
THE MILITARY AND HOMELAND SECURITY

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Abstract

Since September 11, American citizens have witnessed an expansion of the participation of the U.S. military in domestic security (e.g., civil infrastructure protection, defenses against WMD attack). Currently much of this activity remains limited to activities only indirectly related to the monitoring, investigation and apprehension of individuals and groups with suspected terrorist ties. However, in the event of a new, large-scale attack (or fear of one) politicians may be tempted to accept an even greater role for the U.S. military in antiterrorism efforts--efforts that border on "police work." This essay argues against permitting an expanded role on three grounds: military and police work are fundamentally different activities, which require different training and mindsets; expanding roles in internal security could politicize the officer corps and undermine the fundamental premises of U.S. civil-military relations; allowing the military an active role in domestic security challenges important, historically grounded societal and cultural values.

Introduction

Since September 11 the U.S. has undertaken a variety of military actions, notably in Afghanistan and Iraq, with the stated goal of anticipating and preventing future terrorist threats against Americans. Although the rationale offered for these military actions is largely new, in other respects, these wars and interventions represent familiar territory for Americans. The tradition of using the military abroad to protect U.S. security is, after all, what the armed forces have been trained and equipped

for. Historically, the military has been a tool to protect Americans from threats emanating from outside their borders.

In the post September 11 era, however, U.S. politicians are increasingly employing and contemplating a new role for the military: as a participant in safeguarding U.S. domestic security—a force that not only secures Americans from threats originating from abroad, but protects us from each other and would-be terrorists here at home. For many, the imperatives of homeland security make expanding the military's role in countering terrorism an appealing option. Yet Americans should carefully consider the implications before supporting such initiatives. Expanding the U.S. military's role in homeland security could, over time, alter the purpose and culture of the military establishment and its relationship to American society in ways that undermine the legal and social fabric of civil-military relations in this country.

Although little noticed by the public at-large, some important changes have, in fact, already occurred in the military's roles in homeland security. Members of the Air National Guard have flown over 42,000 air patrol missions over U.S. cities since September 11. Army National Guard Units have been guarding major infrastructure sites, including dams, bridges and power plants. Since 9-11 the Guard has also provided 1,100 troops to assist the Immigration and Naturalization Service at the country's borders. In fact, as of July 2003, over 28,000 active duty, reserve and guard troops were involved in homeland security.¹ These activities have led to talk of relocating the National Guard in the Department of Homeland Security, with some prominent politicians and think-tanks, conservative and liberal, advocating assigning homeland security to the National Guard as a primary mission.²

In addition to the Guard's activities, the Department of Defense (DoD) has undertaken a major reorganization, creating a new unified combatant command, Northern Command (NORCOM), which is charged with protecting the security of the territorial United States (an innovation DoD managed to avoid

throughout the Cold War). Justice and Defense Department lawyers have been reviewing legislation that limits the military's role in domestic law enforcement related activities, while the Department of Homeland Security is reviewing how best to employ for the military in supporting its domestic security mandate. Although prior initiatives, such as "Total Information Awareness," which would have allowed Pentagon to monitor financial and other data on civilians, have been defeated, new efforts to enhance those prerogatives are under consideration. Recently, for example, Congress has proposed granting the Pentagon the prerogative to demand direct access to individuals' personal and financial records in order to monitor the activities of civilians residing in the United States.³ In sum, in a variety of ways the U.S. has begun slowly to enhance the domestic security roles of the U.S. military.

As striking as these changes have been, they represent the proverbial tip of the iceberg in terms of altering the military's role in homeland security. Public officials continue to warn that the U.S. remains at risk of serious terrorist attacks on its own soil. These risks may in fact grow as the U.S. military expands its training activities and other operations overseas, maintains a presence in Iraq in coming years, and as al-Qaeda continues to regroup, expands its mobilization activity and replaces leaders that the U.S. apprehends.⁴ Skeptics continue to voice concerns about whether civilian agencies can handle the nature of the threats facing American citizens in an era of growing terrorist activity.⁵ And if civilian agencies do prove incapable, political leaders and analysts may be inclined increasingly to call on the U.S.'s most well trained, professional organization to assist in rooting out these threats: the military establishment.

