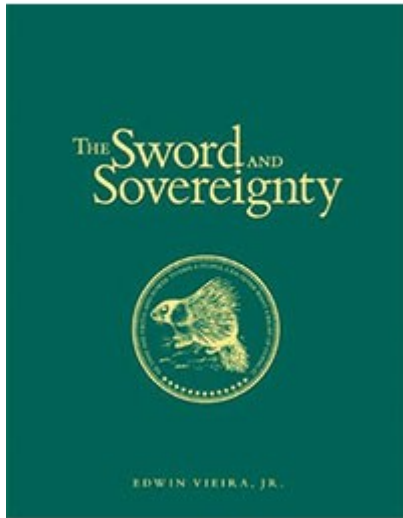




Written by [Joe Wolverton, II, J.D.](#) on January 6, 2014

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On a Militia Mission



The Sword and Sovereignty

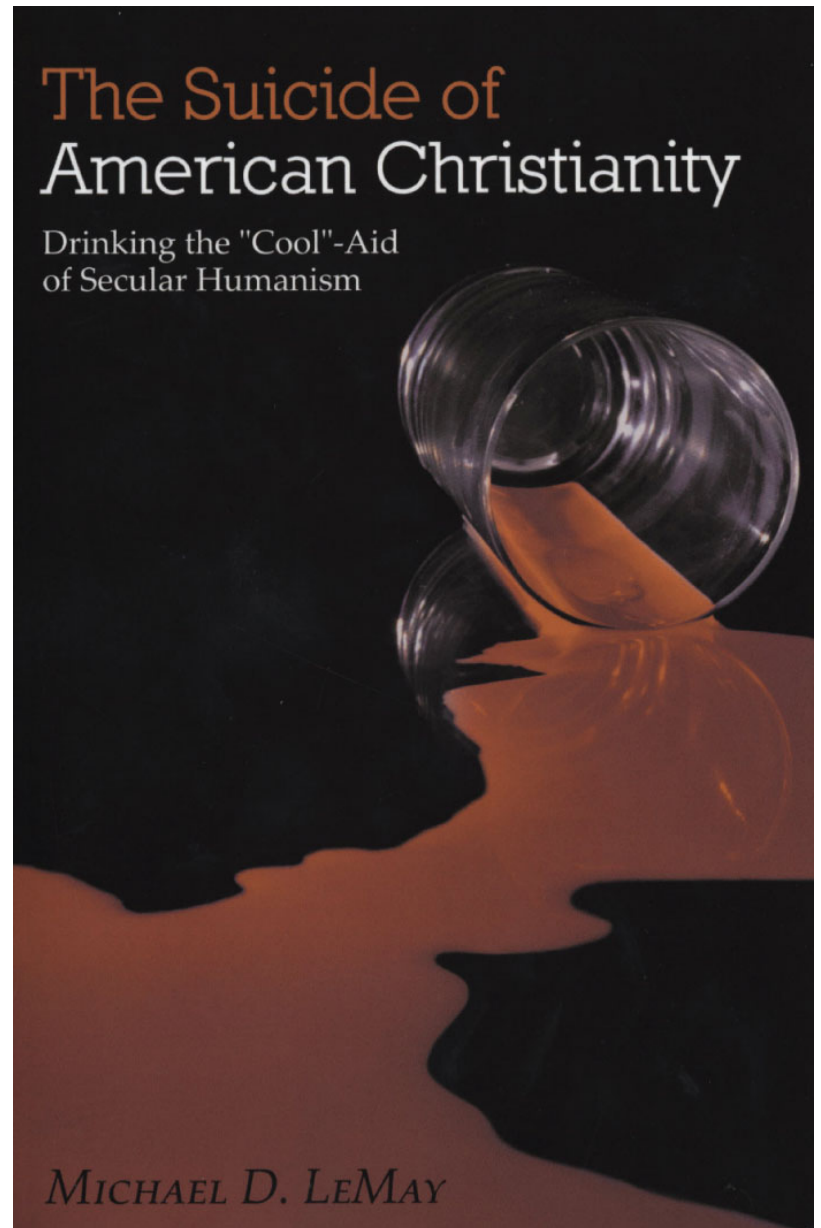
The Sword and Sovereignty, by Edwin Vieira, Jr., House of a Thousand Suns, 2012, 2,304 pages, CD-ROM.

