THE HISTORY OF MILITARY CONSCRIPTION

With Especial Reference to the United States

by

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The History of Military Conscription with Especial Reference to the United States[1]

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I. Introductory Considerations.

When James A. H. Murray defined "conscription" as the "enrollment by lot of fixed numbers of those liable to service, with the option given of procuring a substitute," he expressed a popular misconception of the theme; his definition covered one phase of the subject, the variety of conscription known in the United States as "the draft," but it failed to include the more efficient army system in vogue amongst the Prussians, the system now known in America as "the selective service," and it ignored the basic, and vastly older, form of conscription which is connoted by the word "militia."

Of fundamental importance in a discussion of military conscription is the question of exemption and substitution; did some of the conscripts escape service by the payment of money? Whenever payment was accepted in lieu of service, the system was at once transformed into a mere method of taxation, wherein delinquents were penalized by being compelled to serve personally; the premium upon the possession of wealth and the penalty of poverty were the emphatic points. If no exemption or substitution was permitted, the conscription was productive of soldiers rather than of revenue; but another question was raised: How was the state to provide for the necessities of industrial life when it forcibly removed many workers from their customary fields of industry? It is about the two foci of paid exemption or substitution, and of provision for industry, that a discussion of "conscription" must be constructed. A correct definition of "conscription" would be "the compulsory enlistment of men for military and naval service"—with the elision of Murray's last phrase.

II. The Militia System.

Oldest of all forms of military conscription was the militia system. When Herbert Spencer asserted that, in primitive society, the army was the nation mobilized and the nation was merely the quiescent army, his reference was to the militia. Other terms by which such conscription has been described are the *arrière-ban*, the levy-in-mass, and the *posse comitatus*. The militia was always characterized by its compulsory character, was a form of conscription, and it had its origins far back in the preliterary period of the early neolithic.

As the city-state became democratic, it made its military organization a framework within which to set up its electoral and legislative machinery; when citizens assembled to vote, they presented themselves in military formation, and often under arms. This primitive association of political with militia activities seemingly exercised significant influence upon United States military history, a popular vote of the soldiers sometimes possessing authority transcending that of the officers' commands.

Although the American Constitution provided two methods by which Congress might utilize the potential military strength of the nation,—by means of the "militia," or by "raising and supporting armies,"—as a matter of fact, the militia alone was, until 1917, regarded as the "bulwark of national defense"; and the militia was a state, not a national, force. In 1792 the first militia law was enacted. In 1794 Congress "detached" 80,000 state militia for possible duty against France; and later in the same year, such troops were actually put into the field to suppress the "whiskey rebellion."

Between 1815 and 1846, the years of Jacksonian democracy, militia service was everywhere allowed to become voluntary; the law of the United States was tacitly annulled by the states. Volunteer companies, such as had appeared at intervals throughout the previous history of the world, at once sprang up in large numbers as substitutes for the older force. Although there was no inherent reason why volunteers should not have been quasi-regulars under complete federal control, as a matter of fact Congress decreed that they should be regarded as militia and organized under the militia clause of the Constitution; the force was thus handicapped with the limitations which interfere with militia efficiency.

An ostensible restoration of the compulsory feature to the militia system was accomplished by the federal law of 1862; but the states continued filling their militia quotas by bounty-stimulated volunteering and disregarded the true intent of the legislation. When the original militia law was finally revised in 1903, the only actual militia were the "volunteer militia," who existed under the name of "national guard"; making a virtue of necessity, Congress accorded exclusive recognition to the latter force.

It was a militia whose service was compulsory, which achieved many of history's most notable military triumphs. Marathon and Thermopylae were militia victories; Hannibal was vanquished by Roman militia; Cromwell's "trainband" militia turned the scale of battle at Worcester; in American history the Swamp Fight of 1675, the capture of Louisburg in 1745, Lake George in 1755, Bunker Hill, Saratoga, King's Mountain and New Orleans were all similar militia victories. The militia must be well led, must begin the battle under favorable conditions, and as Putnam said at Bunker Hill, must "have shelter for their legs"; granted the fulfillment of these conditions, and American militia have performed deeds of prowess unequaled outside the realm of legendary warfare.

Turning the page, however, we find that American history is dark with the record of military disaster caused by the inherent faultiness of the militia system. Camden, in 1780, and Detroit, in 1812, were such

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militia defeats; at Bladensburg, in 1814, American militia, to the number of 5,401, fled with only the barest show of resistance, before less than 3,500 British troops, leaving the national capitol to be burned by the invader. Bull Run, in 1861, was a militia disaster.