Alarming, these potential and manifest changes in the military's role in anti-terror activities are occurring in a relative vacuum of public debate about the appropriate role of the armed forces in homeland security. These issues are too important to leave to lawyers, or even to the president and Congress to decide. Americans must decide for themselves what, if any, role the country's armed forces should play in protecting their cities and

neighborhoods from terrorist threats.

There are some good reasons to consider creating a substantial role for the armed forces in homeland security. Without question, our powerful military is a major resource that could be marshaled in support of the war on terror here in the United States. But the arguments against allowing it such a role are stronger. Although the National Guard has helped ensure stability during episodic crises in this country's history, granting the military a major, on-going domestic role in ensuring internal security is not part of American civil-military tradition. It also conflicts with the fundamental philosophical traditions upon which our society rests, which privilege a free and open society reflexively opposed to militarist values. More concretely, policing citizens and fighting wars are largely incompatible tasks. They require different mindsets, training and involve a different sensibility toward the use of force. For these, and other, reasons Americans should resist the impulse to institutionalize a major military role in homeland security.

The Scenario

Assume, for a moment, that officials obtain reliable intelligence that the country could face a September 11 scale attack within the next year. A mobile, highly compartmentalized and skilled of terrorist cell is suspected of planning operations in several major metropolitan areas. To confront the threat, public officials develop a plan to expand security and intelligence operations within the country's major cities. They seek to establish a surveillance regime, employing sophisticated and expensive equipment, to monitor civilian groups who live within select urban areas and are suspected of having ties to the network. Offices within each city will oversee the search, apprehension, and interrogation of suspects. These activities are to be coordinated by integrated command and control centers.

The considerable demands of implementing the plan overwhelm state and federal civilian law enforcement and intelligence agencies. They lack essential resources,

infrastructure and experience. Under the strain, they look to Washington to supply military resources to staff, equip and coordinate the operation. Washington would likely be tempted to commit them. Protecting the lives of U.S. citizens would weigh heavily on the president and his advisors. Given the stakes involved, they could call on the Pentagon to act—perhaps at first to run the command centers, and later to actually participate in the monitoring and apprehension of suspected civilian suspects.

Of all the changes wrought by September 11, using the military in this way would represent the largest and most significant departure from our political and legal traditions. Historically the U.S. military has not played a central role in domestic security. Rather, the military and civilian establishments have traditionally conformed to a division of labor in protecting the country from domestic and international threats. The military protects the country's borders and sovereignty from external challengers. Civilian entities, such as the Federal Bureau of Investigation, other federal agencies, and state and local officials enforce our laws and protect us at home.

Beyond this practical division of labor, our current laws prevent the military from playing an active role in law enforcement. The Posse Comitatus Act (PCA) of 1878 prohibits such a role. The PCA was passed during the Reconstruction era South when the military was being used to enforce federal law. Disturbed by the politicization of the military, Congress prohibited the use of the army and navy (it applies to the marines and air force by DoD regulation) as a *posse comitatus*, which literally means “force of the county,” in order to enforce laws. As it now stands, with the exception of the National Guard when under state control, military personnel cannot participate in activities associated with searching citizens, seizing their property for evidence or arresting them. In practical terms, this means that the military cannot now legally participate in criminal-style investigations of civilians residing in the United States in order to enforce federal laws.

Expanding the military's place in homeland security to

more actively monitor, investigate and pursue suspected terrorists would require relaxing these limits on the military's law enforcement related activities, and altering the longstanding division of labor between the military and civilian establishments. In short, undertaking these activities would represent an unprecedented change in the role of the military in the United States.

