WELCOME TO THE JUNTA: THE EROSION OF CIVILIAN CONTROL OF THE U.S. MILITARY

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Colonel Dunlap argues that civilian control of the United States military is eroding as a result of seemingly disparate phenomena. Colonel Dunlap first examines the American tradition of antimilitarism, which he believes no longer effectively restrains the modern armed forces. He then analyzes the effects of the military's elevated public support, the evolving nature of the leadership elite, and the increasing vulnerability of constitutional safeguards to military influence. In an effort to assess the current predicament, Colonel Dunlap introduces the new paradigm of postmodern militarism that challenges traditional notions of civilian control. Noting the potential long-term implications of excessive military influence, Colonel Dunlap concludes that immediate steps must be taken to revitalize civilian control of the military.

This is not a Latin American junta . . . . This is a country where the civilians do call the shots and the armed forces serve at the pleasure of the public. They may not like it but they should go along.1

Arthur Kropp

Few assumptions about American politics seem more settled than that of civilian control of the military. Professor Allan Millett predicted in a comprehensive study that “civilian control of military policy should be as enduring as it has already proved in two hundred years of na-

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tionhood.” Similarly, in April 1993 the editors of the redoubtable Washington Post assured their readership that the “honorable tradition” of democratic civilian control of the military is not in danger.

This article takes a less optimistic view. Civilian control of America’s still sizeable military is instead eroding, albeit slowly and often inconspicuously. The erosion of civilian control does not imply that a malevolent conspiracy exists within the armed services. Instead, the decline in civilian control is a subtle drift towards an uncertain destination. The decline indirectly results from a combination of seemingly disparate trends, programs, and circumstances. Further, the erosion very often receives the unwitting aid of well-meaning civilian leaders and military personnel with the best of intentions.

The accomplices in the decline of civilian control are the American people themselves. Rather than resisting military intrusion into civilian affairs, Americans turn to the armed forces ever more frequently to provide answers when conventional political methodologies fail. This article contends that the trend threatens the nation’s long-term interests.

This article initially studies the parameters of an American model for civilian control of the military. It then argues that antimilitarism—the cornerstone of the American political tradition of civilian supremacy—has so declined that it no longer serves as an impetus for civilian control. The historical overview also demonstrates that the Vietnam War, perhaps the apex of antimilitarism in modern America, paradoxically served as the catalyst for the military’s dramatic rise in status.

The military’s elevated standing, combined with other circumstances of the contemporary political landscape, invites an unprecedented insinuation of the military into American life. The evolving nature of the leadership elite and the increasing vulnerability of key constitutional safeguards against military influence facilitate the insinuation. This article introduces a new paradigm—postmodern militarism—that presents a unique challenge to the concept of civilian control. Finally, this article offers suggestions to reinvigorate civilian control while accommodating America’s security needs in the last decade of the twentieth century.


5. The Tampa Tribune reported: “Since reaching a post-Vietnam peak of 2.17 million in 1987, the number of people in uniform has dropped 21 percent to 1.71 million. That figure is projected to bottom out at 1.4 million in 1999.” Steve Huettel, In Retreat, Tampa Trib., Nov. 28, 1993, at 1, 14.
I. WHAT IS CIVILIAN CONTROL?

In his treatise, *The Soldier and the State,* Professor Samuel P. Huntington complained that despite many references to civilian control of the military in historical literature, a satisfactory definition of the term had yet to emerge. In an attempt to remedy the deficiency, Huntington defined “civilian control” by describing the mode of achieving it. The accepted formula in Western nations like the United States was, according to Huntington, “subjective” civilian control. Subjective civilian control involved “maximizing the power of civilian groups in relation to the military” with particular civilian institutions, constitutional forms, and social class distinctions. Unfortunately, due to its focus on process, Huntington’s approach did not readily serve as an analytical tool.

Professors Kenneth W. Kemp and Charles Hudlin took a more orthodox approach to defining civilian control. They described the principle as being composed of two related parts: “First, the ends of government policy are to be set by civilians; the military is limited to decisions about means . . . . Second, it is for the civilian leadership to decide where the line between ends and means (and hence between civilian and military responsibility) is to be drawn.” However, the definition fails to acknowledge the dangers that arise when elected officials freely set policy that allows the uniformed services to encroach upon areas that ought to be administered by non-military agencies. The definition also inadequately addresses the situation in which “the line between ends and means” is drawn to assign to the military matters that democracies should not allot to their most powerful and authoritarian arm.

Consequently, it is necessary to add a third interrelated element to Kemp and Hudlin’s definition. In no event should the military, to paraphrase President Eisenhower, be allowed to acquire unwarranted influence, whether sought or unsought, in civilian affairs. Defined as such, the

7. HUNTINGTON, supra note 6, at 80.
8. Id.
9. Id.
10. Id.
12. Id. at 8-9.
13. In his 1961 Farewell Address, President Eisenhower admonished:

   In the councils of government we must guard against the acquisition of unwarranted influence, whether sought or unsought, by the military-industrial complex. The potential for the disastrous rise of misplaced power exists and will persist.

   We must never let the weight of this combination endanger our liberties or democratic processes. We should take nothing for granted. Only an alert and knowledgeable citizenry can compel the proper meshing of the huge industrial and military machinery of defense with our peaceful methods and goals so that security and liberty may prosper together.

ENCYCLOPEDIA BRITANNICA, INC., 18 ANNALS OF AMERICA 3 (1976).
principle of civilian control may be offended when the influence of the armed forces extends into areas that endanger liberties or the democratic process, even when that expansion is sanctioned by the civilian leadership. The revised definition addresses what Millett identified as the purpose of civilian control: "to ensure that defense policy and the agencies of defense policy are subordinated to other national traditions, values, customs, governmental policies, and economic and social institutions." The additional factor exalts democratic principles over the authoritarian values that are inherent in the military.

II. The Tradition of American Antimilitarism

Observers of American society frequently cite its traditional antimilitarism as the main pillar supporting civilian control of the armed forces. Americans, the argument goes, are so wary of the military that any suggestion of unseemly involvement in civilian affairs would be identified quickly and rooted out. Today, however, that argument is obsolete because the antimilitarism that would stimulate such vigilance no longer

13. MILLETT, supra note 2, at 2. Millett also listed certain prerequisites that he believed are needed for civilian control to remain predominant in the policy process:
   a. the armed forces do not dominate government or impose their unique (however functional) values upon civilian institutions and organizations.
   b. the armed forces have no independent access to resources of military [utility].
   c. the armed forces' policies on retirement, pay, education, training, treatment, promotion, and use of personnel are not inconsistent with basic civil liberties and individual rights—with some compromises for military discipline and combat effectiveness.
   d. the use of military force is not determined by the values of the military institution itself, either for or against military action, either in the conduct of foreign or domestic policies. Conversely, civilian decisions on the use of force should not disregard the relationship of policy ends and military institutional characteristics in terms of personnel, doctrine, training, equipment, and morale.

14. For a discussion of the instinctively authoritarian values of the military, see infra notes 353-60 and accompanying text.

15. Military analyst Harry Summers observed: "Americans have a long and proud history of antimilitarism, and civilian control of the military is one of the foundations of American democracy." Harry Summers, History, Clinton, and LBJ, WASH. TIMES, Oct. 21, 1993, at 16. Another commentator, exploring the apolitical tradition of the United States military, attributed civilian control of the military to an antimilitaristic view of a standing army:

   There is no express provision in the Constitution for the political neutrality of the military. The principle is best viewed as a corollary for another constitutional principle, that of civilian control over the military. The mandate of civilian control of the military pervades our constitutional structure and stems from the deep distrust on the part of the Founding Fathers of a standing army. Such a distrust was based on European and American experiences of great power wielded by a permanent armed force.


exists.

To understand the tradition of antimilitarism, it is necessary to examine its history. Antimilitarism arose in colonial America for two primary reasons: first, the belief that professional soldiers were the agents of oppression and, second, the loathsome reputation of the soldiers themselves.17

A. The Soldier as an Instrument of Tyranny

Colonial Americans inherited the European view that permanent military forces were costly instruments of tyranny.18 Their experience with the British regulars who suppressed growing American dissatisfaction with English rule corroborated that conviction.19 Answerable only to the King and his designated governors, the troops were unresponsive to the colonists’ assemblies.20 Incidents like the Boston Massacre only aggravated American hostility toward professional soldiers.21

Thus, civilian control of professional militaries became a critical issue in colonial America. In writing the Declaration of Independence, the colonists charged King George III with keeping standing armies among them without the consent of their legislatures, and having “affected to render the Military independent of and superior to the Civil Power.”22 When Americans later debated which interests the Constitution would address, the danger posed by a permanent military establishment was a preeminent concern. The New York Journal of 1788 published a typical view of standing armies:

The liberties of a people are in danger from a large standing army, not only because the rulers may employ them for the purposes of supporting themselves in any usurpations of power, which they may see proper to exercise, but there is great hazard, that an army will subvert the forms of the government, under whose authority they are raised, and establish one, according to the pleasure of their leaders.23

The caution of the early Americans is understandable. In The Man on Horseback,24 the classic study of military subversion of civilian rule,

19. Id. at 23-26.
20. MILLET, supra note 2, at 4-6.
22. THE DECLARATION OF INDEPENDENCE para. 1 (U.S. 1776).
Samuel Finer argued that given the military's "marked superiority in organization, [its] highly emotionalized symbolic status, and [its] monopoly of arms . . . [t]he wonder . . . is not why [it] rebels against its civilian masters, but why it ever obeys them." 25 Nevertheless, despite the fears of early Americans, serious military challenges to civilian authority are rare in United States history.

The "Newburgh Conspiracy" is one of the exceptions. Occurring at the close of the Revolutionary War, it constituted, according to historian Richard H. Kohn, the "closest an American army has ever come to revolt or coup d'état." 26 Originating in the discontent of unpaid troops encamped near Newburgh, New York, and fostered by nationalists who saw the revolt as an opportunity to increase the taxing ability (and hence the power) of the central government, the nascent conspiracy collapsed after General George Washington delivered a speech to condemn it. 27

The most renowned recent challenge to civilian authority came from one of America's most famous military leaders, General Douglas MacArthur. 28 Frustrated with President Harry Truman's reluctance to allow American forces to attack air and naval bases in China during the Korean War, MacArthur attempted to circumvent the President's policies. Truman, who feared that attacks against the Chinese mainland could lead to a wider conflict—one possibly including a nuclear confrontation with the Soviet Union—relieved MacArthur of his command after the general openly criticized the President. 29 MacArthur returned to the United States to a hero's welcome, addressed a joint session of Congress, made an abortive bid for the presidency, and then "faded away." 30 Truman biographer David McCullough declared that the Truman-MacArthur controversy "challenged [civilian control] as never before in the nation's history." 31 Significantly, however, as noted by Professor D. Clayton James, there is no evidence that MacArthur ever "harbored dreams of gaining political power by force or other unconstitutional means." 32

25. Id. at 5.
26. KOHN, supra note 17, at 17.
27. Id. at 32. For the text of General Washington's speech, see WILLIAM SAFIRE, LEND ME YOUR EARS: GREAT SPEECHES IN HISTORY 91-94 (1993); see also Richard H. Kohn, American Generals of the Revolution: Subordination and Restraint, in RECONSIDERATION OF THE REVOLUTIONARY WAR: SELECTED ESSAYS 104-23 (Don Higgenbotham ed., 1978) [hereinafter Kohn, Introduction]. Kohn credited the first group of American generals, not Washington alone, for establishing the legacy of subordination and restraint of the military. Id. at 123.
30. The reference to "fade away" is taken from the conclusion of MacArthur's April 19, 1951 speech to a joint session of Congress wherein he said, referring to himself, that "old soldiers never die; they just fade away." See SAFIRE, supra note 27, at 379.
32. See D. Clayton James, Harry S. Truman, in COMMANDERS IN CHIEF 107, 120 (Jo-
Few other events in American history challenged civilian control of the military. Most can be described as either long-ago or nearly forgotten, grossly speculative, or obviously preposterous. In any event, the military never has made an overt attempt to seize power.

B. The Soldier as a Societal Outcast

The second source of traditional American antimilitarism is rooted in a revulsion for those who served as career soldiers in the late eighteenth century. At that time, soldiering—especially in the enlisted ranks—was an appalling experience. To steel soldiers for the tightly packed formations that marched terrifyingly close to their opponents to achieve effective musket fire, officers resorted to relentless drill and brutal discipline.

Few sought such ghastly employment. The Comte de Guibert wrote in 1772 that the profession of soldiering had been abandoned “to the most vile and miserable class of citizen.” Similarly, General Sir John Hackett observed that during the eighteenth century “[t]he common soldier [held] . . . a position in society which was almost that of an outcast.” Early Americans brought this disparaging view of soldiering with...
them to the New World. Soldiers deployed to America in service of the British King, and the Continental Army whose composition mirrored its European counterpart, confirmed the unfavorable perceptions of professional militaries.

III. ANTIMILITARISM AND THE AMERICAN CONCEPT OF NATIONAL DEFENSE

Antimilitarism spurred much of the thinking about the organization of the new nation's defenses. In fact, the Supreme Court noted in *Perpich v. Department of Defense* that the Constitutional Convention was infused with a "widespread fear that a national standing Army posed an intolerable threat to individual liberty and the sovereignty of the separate states." Virtually forsaking involvement in overseas conflicts, the Founding Fathers considered foreign invasion and attacks by native Americans along the frontier as the principal threats to American security. A modest navy and a small standing army backed by a citizen militia was deemed sufficient to counter these threats. While the final version of the Constitution accommodated both a standing army and a militia, the document reflected a prevailing view favoring dependence on the militia.

was no heroic view of war as an ennobling experience. No especial esteem attached to a warrior class. . . No one enlisted unless he was nearly at the end of his tether.

Id.

41. See Kohn, *supra* note 27, at 107. Kohn related: "[B]eginning in 1777 the Continental army began to mirror its European relative in social composition: The soldiery was a mixed lot of convicted Tories, criminals, British deserters, bounty jumpers, draftees, and drafted substitutes—an army overwhelmingly of the young, of the poor, of rootless laborers and tradesmen." Id.