Militia in every land and age were characterized by certain peculiarities. Their term of service was necessarily short—in the United States ranging from 30 days to 9 months; their field and range were consequently restricted to the vicinity. The subtraction of a large fraction of the laboring population produced a paralysis of industry. Owing to the lack of uniform military clothing and equipment, the militia presented a burlesque appearance, as noted by Shakespeare in his description of the "Falstaffian regiment," and later by Dryden in "Cymon and Iphigenia," Cowper in his "John Gilpin," and by Schuckburgh in "Yankee Doodle." Democracy was ever the characteristic quality of the militia, democracy strong in the local interest which it engendered and the friendly ties subsisting between officers and men, but weak by reason of an injection of neighborhood politics into every military relationship.

Militia organizations were always local in composition, being merely the man-power of the community temporarily organized for warfare, and were also local in their control, the officers being men prominent in the vicinage. The characteristic localism was emphasized and perpetuated by the militia clause of the federal constitution—the states and not the United States, selected the officers, and afterwards rewarded them by promotion or penalized them by withholding advancement. Indeed, neolithic customs persisted to such a degree that, for the most part, the members of the militia elected their own officers, whereof the purport was that the government had forfeited its most fundamental instrumentality for maintaining discipline. From time to time subsequent to 1791, the federal government attempted to gain possession of the officer-appointing right, but ever with limited success; a direct move in this direction, made in 1812, was flatly resisted by Connecticut. In consequence of such localism, militia discipline was always defective.

Worst of all the militia characteristics was the purchasability of exemption by such as were rich enough to afford the price; in most lands throughout the ages, certainly in the United States, the citizen was offered the option of paying a fine and being excused, in case he did not wish to render personal service. The custom of rating the money of the wealthy as equal to the life and manhood of the poor, always provoked just resentment in the minds of Americans—and indeed of true men everywhere; the Jacksonian democracy here found justification for their attacks upon the system. Shakespeare made Falstaff express the villainy of it: "I have got, in exchange of a hundred and fifty soldiers, three hundred and odd pounds. I press me none but good householders, yeoman's sons, inquire me out contracted bachelors, such as had been asked twice on the banns; and they have bought out their services." When Frederick the Great and the Landgrave of Hesse and Duke Charles of Brunswick "pressed" their poorer, less fortunate militiamen into their regular, professional regiments, and especially when the last two sold the services of their subjects to fight for George III in far-away America, they caused the entire militia system to stink.

Switzerland, since 1874, has possessed the most perfect militia army in the world. With service universally compulsory and no exemption by purchase and no substitution whatever, every able-bodied citizen devoted 60 days to the army at the age of 20, and thereafter each year 11 days until he attained the age of 32, and remained a reservist until the age of 48; the training of the force became a federal function. Undoubtedly the details of this plan were copied from the selective service which, as we shall see, was then in vogue beyond the German frontier; indeed developments to the northward had indicated the need of such efficient training for the Swiss army.

III. The Draft System.

From time to time the exigencies of a military campaign compelled nations to extend their militia systems into something more adequate for prolonged warfare. Xerxes, Scipio in the campaigns against Hannibal, and Gustavus Adolphus—each held his militia under arms for periods so long as to transcend the proper limitations. On at least these three occasions, militia conscription was transformed into draft conscription; the essential difference between the militia and the draft is one of short or long continuance. The British Plantagenets and their royal successors, Frederick the Great, the Landgrave of Hesse and the Duke of Brunswick strained the militia system yet more violently when they actually drafted their militiamen into their regular armies, there to serve for protracted periods.

France enjoyed the distinction of adapting the old Latin word "conscription" (or selection) to military usage, and making it the designation for compulsory service. The new French Republic met its military emergency by organizing national guards (the origin of the name) in 1789, calling out one-year volunteers in 1791, requisitioning national guards as volunteers in 1793, and the same year making a levy-in-mass of all militiamen between the ages of 18 and 25; when the French armies dwindled in spite of the epochal victory at Valmy in 1792, while the numbers of France's enemies continued to increase, the government, in the fall of 1798, faced a critical situation. On September 5 of that year, the Directory, in response to the advocacy of Jean B. Jourdan, enacted the "Conscription law," compelling every man to render 5 years' service between the ages of 20 and 25,—and furnished the world with a new word for its military vocabulary. The Jourdan system was a draft conscription; the nation assumed no responsibility for supplying the needs of industry, and after 1800 definitely permitted citizens to evade military duty by purchasing substitutes. As the levy-in-mass of 1793 had also been an instance of the draft, five years earlier than Jourdan's, it deprived the latter of most of his credit for originality; the law of 1798, besides popularizing a new word, merely inaugurated a more efficient method of enforcement for the existing draft.

