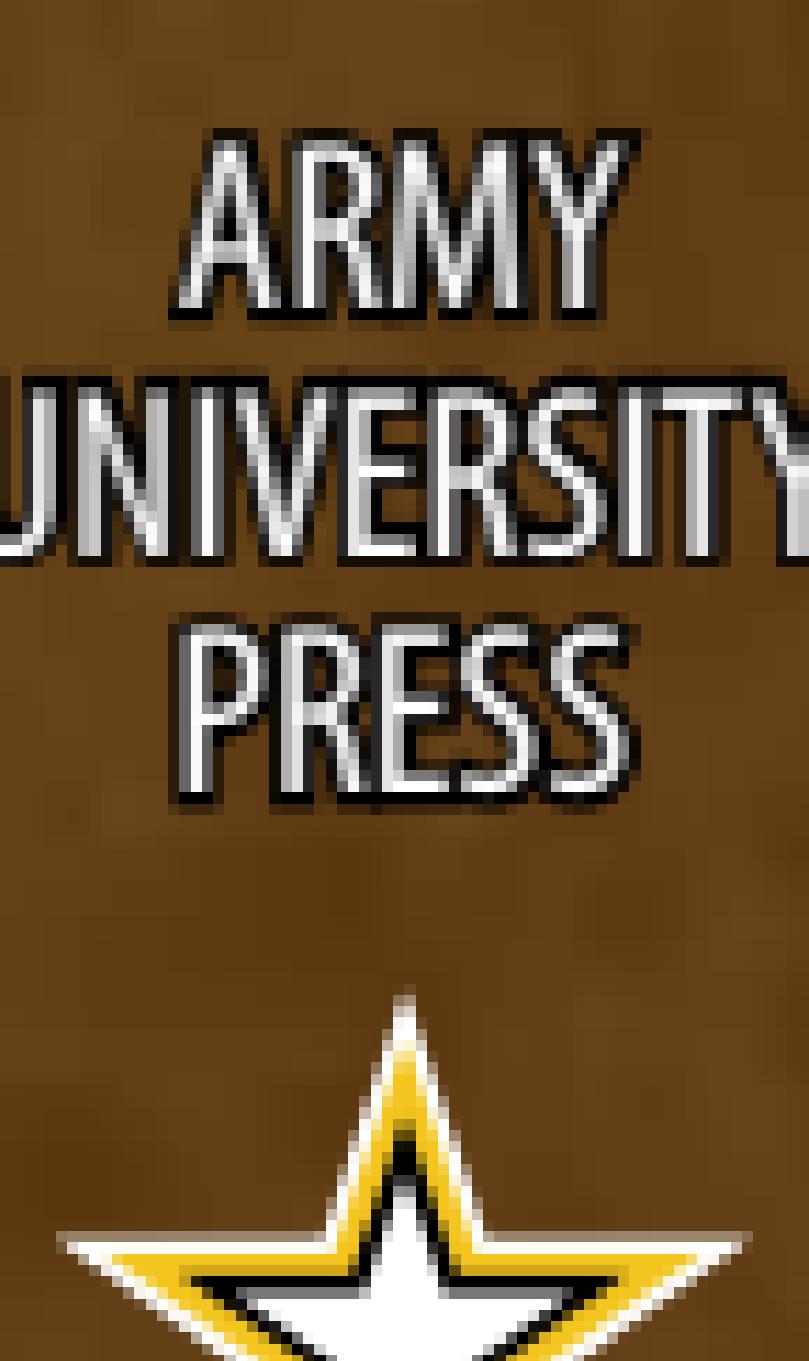
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# THE S E R V I C E S P R O C E S S I O N S A N D T E C H N O L O G Y



An Army University Press Book  
US Army Combined Arms Center  
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*Forging the Framework* discusses how US Army leaders and soldiers have navigated complex situations involving use of the military for disaster relief, emergency management, and domestic unrest and how those events have shaped law, policy, and regulations. This anthology explores the history of the Defense Support of Civil Authorities (DSCA) framework and how developing policies have helped minimize uncertainty and confusion over time—a robust framework forged by lessons observed and sometimes learned. The authors hope that *Forging the Framework* will help leaders, soldiers, and civilians understand how historical events shaped DSCA policies, laws, and regulations and that this, in turn, will help with future decision-making.