Reasons for Change

There are some good reasons to consider making such changes. First, and perhaps most importantly, the U.S. military is an extremely effective organization. It is the largest and best-funded public institution in the United States. It is composed of highly competent officers and enlisted personnel—an untapped pool of resources available for protecting U.S. citizens against terrorism. The Department of Defense also already has sophisticated satellite and other reconnaissance capabilities, as well as specialized surveillance equipment, not broadly available to civilian agencies. The military is used to contingency planning and the speedy deployment of forces. It is expert at establishing control of an area quickly and monitoring movements of people and equipment.

In addition, some may argue that there is already a precedent for expanding the military's role in law enforcement activities. As noted above, the military, and the National Guard in particular, has long played an important role in quelling civil disturbances and suppressing domestic insurrections during episodic crises. Recently, for example, Federalized Guard troops and U.S. marine units helped restore order in Los Angeles in the aftermath of the 1992 Rodney King verdict. Since the early 1980s the military has also played a role in counter-drug operations. Military personnel assigned these responsibilities are tasked with patrolling borders, and providing intelligence and other support to civilian law enforcement officials. Moreover, the U.S. military plays a role in humanitarian operations, especially in the aftermath of national disasters. In the 1990s Congress assigned the U.S. military a role in training and coordinating a response to

a chemical, biological or nuclear attack within the United States. Today the National Guard maintains 27 civil support teams whose main responsibilities involve supporting civilian emergency operations and clean-up in the event of a WMD attack.

Finally, while the PCA prohibits the active duty military and reserves from participating in civilian law-enforcement, the Act does not apply to the National Guard when under state control, or to the Coast Guard. Hence these services now could be assigned substantial roles in intelligence, gathering evidence and even in the interrogation and detainment of civilians without legal restrictions. In addition, the courts and Congress already allow *all* the armed forces to provide *passive* support to civilian authorities. Only active participation is illegal (e.g., search, seizure and arrest).⁶ The military can share equipment and facilities, train civilian personnel in the use of the equipment, and provide technical assistance and operate surveillance and communications equipment on their behalf.

In short, since part of the military is already exempt from the PCA, and support activities are permissible for all the armed forces, amending the law to allow the regular, active duty forces, the Reserves or the Federalized National Guard to participate in law enforcement related activities may seem a logical next step. In short, advocates of change may argue that there already is a legal and practical basis for a military role in law enforcement to combat terrorism on U.S. soil. Much is already allowed and acceptable.

Turning Soldiers into Policemen

Institutionalizing a major role for the military in domestic counterterrorism activities may seem a short departure from the status quo. In reality it is a major, and potentially risky, step. There are three main reasons to be wary of taking it.

First, it would be bad for our military. The U.S. military has already assumed new responsibilities in the post September 11 era. To start, Special Forces continue to patrol Afghanistan, in

search of al-Qaeda and Taliban forces. The military has also accepted a series of new training missions for foreign militaries to bolster their capacity to fight terrorism. On top of this, tens of thousands of military personnel are now deployed in Iraq and will stay for an unknown duration. Iraq aside, the U.S. military must remain prepared for a potential conflict in Asia. A range of incendiary situations—from North Korea to Taiwan—make that a top priority for the foreseeable future.

Expanding the military's role in homeland security may harm readiness to perform these external missions. It would absorb critical personnel and equipment. The U.S. military already experienced shortages in equipment, such as unmanned surveillance aircraft in Afghanistan. Strains on personnel are also serious considerations. As noted above, the National Guard, since September 11th, has played a significant role in providing security to civilian infrastructure and major sites in the United States. Yet, it is critical to remember that the Guard also maintains a critical external role. The Guard provides 98% of the staff for civil affairs units involved in stability operations overseas. The personnel requirements of maintaining stability in post-war Iraq alone will demand considerable Guard resources for years to come. The active duty force is similarly constrained. From January to the end of July 2003, of the Army's 33 active duty brigades, 24 were deployed overseas, or approximately 73 percent. While deployments may decline moderately in the future as some forces are withdrawn from Iraq, in July 2003 48 percent of the active duty military was deployed overseas (with 167,000 in Iraq alone) as was 30 percent of the Army Reserve force and 21 percent of the Guard.⁷ In addition to current deployments, the reserves and active duty force--the country's mainline combat forces—may be assigned other combat-related tasks in coming years, and must remain prepared if politicians require them to act. For these reasons, requiring the Guard, Reserves or active duty forces to commit their personnel and equipment permanently to homeland security could overstress our resources in these areas.