France, except during the years 1814-1818, held to the draft system until 1871. The French example was followed successively by Austria, Italy, Russia, Spain, Portugal, Holland and Belgium; the draft was

dopted by Turkey in 1826, and by Japan in 1873. Only in Prussia did different ideas prevail concerning conscription.

President Madison urged Congress to enact draft legislation in 1814, but found himself blocked by the defenders of state rights; the treaty of Ghent presently rendered the proposed law unnecessary. January 29, 1862, the Confederate Provisional Congress authorized a draft of militiamen for a term of 3 years—the French levy-in-mass was repeating itself. In the North, Lincoln introduced a new ramification of the draft system when, on January 31, 1862, he "drafted" the personnel of all railroads into the military service of the government: the plan met with a cordial response everywhere and proved successful.

On April 16, 1862, the Confederate Congress threw the theory of state rights to the winds and enacted the first "Conscription law," which required 3 years of military service for every able-bodied citizen between the ages of 18 and 35; following the French model, provision was made for substitution. The Confederacy had lost Donelson and all Kentucky and Tennessee, and had suffered defeat at Shiloh and on the Peninsula; 100,000 volunteers had completed their terms and were about to return home. Despite violent opposition from the state rights advocates, and more justifiable resistance by those who resented the discrimination against manhood in favor of property, the law worked wonders. The term-expired volunteers remained at the front; in all, 101,992 conscripts entered service and 76,000 other citizens volunteered in anticipation of the draft—22 per cent of the total Southern armies. Victory soon came at the second battle of Bull Run, which opened the way for Lee's invasion of the North; Tennessee was recovered, and Kentucky invaded.

We have seen how the federal law of July 17, 1862, failed to restore compulsion to the militia system, although designed for that purpose; the states followed the course of least resistance (and greatest expense) by procuring volunteer militiamen through the payment of ever-increasing bounties. Of 300,000 secured for the armies under the law, only 87,000 were drafted men; all others volunteered.

After the defeat at Fredericksburg and the costly victory at Murfreesboro, the North was compelled to enact draft legislation similar to that enacted eleven months earlier by the South; the "Draft Act" became a law on March 3, 1863, requiring military service by all able-bodied citizens between the ages of 20 and 45.

Difficulties attended the introduction of the draft from the very outset. The law was adopted as a party measure, the vote being, in the House, 115 to 49, and in the Senate, 35 to 11, with all Democrats in opposition. Owing to lack of experience, the federal government made the mistake of attempting to enforce the act exclusively through federal agencies, and created an elaborate organization of provost marshals, whose duty it was to secure conscripts in disregard of local sentiment—to "go in and get them," as President Wilson later described the process. Owing to the discrimination in favor of the rich, involved in the provision permitting substitution, the draft was sufficiently unpopular at best. Drafting actually began on July 11, 1863, and on the 13th rioting broke out in New York City, followed the next day by similar violence in Boston and elsewhere. During the four days of mob control in New York City, many negroes were murdered, and more than $2,000,000 worth of property was destroyed.

Again did the states turn to bounty payments as a means of securing volunteers in order to fill the draft quotas. While 776,829 men were drafted during 1863 and 1864, only 46,347 of them actually rendered military service, the remainder securing exemption by one means or another. Indirectly, however, through stimulated volunteering and bounties, 1,120,621 men were added to the Union armies—numbers which insured the ultimate victory of the North. The bounty payments attained the staggering total of more than $500,000,000.

IV. The Selective Service Plan.

A third system of conscription had meanwhile come into existence, the Prussian or selective service plan. Prussia, crushed at Jena in 1806, was compelled to agree, in the Treaty of Tilsit, to limit her army to 42,000 men—Napoleon intended to terminate the Prussian peril once for all. The Prussian army, which went down in defeat, had been constituted on the professional basis, in accordance with the plans of Frederick the Great. The nation now imitated France in employing conscription as the means for raising its new army. But how could conscription be made compatible with the rigid numerical limitation? General Scharnhorst solved the problem with his "Krümpersystem," the plan of short service, which had never occurred to Napoleon as a possibility. The first class of 42,000 soldiers were regarded merely as the skeleton of a far larger force, and continued in active service only long enough to receive essential training, and then returned to civilian occupations, retaining, however, the military status of reserves, liable to take the field when recalled by the government; and were replaced in active training and service by a second 42,000; and so on. As one class followed another through the period of active training, they brought the number of soldiers in Prussia up to an unimagined total. When, in 1813, the kingdom resumed war against Napoleon, it was able to put in the field an army of 250,000 men, most of them graduates of the "Krümpersystem."