“What degree of madness,” James Madison asks in *The Federalist*, No. 46, “could ever drive the federal government to such an extremity?” The unthinkable excess Madison refers to is the federal government’s accumulation of all power and obliteration of state sovereignty.

In that essay, Madison lists five assumptions upon which his faith in his descendants was built.

The last item in Madison’s list of things that states would never stand for is the disarming of state militias. As Madison saw it, should the unthinkable happen and the federal government overrun the high fences placed by the states around its enumerated powers, every foxhole in a war over sovereignty would be filled with members of the state militias.

The obliteration of the state militia — a militia capable of repelling federal consolidation of power — is the subject of an exhaustive new tome authored by historian, attorney, and contributor to *The New American*, Dr. Edwin Vieira, Jr.



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In his book *The Sword and Sovereignty*, Vieira provides more than 2,000 pages of “information, analysis, opinion, and advocacy in regard to revitalizing ‘the Militia of the several States.’”

And he does so as only a scholar and writer of his training and talent is able.

George Washington understood better than any of his contemporaries that a well-trained but otherwise ad hoc army composed of state militias could prove itself powerful enough to defeat the invading forces of a mighty empire. General Washington recognized the urgent need for a disciplined, organized, and independent state militia. As the continental commander-in-chief, Washington knew very well that training an army of citizen soldiers — many of whom used their muskets for little more than hunting — was crucial to restoring the freedom of America. In fact, it was the need for a more well-regulated force that compelled Washington to hire the Prussian officer, Friedrich von Steuben, to drill the soldiers of the Continental Army. His experience in the War for Independence likely inspired this quote, as well. Washington’s experience taught him:

A free people ought not only to be armed and disciplined, but they should have sufficient arms and ammunition to maintain a status of independence from any who might attempt to abuse them, which would include their own government.

Most states have forgotten the historical role of state militias in the defense of freedom. They have failed to maintain an armed and disciplined militia capable of maintaining (or regaining) independence from tyrants.

The mustering and maintenance of an organized militia, considered by Madison to be the last line of defense against a tyrannical federal government, is often rejected even by many within the liberty movement. Establishment types consider the subject to be an embarrassment and a fascination of the lunatic fringe of the Right. Its advocates, they insist, should be shunned by all right-minded conservatives.

The plan to marginalize militias has been startlingly successful. There remain only 23 state defense forces (not including units of the National Guard and Reserve that are under the command of the president and are effectively just reserves of the federal armed forces). The problem, however, is that even these state-run militias are not militias in the sense that Madison and the Founders were familiar with. They are nothing close to a citizen army that could be counted on to repel federal invasions.

Dr. Vieira includes over 4,000 footnotes in his book, each of which contains substantial references to Supreme Court cases, federal acts, and regulations that have unconstitutionally infringed on the right of the states to maintain armed militias as protected by the Second Amendment.

On page 133, Vieira calls the reader’s attention to the Supreme Court’s decision in the 1990 case of *Perpich v. Department of Defense* 496 U.S. 334 (1990). In this ruling, the Supreme Court effectively federalized even state defense forces. The decision, although explicitly claiming not to be ruling on the issue of the status of the state defense forces, referenced a few federal statutes that seem to support an inference of federalization of these ersatz militias.

The Supreme Court held:

It is true that the state defense forces “may not be called, ordered, or drafted into the armed



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forces.” 32 U.S.C. 109(c). It is nonetheless possible that they are subject to call under 10 U.S.C. 331-333, which distinguish the ‘militia’ from the ‘armed forces,’ and which appear to subject all portions of the ‘militia’ — organized or not — to call if needed for the purposes specified in the Militia Clauses.

