
Today the United States is undergoing a great transformation in national security thinking and priorities. Between the end of the Cold War in 1989 and the collapse of the Soviet Union in 1991, the country began to abandon the policy of containment and the strategy of deterrence that had governed American relations with the rest of the world for over 4 decades. For only the fourth time in its national history, the United States has been changing its national security policies and reconfiguring its military institutions to adapt to a new role in world politics. Once again, for a variety of reasons—not least because of technologies Americans themselves pioneered—defense of the American homeland has become central to national security. Protecting the American people inside the United States is the most significant and perplexing of the changes underway in national defense. What should be—must be—the role of the military in homeland defense?

HISTORICAL EXPERIENCE

Until the middle of the twentieth century, safeguarding the continental United States and American territories overseas was the primary mission of the American military. The very first American military forces, the colonial militias, came into existence precisely for the purpose of homeland defense, adapted from the citizen military forces of early modern England, which themselves had been formed for defense against invasion in the absence of a standing army. In North America, beginning in the second quarter of the seventeenth century, colonial governments required the service of the able-bodied white male population to muster periodically, keep arms, train, and embody not only for defense but for offensive expeditions against hostile Indian tribes. In the eighteenth century, during the wars between England and France for imperial domination, the threat metastasized into the combined invasion of French and sometimes Spanish forces from the sea, as well as on land. The scale and scope of these conflicts forced the colonies to depend on British military forces, and on occasion, to fully mobilize the human and material resources of their own populations. So focused on defense were these militia forces that they were almost always restricted by law to service within the colony of origin. At the same time, volunteers or men drafted from the units were used for offensive expeditions to attack Indian tribes, or to seize the seaports, cities, or fortifications of other European powers in the new world.

During the nineteenth century, these local militias either in the form of the enrolled units (the entire militia of a colony or state), a group of individual volunteers, drafted individuals, or through the concept of a citizen’s obligation to serve when required—formed the basis of American military power. After the Civil War, with the creation of state national guards (volunteer militia), the militias began their transformation into the warfighting reserves of the regular armed forces. Beginning in the 1970s, the reserves became even more closely aligned with the regulars in the "Total Force" policy; some ground units were assigned to fill out regular Army divisions to make them ready for combat, and some support functions like Civil Affairs migrated almost entirely into the reserve components. In the case of the Air Force, reserve forces grew increasingly integrated into virtually all combat and support operations of the regulars over a generation’s
time. In the 1990s, National Guard and reserve ground forces began to supplement regular Army forces in peacekeeping and peace enforcement duties overseas, an unprecedented use of reserves in constabulary duties, in addition to their other duties. The Guard and Reserve leadership grasped every mission available to prove the military importance of reserve forces and to acquire the most resources and the most modern weapons possible. The regulars, stretched thin after the Cold War by numerous foreign interventions and peacekeeping operations, welcomed the relief from the stresses that a high operational tempo had placed on their personnel and equipment. Yet throughout the twentieth century, the National Guard remained state forces, no matter how closely monitored, trained, organized, or shaped by the federal government, or how completely focused they became on warfighting in doctrine, organization, training, and weapons.

Furthermore, going back to the beginning of American history, American military forces, both militia and regular, fulfilled internal domestic functions as well; particularly, the maintenance of order when local and state law enforcement institutions proved inadequate. The framers of the Constitution agreed, as one put it after the Constitutional Convention, that "no government can be stable, which hangs on human inclination alone, unbiased by the fear of coercion." Although they disagreed about die extent to which government depended on military power to keep order and enforce its will, they were agreed that regular forces must remain in the background. "Force," according to Alexander Hamilton, "may be understood as a coercion of laws or coercion of arms." For the normal functioning of society, law would compel obedience and keep order. If that were to fail, then the power of the community would act in the form of police or sheriffs forces, or in extremity, the militia. If that failed, then the regular forces would be called out as the last resort: "when resistance to die laws required it," James Madison told the Virginia ratifying convention, to prevent "society from being destroyed." As far as the internal use of military power was concerned, the Constitution favored very specifically militia rather than regulars. Congress' power read: "To provide for calling forth the Militia to execute the Laws of the Union" and "suppress Insurrections."

Militias have been used throughout American history to keep order and to enforce the laws. State forces suppressed rebellions in western Pennsylvania in 1794 and in Rhode Island in 1841; intervened in coal mine strikes in Pennsylvania and Colorado early in the twentieth century, and in a famous textile strike in Lawrence, Massachusetts, in 1912; mobilized to stop a lynching in Mississippi in 1904, to quarantine Arizona against California cattle with hoof-and-mouth disease in the early 1920s, and to stop violence in the longshoreman's strike in San Francisco in 1934. In the decade from 1886 to 1895 alone, a time of intense industrial strife, state governors called out the Guard over three hundred times. In the South, an additional militia role developed, adapted from sugar plantations in Barbados in the seventeenth-century Caribbean: to police slavery through the prevention of insurrection, regulation of slave movement and gatherings, and the apprehension of runaway slaves by means of regular patrols in towns and the countryside—practices that lasted more than a century and a half to the end of the Civil War, and that continued illegally against African Americans by the Ku Klux Klan and other terrorist or vigilante groups during Reconstruction.

The regular armed forces, created in the 1780s and 1790s after American Independence, fulfilled similar missions of homeland defense and internal order. For more than a century, the Army garrisoned frontier and seacoast forts to occupy American territory control strategic points of transportation and communication, and prevent or slow invasions of more populated areas. Until its modernization at the end of the nineteenth century and the adoption of doctrines emphasizing command of the sea and the destruction of invading forces in fleet actions, the Navy focused on harassment of hostile forces, raiding enemy commercial shipping, and the defense of American coasts and harbors. Even the new fleet strategy was predicated on stopping enemy forces from invading the United States. As late as the eve of World War II, with hemispheric defense the basis of American war planning, even such offensive forces as the
strategic bomber fleets being planned by the Army Air Corps were being justified to Congress and the American people as defenses that could attack enemy fleets heading for North America. Only during and after the Cold War did American strategy call for defending the country and advancing American interests by positioning forces abroad and going on the offensive. Even then, a sizable slice of American military power—strategic nuclear forces, air defenses, portions of the National Guard and reserves—was configured deliberately to prevent attack on American soil or respond to it in some way.