44. Id. at 340 n.5.


46. See Fields & Hardy, *supra* note 18, at 32.

47. George Washington in his Farewell Address of September 19, 1796, counseled: "[O]vergrown military establishments . . . under any form of government are inauspicious to liberty and . . . are to be regarded as particularly hostile to republican liberty." 1 *Encyclopedia Britannica, Inc.*, *supra* note 12, at 609.


50. U.S. CONST. art. I, § 8, cls. 15, 16.

51. See generally Richard H. Kohn, *Introduction, in The United States Military under the Constitution of the United States, 1789-1989*, at 5 (Richard M. Kohn ed., 1991) (commenting that the militia system was inserted in the Constitution as a primary defense institution due to violent prejudice against standing armies); Fields & Hardy, *supra* note 18, at 33-38 (discussing debate over type of military establishment to be provided in
Until relatively recently the system worked as conceived by the Framers. Enormous military forces raised for the Civil War and two World Wars largely demobilized at the end of hostilities. After World War II, however, advances in technology and the development of extensive transnational economic and political ties obliged the United States to maintain a massive, permanent peacetime military establishment. Although antimilitarism yielded to Cold War realities by necessity, Americans did not completely abandon their traditional vigilance. Alerted by President Eisenhower's warning about the growth of the military-industrial complex, skepticism of the military establishment persisted well into the Cold War. The skepticism deepened during the Cold War's most famous prodigy: the Vietnam War.

A. The Impact of the Vietnam War

It is difficult to overstate the impact of Vietnam on the United States military and the issue of civilian control. Among other things, the conflict inspired a resurgence of antimilitarism in American society. Equally important, the war tremendously affected the attitudes and decisions of today's military leaders. For many Vietnam veterans the war was the watershed event of their personal and professional lives and continues to shape their views. Above all else, the veterans molded by Vietnam are determined to avoid repeating the mistakes of the war.

Characterizing the United States' involvement in Vietnam, Lt. Gen. Phillip B. Davidson observed, "Our principle vulnerability was the weakness inherent in democracy itself—the incapacity to sustain a long, unfocused, inconclusive, and bloody war far from home, for unidentified or ill-defined national objectives." Most analysts agree that a meddlesome

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52. See Heppenheimer, supra note 48.
53. Former Chairman of the Joint Chiefs of Staff Admiral William J. Crowe noted: It was not until after World War Two that the change began, chiefly as a consequence of America's global conflict with the Soviet Union. Containing the Soviets required large standing forces and began consuming an eye-opening share of the federal budget . . . A massive infrastructure of military bases was established throughout the country, deeply affecting local economies and politics.
54. For the text of President Eisenhower's admonishment, see supra note 12.
55. In his treatise, Millett argued that "[i]f anything, the proliferating agents of civilian control has more than kept pace with the size of the standing forces, the hugeness of the military budget, and the importance of national security affairs." Millett, supra note 2, at 38. For an early 1960's critique of the military establishment, see John M. Swomley, Jr., The Military Establishment (1964).
57. See id.
executive branch,\textsuperscript{59} paired with a politically paralyzed Congress,\textsuperscript{60} also hindered the war effort. Moreover, many in uniform believe that a hostile, almost treasonous press fought them at every turn.\textsuperscript{61} Most troubling for the veterans of Vietnam, it seemed that even the American people had abandoned them. With soldiers facing open hostility in the streets, American antimilitarism reached its modern zenith.\textsuperscript{62}

Not all of the military’s problems were externally generated. Outmoded strategy,\textsuperscript{63} a disintegration of discipline,\textsuperscript{64} and the rise of rampant careerism\textsuperscript{65} crippled effectiveness. In the years following Vietnam, virtually every aspect of the war was dissected, analyzed, and studied by the military.\textsuperscript{66} Studies included an examination of the role of civilian institutions, often the very ones expected to exercise civilian control of the armed forces.\textsuperscript{67}

Despite the deluge of analysis performed in the wake of Vietnam,

\textsuperscript{59} Former Senator Barry Goldwater offered a harsh assessment of President Lyndon Johnson’s wartime leadership: “[He] didn’t know his rear end from a hot rock about running a war.” Dotson Rader, “This Country Had to Make a Decided Change,” \textit{Parade Mag.}, Nov. 28, 1993, at 4, 5. Moreover, the civilian leadership did not limit itself to its proper role as the policymaker. Instead, it repeatedly dabbled in purely military matters despite no apparent qualifications to do so. For example, Lieutenant General Davidson noted that during the Rolling Thunder air campaign against North Vietnam:

Johnson, McNamara, and their civilian underlings not only established the philosophy of the program, they decided what targets should be hit, the number of planes to be used, and on occasion, even the type and weight of bombs to be employed. To see Johnson and McNamara huddled over maps and aerial photographs planning air strikes would have been ludicrous, had the consequences not been so serious. As a result of the restrictions and the interference of the “self-appointed air marshals” (Westmoreland’s words), ROLLING THUNDER’s initial efforts were futile.


\textsuperscript{61} For a discussion of the press’ coverage of military action, see infra part VI.D.


\textsuperscript{64} See Gueunter Levy, America in Vietnam 153-61 (1978).


\textsuperscript{67} See Skelton, supra note 66, at 7-10.
only the debacle of Desert One and the massive budgetary increases of the Reagan years offered the military both the impetus and the resources to effect genuine change. Congress also attempted to revitalize the military by enacting the multifaceted Goldwater-Nichols Department of Defense Reorganization Act of 1986 that became the foundation of the congressional effort. The changes stimulated a dazzling transformation.

68. See Paul B. Ryan, The Iranian Rescue Mission 8-9 (1985). "Desert One" refers to the abortive attempt to rescue American hostages who were seized by Iranian militants on November 4, 1979. The rescue attempt ended in catastrophe on April 24, 1980, when U.S. aircraft collided at a staging area in Iran designated Desert One. Id. at 1. Eight American military personnel died in the effort. Id. The hostages were eventually released on January 20, 1981. Id. at 105. See generally Charlie A. Beckwith & Donald Knox, Delta Force (1983) (providing a first-hand account of the rescue mission); Daniel P. Bolger, Americans at War 99-168 (1988).

69. Jacques S. Gansler described the Reagan build-up:
   At the end of the 1970s, the United States was spending approximately $150 billion a year on its defense establishment. The public felt that this did not provide a "strong America," and gave Ronald Reagan a mandate for significant increases in the defense budget. Within six years the defense budget had almost doubled and an extra trillion dollars had been spent on increasing America’s military power.


SEC. 3 POLICY

In enacting this Act, it is the intent of Congress, consistent with the congressional declaration of policy in section 2 of the National Security Act of 1947 (50 U.S.C. 401):

(1) to reorganize the Department of Defense and strengthen civilian authority in the Department;
(2) to improve the military advice provided to the President, the National Security Council, and the Secretary of Defense;
(3) to place clear responsibility on the commanders of the unified and specified combatant commands for the accomplishment of missions assigned to those commands;
(4) to ensure that the authority of the commanders of the unified and specified combatant commands is fully commensurate with the responsibility of those commanders for the accomplishment of missions assigned to their commands;
(5) to increase attention to the formulation of strategy and to contingency planning;
(6) to provide for more efficient use of defense resources;
(7) to improve joint officer management policies; and
(8) otherwise to enhance the effectiveness of military operations and improve the management and administration of the Department of Defense.

Goldwater-Nichols Department of Defense Reorganization Act, § 3, 100 Stat. at 993-94 (emphasis added).
In 1988 *U.S. News & World Report* related: "In contrast to the dispirited, drug-ravaged, do-your-own-thing armed services of the ‘70s and early ‘80s, the U.S. military has been transformed into a fighting force of gun-ho attitude, spit-shined discipline, and ten-hut morale."

Positive results on the battlefields soon followed. Qualified successes in Grenada, Libya, and Panama set the stage for the spectacular Gulf War triumph. Televised images of stupefied Iraqi soldiers grovelling before their American captors enthralled America. Such pictures ended more than two decades of what Rick Atkinson described as "self-reproach, mistrust, and an abiding doubt in U.S. military prowess." Atkinson declared that following the Gulf War, the "competency and efficacy of the American military was now beyond question." Perhaps even more important, the military's superlative performance "reaffirmed the bond between those in uniform and the larger republic." Antimilitarism all but disappeared.

B. Today's Military

The United States military of the 1990's bears little resemblance to the forces that spawned antimilitarism in colonial America. The virtual absence of any record of overt military intervention into civil affairs has cast the Founding Fathers' fear of a military takeover as a mere oddity of an earlier era. The American political psyche no longer entertains any conscious apprehension of the military as a tool of political oppression. Thus, a principal basis for the traditional antimilitarism that historically assured civilian control of the military is extinct.

The current American complacency about military control is likely attributable to an inadequate understanding of the many forms that mili-

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73. See Bolger, supra note 68, at 261-358.
74. See generally Crowe & Chanoff, *supra* note 53, at 129-45 (characterizing the attack on Libya as eminently successful).
77. Id.
78. Id. at 495.
80. See Kohn, *supra* note 27, at 105 (commenting on dissipation of Americans' fear of military takeover).
81. One example of the American tradition is related by columnist Art Buchwald: I was at the White House that night to hear [President Nixon's] resignation speech, and what impressed me more than anything else was that while one leader of our country was resigning and another was taking his place, I did not see one tank or one helmeted soldier in the street and the only uniforms I saw that night were two motorcycle policemen who were directing traffic on Pennsylvania Avenue.

Military subversion of civilian control can take. Popular notions of military intervention tend to focus on overt military takeovers. Overt intervention is, however, not the only threat to civilian authority in the United States—or even the principal one. For example, Finer contended that military intervention in politics in developed countries seldom involves the actual overthrow of a government. Typically, more subtle and manipulative threats exist, with a level of intervention ranging from influence to blackmail.

As Americans no longer view the armed forces as an instrument of tyranny, they no longer abhor the persona of the soldiers. The reason is simple: Instead of drawing from the dregs of society, today's military picks from among the nation's finest. With ninety-four percent of military recruits possessing high school diplomas, enlisted personnel are better educated than the general populace. Virtually all officers have graduated from college, and most senior officers hold post-graduate degrees. Additionally, studies show that top military officers are frequently more intelligent than their civilian counterparts. Demonstrating the military's organizational excellence and societal respect, military leadership techniques are now the envy of business and government. Moreover, unlike

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82. Finer explained:
   At first glance the characteristic "mode" of military intervention is the violent overturn of a government and the characteristic "level" is the establishment of overt military rule. Yet often, the military works on governments from behind the scenes; and even when they do establish a military dictatorship, they usually fabricate some quasi-civilian facade of government behind which they retire as fast as possible. Overt military rule is relatively rare, and, apparently, short-lived.

FINER, supra note 24, at 4.

83. Id. at 77-80. Finer also enumerated several modes of intervention:
   (1) The normal constitutional channels.
   (2) Collusion and/or competition with the civilian authorities.
   (3) The intimidation of the civilian authorities.
   (4) Threats of non-cooperation with, or violence towards, the civilian authorities.
   (5) Failure to defend the civilian authorities from violence.
   (6) The exercise of violence against the civilian authorities.

Id. at 127.

84. Until recently, the rate was even higher. See Military Recruits Decline in Quality, WASH. TIMES, May 26, 1993, at 5.

85. For example, one survey revealed that over 88% of brigadier generals had an advanced degree, compared with 19% of top civilian business leaders. See David Gergen, America's New Heroes, U.S. NEWS & WORLD REP., Feb. 11, 1991, at 76.

86. A survey of 163 new Army brigadier generals revealed that their IQs were in the 92nd percentile of the population. See Bruce W. Nelan, Revolution in Defense, TIME, Mar. 18, 1991, at 25.

87. Technological changes in the latter half of the twentieth century caused political scientist Harold D. Lasswell to project "that 'specialists in violence'—that is, military elites—would add management to their repertoire of skills and would become a major force in ruling elites." SEGAL, supra note 53, at 4.

88. For instance, in the best seller, A Passion for Excellence, management gurus Tom Peters and Nancy Austin invited industry to emulate the innovative techniques of Air Force leaders. See generally TOM PETERS & NANCY AUSTIN, A PASSION FOR EXCELLENCE (1985). Similarly, Vice President Al Gore, in his capacity as head of the National Performance Re-
the rest of America, the highly disciplined post-Vietnam military is relatively drug- and crime-free.\textsuperscript{98} It earns kudos as an enlightened avenue for social advancement by African-Americans and other minorities.\textsuperscript{99} The plethora of initiatives resulting from the Tailhook scandal\textsuperscript{100} also suggests that the military may emerge as the model for the proper treatment of women in the workplace.

C. The Military's Growing Popularity

The American public no longer views the armed forces with the fear and loathing that produced the antimilitarism that provided the intellectual infrastructure for civilian control of the military in this country. In 1993 the steadily climbing approval rating for the military reached a twenty-seven-year high.\textsuperscript{102} A Harris poll spokesman reported that “[n]o other major institution, profession, or interest group comes close [to the military].”\textsuperscript{103} The remarkable resiliency of the military’s popularity also is notable; it remains evidently unfazed by the women-in-combat debate,\textsuperscript{104} the Tailhook scandal,\textsuperscript{105} and the gays-in-the-military controversy.\textsuperscript{106}

IV. The New Political Environment

A. Do Americans Believe Democracy Is Failing?

In a free society the most important poll of public opinion is taken on election day. Casting a vote is the ultimate expression of democracy and fundamentally indicates the public’s commitment to the democratic system. The strength of the commitment carries striking implications for view, insisted that “military commands can teach civilian government much about efficiency, morale and clear objectives.” Michael Ruby, \textit{Rube Goldberg, R.I.P.}, \textit{U.S. News \& World Rep.}, Aug. 16, 1993, at 64 (quoting Vice-President Al Gore); see also \textit{Al Gore: What Business Can Teach the Feds}, \textit{Bus. Wk.}, Sept. 13, 1993, at 102.