Vieira, however, provides convincing evidence that not only is the Congress of the United States not empowered to federalize the state militias, but it is under a positive, constitutional obligation to organize, arm, and discipline these state armed forces. Vieira lists four reasons Congress must exercise this power.

Included among these reasons is the principle that Congress has to exercise its constitutional powers if it will benefit the public good. As Vieira explains:

For all practical purposes, “the public good” always requires that the Militia be properly “organiz[ed], arm[ed], and disciplin[ed].” The Second Amendment declares that “[a] well regulated Militia” — that is, a Militia properly “organiz[ed], arm[ed], and disciplin[ed]” — is “necessary to the security of a free State.” Thus the Amendment defines the primary power of Congress “[t]o provide for organizing, arming, and disciplining, the Militia” — and the secondary power allied with it “[t]o make all Laws which shall be necessary and proper for carrying into Execution th[at] Power[]” — not as discretionary, but as obligatory, because what is “necessary” is “[i]mpossible ... to be dispensed with.”

Vieira also argues that Congress has a duty to make sure that each state has a militia capable of defending the rights of “we, the people.” This obligation extends to “Members of Congress as individuals, and Congress as an institution.” All of whom “must labor under the correlative ‘duty’ to see to it that ‘well regulated Militia’ — properly ‘organiz[ed], arm[ed], and disciplin[ed]’ — shall actually exist at all times in every State.”

Central to understanding the textual source of Congress’ non-delegable duty of providing for the state militias is the meaning of key terms as understood at the time of the drafting of the Bill of Rights.

Vieira explains that “the term ‘[a] well regulated Militia,’ which the Second Amendment declares to be ‘necessary to the security of a free State,’ must have had a most definite meaning known to all among WE THE PEOPLE at the time the Bill of Rights was ratified — and a meaning which THE PEOPLE expected could not change absent an Amendment of the Constitution.”

What, then, is a constitutionally qualifying militia? Vieira provides historical and legal references that clear up any remaining controversy on the subject.

Even before the idea of the Constitution entered anyone’s head, “the Militia of the several States” (or, earlier, the Militia of the several American Colonies, with the partial, peculiar, and in any event not permanent exception of Pennsylvania) were established and maintained pursuant to statutes enacted throughout the 1600s and 1700s. In those Colonies and then all of the independent States, operations aimed at organizing, arming, and disciplining these Militia were conducted pursuant to these statutes. In those Colonies and States, the vast majority of the able-bodied adult free male inhabitants (other than conscientious objectors)



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personally possessed firearms, because those statutes imposed upon them a duty to keep and bear arms. And as a consequence of all this, throughout America in the pre-constitutional era existed “well regulated Militia” — the products of statutes which Americans had believed were so effective in achieving their ends that they had enacted them and reenacted them and reenacted them yet again, in form and substance, decade after decade and generation after generation.

Finally, Vieira points to the Declaration of the Independence as the immediate American expression of the absolute necessity of a free and happy people to maintain a well-regulated militia.

Inasmuch as WE THE PEOPLE have a right to participate in “well regulated Militia” which can “execute the Laws of the Union” in aid of “the security of a free State”; and inasmuch as, to be “well regulated”, the Militia must be organized pursuant to some act with legislative character; and inasmuch as THE PEOPLE today are entitled to execute the selfsame right and power their forebears invoked in the Declaration of Independence, “to alter or to abolish” their “Form of Government” in order to prevent that “Form” from “becom[ing] destructive of [the] ends” for which it was “instituted”; and inasmuch as THE PEOPLE, under the aegis of that right and power, could “throw off” the entire Constitution, eliminating the legislative powers of Congress and of the States as well; therefore, THE PEOPLE can merely “alter” their “Form of Government” by enacting temporary “ordinances” under the authority of which they can organize themselves in “well regulated Militia” for the purpose of preserving the Constitution by “throw[ing] off” the misgovernment of usurpers and tyrants.

Americans determined to defend the Second Amendment will be better armed after reading *The Sword and Sovereignty*. They will be better prepared to parry the arguments of those who would not only take guns from individuals, but who would argue against the arming of state militias capable of resisting the assault of despots.



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