Moreover, the regular armed forces have always fulfilled internal, constabulary functions, even in the twentieth century after they had recast themselves into warfighting organizations designed to combat the military establishments of the great powers. The Army explored the West, enforced Jefferson's embargo laws (or tried to), mapped and surveyed railroad routes, implemented government policy toward the Indians, enforced federal law over the Mormons, captured fugitive slaves, intervened to restore order during the era of industrial and labor strife into the 1920s, restored order during race riots, dispersed Bonus marchers in the nation's capital in 1932, ran Civilian Conservation Corps camps, guarded interned Japanese Americans during World War II, fought forest fires, dredged rivers and harbors, built dams and flood control systems, and fed and sheltered Americans displaced by fires, floods, and earthquakes. Disaster assistance became "so commonplace" that "by the 1960s," according to one historian, "few seasons passed without some involvement in flood, hurricane, tornado, blizzard, or other form of help for civilians in emergencies." The Navy mapped and charted coastal areas and distant seas, chased pirates, suppressed the slave trade, negotiated foreign agreements, safeguarded Americans and their interests overseas, promoted and protected American commerce, and fostered scientific research. Marines guarded diplomats and the U.S. mails, suppressed riots, fought fires, and, like the other services, engaged in disaster relief. The Air Force has provided search and rescue, aerial photography, humanitarian airlift, medical evacuation, and disaster relief throughout its history.

Many of these internal roles receded into the background after World War II because the armed forces (including the National Guard and reserves) became absorbed by foreign warfighting, preparing to intervene abroad or to wage limited wars as part of the Cold War. Nation-building and exploration were no longer necessary or desirable because they distracted the armed forces from the capacity to win high-tech, high-tempo military conflicts against foreign adversaries, particularly Soviet and Warsaw Pact forces. After World War II, industrial strife diminished, and except for some notable instances of racial conflict—either urban riots or southern resistance to school desegregation—violence and disorder on a scale that overpowered local and state law enforcement institutions declined in frequency.

Yet the armed forces never quite succeeded in evading some domestic functions. Since World War II, the National Guard has been activated innumerable times by state governors or by the President to quell riots, enforce racial integration, prevent looting in the wake of natural disasters, or for other purposes of internal order. Disaster assistance, fighting forest fires, keeping order, coping with anti-Vietnam War violence, and many other internal activities involved the American military episodically throughout the last half of the twentieth century. Army units manned antiaircraft missile defenses around American cities in the 1950s and 1960s while squadrons of air defense fighters maintained readiness to intercept Soviet bombers. Regular Army units at Ft. Lewis, Washington, were even pressed into the hunt for "D.B. Cooper," the legendary criminal who hijacked a jetliner over the Northwest, parachuted out of it, and disappeared with the $200,000 ransom he extorted out of the Federal Bureau of Investigation (FBI). Ground forces were still called upon to cope with race riots and resistance to school desegregation in Arkansas, Mississippi, and Alabama, and to support other state and federal organizations in times of need. Beginning in the late 1980s, the Army and Air Force were pressed into service to assist in the "war" on drugs, interdicting shipments headed for American shores, and in some instances, to assist in the effort to halt illegal immigration along the border
with Mexico.\textsuperscript{24} On the eve of September 11, the reserve forces had just begun to consider reevaluating their roles and missions. The regular forces, although under great pressure by the new Bush administration to "transform," had done little to alter their doctrine, weapons, or organization to meet the challenges of the twenty-first-century security environment. Neither regulars nor reserves had even begun to seriously contemplate homeland defense, a term hardly known to the armed forces of the United States when the airplanes struck the Pentagon and felled two of the three tallest buildings in the country on September 11\textsuperscript{25}

**SINCE SEPTEMBER 11**

The attacks of September 11 quickly forced the military establishment to think anew and act on the internal role that had so declined in relative importance. Air National Guard and regular Air Force fighter planes scrambled to intercept the hijacked airliners heading for the Pentagon and over Pennsylvania. Even in the reduced level of threat before that tragic day, the North American Aerospace Defense Command (NORAD) operated air defense fighters regularly assigned and on alert to protect American air space, but with almost no concept of defense against terrorists using aircraft as weapons of destruction and no intention of flying regular interceptor patrols over American cities, which became routine for months after, and continues intermittently, albeit with reduced numbers of sorties. "Operation Noble Eagle isn't an operation," Secretary of the Air Force James Roche informed an audience during the increased homeland defense threat level of Code Orange in February 2003. "Ladies and gentlemen, it's our future. It's never going away!"\textsuperscript{26}