\textsuperscript{89} See, e.g., Tracy Gwinn, \textit{Parachutists Want to Share Highs with Kids}, \textit{Plain Dealer} (Cleveland), Sept. 12, 1993, at IB.


\textsuperscript{91} Tailhook refers to the alleged sexual abuse of women by Navy and Marine Corps aviators at the Tailhook Association convention in Las Vegas, Nevada, in September 1991. The Tailhook Association draws its name from the arresting device used to stop planes landing on aircraft carriers. For a discussion of the allegations and their repercussions, see generally J. Richard Chema, \textit{Arresting “Tailhook”: The Prosecution of Sexual Harassment in the Military}, 140 Mil. L. Rev. 1 (1993).

\textsuperscript{92} \textit{Public Confident About Military}, \textit{Soldiers}, June 1993, at 5 (reporting results from Harris poll).


\textsuperscript{94} See Bruce W. Nelan, \textit{Annie Get Your Gun}, \textit{Time}, May 10, 1993, at 38.

\textsuperscript{95} For a brief discussion of the Tailhook scandal, see supra note 91.

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civilian control of the military. In 1964 one analyst maintained that a coup d'état in the United States is “too fantastic to contemplate” because, among other things, “the bulk of the people are strongly attached to the prevailing political system . . . . The environment most hospitable to coups d'état is one in which political apathy prevails as the dominant style.”

American commitment to the democratic political system is weakening, insofar as voter participation accurately measures the commitment. For the past three decades voter participation generally has declined, though the trend was interrupted temporarily in 1992 by the interest generated by billionaire Ross Perot’s bid for the presidency. The weakening attachment to the political system evoked a warning from Business Week: “When people become divorced from the political system, demagogues thrive, extremism flourishes.”

Whatever threat to civilian control political apathy might pose, it is dwarfed by the potential peril of outright hostility to elected government. Increasing animosity to democratic government is based on a growing consensus that elected politicians are failing to alleviate the economic and physical insecurity of vast numbers of Americans. Variously described as the “Age of Insecurity” and the “Age of Anxiety,” Americans live in an era permeated by a dread of unemployment. They believe, economist Robert J. Samuelson has argued, that “something fundamental has ‘gone wrong’ with the economy.” Senator Bill Bradley aptly summed up the crisis: “There are millions of Americans who find economic security an unattainable dream.”

Superimposed over the deep-seated economic worries is an even greater fear of crime. The explosion of random violence terrifies Americans. “Crime,” according to Senate Judiciary Chairman Joseph Biden, “is the single most pressing issue on the minds of the American peo-


98. Voter turnout hit a 64-year low in 1988 (50.17%), capping a downward trend that began in 1960. See THE UNIVERSAL ALMANAC 1992, at 89 (1991). With less than 27% of the eligible electorate actually voting for the current Commander-in-Chief (43% of a 54% turnout), the 1992 election failed to represent a renaissance of democratic majoritarianism.


101. Samuelson, supra note 100, at 18. Professor Samuelson believed that the pessimism is misplaced in that economic fluctuations are part of economic growth and should be considered as nothing more than passing aberrations.

102. Swoboda, supra note 102, at 18 (quoting Senator Bill Bradley (D-NJ)).

Poll after poll has demonstrated that frightened citizens will support expensive, sometimes draconian responses to lawlessness. For example, a 1990 poll revealed a majority of Americans who believed that the Bill of Rights is a luxury no longer affordable. With sixty-one percent of Americans convinced that crime in their community is increasing, it is no surprise that they turn their homes and public places into fortresses. Sacrificed is the social interaction which underpins democracy.

In a complete reversal of the colonial era, Americans find the democratically elected political leaders, not the "standing army," corrupt and repugnant. A September 1993 Business Week editorial concluded:

It's clear most Americans don't trust their government much. They don't trust it to deliver services, solve social problems, or boost their fortunes efficiently. Just the opposite. Government appears to work against them as much as for them these days. Beneath the surface of the tax revolt and the movement for term limits is the public's sense of abandonment, abuse, and betrayal by government.

The American public's approval of the performance of their elected leaders has reached historic lows. The trend has serious implications. U.S. News & World Report echoed the warnings of others: "Government that does not deliver value inevitably breaks the social compact with the people, and that can be dangerous." The one branch of government that does deliver, however, is the "can do" military. One commentator has observed that "[a]t a time when a growing number of Americans are disillusioned with government . . . the military stands in singular counterpoint to that disillusionment."

106. Senate Approves $22-billion Crime Bill, TAMPA TIMES, Nov. 20, 1993, at 1A (quoting Senator Joseph Biden (D-DE)).
110. TIME reported: "Fear [of crime] has led to a boom in the security industry and the transformation of homes and public places into fortresses." Id.
111. See generally Robert Gerloff, Public Space Minus the Public, UTNE READER, Jan./Feb. 1993, at 46.
112. Deflating Bureaucratic Bloat, supra note 99.
113. In a 1993 Gallup poll only 8% of Americans expressed a "great deal" of confidence in Congress. In the same poll, only 19% expressed that level of confidence in the President, but 32% expressed such confidence in the military. See David W. Moore & Frank Newport, Confidence in Institutions: Military Still Tops The List, GALLUP POLL MONTHLY, Apr. 1993, at 22, 23.
114. Ruby, supra note 88, at 64; see also Robert J. Bresler, Politics of Dissatisfaction, USA TODAY MAG., Nov. 1993, at 5.
B. The Military as Deliverer

The transfer of public confidence from the elected leaders to the military challenges civilian control of the armed forces. Specifically, Finer argued that, as confidence in politicians and the civil process weakens, an intervening military is deemed a “deliverer.”\footnote{Finer, supra note 24, at 73.} That appears to be the case today. James Fallows captured the sentiment of many Americans when, after contrasting the military’s efficiency with the failures of civilian government, he declared, “I am beginning to think that the only way the national government can do anything worthwhile is to invent a security threat and turn the job over to the military.”\footnote{James Fallows, Military Efficiency, ATLANTIC MONTHLY, Aug. 1991, at 18. He explained his reasoning: According to our economic and political theories, most agencies of the government have no special standing to speak about the general national welfare. Each represents a certain constituency; the interest groups fight it out. The military, strangely, is the one government institution that has been assigned legitimacy to act on its notion of the collective good. “National defense” can make us do things—train engineers, build highways—that long-term good of the nation or common sense cannot. Id.}

Granting the military the responsibility for the general national welfare under the aegis of “national security” is a major expansion of its customary function. National security ordinarily includes “only those activities of the Government that are directly concerned with the protection of the Nation from internal subversion or foreign aggression, and not those which contribute to the strength of the Nation only through their impact on the general welfare.”\footnote{Cole v. Young, 351 U.S. 536, 544 (1955).} In that context, the military’s primary security responsibility is “to fight or be ready to fight wars should the occasion arise.”\footnote{Toth v. Quarles, 350 U.S. 11, 17 (1955).}

Even with the historical separation of military functions from domestic issues, political leaders have long recognized the motivating effect of martial rhetoric.\footnote{For example, President Johnson had his “War on Poverty.” Guy Gugliotta, War on Poverty, WASH. POST, Dec. 26, 1993, at A1. President Carter termed his drive for energy self-sufficiency “the moral equivalent of war,” Tilak Doshi, Twenty Years After the First Oil Shock, BUS. TIMES, Oct. 30, 1993, at 1, and President Reagan declared a “War on Drugs.” John Dillin, U.S. Drug Fight: The Focus Shifts to Home Front, CHRISTIAN SCI. MONITOR, May 3, 1993, at 3. President Bush era advocates of educational reform equated the desperate status to which schools have been allowed to decline as “an act of war” Henrik Bering-Jensen, Rebel for Cause of School Reform, WASH. TIMES, July 11, 1991, at B1.} Despite the bellicose language and the allocation of tremendous resources, a range of economic and social problems stubbornly defy civilian solution. In response, exasperated politicians have re-
placed militant oratory with the actual dispatch of military troops to fight civic wars.

V. THE NEW ROLES

Beginning in the 1980's, Congress significantly enlarged the scope of the armed services' domestic duties. Such assignments are not completely new. In the early days of the Republic, military personnel served as explorers, built roads and bridges, and gave the nation its cadre of trained engineers. Further, the military countered civil disturbances at various times, and engaged in law enforcement duties in the South during Reconstruction. Law enforcement responsibilities were, however, largely abandoned following the passage of the Posse Comitatus Act in 1878. For the next century the military successfully avoided assuming regular police duties.

The one-hundred-year hiatus ended with the drug crisis of the 1980's. Discouraged by the inability of police departments to stop illegal drugs from flooding the country, Congress enacted the Military Support for Civilian Law Enforcement Agencies Act in 1981. Originally intended merely to strengthen interdiction efforts, the military's responsibility evolved into a $1.2 billion program that includes regular patrols.

121. For a discussion of the recent expansion of the military's domestic duties as a response to the drug problem, see infra notes 127-33 and accompanying text.


123. See generally Engdahl, supra note 21 (discussing the use of the military to suppress domestic disorders).

124. See Engdahl, supra note 21, at 55-64 (discussing the use of the military as law enforcement after the Civil War).

125. The Posse Comitatus Act provides:

Whoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully uses any part of the Army or the Air Force as a posse comitatus or otherwise to execute the laws shall be fined not more than $10,000 or imprisoned not more than two years, or both.


in certain high-crime neighborhoods and along borders. Desperate politicians want to deploy even more troops to police their cities.

With more than 5,000 troops conducting law enforcement activities throughout the country on any given day, America is witnessing the beginning of what it never has had before: a national uniformed police agency. This is a fundamental departure from United States law enforcement philosophy and one of import to civilian control. Professor Steven Wisotsky explained the problems created by a national police force:

The constitution makes the president commander-in-chief, thus centralizing control of all the armed forces in one person. Police, by contrast, are supposed to enforce the law, primarily against domestic threats at the city, county, and state levels. They thus are subject to local control by the tens of thousands of communities throughout the nation.

Morris Janowitz has argued that the professional military resisted identifying itself with local police forces because of, among other factors, the impact on civilian control. “Civilian supremacy in the United States,” Janowitz noted, “has rested on the assumption that its national military forces were organized and controlled separately from the local and more decentralized police forces.”

Of perhaps greater concern, Congress did not limit the expansion of military responsibilities in the civilian sector to policing. The National Defense Authorization Act for 1993 included legislation allowing the armed forces to engage in a wide range of activities once the exclusive


132. New Civilian Tasks for the Military (Ctr. for Def. Info. broadcast, Apr. 11, 1993).

133. To be sure, the military has intervened to quell domestic disorders but it has long resisted, especially in the twentieth century, any suggestion of a permanent police function in part because of a fear that to do so would “fan the flames of antimilitarism.” See Jerry M. Cooper, Federal Military Intervention in Domestic Disorders, in The United States Military under the Constitution of the United States, 1789-1989, at 120, 142-43 (Richard H. Kohn ed., 1991).

134. Steven Wisotsky, The War on Drugs and Civil Liberties, USA Today Mag., July 1993, at 17, 19.

135. JANOWITZ, supra note 62, at 419.
province of local civilian authorities. Specifically, the Civil-Military Cooperative Action Program encouraged the use of the “skills, capabilities, and resources of the armed forces to assist civilian efforts to meet the needs of the United States.” The military now involves itself in local schools, the provision of medical care to underserved communities, infrastructure construction and repair projects, environmental restoration, youth programs, and more. It also has played a much more aggressive role in disaster relief activities, especially following Hurricanes Hugo and Andrew, after which thousands of active duty soldiers supplanted the role of civilian agencies.

The new domestic operations are enormously popular with the public. Americans apparently no longer entertain what the Supreme Court declared in 1972 was “a traditional and strong resistance to any military intrusion in civilian affairs.” To the contrary, beleaguered residents of drug-plagued neighborhoods welcome soldiers into the community.

137. Id. § 1081(b), 106 Stat. at 2514 (codified at 10 U.S.C. § 401 (1988)).
138. Id.
139. For example, since October 1992 an Army program served 20,000 students in thirteen states. Darlene Smith, Army Expands Science, Math Student Program, ARMY TIMES, Oct. 11, 1993, at 28. Due to a 1993 congressional authorization to expand the existing program, the number of Junior Reserve Officer Training Corps programs is expected to double, reaching over 318,000 students over the age of fourteen. See Eugene J. Carroll, Jr., Junior R.O.T.C.? Who Needs It?, N.Y. TIMES, June 26, 1993, at 10.
141. See, e.g., Vago Muradian, Meet the Playground Squadron, AIR FORCE TIMES, Nov. 29, 1993, at 22.
143. Television journalist Jim Cummins reported a $44 million, five-month, military-run “boot camp” program for high school dropouts that provided an opportunity to earn a high school diploma while developing self-discipline and cooperation. NBC Nightly News (NBC television broadcast, Nov. 9, 1993).
145. See GOVERNMENT ACCOUNTING OFFICE, DISASTER ASSISTANCE: DoD'S SUPPORT FOR HURRICANES ANDREW AND INIKI AND TYPHON OMAR 15 (1993). The GAO reported that “DoD provided much of the food, water, sheltering, transportation, and medical care, even though the Federal Response Plan assigns those responsibilities to other agencies.” Id.
146. Laird v. Tatum, 408 U.S. 1, 17 (1972) (involving a suit by the subjects of Army surveillance during the 1980's as a part of an Army attempt to collect information on persons who might have caused domestic civil disturbances). For a discussion of Laird in context, see Paul M. Peterson, Civilian Demonstrations Near the Military Installation: Restraints on Military Surveillance and Other Activities, 140 MIL. L. REV. 113, 120-21 (1993).
147. See A Cry From the Capital, CHRISTIAN SCI MONITOR, Oct. 25, 1993, at 18. The
ter civilian relief organizations failed, disaster victims hailed the arrival of the military, demonstrating once again that the antimilitarism of the Vietnam era is gone.\(^{148}\)

Although a few officials grumble that given the Department of Defense's new domestic agenda, it should be renamed the "Department of Defense, Health, Education and Welfare," an increasing number of military leaders greet the new functions with enthusiasm. Some see the new roles as a way to preserve military force structure in the austere budgetary environment of the post-Cold War era.\(^{149}\) Others view the new assignments as a proper use of military strength. For example, one senior leader, Admiral Paul David Miller, Commander-in-Chief of United States Atlantic Command, envisions military personnel employed in a wide variety of domestic construction and infrastructure repair projects, as well as a myriad of social service programs.\(^{150}\)

A. Impact of the New Roles on Civilian Control

How does the increasing military involvement in nontraditional missions undermine civilian control of the military? Why are such activities more threatening today than in the past? The answers are manifold.