Beyond straining resources, expanding the military's active participation in domestic counterterrorism would distract the

Department of Defense from its other external responsibilities. The Pentagon has already developed new layers of bureaucracy to liaison with various civilian agencies and the Department of Homeland Security. An even greater role in law enforcement style activities would demand even more investment in bureaucratic structures to interface with potentially dozens of federal bureaucracies and local and state entities. Everything from chains of command, doctrine and training, to rules of engagement and conduct for military personnel would have to be designed, established and monitored. Civilian entities already have the basic infrastructure and know-how for enforcing laws. The military would have to develop these structures and skills.

The problem will run even deeper than modifying bureaucracies. Military and police work require fundamentally different mindsets. These skills are not easily interchangeable. Police are trained to deescalate situations. They draw their weapons as last resort. They administer Miranda rights and operate under a strict mandate to safeguard citizen rights and liberties. Military personnel are trained to be decisive and liberal with the use of force. They are trained to act reflexively in a combat situation. They have specialized doctrine and language which helps them communicate to their units, and not necessarily with outsiders. They are not trained in basic citizen protections.⁸

The culture clash is illustrated by a potentially devastating incident during the 1992 LA riots when federal troops were brought in to help restore order in the aftermath of the Rodney King verdict. One night during the riots, officers from the LAPD, accompanied by U.S. Marines, were asked to respond to a domestic dispute. When they arrived at the doorstep of the house, shotgun birdshot rounds were fired through the door, hitting the police officers. One reportedly yelled "cover me" to the Marines. With that command, the police officer was directing the Marines to point their weapons and be prepared to shoot if necessary. The Marines, however, responded as they had been trained to react to that phrase: over 200 bullets were fired into the house. No one was hurt in the incident, but the couple's children were in the house at the time.⁹

The current occupation of Iraq also highlights some of these dilemmas. The particular mix of an unstable security environment and need for political and economic reconstruction has required soldiers deployed in Iraq to reconcile the training, tactics and mindset essential to countering guerilla-style operations with the skills necessary for dealing effectively with civilian populations, at times with considerable difficulty. Although arguably less acute than would be the dilemma of the U.S. military policing civilians within the country's borders, the problems in Iraq highlight the conflict between police work and combat operations. For example, reports of soldiers searching homes and treating Iraqi civilians disrespectfully in an effort to apprehend criminals and opposition forces speak directly the differences in the mindsets involved in combat operations and stability operations.¹⁰

Some might argue that these problems are less acute for the National Guard, and therefore while keeping the active duty force out of internal security is important, the obstacles are less for the Guard. As citizen soldiers, many members of the Guard work in civilian jobs and serve in locally based units that have strong roots in their communities; as a result, organizationally and culturally the Guard is probably best prepared to interface with civilians and their institutions in the United States and therefore to play a role in internal security. Yet, the Guard too must maintain readiness to operate in a conventional military environment to fulfill its present mandate— its members may be best prepared to bridge the gap between the skills essential to stability operations and combat operations, but that does not mean it is easy to do so. To train and equip the National Guard to participate more actively in anti-terrorism activities here in the United States—especially in those activities that could potentially fuse with criminal style investigations involving the monitoring and apprehension of civilians—would require an important shift in doctrine, training and military education in order to establish civil protections and restraint in the use of force. Such efforts to prepare the Guard as an institution and its members to play an enhanced role in internal security would

potentially entail changes in the current mandate of the Guard and a shift away from its combat roles. However, politicians do not seem inclined to take-on such ambitious and politically sensitive initiatives. Rather, in the current climate momentum is pushing in the opposite direction; rather than making the Guard a less combat oriented force, the Department of Defense is advocating a rebalancing of responsibilities between the Guard, Reserves and Active Duty force, which would result in the a greater emphasis on combat operations within the Guard and Reserves.¹¹