From the beginning of the crisis on September 11, the armed forces rushed to support the state and local agencies responding to the disaster—as armed forces have been doing for most of American history. According to the Bush administration's National Strategy for Homeland Security issued in July 2002, "New Jersey and New York guardsmen and Navy and Marine Corps reservists provided medical personnel to care for the injured, military police to assist local law enforcement officials, key asset protection, transportation, communications, logistics, and a myriad of other functions to support recovery efforts in New York City."\textsuperscript{27} In Washington, D.C., Maryland Guardsmen sent military police for security at the Pentagon. Nationwide, over seven thousand National Guard began patrolling 429 commercial airports and soon, Guardsmen began supplementing Customs Service and Immigration Service officers at U.S. borders. At West Point, the need to protect the installation 24 hours a day, 7 days a week, so overwhelmed the Military Academy's local security details that the faculty— even one general— took turns as gate guards until the National Guard could be put in place.\textsuperscript{28} Between September 11, 2001, and early February 2003, some 170,000 Guardsmen and reservists were activated at one time or another to supplement border security, protect airports, guard military bases and such civilian installations as power plants and bridges, protect the population at special sporting or civic events, and for other purposes of homeland defense.\textsuperscript{29} For the first time, Army reservists were to guard U.S. Air Force bases.\textsuperscript{30} As the armed forces mobilized and deployed for a campaign against Iraq, the numbers exceeded 150,000 by mid-February 2003, and may reach as high as 250,000 people on active duty.\textsuperscript{31} The secretary of defense ordered a change in the missions of the regulars and reserves: the active duty regular forces were to concentrate on overseas missions, including those that had in recent years been migrating to the reserves, and reserve forces were to focus on defense inside the United States. As the Pentagons "transformation" chief, retired Navy Vice Admiral Arthur Cebrowski, put it, the "post-9/11 reality" is "that we need a new way to rebalance our overseas interests and our concern for homeland security."\textsuperscript{32}

The Coast Guard, the nation's fifth armed service, formed in 1915 from a merger of the Revenue Cutter and Life Saving Services, underwent a metamorphosis. From a law enforcement institution operating under the Transportation Department devoted to catching smugglers, enforcing fisheries statutes, interdicting illegal drugs, and providing maritime safety
services to Americans on coasts, lakes, and inland waterways, the Coast Guard almost overnight became an antiterrorist force charged with security for the nation's ports and sea frontiers. Now it is part of the new Department of Homeland Security. Its aged fleet of aircraft, ships, and boats will be replaced or upgraded as quickly as possible, a recapitalization of at least $17 billion over the next 2 decades, "the largest contract for new assets ever awarded in Coast Guard history."³³

Since September 11, the White House and the Department of Justice have used the military establishment to incarcerate and interrogate suspected terrorists and "enemy combatants" and keep them beyond the reach of the civilian judicial system, even if they are American citizens, to collect intelligence and prevent future attacks. The threat to try terrorists in military commissions under the authority of an Executive Order that severely restricted the individual rights of the detainees, seemed at the time it was issued (barely 2 months after September 11) grounded as much in expediency as necessity.³⁴ Repudiated by a committee of the American Bar Association, the Executive Order was softened by rules governing its implementation drawn up by the Pentagon.³⁵ At the same time, the government designated prisoners captured in Afghanistan and Pakistan as "unlawful enemy combatants" outside the provisions of the Geneva Convention on prisoners of war.³⁶ They have been incarcerated at the Marine Corps base at Guantanamo, Cuba, precisely because that facility is beyond the reach of American courts. That detention has since been essentially sanctioned by two U.S. District Courts.³⁷ Two American citizens held in Navy prisons in Norfolk, Virginia, and Charleston, South Carolina, since April and June of 2002, have not been charged with crimes nor have they been allowed access to legal representation, an apparent violation of their constitutional rights. Efforts to allow them access to legal counsel have been opposed by the government and rebuffed by the judiciary, without any declaration or admission of the suspension of the right of habeas corpus by either Congress or the executive branch. This legal limbo was expressly sought by the government for the purposes of domestic security and intelligence collection but condemned by the American Bar Association.³⁸

Perhaps the greatest change in the armed forces after September 11 occurred not in operations or deployments or the use of military legal institutions, but in organizational changes inside the Department of Defense. Because intelligence is so critical to preventing terrorism, the department has a new undersecretary for Intelligence, a role to be filled by Stephen Cambone, Secretary Rumsfeld's most trusted lieutenant for "transformation." A new assistant secretary for Homeland Defense has also come into existence to coordinate planning and activities inside the Office of the Secretary. Most importantly, in response to a recommendation by the Joint Chiefs of Staff, the secretary of defense revised the Unified Command Plan, the document governing the organization and responsibilities of the nation's military forces worldwide, to create a command in North America to protect the United States. Northern Command will "consolidate ... existing missions that were previously executed by other military organizations. The command's mission is homeland defense and civil support, specifically ... to deter, prevent, and defeat threats and aggression aimed at the United States, its territories, and interests . . . including consequence management operations" with whatever forces are "assigned ... by the President."³⁹ Northern Command's head (dual-hatted as NORAD commander), Air Force General Ralph Eberhart, not only plans and prepares operations to help civilian "first responders" after an attack, but also engages in military operations on and over "the continental United States, Alaska, Canada, Mexico, and the surrounding water out to approximately 500 nautical miles" including "the Gulf of Mexico, Puerto Rico and the U.S. Virgin Islands."⁴⁰

What seemed to be major but essentially bureaucratic alterations represented in reality a transformation of American national security thinking: a greater concern about domestic safety than foreign attack, about internal threats than external war, about the murder of American citizens in large numbers and the harming of American institutions, installations, landmarks, and physical and electronic infrastructure at home rather than war with foreign nations, "Defending
our Nation against its enemies is the first and fundamental commitment of the Federal
Government," the President declared in issuing his first National Security Strategy, a year after
September 11. "Today, that task has changed dramatically. Enemies in the past needed great
armies and great industrial capabilities to endanger America. Now, shadowy networks of
individuals can bring great chaos and suffering to our shores . . . turn[ing] the power of modern
technologies against us.... The gravest danger our Nation faces lies at the crossroads of
radicalism and technology."41

THE FUTURE

The danger posed by the use of the regular military forces internally is dual: on the one
hand, impairing military effectiveness in the primary task of the regulars today, warfighting
overseas; and on the other hand, undermining civil liberty (as has happened in past wars) by
using regular troops for law enforcement, to try or incarcerate American citizens, to gather
intelligence, or to suppress dissent or antiwar protest.