First, before the Cold War, the peacetime militaries performing domestic assignments were small and relatively weak compared to the rest of American society. Despite the end of the Cold War, today's military is the largest peacetime force in United States history that does not face an overarching external threat.\(^{152}\) The impact of the unprecedented concentration of martial energy on American society and its potentially vulnerable political systems is uncertain at best.

Second, as noted above, the military's role in domestic activities has become more formalized and legitimized.\(^{153}\) Unlike earlier eras, specific

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\(^{149}\) Christian Science Monitor reported that the proposal to use troops in a police mode in Washington “is very popular” in the neighborhoods affected. Id.

\(^{150}\) Admiral Crowe, whose 45-year career ended in 1989 observed that his professional life spanned an “era when American foreign and military policy was shaped by a single factor: the challenge of the Soviet Union.” CROWE & CHANOFF, supra note 53, at 320.


\(^{152}\) For a discussion of the expanded domestic role of the military, see supra notes 121-51 and accompanying text.
legislation now facilitates military involvement in domestic areas.\textsuperscript{154} The legislation finds official expression in military mission statements and doctrinal manuals.\textsuperscript{155}

Third, the coalescing of the all-volunteer military has challenged civilian control. Not only is the military undiluted by the civilianizing effect of conscription, it is also—after Goldwater-Nichols—a much more unified force. Specifically, the law attempted to minimize the deleterious effect of interservice rivalries\textsuperscript{156} by emphasizing “jointness,” that is, forcing the separate military services to operate corporately. According to former Chairman of the Joint Chiefs of Staff Admiral William J. Crowe, the “overarching aim of jointness is to expand officers’ loyalties from a single service to the military as a whole.”\textsuperscript{157}

When the “joint” imperative of Goldwater-Nichols combines with fiscally driven consolidations, gigantic military conglomerates of disturbing potential arise.\textsuperscript{158} For example, though virtually unreported in the media, the United States recently formed a supercommand: U.S. Atlantic Command (USACOM). In the early fall of 1993 over 1.2 million troops—nearly all the military forces based in the continental United States—were reorganized under the control of USACOM, a joint military organization answerable to a single uniformed officer.\textsuperscript{159} USACOM not only is America’s largest military command; it also is the organization primarily responsible for the new array of domestic assignments. For example, USACOM responds to civil disorders.\textsuperscript{160} Thus, a military leader whose control over the United States military is second only to the president must study and plan operations to take control of American cities in crises. In short, the military force that concerns itself with domestic affairs is larger, more focused, and more united than ever before.

The fourth factor that differentiates the current military involvement from that of earlier eras is the increased politicization of today’s armed services. Clearly, an apolitical military complements and sustains civilian control. Chief Justice Burger opined in \textit{Greer v. Spock}\textsuperscript{161} that the “200-year tradition of keeping the military separate from political affairs . . . is a constitutional corollary to the express provision for civilian control of

\begin{itemize}
  \item \textsuperscript{154} For a discussion of particular legislation, see \textit{supra} notes 127 and 136 and accompanying text.
  \item \textsuperscript{155} For example, “combatting drugs” is now officially a “high national defense mission” of the U.S. armed forces. \textit{Department of Defense, National Military Strategy of the United States} 15 (1992). Similarly, the new Field Manual 100-5, the Army’s basic doctrine treatise, contains for the first time a chapter on nontraditional missions. \textit{Department of Army, FM100-5 Operations} 13-0 to 13-8 (1993).
  \item \textsuperscript{156} For a discussion of interservice rivalries, see \textit{Janowitz, supra} note 62, at 350-56.
  \item \textsuperscript{157} \textit{Crowe & Chanoff, supra} note 53, at 148.
  \item \textsuperscript{158} Congress historically opposed “excessive unification” of the armed forces specifically because it feared an overconcentration of military power would weaken civilian control. \textit{See} \textit{Janowitz, supra} note 62, at 356.
  \item \textsuperscript{159} \textit{See} William Matthews, \textit{New Command Replaces LANTCOM, Army Times}, Oct. 11, 1993, at 11.
  \item \textsuperscript{160} \textit{Id}.
  \item \textsuperscript{161} 424 U.S. 828 (1976).
\end{itemize}
In the United States, law and policy are supposed to ensure political neutrality. Nevertheless, as the United States military adapts to the needs of the country in a time of budget constraints and few external threats, the traditional apolitical stance has diminished.

The current politicization of the military is another vestige of the Vietnam War. One theory partially attributes the defeat in Vietnam to the failure of the military leadership to assert themselves and their views more forcefully in the political realm. Profoundly affected by that experience, military officers developed the skills and determination to effectively express themselves in such fora. Thus, military leaders eroded the customary practice of privately expressing disagreement with civilian leaders, if at all. Forrest Pogue, the biographer of General George C. Marshall, explained the traditional thinking:

[Marshall] believed that military men had a duty to explain the needs of their services and the requirements of their forces to carry out assignments directed by the President. A responsible officer had the right to question a policy he considered wrong or mistaken and to discuss thoroughly a proposal. But there was no right to challenge publicly the wishes of the Commander-in-Chief.

To many in the military, the lesson of Vietnam holds that a discreet approach to confronting political authority is outmoded. Admiral Crowe observed that few officers today achieve higher rank "without a firm grasp of international relations, congressional politics, and public affairs." Accordingly, today's officers are intellectually prepared to challenge political leaders, particularly when they believe military interests are at
Moreover, the new military assertiveness especially politicizes the relationship with the weakened civilian political institutions. In addition to the military response to Vietnam, protest groups ironically prompted politicization as well. During the Vietnam conflict, public demonstrations and similar activities wrongly targeted the military itself. Military analyst Harry Summers explained: "By attacking the executors of Vietnam policy rather than the makers of that policy, the protestors were striking at the very heart of our democratic system—civilian control of the military." By challenging the military itself, the critics induced public responses from the armed forces. The protestors thus legitimized military expression on partisan issues.

The politicization of the military that followed the Vietnam War continues today. For example, opponents of the military's homosexual exclusion policy have challenged military recruiters and education programs on many university campuses. Thrust into the political debate by these and other actions directed at the uniformed ranks, the armed services have defended themselves publicly. The public defense led to open clashes with civilian leaders when the Clinton Administration sought to change the policy. The public disputes inescapably politicize the participants, including the military.

Another, even more disturbing development in the politicization of the military is illustrated by the circumstances surrounding the selection of General Colin Powell's successor as Chairman of the Joint Chiefs of Staff. Gay rights organizations reportedly undermined the candidacy of General Joseph P. Hoar of the Marine Corps. Although General Hoar was not involved in any wrongdoing, he enforced the homosexual exclusion policy during a tour as commander of the Marine Corps Recruit De-

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168. It is one thing to debate the merits of the conduct of an overseas military operation, and quite another to argue about the propriety of a strategy to combat a domestic ill. Nevertheless, once the "mission" is redefined to equate the solving of domestic problems with the conduct of war, such debates are inevitable. For example, if the armed forces are tasked to improve education, the military inevitably will find itself critiquing the role of the teachers and the content of curriculum, both of which are political matters best reserved to the voters and their elected leaders.

169. Professor Huntington explained: "The extent to which military institutions and individuals become politicized is a function of the weakness of civilian political organizations and the inability of civilian political leaders to deal with the principal policy problems facing the country." SAMUEL P. HUNTINGTON, POLITICAL ORDER IN CHANGING SOCIETIES 221 (1968).

170. SUMMERS, VIETNAM WAR, supra note 60, at 28.

171. See, e.g., Tom Philip, CSUS May End ROTC Over Anti-Gay Policy, SACRAMENTO BEE, Feb. 15, 1992, at 1. For a discussion regarding the legality of bans on military recruiters, see United States v. City of Philadelphia, 798 F.2d 81 (3d Cir. 1986).

172. See MELISSA WELLS-PETRY, EXCLUSION: HOMOSEXUALS AND THE RIGHT TO SERVE (1993). Wells-Petry, a major in the Army Judge Advocate General's Corps, presented numerous arguments against permitting gays to serve in the military. See id.

173. See Otto Kreisher, Congressional Critics Stall Clinton's 'Don't Ask, Don't Tell' Policy, SAN DIEGO UNION-TRIB., Feb. 4, 1994, at A8.

The complainants apparently ignored the fact that the homosexual policy is ultimately a matter decided not by military commanders but by civilian leaders.

The misguided activists send the military community a troubling message. In effect they suggest that the defiance of the policies of civilian authorities by military commanders is appropriate. The activists imply that military officers should condition their actions not on the lawful dictates of the civilian leadership, but on their own assessment of the present—and future—political climate. Given the military's intensifying involvement in domestic activities, the potential arises for military officers to defy or subvert the directives of the civilian leadership when they decide that the civilian leadership is out of step with fashionable thinking.

The fifth reason for concern about the loss of civilian control is the evolution of the civilian authorities. The leadership responsible for civilian control of the military is fundamentally different in contemporary America than it was in earlier periods. In fact, the civilian leadership now bears little resemblance in background to the military that it must control. This development is discussed in more detail below.

B. The Rise of the Meritocratic Leadership Class

Paralleling the transformation of the military and its role in American society is the evolution of the United States civilian leadership. The assumption of power by the Clinton Administration was hailed as the arrival of the Meritocratic Class. Defined as "those who rise economically and socially largely because of superior education rather than because they are propelled by external forces like family wealth or pedigree," the Meritocratic Class differs from previous leadership elites in an important way: Its members rarely serve in the military.

Yet again the influence of Vietnam is evident. When America withdrew from Vietnam in 1973, Congress ended conscription. Though millions still serve in the all-volunteer force, sociologist Charles Moskos has insisted that military service is no longer a rite of passage for American politicians. The reason, of course, is partly statistical. The World War II generation—until quite recently the principal source of national leadership—saw eight of ten age-eligible males serve in the military. By 1995,
however, only one in ten will serve.\textsuperscript{182} Moreover, thousands of women are entering leadership positions. If women continue to comprise only a small portion of the armed services, the likelihood of persons with military experience assuming key posts diminishes even further.\textsuperscript{183}

Few of the new leaders in the Clinton Administration can claim military experience on their résumés. Forty-seven percent of the Clinton Administration’s appointments went to women, who are less likely to have military experience than men; of the approximately 1,000 male designees, only about ten percent are veterans—even though approximately one-third would reflect the percentage in the population.\textsuperscript{184} However, military experience counts. For example, in \textit{Chappell v. Wallace},\textsuperscript{185} the Supreme Court noted that the framers of the Constitution anticipated the issues in the case because many “had recently experienced the rigors of military life and were well aware of the differences between it and civilian life.”\textsuperscript{186} Similarly, Congressman Ronald V. Dellums, an ex-Marine and a relentless critic of the military, stated, “I was a ground-pounder . . . . I understand what the human condition is in the military.”\textsuperscript{187} An understanding based on personal experience is rare among the Meritocrats.

Ironically, the military is itself a meritocracy, but a very different one from that which produces the Meritocratic Class now assuming power. In the armed forces, advancement is based largely on the demonstrated ability to succeed in often difficult environments through the orchestration of a complex amalgam of people and machines. The Meritocratic Class, on the other hand, tends to overemphasize IQ and academic credentials at the expense of practical experience backed by proven results.\textsuperscript{188} Meritocratic elites revel in the sophisticated repartee of Washington think tanks and university conferences, but may stumble when tasked to implement the theories discussed.\textsuperscript{189}

Popular opinion considers many Meritocrats “anti-military.” Supported by oft-reported (and perhaps apocryphal) slights to military personnel, some contend that as “baby boomers” take positions of leadership they bring with them Vietnam-era animosity toward the armed services.\textsuperscript{190} Vietnam veteran John Wheeler argued that “the Clinton Admin-

\textsuperscript{182} \textit{Id.} at 86-87.

\textsuperscript{183} Women comprise less than 11% of the military. See \textit{Department of Defense, Defense Almanac}, \textit{supra} note 128, at 30 (1993). Since the pool of potential women veterans is small, the likelihood of a female civilian leader having military experience is similarly reduced.


\textsuperscript{185} 462 U.S. 296, 300 (1983) (holding that enlisted military personnel may not maintain a suit to recover damages from a superior officer for alleged constitutional violations).

\textsuperscript{186} \textit{Id.} at 300.

\textsuperscript{187} Pat Towell, \textit{The Dellums Agenda}, AIR FORCE MAG., July 1993, at 46, 50.


\textsuperscript{189} \textit{See generally} David Ignatius, \textit{The Curse of the Merit Class}, WASH. POST, Feb. 27, 1994, at C1.

\textsuperscript{190} \textit{See, e.g.,} Steven D. Stark, \textit{Anti-Military Generation Takes Office}, LA. TIMES
istration is largely a networked clique of people who were anti-military and anti-war during the 1960's and carry their biases with them still."\textsuperscript{181}

While antimilitarism is undoubtedly a factor, it appears that the Meritocratic Class suffers more from ignorance about the military than from antimilitary bigotry. As military service becomes increasingly rare among the general population and as military education programs disappear from many college campuses,\textsuperscript{192} few opportunities allow for contact with anyone associated with the armed forces. Richard G. Miles, an Army reservist who attended the Georgetown University School of Foreign Service, wrote that his classmates were singularly unacquainted with military matters.\textsuperscript{193} He contended that their ignorance, which he believed was not motivated by "some sort of militant pacifism or left-wing prejudice," would be "comical if it weren't for the fact that Georgetown grads end up in high places, including the presidency."\textsuperscript{194} He added that "[a]lthough some students with a military background can occasionally be found at schools like Georgetown, they are vastly outnumbered by those who have had no personal contact whatsoever with those who serve in the U.S. armed forces."\textsuperscript{195}

Other commentators share similar views of the public's declining understanding of the military. "When it comes to the study of military affairs," A.J. Bacevich noted in \textit{National Review}, "the attitudes of the baby-boomers now moving into dominant circles in government, media, and the academy run the gamut from uninterested to ignorant."\textsuperscript{196} Whether such a cavalier attitude by the Meritocratic elites towards the military is sufficient to ensure civilian control is questionable. It depends in large measure upon the strength of the institutions of civilian control that they will lead.