In summary, there are important differences between the resources, skills and instincts required for warfighting and policing. Assigning military personnel roles related to law enforcement would require major changes in culture and training, as well as strain resources. And such changes would certainly compromise the military's capacity to perform its primary responsibility: protecting the U.S. from external threats and challengers. In sum, turning soldiers into policeman is a bad idea.

Politicizing the Military

Involving the military more extensively in homeland security would also be bad for civil-military relations. The U.S. system is premised on having a military that keeps its distance from politics and focuses on its professional responsibilities. Although, as Eliot Cohen reminds us, military activity is inevitably political, for the most part United States military personnel are socialized to keep their noses out of active political debate (Cohen, 2002). Rather, politics is a civilian endeavor. The Constitution helps perpetuate this convention. Civilian control of the military is assured through the designation of the president as commander-in-chief. The Constitution also vests Congress with the right to manage the military (including deciding its organization and approving its budget). All of this is reinforced by the conventions of civilian supremacy central to American military culture. Civilians are ultimately accountable and responsible for military and security policy.

Involving the military in homeland security could erode the practical base—if not the formal legal pillars—of this architecture of civilian control. Samuel Huntington himself, the United States' most prominent theorist of civil-military relations, warned of the dangers of involving militaries in internal security. He worried that it would enmesh these organizations in domestic politics, invite their politicization and harm their effectiveness in war (Huntington, 1957).

In fact, scholars working on the politics of lesser developed countries have long documented the dangers of actively engaging the military in states' internal security.¹² Important lessons can be learned from these scholars' observations—lessons that are relevant not only for the present and transforming autocracies which commonly studied, but for consolidated democracies as well. Among them is the risk that involving the military in internal security could undermine civilian competence in such activities, by slowing the development of civilian agencies whose training, mission and function is better tailored to the delicate nature of investigating citizens and protecting their institutions and environments. Louis Goodman, for example, warns against engaging military authorities in activities that “shut out” civilian actors and prevent them from “developing the critical skills and expanding their activities” (Goodman, 1996: p. 39; also see Desch, 1996: p. 14).

Equally important are the effects on the politicization of the officer corps and military service organizations of growing involvement in domestic security. Once again, Goodman suggests decision-makers think carefully about expanding activities of this nature. He warns that they could result in the “armed forces gain[ing] added privilege and becom[ing] a special-interest group promoting their own institutional interests at the expense of private and public entities.” Specifically, the risk is that in the process of institutionalizing a role in domestic security, military leaders and their organizations become vested in internal debates about the allocation of resources and methods in countering terrorist activity in the United States—they develop their own institutional interests in how domestic security is managed and

funded. This would also likely enhance pressures to become participants in partisan debates about these issues, as politicians court military support in trying to sell alternative conceptions of how homeland security resources are structured and allocated (a phenomenon, for example, that is increasingly observed in the area of foreign and external security, as politicians have sought and received endorsements about their credentials and platforms from retired military personnel in recent elections) (for details see Brooks, 2002).

One of the underlying normative principles upon which United States civil-military relations rests is that officers are professionalized—a term that is, in part, conventionally understood to mean that officers withhold public participation in politics and do not align with particular parties or interest groups; explicit partisanship and politicking stop at the barracks doors. This value has already been tested in service branches' organizational battles over the defense budget and procurement (Scroggs, 2000), and even in foreign policy,¹³ but for the most part military leaders and their organizations in the contemporary United States do not participate in debates and lobbying on domestic policy. This could be tested, however, if the military services or their subcomponents become organizationally committed to a mission of internal security. In sum, one of the consequences of expanding the military's organizational roles in internal security is that it subverts this normative ethos and alters the existing basis of professional conduct for United States military personnel.