On the surface, there seems little ground for worry. The creation of a civilian cabinet
Department of Homeland Security charged with overall responsibility for preventing and dealing
with the consequences of further attacks suggests that the military would not assume
inappropriate authority over the population even in catastrophic circumstances. Expressing
sensitivity about using the military at home, The National Homeland Security Strategy issued in
the summer of 2002 listed only limited roles for the armed forces internally:

1. Conventional military activities in those "extraordinary" situations "such as combat air
patrols or maritime defense operations" in which the military "would take the lead in defending
people" and American "territory" with support "by other agencies";

2. "Responding" to "emergencies such as ... an attack or ... forest fires, floods, tornadoes,
or other catastrophes," for which the Defense Department would react "quickly to provide
capabilities that other agencies do not have"; and

3. "Limited scope" situations "where other agencies have the lead—for example, security at
a special event like the recent Olympics."42

The Defense Department has shunned a wider role for the military in law enforcement.
"Frankly I don't think the American people want to see the military performing a domestic law
enforcement function," Deputy Secretary of Defense Paul Wolfowitz has stated. Although there
would be much "close handing off of information both ways" among the Defense Department,
the intelligence agencies, and the FBI, "when it comes to doing a wiretap on a domestic
suspect, I don't think people want the Defense Department doing that."43 Likewise, General
Eberhart voiced genuine sensitivity to civil liberties: "We also understand Civics 101," he told a
reporter. "I really don't think . . . the military will be doing things that should be done by other
agencies."44 The Northern Command's website contains explicit pages on "Limitations" and
"Operating with the Law."45

Yet the behavior of the Bush administration in the fight against terrorism is anything but
reassuring. The conservative columnist George Will, listing some of the radical changes
inherent in many administration foreign and domestic policies and proposals, observed that
"America has a president unusually comfortable contemplating, and pushing, change."46
Attorney General John Ashcroft, in a single statement at a National Security Council meeting
the day after September 11, altered the primary mission of the Justice Department and the FBI
from law enforcement to antiterrorism—without comment from the president.47 "The president
had made clear to Ashcroft in an earlier conversation that he wanted to make sure an attack like
the ones on the Pentagon and World Trade Center never happened again," reported the Washington Post's Bob Woodward. "It was essential to think unconventionally. Now, Ashcroft was saying, the focus of the FBI and the Justice Department should change from prosecution to prevention, a radical shift in priorities."48

The administration apparently presumed that protecting an open society against a ruthless, formless, suicidal enemy bent on killing large numbers of Americans required new thinking and unprecedented measures—and perhaps heretofore unacceptable new methods. Ashcroft, acting and often speaking for the administration, has demonstrated a limited sensitivity to civil liberties and, despite rhetoric to the contrary, scant regard for traditional legal safeguards. Outgoing House Majority Leader Dick Armey "said he thought Mr. Ashcroft and the Justice Department were 'out of control.'"49 A scholar of the history of the attorney general's office put it this way: "The terrorist attacks have energized Ashcroft in a remarkable way, resonating with his sincere belief that there is evil in the world."50

Furthermore, the administration is the most secretive seen in Washington in decades: "a sea change in government openness," according to a reporter who consulted "dozens of experts."51 A November 5, 2001, Executive Order restricted the release of presidential documents from previous administrations, angering not only historians and journalists but many in Congress, including some in the president's own party.52 A November 13, 2001, Executive Order authorized military commissions for the purpose of trying enemy combatants in secret.53 The administration has closed immigration court proceedings to the public and chosen to keep secret the names of thousands of immigrants swept up after September 11 and the names of the prisoners designated "unlawful enemy combatants" incarcerated at Guantanamo and in Bagram, Afghanistan. The attorney general established an interagency task force to reconsider punishments for leaking classified information, die first such review in 2 decades.54 The administration has kept all sorts of information away from Congress, including activating a "shadow" government of civil servants at "secret underground sites outside Washington to ensure that the federal government could survive a devastating terrorist attack on the nation's capital."55 At one point, after leaks on Capitol Hill, the president threatened to share classified information only with the heads of the committees involved in national security—to the dismay and sometimes outrage of lawmakers, including Republicans.56

Surveillance of American citizens and immigrants has expanded enormously, but not as much as the administration wished. Two weeks after the terrorist attacks in New York and Washington, D.C., the attorney general suggested in a White House meeting that Americans spy on each other: "We want to convey the message that you're likely to be detected if you're doing something wrong."57 This Terrorism Information and Prevention System (TIPS), described by the Administration as "a nationwide program to help thousands of American truck drivers, letter carriers, train conductors, ship captains, and utility workers report potential terrorist activity,"58 appeared so intrusive that Congress actually prohibited it.59 A program of surveillance targeted at "hundreds of mostly young, mostly Muslim men" was instituted to find al Qaeda sleeper agents planted inside the United States.60 The government won broad authority to use the permission of the Foreign Intelligence Surveillance Court to institute wiretaps and other undercover investigations against suspects, and to use the information gathered thereby in criminal proceedings, thus erasing a barrier protecting the Fourth Amendment guarantee against "unreasonable searches" and warrants without "probable cause."61 According to one recent analysis, "from New York City to Seattle, police officials are looking to do away with rules that block them from spying on people and groups without evidence that a crime has been committed," and "at the same time, federal and local police agencies are looking for systematic, high-tech ways to root out terrorists before they strike."62 One Defense Department program provoked national attention and much anxiety: the Total Information Awareness (TIA) research effort at the Defense Advanced Research Projects Agency. TIA would sift thousands of disparate databases to detect suspicious activity in an effort to anticipate terrorist behavior. The
system would "mine" computer records generated by Americans' private behavior—credit card charges, phone usage, travel behavior, medical data, e-mail messages, and other evidence of personal behaviors—with such vast implications for privacy and opportunity for government abuse (acknowledged by a panel of computer scientists and policy experts who reviewed the system for the Pentagon) that Congress prohibited further development without regular reporting to, and oversight from, Capitol Hill. Similarly the government, according to one report, plans to require "Internet service providers to help build a centralized system to enable broad monitoring of the Internet and, potentially, surveillance of its users."