\section*{VI. The Decline of the Safeguards for Civilian Control of the Military}

In Professor Huntington's analysis of subjective civilian control of the military, he emphasized the vitality of the civilian institutions and the constitutional forms expected to exercise that control. The following section examines key institutions and forms of civilian control in the United States to determine if their strength in relation to the military is ebbing.

\textsuperscript{181} See Broder, supra note 184 (quoting John Wheeler).
\textsuperscript{191} For example, in the last decade Reserve Officer Training Corps programs ended on over 100 campuses. See Carlton W. Meyer, \textit{Separate ROTCs Are Unnecessary}, \textit{Air Force Times}, Dec. 13, 1993, at 39.
\textsuperscript{193} Id.
\textsuperscript{194} Id.
\textsuperscript{195} Id.
\textsuperscript{196} Bacevich, supra note 4, at 36. Bacevich is executive director of the Foreign Policy Institute at the Paul H. Nitze School of Advanced International Studies. Id.
A. The Judiciary

A division of power among the branches of government and the accompanying system of checks and balances is central to the constitutional scheme of civilian control of the military. By design, the courts are the least influential element in the scheme. The judiciary realizes that control of the armed forces is essentially a political matter best left to the politicians. In Gilligan v. Morgan, the Supreme Court stated: "It would be difficult to think of a clearer example of the type of governmental action that was intended by the Constitution to be left to the political branches directly responsible—as the judicial branch is not—to the electoral process."

When the political branches act, the courts usually defer. In Solario v. United States, the Court noted that "[j]udicial deference is at its apogee" when Congress' authority to govern the military is challenged. Not only does the desire to defer to the electoral process motivate the courts, they also recognize that the judiciary lacks expertise in military affairs. The Court has emphasized the point:

'It is difficult to conceive of an area of governmental activity in which the courts have less competence. The complex, subtle, and professional decisions as to the composition, training, equipping, and control of a military force are essentially military judgements, subject always to the civilian control of the legislative and executive branches.'

Once the elected branches assign the military a mission, the Court readily gives military authorities considerable discretion to execute the task. For example, the Supreme Court declared in Orloff v. Willoughby, "Orderly government requires that the judiciary be as scrupulous not to interfere with legitimate Army matters as the Army must be scrupulous not to intervene in judicial matters."

Millett cited three contributions of the judiciary to the concept of civilian control of the military:

(1) restraining the use of martial law and military action by regular forces in civil disturbances;
(2) protecting the civil liberties of civilians (both American and foreign) from military abuses during times of war; and
(3) extending to American servicemen the same set of individual legal protections provided civilians in the federal court system.

197. Millett cited three contributions of the judiciary to the concept of civilian control of the military:


199. Id. at 4.


201. Id. at 447 (quoting Rostker v. Goldberg, 453 U.S. 57, 70 (1981)). However, "[n]one of this is to say that Congress is free to disregard the Constitution when it acts in the area of military affairs." See Rostker, 453 U.S. at 67-68.


203. 345 U.S. 83 (1953).

204. Id. at 93-94.
berger, the Court stated that the judiciary "must give great deference to the professional judgment of military authorities concerning the relative importance of a particular military interest." The Supreme Court recently reaffirmed its deference to the elected branches of government in Weiss v. United States, in which it approved Congress' scheme for the appointment of military judges. Another issue, not yet before the Court but almost certain to reach it, is the constitutionality of the "don't ask, don't tell" policy relating to gays in the military. In one sense a decision supporting the individuals challenging the government policy would seem to enhance the role of the judiciary as a means of civilian control. But in another, perhaps more important way, such decisions would undermine it.

Significantly, the policy concerning gays in the military is the product of a collaborative effort between the executive branch and Congress—the two key institutions of civilian control. Arguably, if an individual military member can defeat the combined wills of the elected branches of government, the ability of those branches to control the armed services becomes vulnerable. The military is an organization in which the essence of service "is the subordination of the desires and interests of the individual." Any action that promotes the rights of an individual over his or her civilian masters by definition erodes the latter's authority.

The courts, never expected to play a strong role in controlling the military, have not significantly checked military power as they have with other government powers. More often than not, the courts protect military interests from attempts by civilian entities to interfere with military

208. Current litigation primarily involves a prior policy which excluded homosexuals on status as well as behavior grounds. "Don't ask, don't tell" is a euphemism to describe the new policy that focuses on conduct alone. The policy resulted from a compromise achieved by the Clinton Administration and Congress. The Administration decided to forego litigating the merits of the old policy to await challenges to the new one. See generally John Lancaster, Administration Decision Not to Defend Homosexual Ban Is a Retreat of Sorts, WASH. POST, Dec. 31, 1993, at 12. See also supra note 96.
activities. Courts avoid confrontation with the military\textsuperscript{210} and plainly consider responsibility for civilian control of the military to lie principally with the executive and legislative branches. It remains to be seen, however, if the judiciary will depart from the traditional view when faced with the highly controversial issue of gays in the military.

B. The Executive

The Constitution assigns the bulk of power over the military to the executive and legislative branches.\textsuperscript{211} In the division of power, the designation of the President as Commander-in-Chief\textsuperscript{212} establishes the executive\textsuperscript{213} as an indispensable element of civilian control.\textsuperscript{214} Furthermore, the enormous pressures of World War II and the Cold War enhanced the primacy of the President in military affairs. The time-sensitive decisionmaking of the nuclear age fosters the centralization of control of military forces in the person of the President.\textsuperscript{215} Thus, the American system of civilian control of the military relies on strong leadership from the Commander-in-Chief. As General Bruce Palmer, Jr. observed:

In our system of government, the president, with his dual role as civilian chief executive and commander-in-chief of the armed forces, is the indispensable key to national security. For the president to control the armed forces, he must command them . . . . The president is the commander-in-chief and there is no substitute for his forceful and visible leadership in discharging this supreme command function over the Department of Defense and the armed forces.\textsuperscript{216}

Despite the traditional deference to the President and in yet another legacy of Vietnam, Congress challenged the President's authority to exercise supreme command over the armed forces. The 1973 War Powers Resolution,\textsuperscript{217} born of concern for the long-term commitment of American

\textsuperscript{210} Professor Lurie argued that "judges have tried to avoid confrontations with the military, resulting during World War II, for example . . . [in] decisions that cannot be reconciled with American standards of due process." See Lurie, supra note 33, at 145.


\textsuperscript{212} U.S. CONST. art. I, § 2, cl. 1.

\textsuperscript{213} The Constitution obliges the President to "take Care that the Laws be faithfully executed." U.S. CONST. art. II, § 3.

\textsuperscript{214} Professor Graebner believed the power of the President as Commander-in-Chief flows more from the "access to the public mind" than from any constitutional designation. Norman A. Graebner, The President as Commander-in-Chief: A Study in Power, J. MIL. HIST., Jan. 1993, at 111, 127-32. Millett believed that the Constitution intended Congress to be the more influential actor. MILLETT, supra note 2, at 7.

\textsuperscript{215} Howard E. Shuman argued that "the public, as well as politicians and pundits, generally accepts the powerful modern Presidency as necessary in a dangerous world." Howard E. Schuman, Preface to The CONSTITUTION AND NATIONAL SECURITY xvii (Howard E. Schuman & Walter R. Thomas eds., 1990).

\textsuperscript{216} PALMER, supra note 59, at 201.

troops to hostile situations abroad, requires congressional approval of operations within specified time limits. According to Professor Norman A. Graebner, Congress sought to restore "the balance between the President's control of the armed forces and the right of Congress to determine their use." Nonetheless, no president has accepted the constitutionality of the Resolution, and no court has ever decided the issue. Whenever the Resolution seems to apply, Congress and the President strike an accommodation that allows both branches to insist on the correctness of their view.

Unresolved, however, is the proper course for a military commander of a future operation in which an understanding between Congress and the President is not reached. The implications for civilian control are grave. Richard Kohn argued that if the branches of government responsible for civilian control of the military "are in such conflict that they defy each other, the U.S. military can be put in a position in which civilian control—even the Constitution itself—is in jeopardy."

The War Powers Resolution is a classic illustration in the military context of what Edward S. Corwin called "the invitation to struggle" that is intrinsic to the Constitution's fabric. The concept, which embraces the balance of power between the legislative and executive branches of government, may serve a proper purpose for the apportionment of other responsibilities of government. However, it does not serve the needs of a military commander enmeshed in an overseas operation who faces conflicting demands from the Commander-in-Chief and the Congress. Moreover, the uncertainty that marks the seam between

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218. Graebner, supra note 214, at 111, 131.
220. A recent example is the Senate's refusal to limit the President's powers to send troops to Haiti as part of a plan to facilitate the return to the island of Haitian president Jean-Betrand Aristide. See Helen Dewar, Clinton and Congress Cease Fire, WASH. POST, Oct. 22, 1992, at 26.
221. Kohn, supra note 17, at 8.
223. Millett asserted: "Since there has never been any particularly peaceful equilibrium in exercising civilian control between the president and Congress, it is silly to expect any. The Constitution in essence forbids it." Millett, supra note 2, at 60.
224. For example, if the President as Commander-in-Chief orders the continued deployment of troops in a hostile situation in defiance of a congressional mandate to the contrary, what is a military commander to do? Professors Kemp and Hudlin suggest that the commander would likely follow the orders of the President. See Kemp & Hudlin, supra note 10, at 10-11. Regardless of the disposition, such a precedent would permanently alter concepts of civilian control in this country. The "losing" party would forever know the military can spurn its direction. The authority of at least one of the two primary institutions of civilian control would be eviscerated. Thus, even a single significant incident undermining civilian control could dramatically alter the American political tradition. As historian Richard H. Kohn warned:
presidential and congressional authority creates what in military terms is known as a schwerpunkt, which is a weak point, vulnerable to exploitation by a politicized military. Thus, for example, analyst Barry Blechman pointed out that the military services "are notorious for sidestepping decisions by the executive branch by appealing to friends [in Congress]."

The jointness inspired by the Goldwater-Nichols Act also presents an institutional problem for the executive branch. As the military services adopt an increasingly unified perspective, the propensity to counterbalance each other diminishes. Huntington maintained that as the officer corps of the separate services become more unified, "this change will tend to increase the military's authority with regard to other institutions of government. It will speak with one voice instead of three." Indeed, the military already appreciates the value of a unified voice. Hedrick Smith explained in The Power Game:

By operating as a cartel, [the military services] foil attempts at ruling them, made by outsiders—including the secretary of Defense and his sprawling staff of 1,765 civilians . . . . The service military chiefs have a habit of withdrawing into the "tank"—their top-secret meeting area, generally off-limits to civilian officials—to broker their differences before civilian leaders intervene.

With this backdrop, the Clinton presidency constitutes an especially important challenge to the efficacy of the executive branch as a vehicle for civilian control of the military. Perceived as improperly avoiding military service during the Vietnam War, the President also is viewed by many within and outside the military community as loathing the very concept of military service. Like others in the Meritocratic Class, he is considered untutored in military affairs. In addition, President Clinton's

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228. See generally Joint Chiefs of Staff, Joint Publication 1, Joint Warfare of the US Armed Forces (1991) (arguing that, to prevail in modern warfare, separate services must operate jointly).

229. Huntington, supra note 6, at 87.


231. Admiral Crowe contended that the perceptions of Clinton are unfair. See Crowe & Chanoff, supra note 53, at 340-42.
support for placing women in combat roles and his desire to end the homosexual exclusion policy could not have been more ill-timed as these views assault the ethos of an organization already obsessively anxious about its future in the post-Cold War world.\textsuperscript{232}

The President's unpopularity within the military combined with an almost universal distaste for his policies\textsuperscript{233} translated into a license to express dissatisfaction and even contempt for the Commander-in-Chief. The highly decorated, retired Army officer David Hackworth stated that "[i]n almost a half-century of soldiering or writing about it, I've never seen a president attacked so openly by the nation's fighting forces."\textsuperscript{234} Following a much-publicized visit to an aircraft carrier where the officers and crew made little effort to hide their contempt for President Clinton,\textsuperscript{235} even military leaders became alarmed. Chief of Staff of the Air Force General Merrill A. McPeak issued a letter reminding military personnel that the President stands at the top of the chain of command.\textsuperscript{238} Implicit was a thinly veiled warning to stop grousing about the Commander-in-Chief. Shortly after the issuance of the letter, Air Force Major General Harold N. Campbell nonetheless allegedly denounced the President as a "gay loving," "pot smoking," "draft dodging," "womanizer" in a speech to military personnel.\textsuperscript{237}

The Campbell incident illustrates the dwindling utility of the Uniform Code of Military Justice\textsuperscript{238} as a tool for ensuring civilian control. If accurate, the reports of the Campbell case, appear to squarely establish a violation of Article 88 of the Code,\textsuperscript{239} a provision which criminalizes an...

\textsuperscript{232} In November 1993, \textit{Air Force Magazine} reported: "Morale and confidence of the troops are growing concerns. The men and women of the armed forces are more apprehensive than we have seen them in many years." \textit{Warning Signs on National Security, Air Force Mag.}, Nov. 1993, at 2.


\textsuperscript{235} Bacevich, \textit{supra} note 4.


\textsuperscript{239} \textit{See} 10 U.S.C. § 888 (1988). The proscriptions of the Article are not limited to statements against the President. The full text protects a number of civilian officials:

- Any commissioned officer who uses contemptuous words against the President, the Vice President, Congress, the Secretary of Defense, the Secretary of a military department, the Secretary of Transportation, or the Governor or legislature of any State, Territory, Commonwealth, or possession in which he is on duty or present shall be punished as a court-martial may direct.