As it gradually dawned on the Prussian mind that Scharnhorst's system was more than an emergency measure, makeshift in its nature, indeed, that it was the best possible arrangement for organizing a nation's military strength, the Minister of War, von Boyen, induced the King to proclaim a new law on September 3, 1814. Every able-bodied male citizen was enrolled in the active army for 3 years; following 2 years of leave, he served 7 years more in the first-call *Landwehr*, 7 years in the second-call *Landwehr*, and finally in the *Landsturm*. Provision was made for the needs of industry by excusing certain groups of skilled workers, or by detailing men to do such work as part of their military duty; no exemption or substitution whatever was permitted in return for the payment of money—the system was truly democratic.

Prussia stood alone in Europe during the ensuing fifty-four years; no other nation adopted her system

of military service. Gradually increasing in strength, she outstripped all the other German states. In 1860 Bismarck secured the enactment of further legislation —in the face of strenuous opposition—rendering the Boyen law yet more efficient; 63,000 men were called to the colors annually at the age of 20, to remain 3 years in the army, 4 in the reserve and 5 in the *Landsturm;* and substitution continued under the ban. This army defeated Denmark in 1864, Austria in 1866, and France in 1870.

While the Prussian plan was not immediately adopted by any other European nation, it was accepted, under stress of circumstances, by the Confederate States of America, December 28, 1863. On that date the Confederate Congress abolished the privilege of substitution in the existing conscript army, and so crossed the divide which separates the draft from the selective service; everyone between the ages of 17 and 50 was compelled to enter the military organization in some capacity or other. Supplementary legislation on February 17, 1864, arranged the necessary details relative to essential industry and kindred matters. One weakness, however, persisted; the ancient militia custom of permitting the troops to elect their own officers continued to be embodied in Confederate legislation to the very last, and did much to impair the discipline of the armies. The South was facing her final crisis in the beginning of 1864; the adoption of this form of conscription enabled her to maintain resistance throughout the year—and secured for the Confederacy the honor of standing second to Prussia in the entire world as practitioner of the most advanced military system.

Austria adopted the Prussian methods in 1868; France, under the leadership of Thiers, in 1872; Italy in 1873; Russia in 1874; and Japan in 1883. During the World War, in 1916, Great Britain forsook her age-long allegiance to the volunteer system and enacted a selective service law; even then she adhered to ancient forms while adopting modern methods, and decreed that all able-bodied men should —not be compelled to serve, but—be "deemed to have been duly enlisted."

When General Upton's book, *The Military Policy of the United States,* was brought to light from the archives of the War Department in 1903, it produced a reformation in American military affairs comparable to the one occasioned in the life of ancient Judah by the discovery of the book of Deuteronomy. Standing on the teachings of Upton, President Roosevelt and Secretary Root actively propagated the idea that America must "prepare" if she was to be safe; from this effort, there developed, in 1914, the Plattsburg camps. As the World War progressed it aroused widespread interest in military matters, and ultimately produced a strong sentiment in favor of compulsory service. The Mexican border duty of the volunteer national guard in 1916 resulted so inequitably for its participants as to win their approval for conscription methods.

Conditions were critical when the United States entered the World War; the withdrawal of Russia, in process during 1917, left the result very much in doubt, and rendered it essential that new armies come forward to fill the gap. President Wilson was a Virginian by birth, nurtured in the home of state rights and of the earliest American conscription; he was a master of English expression, and an historian able to draw profitable lessons from the mistakes of the past. An unquestioned lover of peace, he commanded popular confidence.

In his "war message" of April 2, 1917, Wilson took occasion to urge the adoption of "universal liability" as the principle upon which the new armies were to be raised. We declared war. On May 18 the "selective service law" was signed and became effective, requiring every able-bodied man between the ages of 21 and 30 to do military duty; no substitution whatever was permitted. Five additional items of legislation were enacted subsequently, in order to strengthen and perfect the system; provision was made for the efficient maintenance of essential industry. The age limits were presently established at 18 and 45.

Wilson knew that a federal system of enforcing such a sacrificial law could not prove effective, and he drew upon the treasure-store of history for wiser methods. In this war the nation was not "to go in and get" its men; now it was assumed that a national act of volunteering had taken place, and selection was to be made from people who had "volunteered in mass." "Let each state offer its young men," he wrote to Congress. The state function was not to officer the regiments, as it had been under the militia system; the state now set up and administered a draft-enforcing machine, in which local officials, selected from the neighborhood, rendered effective amongst their friends and associates this most inquisitorial national law.