Immediately after September 11, the administration proposed legislation to expand authority to monitor voice and e-mail messages, broaden the definition of terrorism, punish people who even unknowingly support or harbor terrorists, intensify attacks on money laundering that could support terrorism, break down the barriers between intelligence gathering and criminal investigations, allow the government authority to detain immigrant suspects indefinitely or expel them without court review, and permit other heretofore prohibited or unprecedented police powers. The administration hurried its proposals through the House and Senate a month after September 11, and when both chambers balked at the extremity of some of the provisions, the administration attacked the Democrats and intensified the pressure. In spite of these tactics, Congress insisted on limitations on the new government authority and sunset provisions for the more intrusive or authoritarian powers. Yet in early 2003, the administration apparently intended to return to the Congress requesting further expansion of police powers, provisions for secret arrests and detentions, exceptions from judicial oversight, and other changes that invade civil liberties, to prosecute the war on terrorism more aggressively.

If, then, the Bush Administration tilts decidedly in favor of security over liberty to prosecute what top officials see as an extremely difficult, ambiguous war against a suicidal enemy with no "center of gravity," an enemy clearly capable of using the American legal system and the openness of American society to its advantage, it is likely that the military will be used internally, perhaps in ways that threaten civil liberties or diminish the warfighting effectiveness of the regular armed forces. And it is likely that the American people will support such expedients.

The dangers are threefold.

First, the federal government might turn to the regular armed forces because they are handy, convenient, and superficially at least, effective—and because the civilian agencies involved in homeland defense at various levels of government are not being funded adequately. The concern is not the ordinary conduct of the war at home. The use of a military surveillance system to help local law enforcement catch the Washington, D.C., area sniper in the fall of 2002 drew little criticism. Nor did calling up the National Guard to patrol airports or protect military installations, or supplement the Border Patrol. In fact, reorienting and reordering the National Guard to focus primarily on homeland security would be returning it to its traditional role; the hundreds of thousands of soldiers in the Guard, embedded in 3,100 communities, are the appropriate pool of military people to prepare for domestic attack. They already possess the links with local responders—in some cases, they are the local responders in civilian life (a duplication that would have to be prohibited): the fire, police, emergency medical, public health, and other people who provide security and would react to minimize the damage and begin reconstruction after a terrorist attack. Other internal military missions, such as missile defense and cyber defense, could be assigned to the Guard or reserves. The danger in developing capabilities in the regular forces for homeland use is that those capabilities would be most effective in civilian agencies, in the National Guard, or down at the state and local levels that will respond first to a terrorist attack. One example is the Marine Corps's Chemical and Biological Incident Response Force, developed in the mid-1990s in part to help civilian society. One of a number of such organizations in the armed services and scattered across the federal government, the force would likely be useless unless it arrived at the scene within an hour. Experts know that responding to a chemical or biological attack will first occur at the local level,
that speed will be critical, and that state and local emergency services, police, fire, public health, and government people need the training, equipment, practice, and staffing if lives are to be saved and panic avoided. Another example: should the Army really be training federal executives to deal with the issues facing them in terrorist attacks just because the federal executives are ineligible for the Justice Department program offered to state and local officials? The dangers of using or relying on the military are many: the duplication and waste of resources, the ineffectiveness of the effort, and the diversion of money, people, and focus from traditional responsibilities, which can diminish the warfighting effectiveness of a military establishment already strained by a broad range of missions and commitments.

A second danger is that the military establishment will be pressed into service temporarily on a substantial scale for disaster response should the United States be struck with one or more weapons of mass destruction, or some massive disruption of our cyber networks that causes multiple or sequential natural or human disasters—and that the "temporary" would last for a very long time. The United States remains, 18 months after September 11, enormously vulnerable to attacks on its trade, ports, transportation and cyber systems, power plants, chemical industry (some 850,000 "facilities that work with hazardous or extremely hazardous substances"), landmarks, and other sites. In the year before the attacks, "489 million people, 127 million cars and 211,000 boats passed through our border inspection systems," wrote a Coast Guard commander who studied the problem and reported to the U.S. Commission on National Security/ 21st Century. Little or no additional federal support has reached the two million local firefighter, emergency service, and law enforcement first responders who would have to deal with a chemical or biological attack in their communities. Nor has the public health system—federal, state, and local—been adequately improved, expanded, or reformed to deal with mass casualties. Judging from the response of the government to September 11 and the possibility of mass panic in the event of future attacks—the reaction to the anthrax and the Washington, D.C., area snipers—one can easily imagine enormous pressure for the use of military forces immediately after a successful attack. A large outbreak of smallpox might require huge areas to be quarantined, with checkpoints controlling the movement of the population, requiring numbers of people that only the military could provide. "Depending on the extent of the outbreak, a quarantine could remain in place—potentially in multiple U.S. cities or regions simultaneously—for weeks, months or even years." The United States may have to declare martial law someday ... in the case of a devastating attack with weapons of mass destruction causing tens of thousands of casualties," retired Army General Wayne A. Downing speculated at the end of 2002, some 6 months after leaving the White House as deputy national security adviser for counter-terrorism. Northern Commands head, General Eberhart, agrees: "There may be situations if we ever got into a major chemical biological nuclear attack problem where we may, in fact, be in charge," but only if "its become so bad that the lead federal agency in working with the state governors say . . . 'we give up.' . . . And then the president and the secretary of defense ... decide, 'yes, that is appropriate.' Assaults on the food supply, water, or energy resources could provoke a massive deployment of available people for response, recovery, and protection, so the possibilities of an incident involving the military establishment are significant. Even if tens of thousands are not pressed into service, the need for some of the specialized units—medical, chem-bio, police, civil administration, and the like—might prove enormously disruptive to military operations abroad. That is the value of Northern Command: to plan for such an event and to begin to think through the coordination with local and state authorities. Thinking about the very worst catastrophe—the explosion of nuclear weapons in American cities—goes back several years at least. In December 2002, at the recommendation of a commission created 4 years earlier "to advise the president and Congress on domestic response to terrorism involving weapons of mass destruction," discussions began "among various federal agencies" to "delineate a role for U.S. troops, should local and state law enforcement authorities become overwhelmed" by an attack using smallpox. This same commission concluded that it was
nowhere clear, even after the creation of the Department of Homeland Security, "which Federal agency" would be "in charge" of the federal response to various kinds of attacks, and "who is in charge is especially problematic when it comes to a bioterrorism attack."82