\textit{Id.}
officer's use of "contemptuous words against the President." Even though prosecutions are rare, it would seldom seem more appropriate to prosecute such conduct than when the President's integrity and authority are openly questioned in the ranks. Despite this, General Campbell was not tried by court-martial. Instead, he received nonjudicial punishment, a disciplinary action which by law is limited to "minor offenses." Thus, open and notorious disrespect for the Commander-in-Chief by a senior officer is now classified as a mere "minor offense." Reportedly, many in uniform still "privately salute" Campbell's remarks.

The Campbell case follows other decisions which indicate that the military justice system is seldom able to address high-profile cases with political overtones involving senior officers. The President's inability to obtain respect, even through the military's disciplinary system, adversely affects his ability to control the military. Columnist Mark August called President Clinton a "man with a conscience," but observed:

Clinton suffers from being perceived as the political equivalent of a Rodney Dangerfield because of the low regard in which he is held by many people in the U.S. armed forces. Thus, without the ability to control the Pentagon during the nation's deliberation of critical issues, the President has been obliged to accept painful compromises.

The president's role as Commander-in-Chief is not, however, the only means of control over the military that the Constitution provides the chief executive. The president also appoints key civilian leaders for the
armed services and the Department of Defense. Indeed, the Clinton Administration’s declared intent was to reassert the civilian control that they believed waned during prior administrations. The intent, however, has evidently faded. In June 1993 the Washington Post described the problem:

Civilian control of the military is a principle that the Clinton administration [. . .] rightly defending. But there’s a problem: To have some control over the Pentagon, the civilians have to be on the job and behind desks. And at the moment, a lot of desks are empty.

As late as October 1993, the President still had announced his nominees for “only 26 of the top 46 Defense Department jobs that require Senate confirmation.”

Moreover, the Goldwater-Nichols Act ensures that appointees who assume duties in the Department of Defense will confront a far more powerful and sophisticated Joint Staff than ever before. Prior to the legislation, the services seldom offered the best and brightest for duty with the Joint Staff. Now, with joint service a prerequisite for promotion to senior rank, the very “sharpest” officers serve there. Consequently, not only are Meritocratic Class appointees less familiar with military affairs than their predecessors, but also they must oversee a much more astute and energized uniformed staff. Moreover, the Meritocrats work in an environment heavily dependent upon staff work and planning—tasks that civilians historically perform less ably than military professionals.

Goldwater-Nichols affects executive branch appointees in other ways as well. By streamlining the chain of command between the President and the combatant commanders, Goldwater-Nichols theoretically improved command and control of the armed forces. However, it did so, according to Harry Summers, at the expense of the civilian service secre-

252. Former Chairman of the Joint Chiefs of Staff Admiral William J. Crowe noted that prior to Goldwater-Nichols “[i]t was unusual to find our most highly regarded officers laboring in the Joint Staff vineyard; many considered a tour there as a hurdle on the career path.” Crowe & Chanoff, supra note 53, at 148; see also JANOWITZ, supra note 62, at 350-54.
253. Lt. Gen. E. Ehlerl, USMC, noted that the Marine Corps “used to send officers who were retiring to work on the Joint Staff—not since Goldwater-Nichols. Now we send our sharpest folks and so do the other services.” Peter M. Chiarelli, Beyond Goldwater-Nichols, JOINT FORCE Q., Autumn 1993, at 71, 77. See also 10 U.S.C. §619(e) (concerning requirements of joint duty for promotion).
taries who, he observed, were "almost invisible during the Gulf War."\textsuperscript{255} By diminishing the role of the secretaries of the Army, Navy, and Air Force, Summers contended that Goldwater-Nichols removes an important buffer between the uniformed services and the political decision makers at the very time when "contentious issues [are] being pressed on the military services."\textsuperscript{256}

In addition, ever since the years when Secretary Robert McNamara and the Vietnam-era "Whiz Kids" ruled the Pentagon, concerns existed about the quality of military advice available to the President.\textsuperscript{257} Congress addressed the problem in Goldwater-Nichols by substantially enhancing the role of the Chairman of the Joint Chiefs of Staff. To ensure that the professional military had a strong voice in national security affairs,\textsuperscript{258} Goldwater-Nichols established the Chairman as the military's spokesman.\textsuperscript{259}

As the military's spokesman, General Colin Powell acquired unprecedented influence.\textsuperscript{260} Powell, a Vietnam veteran whose popularity far exceeded the President's,\textsuperscript{261} opposed—with noteworthy finesse—some of Clinton's key military policy proposals.\textsuperscript{262} Considered the consummate soldier-politician,\textsuperscript{263} Powell aggressively advanced his views to numerous audiences, including public ones.\textsuperscript{264} Powell presented his arguments too

\begin{footnotes}
\item[256.] Id.
\item[261.] According to the \textit{Air Force Times}, a survey by the Wirthlin Group rated General Powell as the country's most popular public official with a rating of 70.9% compared with 54.7% for Clinton. \textit{Fast Track}, \textit{AIR FORCE TIMES}, Dec. 13, 1993, at 16.
\item[262.] \textit{A Chairman for Changing Times}, N.Y. TIMES, Aug. 14, 1993, at 18 (noting General Powell's opposition to President Clinton's proposals on homosexuals in the military in editorial on nomination of General John Shalikashvili as Chairman of Joint Chiefs of Staff).
\item[263.] \textit{CROWE & CHANOFF, supra} note 53, at 229 (Admiral Crowe calling General Powell a "political general"). The \textit{Times of London} described Crowe himself as "more of a political animal than a warrior." Martin Fletcher, \textit{Grateful President Rewards Pentagon Politician's Loyalty}, \textit{THE TIMES} (London), Feb. 23, 1994, at 12.
\item[264.] See generally Steven Stark, \textit{President Powell?}, \textit{ATLANTIC MONTHLY}, Oct. 1993, at
\end{footnotes}
aggressively, according to military historian Russell F. Weigley.\textsuperscript{266} Professor Weigley argued that Powell's public opposition to intervention in Bosnia and his open resistance to the President's initial proposals concerning homosexuals in the military overstepped the proper role of a military officer.\textsuperscript{266} Weigley argued that, partly due to Powell's outspokenness, civilian control faces an uncertain future in the United States.\textsuperscript{267}

The President's selection of General John Shalikashvili to replace Powell may reflect a desire to avoid another popular, and almost autonomous, uniformed officer. Unlike Powell, General Shalikashvili is, according to \textit{Time}, "virtually unknown to the public and untutored in the ways of Congress and public relations."\textsuperscript{268} \textit{Time} suggested that those qualities "could prove doubly attractive [to Clinton] if it makes [Shalikashvili] more compliant than his predecessor."\textsuperscript{268}

Similarly, the designation of Admiral Bobby Ray Inman to succeed Les Aspin as Secretary of Defense appeared aimed at improving control over the military.\textsuperscript{270} Not all were enthusiastic. Though a retired military officer may legally serve as the senior civilian in the Department of Defense,\textsuperscript{271} critic Saul Landau called the nomination of the retired admiral a "public surrender" of civilian control over the military.\textsuperscript{272} In any event, Inman's charter surely included closing the gap between the military and the President.

Following Inman's sudden withdrawal of his nomination, President Clinton drafted former Deputy Secretary of Defense William J. Perry for the top spot. Considered a skilled and able technocrat, Perry may have the tools necessary to control the Pentagon.\textsuperscript{273} Together these appointments may help the Clinton Administration improve relations with the military. Indeed, \textit{U.S. News & World Report} predicted that the President "will almost certainly make peace with the military in 1994."\textsuperscript{274} It concedes, however, that the peace "will probably have to be on the military's terms."\textsuperscript{275}

The decline of the executive as a force for civilian control might be

\begin{footnotesize}
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\item \textsuperscript{226} Weigley, supra note 4, at 27-32.
\item \textsuperscript{266} Id.
\item \textsuperscript{267} Id. at 58.
\item \textsuperscript{268} Bruce Van Voorst, \textit{Military Maneuvers}, \textit{Time}, Aug. 23, 1993, at 35.
\item \textsuperscript{269} Id.
\item \textsuperscript{271} An officer may not be appointed Secretary of Defense "within 10 years after relief from active duty as a commissioned officer of a regular component of the armed services." 10 U.S.C. § 113(a) (1988).
\item \textsuperscript{275} Id.
\end{enumerate}
\end{footnotesize}
dismissed as a transitory phenomenon idiosyncratic to the Clinton Administration. Such a conclusion, however, is overly simplistic. The American people almost certainly will elect future presidents who lack a military orientation. Future administrations will find it similarly difficult to produce sufficient numbers of knowledgeable and experienced Meritocratic Class civilians capable of matching the growing expertise and sophistication of the Joint Staff and other senior military leaders.

It appears that the struggle between the executive and the legislative branches for primacy in military affairs will leave both, but particularly the executive,\textsuperscript{276} vulnerable to manipulation by the military establishment. With a military justice system seemingly incapable of holding accountable senior officers who commit offenses that undermine civilian control, future Commanders-in-Chief will find it difficult to control popular military leaders heading an equally popular military establishment.\textsuperscript{277} As the military becomes more involved and influential in domestic affairs, controlling it may present the executive with a political problem of the first order.

C. Congress

The Constitution assigns to Congress great responsibility for exercising civilian control of the military.\textsuperscript{278} Article I grants the legislature the authority to declare war,\textsuperscript{279} make rules and regulations for the military,\textsuperscript{280} advise and consent to the appointment of officers,\textsuperscript{281} call forth the militia,\textsuperscript{282} and, most important, raise and support an army\textsuperscript{283} and a navy.\textsuperscript{284}

\textsuperscript{276} In the context of foreign policy, Eugene Rostow, citing the War Powers Resolution and other congressional initiatives, asserts that “the power of Congress is growing, and that of the President is being leached away.” Eugene V. Rostow, President, Prime Minister, or Constitutional Monarch? 45 (1989) (McNair Papers No. 3, Inst. for Nat’l Strategic Stud.).

\textsuperscript{277} Conor Cruise O’Brien observed:
When he became president and tried to honor his promise [to end the homosexual exclusion policy], he was taking on the military establishment of the United States, which is immensely powerful, not only on land, sea, and air, but also in the media. And I don’t think it is a coincidence that the period of his confrontation with the generals over gay rights was also one of the worst patches in terms of media coverage that any president has had to endure.

\textsuperscript{278} Millett believed that in the division of powers in the Constitution, Congress was intended to be the “more influential actor.” Millett, supra note 2, at 7. The Court of Military Appeals also noted, “Because of national security interests and concern for unforeseen military exigencies, it was the intent of the Framers to vest very great authority over these matters in Congress.” United States v. Weiss, 36 M.J. 224, 236 (C.M.A. 1992) (quoting Lawrence Tribe, American Constitutional Law 353-56 (2d ed. 1988)), aff’d, 114 S. Ct. 752 (1994).

\textsuperscript{279} U.S. Const. art. I, § 8, cl. 11.
\textsuperscript{280} U.S. Const. art. I, § 8, cl. 14.
\textsuperscript{281} U.S. Const. art. II, § 2, cl. 2.
\textsuperscript{282} U.S. Const. art. I, § 8, cl. 15.
\textsuperscript{283} U.S. Const. art. I, § 8, cl. 12.
Despite its powers, Congress' propensity to assert itself in military matters has waxed and waned over the years.

Since the Vietnam War, however, Congress has sought to become much more active in the management and oversight of military affairs. Aided by a quintupling of its staff since 1974, Congress annually makes 750,000 inquiries of the Pentagon and demands 750 yearly reports. Furthermore, the Congress created potent support agencies like the General Accounting Office (GAO), a huge 5,000 person investigatory organization that frequently targets the military.

The "power of the purse" unquestionably gives Congress its strongest leverage over the military and its principal competitor for control of the military, the executive branch. Congress readily demonstrates its independence in this regard. For example, the Fiscal Year 1994 defense budget was less than the amount sought by both the Pentagon and the Clinton Administration.

When designing Congress' fiscal check on the growth of military power and influence, the Founding Fathers never contemplated the effect of the large peacetime military establishments that followed World War II. Defense spending became a major sector of the economy with "whole communities depending on defense bases, laboratories, and contractors." In the ensuing scramble for billions of defense dollars, members of Congress made defense decisions based on parochial, constituent interests rather than national concerns.

In addition, the military undermines the fiscal check because it is a particularly effective lobbyist. Like other agencies of government, the armed forces are technically proscribed from lobbying, although they may "communicate" with Congress. Nevertheless, the military services em-

285. BLECHMAN, supra note 227, at 3-22; MILLETT, supra note 2, at 47.
287. Congress also has the Congressional Research Service, the Congressional Budget Office, and the Office of Technology Assessment to facilitate the oversight process. See MILLETT, supra note 2, at 48.
289. "Congress' control of the purse is a far greater power than the President's as commander in chief." See Graebner, supra note 214, at 118.
291. See SWOMLEY, supra note 55, at 99-112 (describing Pentagon's economic power and its threat to American democracy).
293. 18 U.S.C. § 1913 (1988). The statute provides in part:

No part of the money appropriated by any enactment of Congress, shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any man-
ploy a number of imaginative techniques to influence legislation. According to Hedrick Smith, they “unabashedly lobby senators and House members” by flattering them “with courtesies and perquisites” such as domestic and foreign trips. More disturbing, the military often will ensure support by spreading the procurement of expensive weapons systems over scores of congressional districts. Smith also insisted that the “military can turn off the faucet” when displeased with a legislator. Even the most vociferous military critic is subject to pressure when the economic livelihood of constituents is at stake. Armed Forces Journal alleged that Congressman Ron Dellums “was probably right” when the military critic charged that the closing of four military bases in his district was politically motivated. The magazine blamed the Pentagon, claiming its “temptation to deal poetic justice was likely more than it could resist.”