The selective service made its first actual impact upon the manhood of America June 5, 1917; on that day all men between the ages of 21 and 30 were called to register themselves. A feeling of solemnity possessed all hearts; a holiday was declared; at the stated hour, church bells rang as though summoning men to worship. While misunderstanding prevented the smooth working of the system in some localities, and while eighteen days (between May 18 and June 5) had been insufficient for bringing into line all the governors, and sheriffs, and mayors of large cities, in the United States, nevertheless there was a marvelously complete response. The total number of registrants for military service ultimately came to be 9,925,751.

Registrants were grouped in five classes, those of Class I being most directly liable for duty; the classification eliminated the necessity for wasting time and effort on physical examinations for men who would not be inducted into the army in any event. The classification also helped solve other problems.

Pressing in importance was the problem of the alien. He could remain at home and take the job vacated by the patriotic citizen, and if he were disturbed in his security, he might stir up complications with foreign nations. It was primarily because of the alien that the classification was introduced; as long as quotas were based upon the total population, they bore unjustly upon industrial communities where aliens were numerous, aliens who increased the quota without increasing the available man-supply. After May 16, 1918, quotas were based upon the numbers

in Class I. Two-thirds of all aliens were placed, at their own request, in deferred classes. About 56,000 aliens enlisted voluntarily in the armies of the allies. Neutral aliens to the number of 5,852, who found their way into the army, were discharged at their own request; 1,600 aliens who had declared their intention of becoming Americans, and who withdrew such declarations in order to escape service, were forever barred from citizenship. Public-spirited alien men, numbering 179,816, voluntarily took out citizenship papers in order to render themselves liable for service—indeed, the number was actually larger, for available statistics cover only a single year of the war. One-third of America's aliens did not ask to be exempted and voluntarily assumed responsibility for military duty.

Various provisions were made for the needs of industry. Workers who supported dependent relatives received deferment into Class IV; members of certain essential vocations were entered in Class V and thus assured against disturbance, except under most urgent circumstances. Workers in necessary industry were placed in Class I, II, III or IV, according to their individual importance in their employment; 7.19 per cent were thus deferred for the sake of agriculture, and 1.96 per cent in the interest of other industry. The needs of the shipbuilders were met by allowing them to take the labor of 146,435 "emergency fleet corporation" workers—men not given deferred classification, but whose induction into military service was temporarily suspended while they built or manned ships; 33 per cent of these were from Class I. The personnel of the railways was given deferment at the judgment of the local boards; the same rule held for miners and others employed by the "fuel administration." Modern America probably received its most violent shock on May 17, 1918, from the "work or fight" order; men, who refused to engage in some form of productive labor, were compelled to enter the service and take the chances of battle. Thus 137,255 were sent into the ranks of industry—and one man, who persistently refused to work, deliberately chose to fight as the lesser of the two evils—and was reported to have made an excellent soldier.

It was in supplying the needs of industry that the selective service proved least thoroughgoing. Instead of enrolling everyone in the army, providing clothing and sustenance equally for all, and compelling all to render service for the soldier's pay and under military discipline, which would obviously have been the equitable method, the government permitted industrial workers to earn inordinately high wages, while it compelled soldiers and sailors to risk life and limb for "a dollar a day." It was obvious that the men who fought (and lost health and good jobs), would some day demand an adjustment of pay, so as to remedy the inequity.

Both the newspapers, and certain significant facts, combined in testifying to the popular support and approval accorded the selective service. In the press there were few dissenting voices, and those were inconspicuous. Only 5,870 arrests were made in the entire United States for failure to register up to December 1, 1917. The men charged with draft desertion numbered 337,649, only 1.41 per cent of the national registration—and it presently developed that a large percentage of these had enlisted in the national guard or the Canadian forces without waiting for the decision of the local boards. Recalcitrant "conscientious objectors" who refused to serve even in civilian capacity amounted to 1,697.

On April 1, 1917, the combined military and naval forces of the United States had numbered 378,619; by November 11, 1918, when the army and navy were at their numerical maximum, they totaled 4,791,172. Of these 1,083,044 had been added to the army by enlistment (a process stimulated by the knowledge of universal liability) and 2,810,296 by induction; 510,290 had been enlisted in the navy, and 8,923 had been inducted. By the rapid and overwhelming mobilization of her forces, America was instrumental in ending the war.

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