The very planning of such responses with the thousands of federal, state, county, and local public and private agencies and institutions by Northern Command contains inherent dangers. Military staffs are among the most effective planning organizations in American society. Their processes and perspectives —their unstated assumptions—could begin to influence the procedures and operations of state and local law enforcement agencies, fire departments, emergency services providers, public health organizations, and governmental agencies: militarizing them enough to harm the performance of their normal responsibilities. In the past 2 decades, the military model has already invaded the American criminal justice system to an unprecedented degree: the dramatic rise in numbers of SWAT teams; increased cooperation between the military and police; "boot camps" in the correctional system; the language, concepts, and mentality.83 American foreign relations likewise have increasingly come to be influenced by military concerns, understandings, and the military itself, in ways unlike the era of the Cold War and quite beyond the demands of a "war on terrorism": a reliance on military commands to manage many regional relationships or bilateral relations; the threat or use of force to achieve American aims; the subordination of other interests to security beyond the dictates of the war on terrorism.84 An inadvertent militarization of domestic society85—quite beyond the uneven and diffuse ways in which the military has come to pervade American civic life and culture after 5 decades of world and cold wars—arising indirectly, but unnecessarily, from the demands of homeland security, although unforeseen, is possible. And lurking in the background, there is always the possibility that military operations on American soil will result in collateral damage and unintended violence and death, unless the regular military devotes considerable time to training for a homeland role, with the resulting degradation of its conventional warfighting capability.

A third danger is the increasing blurring of the line between military and civilian functions, in part because of convenience and in part because the struggle against terrorism is likely to last indefinitely. In many respects, the "war on terrorism" is no war at all, but a concerted (and hopefully coordinated) national and international effort involving law enforcement, policing, diplomacy, economic initiatives, and military operations to protect the United States against radical Islamic terrorists. There has been no mobilization, no continuous combat, no sudden heating up of the economy or rise in prices, no raising of taxes, no call to sacrifice, no major interruption or upheaval of civilian life—the kinds of experiences common to other wars in American history. In fact, just die opposite has occurred. Americans were asked to "go back to normal" after September 11, to travel and spend, and were given no precise definition of the enemy, no explicit articulation of a strategy to win the war, nor a description of what victory would be, how the war would be waged, and when and how it might end. Instead the government has repeated consistently that this war will last indefinitely, and that it might involve combat at home. One of the government’s most senior, experienced counterterrorism experts casts doubt on the "war" paradigm: "I am disturbed by how often I hear references to ‘as long as the emergency lasts’ or ‘as long as the war on terrorism is going on.’ . . . What we are doing has an indefinite run."86

The greatest worry is the gradual transformation of military forces into adjuncts of the law enforcement, domestic intelligence, and prosecutorial functions that have heretofore been strictly civilian. This has happened before—during almost every war since the mid-nineteenth century, with harm to American civil liberties and to the relationship between the armed forces and the American people. During the Civil War, the federal government used the Army to arrest, try, and imprison thousands of citizens for disloyalty, many of them Northerners, and some for statements or speeches that seemed to many at the time to be legitimate dissent or opposition to the Lincoln administration and its policies. Others were arrested on suspicion of profiteering,
fraud, corruption, or otherwise shady dealings relating to the government, and there were documented cases of torture in the prisons.87 During World War I, some 2,300 of over six thousand enemy aliens arrested by the Justice Department were "interned by the military as dangerous to the national security."88 The Army and Navy participated in government censorship of telegraph and cable messages, newspapers, radio, and public speech. The Army broke strikes, raided labor meetings and union headquarters, and harassed and suppressed radical labor groups, often acting in die role of local law enforcement—arresting and detaining suspects—as well as keeping order. In Seattle, the Office of Naval Intelligence actually arrested Wobblies (members of the International Workers of the World) on the docks and ships. Military Intelligence, which was, in the words of an Army history, "consciously antiradical and antilabor," created over five hundred units nationwide to spy on workers in war production plants in an attempt to prevent sabotage.89 The Army connected not only with federal, state, and local law enforcement, but with private patriotic and vigilante groups watching aliens and radicals in what the history called a "machinery of repression" that, in the end, acted to suppress dissent as well as guarantee the security of the homefront.90 During the 1920s and 1930s, the War Department maintained and updated plans to protect the country from domestic unrest and internal revolution fomented by radicals, leftists, and pacifists, on whom military intelligence collected information.91 During World War II, the Army advocated and then carried out the evacuation of Japanese Americans from the West Coast to "relocation centers" run by the civilian War Relocation Authority.92 During the Cold War, the Army gathered intelligence on civilian groups thought to be radical or subversive, including civil rights and peace organizations. During the Vietnam War, Army surveillance increased dramatically in size and scope: spying on antiwar protests, investigating unrest on college campuses, monitoring racial turmoil in American cities, and scrutinizing political dissent.93