Nevertheless, with the decline of executive control of the military, Congress has emerged as the most effective agent of civilian control. However, Congress—like the executive—is beginning to feel the effects of the rise of the Meritocratic Class. The election of 1982 pushed the percentage of military veterans in Congress below fifty percent for the first time since before Pearl Harbor. Additionally, after the 1994 election, half of Congress may have less than six years of seniority. Such a development, compounded by the youth and inexperience of the vast majority of its 20,000 staffers, indicates that Congress’ expertise in military affairs will suffer.

Evidence of the Meritocratic Class emerges elsewhere. Former Secretary of Defense Caspar W. Weinberger, for example, faulted GAO reporting—upon which Congress depends—because the GAO is staffed by

\[\text{Id.}\]

295. *Id.*
297. For example, contracts related to the controversial B-1 bomber were spread over 48 states. *See Smith, supra* note 230, at 179-82.
298. *Id.* at 185.
300. *Id.*
301. *Moskos, supra* note 90, at 86.
303. *Gansler, supra* note 69, at 110.
people who "neither understand nor like the military." Consequently, Congress is hampered directly and indirectly in its efforts to control the military.

Congress also is the institution that suffers most from a loss of public confidence vis-a-vis the military. It finished dead last in the 1993 Harris poll that showed the military as the institution with the public's highest confidence. Furthermore, in a stark indication of the public's disgust with elected government, an August 1993 poll revealed that fifty percent of Americans believe Congress is corrupt. The numbers suggest that a poll-sensitive Congress must exercise caution when asserting its authority over the highly respected military. Otherwise it risks imperiling its already depressed standing in the public's perception.

In a larger sense, the breakdown of party discipline and the increasing fragmentation of Congress leaves the institution vulnerable. Robert J. Bresler argued that power in Washington has "never been more diffuse." Congress, he noted, "lacks a clear sense of where it wants to go." As long as its members pursue divisive "personal agendas, legislative relationships, and national constituency politics," Congress will struggle to achieve the authoritative consensus most conducive to overseeing a popular, united, and sophisticated military.

D. The Press

The Constitution provides an important indirect check on military power: a free press. The potency of the check has been keenly understood by the military. For example, Napoleon declared that "four hostile newspapers were more to be feared than a thousand bayonets." Similarly, Shakespeare correctly observed that "men wearing rapiers are afraid of goose-quills." While not a formal mechanism of civilian control of the military, the press has tremendous potential to limit military ambitions.

It is virtually an article of faith within the United States armed forces that the press is instinctively hostile to the military. Much of this is yet another vestige of the Vietnam conflict, in which the media is viewed as having played "a principal role in eroding public support" for the war. Like other lessons of Vietnam, the armed forces learned from...
its mistakes. When the Gulf War broke out, the military was prepared. The press, on the other hand, was not. The staff of *U.S. News & World Report* in *Triumph Without Victory* issued a harsh assessment of their colleagues:

> Journalists poorly prepared to cover war, high technology, and international diplomacy were assigned to cover the conflict in the Gulf. A great many embarrassed the profession. By contrast, briefers provided to the press by the military seemed, more often than not, professional, knowledgeable, and worthy of trust. The situation became so bad that “Saturday Night Live” aired a skit satirizing the performance of the press corps assigned to cover Desert Storm and lauding the military.\(^{315}\)

During the Gulf War, the military learned to exploit the tremendous power of images to shape public opinion. Advanced munitions guidance systems and intelligence technology enabled it to obtain a mass of photographs and videos. Because they controlled these sources, military authorities could select powerful images that favorably reinforced the story that the military wished to tell.\(^{316}\) In doing so, the military capitalized on the increasing propensity of Americans to rely on television for news.\(^{317}\) To the extent it controls the images, the military can exploit the “videocentric prejudice,” that is, the uncritical belief that what is seen in visual representations is, in fact, true.\(^{318}\)

The Gulf War exposed other difficulties in the press’ attempt to cover the military. Today’s military can move vast distances at enormous speeds in places where civilian transportation is limited or nonexistent. Weaponry with a range and destructive power that often exceeds its ability to distinguish between enemy troops and noncombatant reporters make press excursions independent of military escorts not only difficult and expensive,\(^{319}\) but exceptionally dangerous. To further complicate matters, media representatives covering the military in austere locations often depend upon military communication channels to dispatch their stories. Consequently, the media is sometimes obliged to court the military to ensure access and support.

Today’s military also employs advanced training techniques to manage the media. In addition to rigorous training primarily directed at sen-

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318. What makes the videocentric prejudice so vulnerable to manipulation is that the ordinary viewer does not take into account the images’ context, the impact of camera rhetoric, or the effect of selective presentation. *See Is Viewing a Threat to Democracy?*, *USA Today Mag.*, Apr. 1993, at 15.

319. Dennis M. Drew argued that the press engages in “journalism on the cheap,” that is, it avoids the stories that are “far from popular watering holes and often difficult to reach.” Drew, supra note 317, at 39.
ior officers, the services now educate even low ranking soldiers to handle the press. Thus, in February 1993 the National Training Center (NTC) began a program integrating media training with regular battlefield exercises. Canny military instructors argued that “[l]earning to respond to reporters is just as important as learning to kill the enemy.” While much of the training instructed soldiers to avoid violating operational or mission security, there is little doubt that it is also meant to shape the military’s public image. As the noncommissioned officer in charge of the NTC’s “Media on the Battlefield” exercise insisted, “[soldiers] have got to be able to tell a positive Army story.”

It is a gross error, however, to underestimate the press’ ability to affect military activities. Many observers believe the media decision to air film of starving children led to the deployment of American troops in Somalia. Most also agree that the images of a captured American airman and of the abuse inflicted on the body of a dead soldier led to the withdrawal.

Whatever the news business is today, it remains a business. News executives, especially after the media fiasco of the Gulf War, must appreciate the huge disparity between the public’s confidence in the armed forces and their own profession. Thus, while a willingness still exists to harshly critique the civilian portion of the military establishment, the media has scrutinized the uniformed ranks more gingerly. To many, the change is baffling. Columnist Fred Reed speculated that the less hostile reporting might be a result of a “new crowd” of less jaundiced post-Vietnam-era journalists favorably impressed by the military’s Gulf War performance.

Much of the press suffers the same lack of a thorough comprehension

320. See CROWE & CHANOFF, supra note 53, at 224 (discussing the Air Force Media Training Team).
321. Chris Murray, Troops Learn How to Deal with Shelling from Reporters, AIR FORCE TIMES, June 7, 1993, at 28.
322. Id. (emphasis added) (quoting Master Sergeant James Edwards of the operations center of the National Military Training Center, Fort Irwin, California).
323. Id. (quoting Sergeant 1st Class Mary Pollard).
324. E.g., Drew, supra note 317.
326. In a Gallup poll released in April 1993, 68% of those polled said they had a “great deal” or “quite a lot” of confidence in the military; television news received that rating from 48% of the public, while newspapers garnered a mere 31% grade. See Moore, & Newport, supra note 113, at 24.
327. For example, when 18 American troops died and 78 were wounded during an October 3, 1993, raid in Mogadishu, Somalia, media attention focused on an earlier decision by Secretary of Defense Les Aspin to deny a military request for armored vehicles. Although it was later determined that the refusal of the armor did not cause the casualties, the focus remained on the Secretary. Calls for the Secretary’s resignation ultimately succeeded. See, e.g., Bill Gertz, Senate Committee Investigates Pentagon’s Policy in Somalia, WASH. TIMES, Nov. 10, 1993, at 1.
328. Fred Reed, Reformers Are Gone—Good Riddance, AIR FORCE TIMES, Sept. 20, 1993, at 59.
of military affairs as the other civilian institutions that control the military, and for much the same reason: It is staffed by the Meritocratic Class. The press’ expertise is declining at the very time the military’s ability to deal with the media has become more effective. The development can adversely affect civilian control of the military. Addressing the potential dangers of the military-industrial complex, President Eisenhower counselled that “it is only a citizenry, an alert and informed citizenry which can keep these abuses from coming about.” While the press remains, a powerful—arguably the most powerful—check on the military, the media’s status as a forceful safeguard of civilian control is not assured.

E. The Militia

By providing for a militia in the Constitution, the Framers sought to strengthen civilian control of the military. They postulated that a militia composed of citizen-soldiers would curb any unseemly ambitions of the small standing army. Today’s National Guard is often perceived as the successor to the militia, and observers still tout the Guard’s role as the ultimate restraint on the professional military.

The reality, however, is much different. Today’s National Guard is a very different force from the colonial-era militia. With 178,000 full-time federal employees and almost all of its budget drawn from the federal government, the National Guard is, for all practical purposes, a federal force. Indeed, one commentator concluded that it is very much akin to

329. See, e.g., Fred Reed, How Smart Are Reporters?, Air Force Times, Dec. 6, 1993, at 78.
330. Stephen E. Ambrose, Eisenhower: Soldier and President 538 (1990). Thomas Jefferson believed a free press to be more important than government itself. He remarked that if obliged to choose between a government without newspapers and newspapers without governments, he would “not hesitate for a moment to prefer the latter.” The Macmillan Dictionary of Political Quotations 404 (Lewis D. Eigen & Jonathan P. Siegal eds., 1993). Likewise, General George C. Marshall contended that:

In our democracy where the government is truly an agent of the popular will, military policy is dependent on public opinion, and our organization for war will be as good or as bad as the public is well informed or poorly informed regarding the factors that bear on the subject.

Kohn, Introduction, supra note 27, at 1.
331. See generally Fields & Hardy, supra note 18.
332. See Kohn, supra note 17, at 84-85.
336. David R. Segal explained the reason for the evolution into a much more federally oriented force: “Americans acknowledged the problems of mobilizing for major wars a militia that was organized by the governments of the states, and Americans increasingly central-
the "standing army" against which the Founding Fathers railed.\footnote{337} Despite the National Guard's record of achievement in combat support roles, the fighting ability of part-time soldiers clearly does not match that of active duty forces.\footnote{338} As a result, the citizen-soldiers do not meaningfully check the power of full-time professionals.

Perhaps due to its inability to compete with active forces in the combat sphere,\footnote{339} the National Guard enthusiastically pursues noncombat domestic missions.\footnote{340} The Guard has dual state and federal\footnote{341} status and very often conducts missions in their "state" status.\footnote{342} Theoretically, the citizen-soldiers are under local control. This concept is more chimerical than factual since virtually all of the indoctrination, training plans, and resources come from the federal government. In addition, as domestic missions proliferate they acclimate society to a military presence in a variety of local matters. Few members of the public appreciate the technical "status" distinction of a National Guard whose outward appearance and equipment is indistinguishable from that of the active duty military. Consequently, the National Guard may unwittingly further the influence of the active duty military in domestic affairs.

Despite similarities with the full-time military, the National Guard has no apolitical tradition. With units in every state, it unabashedly asserts political power.\footnote{343} In the near future, this politicized force will become more integrated with the active duty military. Specifically, following the much-discussed "bottom up" review of U.S. military strategy for the remainder of the 1990's, the Pentagon has called for greater Guard in-

\footnote{337. Fields & Hardy, supra note 18, at 2.}
\footnote{338. Study after study shows that part-time soldiers simply do not train sufficiently to function effectively in ground combat maneuver units. See Richard L. Stouder, \textit{Roundout Brigades: Ready or Not?}, Mil. Rev., June 1993, at 38, 38-49 (citing studies by the General Accounting Office, the Department of the Army Inspector General, and the Congressional Research Service).}
\footnote{339. See Philip Drew, \textit{Taking the Guard Out of Combat}, NAT'L GUARD, Apr. 1991, at 38.}
\footnote{340. According to National Guard Bureau Chief Lt. Gen. John B. Conaway, "We are getting heavier and heavier each day in America and around the world into what we call nontraditional roles." \textit{New Civilian Tasks for the Military}, supra note 132.}
\footnote{341. See generally 32 U.S.C. (1988).}
\footnote{342. For example, Guard members typically performed law enforcement activities in their status as state employees, as distinguished from their federalized status, when they were incorporated into the active United States military. See National Defense Authorization Act, Pub. L. No. 100-456, § 1105, 102 Stat. 1918, 2047 (1988).}
\footnote{343. The \textit{Washington Post} reported: "With an armory in virtually every congressional district and an officer corps made up of stockbrokers, lawyers, and the like, the [Guard and reserve] forces command a political clout and a share of the defense budget that far outstrips their military mission." Barton Gellman, \textit{Pentagon Plan Would Cut Reserve}, Wash. Post, Dec. 11, 1993, at A1. Likewise, the \textit{Los Angeles Times} noted that the National Guard exercises "stunning political power and influence, both among state and local government and in the power centers of Washington." Art Pine, \textit{In Defense of 2nd Line Defenders}, L.A. TIMES, Mar. 13, 1992, at 1; see also Rick Maze, \textit{Political Clout Shields Guard, Reserve from Cuts}, ARMY TIMES, Oct. 18, 1993, at 19.}
volvement in plans to fight two simultaneous regional wars.\textsuperscript{344} As the Guard becomes more integrated with the military services, the Guard’s aggressive political culture may generate unforeseen difficulties.

Notwithstanding efforts to improve the combat skills of the Guard, it is unlikely that it will ever develop into a force capable of control of the active duty military as the Founding Fathers hoped the militia would. Ideally, greater integration of the Guard with the active forces will “civilianize” the professional military and enhance civilian control. The more likely scenario, however, is that the Guard will pave the way for greater military involvement in domestic activities. Such a development, if accompanied by a merger of the growing politicization of the active forces and the Guard’s existing political clout, could result in a unified force with enormous potential to frustrate civilian control.

VII. AN AMERICAN MILITARY COUP?

Even the slightest suggestion of a military coup is almost unheard of in the American political tradition. Today’s military officers are no more consciously disposed toward the improper aggrandizement of power than those of any other age.\textsuperscript{345} Yet it is precisely this fact that makes the military’s current drift into civilian affairs so insidious. Without malice aforethought, a political structure that may be subject to nefarious exploitation in the future is being validated.