The use of the military internally to support African American voting during Reconstruction influenced Congress, with the approval of the Army, to pass the Posse Comitatus Act in 1878, to keep the regular Army from being used to enforce the laws. The military establishment valued this separation, not wishing to be diverted from its focus on war or to be perceived as the tool of one set of Americans against another. Thus the armed forces resisted eroding these restrictions in the 1980s to help interdict the importation of narcotics in the war on drugs.94 And the military continues to be troubled by the tendency. As one student of the problem concluded 4 years before September 11, "in recent years, Congress and the public have seen the military as a panacea for domestic problems."95 "Civilian law enforcement requires the cognizance of individual rights and seeks to protect those rights, even if the person being protected is a bad actor. Prior to the use of force, police officers attempt to de-escalate a situation" and "are trained to use lesser forms of force when possible." However, "soldiers" emphasize "deadly force." "Escalation is the rule" and "in an encounter with a person identified with the enemy, soldiers need not be cognizant of individual rights, and the use of deadly force is authorized without any aggressive or bad act by that person."96

The larger principle is this: that regular armed forces need to face outward, against American enemies rather than inward, where a military force can become an institution acting on behalf of one part of the community against another. That corrodes the morale of the forces, harms recruiting, reduces readiness, undermines the support of the country for the armed forces, and ultimately drives a wedge between the military and society. Temporarily reinforcing civilian agencies in border control or with drug interdiction, or to provide security for the Olympics or sporting events like the Super Bowl seem, on the surface, functional and helpful. For nearly 2 decades, regular military forces, including Special Forces, have been aiding border control authorities along the Texas-Mexico border and law enforcement organizations nationwide since the early 1990s. But when Marines inadvertently killed an innocent teenage goat herder in 1997, ground reconnaissance along the border ceased.97 Yet today, that same border with Mexico presents a special challenge for keeping terrorists out of the United States.98
Both the chairman of the Senate Armed Forces Committee and General Eberhart of Northern Command have called for a review of the Posse Comitatus Act limitations on domestic uses of the armed forces. In January 2003, Undersecretary of Defense Edward "Pete" Aldridge asked the Defense Science Board to review "what specific roles and missions" the military should possess in homeland defense. Citing the great resources the military possesses, Aldridge pointed out the "many . . . systems engineering, technical capabilities, relevant technologies, logistics expertise and modeling and simulation capabilities needed for effective homeland security."  

The problem in the end is not likely to arise from the military itself. Over a century of concern about the use of regular forces internally, and over a decade of discussion about the negative impact on war-fighting capabilities and civil liberties, have made the uniformed leadership extremely wary of altering the boundaries separating military and civil functions in law enforcement and domestic operations. Memories of using the Army against labor and radical groups in World War I and to spy on antiwar protests during the Vietnam War have dimmed but remain alive in institutional understanding. The danger lies in public pressure exerted on the political leadership to act, and in turn, a tendency to use the military because it has the resources and the organizational effectiveness to accomplish what the American public might demand.

The United States has experience with a national security state and its excesses during World War I, World War II, and the Cold War. Although the domestic threat lies more in civilian counterintelligence, the use of the military lies constantly in the background, particularly for those nightmares—the endless "what ifs" in our imaginations—of one or more catastrophes involving weapons of mass destruction, the results of which overwhelm not only temporary civilian responders, but "consequence management" over the long term, and the patience and willingness of the American people to balance security with liberty. Significantly, the courts, normally the bulwark of liberty in American society, have consistently deferred to the military in the operation of the system of military justice, and to the other branches and particularly the executive branch on civil liberties in wartime, permitting infringements during war that, under other circumstances, would not be allowed. The Supreme Court under William Rehnquist has gone further, adopting a doctrine that designates the military "a society apart from civilian society," superior morally and culturally, and essentially exempt from civilian judicial oversight. Under this doctrine, civilian control would be left exclusively to executive and legislative branches that might, under future circumstances and without regard for traditional constitutional and legal safeguards, give power and authority to the military inside the United States, over American citizens. It is this blurring of boundaries—the militarization of internal security and the possible use of the military domestically—that poses the greatest danger.

Over 2 centuries ago, as the Constitutional Convention was concluding its work and the members were signing the document, the aged scientist, diplomat, and political leader Benjamin Franklin remarked that throughout the convention's work, he had speculated whether a sun carved on the back of the president's chair was rising or setting. "But now at length I have the happiness to know that it is a rising and not a setting Sun." At the same time, Franklin sensed the fragility of the experiment. Accosted outside the hall by a local woman, "Well, Doctor, what have we got, a republic or a monarchy?" "A republic," Franklin responded, "if you can keep it."
NOTES

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3. See Mahon, History of the Militia and the National Guard, 110. For a general discussion, see also ibid., 108—24.

4. See ibid., 253-56, 265; Richard B. Grassland and James T. Currie, Twice the Citizen: A History of the United States Army Reserve, 1908-1983 (Office of the Chief, Army Reserve,


6. See Mahon, *History of the Militia and the National Guard*, 254. For a general discussion, see also Gross, *Prelude to the Total Force*; Cantwell, *Citizen Airmen*.


10. See Fautua, "How the Guard and Reserve Will Fight," 130-31. For a general discussion, see also Mahon, *History of the Militia and the National Guard*; Gross, *Prelude to the Total Force*; Cantwell, *Citizen Airmen*.


12. Ibid.

13. Ibid.


19. For a recent overview of the military's historical role in providing a broad array of functions all in the name of homeland defense, see John S. Brown, "Defending the Homeland: An Historical Perspective," *Joint Force Quarterly* (Summer 2WZ): 10.


23. E-mail from Andrew J. Bacevich, director, Center for International Relations, Boston University, to author (February 27, 2003; on file with author). Bacevich was stationed at Ft. Lewis at the time and participated in the search; Sam Skolnik, "30 Years Ago, D. B. Cooper's Night Leap Began a Legend," *Seattle Post-Intelligencer* (November 22, 2001): A1.


28. E-mail from Captain Kevin Clark, instructor, U.S. Military Academy, West Point, to author (March 29, 2003; on file with author).


33. Jacquelyn Zettles, "Interview with die Commandant," Coast Guard Magazine (August 2002): 10. For a review of the new ships and aircraft, see ibid., 30-57; Renae Merle, "For The Coast Guard Fleet, a $15 Billion Upgrade: Agency's Profile, and Its Duties, Have Grown since Sept. 11," Washington Post (June 25, 2002): A3. "We were always involved in homeland defense," said the commander of the 14th Coast Guard District in Hawaii, Rear Admiral Ralph Utley. "But on Sept. 10 it only took up 2 percent of our time. By Sept. 12, it was up to 58 percent": Gregg K. Kakesako, "9/11 Changed Coast Guard: The Terrorist Attacks Force a Shift in Priorities from Rescues to Maritime and Harbor Security," Honolulu Star-Bulletin (September 8, 2002). Nationally, the change in the "port security mission" was from "1-2 percent of daily operations to between 50-60 percent today [February 2002]," Bush, Securing the Homeland, 18. See also The Coast Guard & Homeland Security: A New America, CD-ROM video, enclosed in a letter from Rear Admiral K.J. Eldridge, assistant commandant for governmental and public affairs, U.S. Coast Guard, to author (February 21, 2003; on file with author). A short history of the Coast Guard can be found in John Whiteclay Chambers II et al., eds., The Oxford Companion to American Military History (Oxford: Oxford University Press, 1999), 144-46.


36. See Geneva Convention Relative to the Protection of Prisoners of War, 6 UST 3316 (1956).

37. See American Bar Association, Task Force on Treatment of Enemy Combatants, Criminal Justice Section, Section of Individual Rights and Responsibilities, Report to the House of Delegates (February 2003), 3n8, available at www.abanet.org/leadership/recommendations03/109.pdf; Paisley Dodds, "U.S. Defends


43. Timothy Dodson, "Face to Face: A Conversation with Paul Wolfowitz: I Don't Think the One Problem Can Wait on the Other," Sun-Sentinel (Fort Lauderdale) (November 24, 2002): 5F.


48. Ibid.


53. "Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism."


56. Laurence McQuillan, "For Bush Secrecy Is a Matter of Loyalty," *USA Today* (March 14, 2002): A1. See also Steve Chapman, "Executive Secrecy in the War on Terror: How Can We Judge Whether President Bush and John Ashcroft Have Acted Responsibly When They Refuse to Put All of the Cards on the Table?" *Chicago Tribune* (August 18, 2002): 2-9; James G.


67. For the willingness of the American public, even people traditionally sensitive to civil liberties, "to give up some of their personal freedoms in order to make the country safe from terrorist attacks," see Laurie Goodstein, "Civil Liberties: Jewish Groups Endorse Tough Security..."


71. Smithson and Levy, Ataxia, 113. For additional information on training and equipment programs, an assessment of frontline readiness, and for recommendations on how to prepare for chemical and biological terrorist threats, see ibid., 288-303 and chapters 5-6.


73. For an example of how stretched one service is to deal with multiple commitments and a campaign in Iraq, see Elaine M. Grossman, "Air Chief Reaches Deeper to Find Forces for Multiple Warfronts," Inside the Pentagon (February 20, 2003). See also Press Release, United States Department of Defense, "National Guard and Reserve Mobilized as of November 27, 2002" (November 27, 2002), available at www.defenselink.mil/news/Nov2002/bil272002_b603-02.html. During the Afghan campaign, some 83,000 of the 1.25 million Guard/Reserves were on active duty. See Kilian, "Reserves Turning into Active Force." See also "Making Headlines This Week: Debate Swells Over Sending Unarmed Troops to Guard U.S. Borders, "Inside the Air Force (March 8, 2002); Hearing on Combating Terrorism: Protecting the United States Part II before the Subcommittee on National Security, Veterans Affairs, and International Relations of the House Committee on Government Reform, Rep. 107-156, 107th Gong., 2d Sess. 118 (2002) (statement of Peter Verga, Special Assistant for Homeland Security).


82. Gilmore Commission, Fourth Annual Report to the President and the Congress, iv.

83. See Dunlap, "The Thick Green Line," 32.


85. My use of the term "militarization" follows Sherry's: "the process by which war and national security became consuming anxieties and provided the memories, models, and metaphors that shaped broad areas of national life." Sherry, In the Shadow of War, xi. My use includes the "caveats" he applies to the concept, including a certain blurriness and a "varied and changing rather than uniform historical process" embracing "varied, even discordant, phenomena." Ibid., xi-xii.

86. Paul Pillar, as quoted in Steve I Hirsch, "The War against Terror Will Be Indefinite," National Journal 254 (January 26, 2002). The Chairman of the Joint Chiefs of Staff expressed similar views about the conflict being indefinite. Bradley Graham, "General to Troops: Sit Tight:

95. Ibid., 953.
96. Ibid., 973.
99. See Carl Levin, Opening Statement of Senator Carl Levin, Chairman, Committee on Armed Services, Hearing on The Role of the Department of Defense in Homeland Security


101. See, for example, Lawlor, "Military Support of Civil Authorities."