In the context of Finer’s models,\textsuperscript{346} military intervention into politics in the United States does not yet exceed a level of dynamic influence. Likewise, not all influence is improper. As Finer recognized, military organizations, like other agencies of government have the right, if not the obligation, to persuade the government to adopt their views of matters properly within their area of responsibility.\textsuperscript{347} Threats to civilian control arise when that “area of responsibility” expands to include problems that should be left to the civilian leadership to resolve, such as economic and social problems. Furthermore, military influence improperly erodes the principle of civilian control when it results not from the innate worth of the military’s views, but from the growing power of a popular, respected military deeply inculcated into a political environment characterized by weakened democratic institutions. This scenario has not yet occurred in the United States. A commentator warned, however, that while the United States military has not shown the “slightest inclination to lust for political power,” the potential to do so “always lurks where power and respect converge.”\textsuperscript{348}


\textsuperscript{345} According to journalist Thomas E. Ricks, “military officers don’t dwell on the civilian-military relationship—they take it for granted.” See Thomas E. Ricks, \textit{Colonel Dunlap’s Coup}, \textsc{Atlantic Monthly}, Jan. 1993, at 23, 25.

\textsuperscript{346} For a discussion of Finer’s model, see \textit{supra} notes 82-83 and accompanying text.

\textsuperscript{347} \textit{Finer}, \textit{supra} note 24, at 128.

\textsuperscript{348} Martin Anderson, \textit{The Benefits of the Warrior Class}, \textsc{Balt. Sun}, Apr. 14, 1991, at
Moreover, the danger of a challenge to civilian control is exacerbated when the military perceives itself to be under stress, as it does today. \(^3\) A.J. Bacevich, the executive director of the Foreign Policy Institute at the Paul H. Nitze School of Advanced International Studies, recently described the implications of today’s military environment in *National Review*:

The post-Cold War military environment—institutional uncertainty (how deep will the cuts go?), burgeoning technological change (what is the face of modern warfare?), renewed interest in social experimentation (what is the role for women and gays?), combined with *expanding* expectations of what the military can and ought to do to make peace, succor the afflicted, and respond to disasters—fosters conditions where civil-military harmony should not be taken for granted. To foresee the potential for friction is a far cry from declaring it inevitable. To predict that it could lead to anything like a military coup would strike most Americans as far fetched. Yet ignoring the military distemper will only allow it to fester. \(^5\)

As the United States approaches the twenty-first century, a modern trend not only allows the military's distemper to fester, but also changes the nation's relationship with its military. Specifically, the country's traditional antimilitarism is being replaced by what might be called *postmodern militarism*.

Unlike conventional militarism, \(^3\) postmodern militarism is *not* marked by overt military dominance or even a societal embrace of martial values. To the contrary, in the United States it arises in a citizenry which largely embraces permissive individualism—hardly a military trait. Postmodern militarism admires the effectiveness of the military but rejects for civilian society the discipline and sacrifice necessary to achieve it. Postmodern militarism also is characterized by the proclivity to define a nation's place in the world in terms of military strength. \(^5\) Paradoxically, another of its cardinal features is the populace's corporate unfamiliarity with the true nature of the military. The nation's people celebrate military power without truly understanding the institution that produces it. Likewise, postmodern militarism looks to the armed forces for answers to perplexing societal problems without apprehending the long-term implications of military-derived solutions.

The Meritocratic leadership elites display a postmodern militarism that considers the armed forces much like a bright, loyal, and hardworking servant who conveniently undertakes difficult and unattractive tasks, but who most assuredly lacks the enterprising aptitude for invidious am-

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352. *Id.*
bition. The Meritocratic elites prize the capabilities and sense of power that the military appears to afford them, but their appreciation does not extend to genuine respect on terms of equality. As with any valued employee, the Meritocrats desire cordial relations with the armed forces, but avoid personal association with a military that they view as intellectually plebeian and, therefore, unlike themselves.

Both the Meritocratic elites and the American people fail to comprehend today's military from which they are increasingly estranged. More than ever before, the military is, as the Supreme Court commented, "a specialized society separate from civilian society." The separation is attributable to the military's unique responsibility for national defense in general, and warfighting specifically. To accomplish its mission, the military must foster, as the Court observed in Goldman v. Weinberger, "instinctive obedience, unity, commitment, and esprit de corps." Military personnel perceive most of American society as conspicuously lacking those qualities. Not surprisingly, therefore, they often prefer to live in their own military enclaves, complete with homes, schools, churches, stores, and entertainment facilities. From their virtually crime-free, orderly communities, they "tend to view the chaotic civilian world with suspicion and sometimes hostility."

The separation of the military from civilian society provides an added challenge for civilian control of the military. Military professionals ordinarily seek to establish order out of chaos. Survival may depend upon a unit's ability to maintain order in the confusion of the battlefield. To meet the demands of combat, the military governs itself in an unapologetically authoritarian way; it rarely seeks the consensus or tolerates the dissent that civilian society takes for granted. The military is by no means a democracy; indeed, the military is the antithesis of democracy. What postmodern militarism fails to grasp is that military personnel are untroubled by the authoritarian system in which they live; indeed, they cherish the harmony it provides. Members of the armed services do not necessarily admire or desire the unbridled individualism enjoyed by civil-

353. Parker v. Levy, 417 U.S. 733, 743 (1974). Military analyst Arthur T. Hadley labeled the separation the "Great Divorce." ARTHUR T. HADLEY, THE STRAW GIANT 22 (1986). He also defined it as "the less-than-amicable separation of the military from the financial, business, political, and intellectual elites of this country, particularly from the last two." Id.


355. Id. at 507.

356. The Air Force Times reported: "Most families . . . like to live close to military community facilities, such as shopping and medical clinics, and feel more a part of the military community when they do." Rick Maze, Opposition: Off-Base Bad for Families, AIR FORCE TIMES, Oct. 11, 1993, at 4.


358. JANOWITZ, supra note 62, at xv.

359. In Chappell v. Wallace, 426 U.S. 296 (1983), the Supreme Court noted, "In the civilian life of a democracy many command few; in the military, however, this is reversed, for military necessity makes demands on its personnel without counterpart in civilian life." Id. at 300 (quoting Schlesinger v. Councilman, 420 U.S. 738, 757 (1975)).
ian society. As a result, their commitment to the democratic political system is extant but abstract.

Some in the military view the democratic process as imposing gratuitous inefficiency on the problem-solving mechanism. Others consider it hopelessly subverted by parochial concerns that imperil paramount national interests. Virtually all despise the compromises and duplicity inherent in modern politics. As often as not, they regard the political process as yet another obstacle to mission accomplishment. "[D]emocracy is not," as General Powell observed, "an easy form of government for military professionals."\(^{360}\)

It is particularly relevant then that postmodern militarism arises in the context of growing military expertise—and interest—in political affairs. As the military becomes more aware of its political power, it demonstrates a greater willingness to use it to advance military interests. The military’s natural inclination is to displace the deficiencies of the existing political processes with the self-contained authoritarian methodologies it knows, understands, and considers effective. As the military’s responsibilities become increasingly open-ended, the potential exists for the military to assume it has the right, and even the obligation, to intervene in a wide range of activities when it perceives it can advance a broadly defined notion of the national interest.\(^{361}\) Once the military arrogates to itself such discretion, civilian control is truly in jeopardy.

Finally, postmodern militarism seems to assume that a military integrated into domestic roles will be “civilianized” by the process and thereby rendered more amenable to civilian control. There are few models, however, for the “civilization” of professional militaries. For example, the military’s deep involvement in civil affairs during the occupation of Germany following World War II did not “Germanize” the United States military. British regulars serving in colonial posts during the nineteenth century did not assume the cultures of the countries to which they were assigned; to the contrary, they often significantly influenced the indigenous societies in the nations where they served. Hence, postmodern militarism’s optimistic assumption that the military will be “civilianized” may be dangerously erroneous.

The profession of arms is an exclusive culture, and one that is much more separated from civilian society than postmodern militarism supposes. Soldiers “are trained to do socially obnoxious things, like shooting people and blowing up bridges. As a result they have a different view of life.”\(^{362}\) Military historian John Keegan explained:

Soldiers are not as other men—that is the lesson that I have learned from a life cast among warriors. The lesson has taught me to view with extreme suspicion all theories and representations of war that equate it


\(^{361}\) This is one of the bases for military intervention identified by Finer. See Finer, supra note 24, at 30-33.

\(^{362}\) Paul Quinn-Judge, Military Debate: Reflection of US or Breed Apart?, BOSTON GLOBE, May 12, 1993, at 21 (quoting colonel who wished to remain anonymous).
with any other activity in human affairs . . . . War is wholly unlike diplomacy or politics because it must be fought by men whose values and skills are not those of politicians or diplomats. They are those of a world apart, a very ancient world, which exists in parallel with the everyday world but does not belong to it. Both worlds change over time, and the warrior world adapts in step to the civilian. It follows it, however, at a distance. The distance can never be closed, for the culture of the warrior can never be that of civilization itself.\(^3\)

In a very basic sense, postmodern militarism misapprehends the warrior ethic and the effect it has on military society. The frailties of the human condition necessitate armed forces, and the United States has shown the genius to create an enormously powerful military. Yet, just as the military can keep a nation free, it can, without effective civilian control, enslave a nation as well.

VIII. Recommendations

Despite the end of the Cold War, a catalogue of remaining threats, as well as the myriad of obligations as the world’s sole superpower, compels the United States to maintain large military forces. Consequently, it is imperative that immediate steps be taken to revitalize civilian control of military forces. The following actions are recommended:

- We must develop a new model for civilian control of the military. Huntington preferred the notion of “objective” civilian control.\(^3\)\(^4\) Objective civilian control militarizes or “professionalizes” the military by consigning the armed forces exclusively to the apolitical task of the management of violence.\(^3\)\(^6\) Huntington contended that objective civilian control will render the armed forces “politically sterile and neutral,” albeit as militarily powerful as security needs dictate.\(^3\)\(^6\)

It is probably not possible—or even desirable—to render the military truly “politically sterile.” Political issues and sensitivities are too intertwined with national security policy for the military to ignore. However, we can ensure that the military’s focus remains on external threats. Preparing to fight two regional wars simultaneously is more than a sufficient occupation for a shrinking military. Minimizing the military’s involvement in domestic affairs would reduce the potential for dangerous conflict with civilian authorities.

- We must combat the growing lack of military experience and expertise in the senior civilian leadership. To accomplish this objective, the nation’s war colleges should increase representation from the civilian ranks of government. In addition, at least part of the curriculum should be opened to key members of the media, as well as leaders from social institutions and business. To broaden the outlook of future officers, and to acquaint more

364. Huntington, supra note 6, at 83-85.
365. Id.
366. Id. at 84.
of the Meritocrats with members of the armed services, military academy cadets should spend a year at a top civilian institution. For the same reasons, mid-level officers should spend at least one year obtaining an advanced degree in a residence program at a leading university. Civilian universities should include more national security and military history courses in their curricula. Likewise, professional military education should place greater emphasis on the historical basis for, and contemporary challenges to, the concept of civilian control of the military.

- Key Pentagon posts must be filled in a timely manner. Finding qualified women and minorities for the posts is an obviously laudable goal, but it must not deprive the military of civilian leadership during crucial periods.

- The judiciary must retain its deference to the elected branches of government. When appropriate, the adverse effect of judicial intervention on civilian control of the military should be highlighted for the courts.

- Congress and the executive branch must take a more collaborative and cooperative approach to controlling the military. National concerns must take precedence over parochial interests when dealing with military issues. Congress and the executive branch also must resolve the dilemma of the War Powers Resolution before it manifests itself in a ominous conundrum for a military commander.

- The media must lessen its dependence on the military for information, transportation, and communications support when reporting on armed conflict. Care must be taken to ensure that operational security is not compromised, but the media must be prepared to function independent from a military logistics base.

- Most important, Americans must not allow a desire for economic and personal security to cause them to abandon their faith in traditional democracy. Americans seem to expect that democracy will automatically lead to growth despite evidence that indicates it is not necessarily related to economic development. Americans should remember that even in a relatively depressed economy they still enjoy one of the highest standards of living in the world. Though they castigate elected government for their personal financial troubles, it is nevertheless true that business downturns are an inevitable part of the economic cycle.

- Clearly, however, it is in the area of physical security that, according to Charles Townsend, "liberal states remain vulnerable to the blurring of civil and military functions." The spiraling crime rate in America has generated calls for dramatic measures including patrols by soldiers.

367. Janowitz suggested such an approach. JANOWITZ, supra note 62, at lli.
368. The Pentagon's Missing Civilians, supra note 249, at C6. According to the Washington Post, one reason offered by Clinton Administration supporters for the delay in filling Pentagon jobs was the desire to "bring women and minorities into top posts." Id.
370. Samuelson, supra note 100.
371. See Townsend, supra note 351, at 83.
372. For a discussion of calls for soldiers in American cities, see supra note 131 and
Americans fail to realize that crime is a tragic byproduct of the prosperity and expansion of personal rights enjoyed since the end of World War II. Professor James Q. Wilson of UCLA believed that the crime rate will rise "regardless of what government does." He explained:

The most significant thing in the last half-century has been the dramatic expansion in personal freedom and personal mobility, individual rights, the reorienting of culture around individuals. We obviously value that. But like all human gains, it has been purchased at a price. Most people faced with greater freedom from family, law, village, clan, have used it for good purposes—artistic expression, economic entrepreneurship, self-expression—but a small fraction of people have used it for bad purposes. So just as we have had an artistic and economic explosion, we have had a crime explosion. I think the two are indissolubly entwined.3

Consequently, we must reject the inclination to resort indiscriminately to the military to stop crime.

CONCLUSION

Postmodern militarism entices Americans to task the military with the quixotic mission of providing perfect security. By doing so they unwittingly invite a stifling of the expansive freedom and spontaneous individualism that produces the very society they seek. In the final analysis, it is the American people who must make some hard decisions about the kind of nation in which they wish to live. If they continue to turn to the military for answers, if they abandon their attachment to the democratic process, if they fail to take the necessary action to reinvigorate civilian control, if they persist in exalting inflated notions of security over all other human values, then they will get, as it is often said, the government they deserve. If that becomes the case, then we must sadly say, "Welcome to the junta!"