Of course, to some, this may seem far-fetched for the U.S. military. But the reality of American civil-military relations in the twenty-first century suggests it is possible. There are indications that the U.S. military is already increasingly politicized.¹⁴ Its officers are more partisan than they were thirty years ago. Most now profess allegiance to a political party (primarily the Republican Party) while in the early 1970s a majority preferred to be identified as independents. Today officers are better educated than civilians with similar levels of professional achievement. Their services run elaborate and

sophisticated lobbying campaigns on capital hill. At the same time, nearly two-thirds of the country's military officers surveyed in the 1990s said they believed politicians were either somewhat ignorant or very ignorant about military activity. Large numbers of those officers replied that they should insist (not just advise or advocate) when it comes to civilian policy decisions related to the conditions under which force is used. This may embolden them to speak out on domestic security issues, especially if their organizations and personnel are directly involved. And U.S. citizens may be prone to listen. The military enjoys more esteem than any other public or private institution in the country, including religious institutions.¹⁵

To be clear, the danger of politicization is not that its leaders will engage in an overt intervention in politics (such as through a *coup d'etat*). The risk is more subtle, if equally worrisome. Military leaders may be drawn in to domestic political debate, and be forced or compelled to adopt positions on sensitive issues essential to domestic security. The commander of NORCOM alone, for example, could become a prominent voice on domestic security. Concerned that an administration is mismanaging domestic security, and in his capacity as chief of the unified combatant command for the continental U.S., it would not be difficult to imagine that he could give statements that question or challenge an administration's policy. A president with strong credentials might be able to counter effectively these statements. But not all presidents will have that luck. It is one thing for the military to advise civilians behind closed doors. Much more worrisome is a military leadership that publicly advances its own agenda on domestic security. Such actions threaten to undermine the spirit, if not the letter, of civilian supremacy.

Moreover, even if military leaders do not deliberately seek out opportunities to speak out, they could easily get drawn in to debate inadvertently. Had the marines shot someone during the LA riots or were they to in some future anti-terrorist operation they would inevitably become embroiled in social controversy. History shows that institutions' reputations emerge bruised and bloodied from such episodes. This would be bad for the U.S.

military, and for society that it protects. Moreover, in such an event, the military brass may find it has no choice but to speak out in defense of its own, inviting its politicization. For all these reasons, extreme caution is in order before we enhance the military's domestic roles.

Compromising Values

Last, involving the military in homeland security would be bad for society. This country was born with a basic apprehension about a domestically powerful military. The founders were convinced a powerful military establishment ran counter to the principles of democracy and liberty enshrined in the Declaration of Independence. In fact, it was not until the Constitution was written that the exigencies of protecting the young republic prevailed over the reflexive fear of a standing army, and a federal force was established. Involving the military in homeland security would run counter to our tradition of maintaining a military carefully divorced from civilian society.

Of course, tradition may be a luxury we can no longer afford. The reality is that the country is facing a threat to the well-being of its citizens of a kind unforeseen in the past 200 years. The nature of the adversary—a non-state actor which operates within the boundaries of the country's borders and targets its citizens internationally—differs from the traditional, state-based adversaries the United States has faced throughout much of its history. While some dimension of confronting terrorist activity arguably involves conventional military operations and other combat related activity, the nature of terrorist movements also entail the redirection of existing resources and capabilities—both civilian and *military* resources. In short, from this perspective, confronting global, ideological terrorism may demand new ways of thinking about the uses and functions of the United States military (as well as the country's other public institutions and ways of life). It may require a revisitation of the country's historical, philosophical and legal traditions: maintaining tradition may be an indulgence American citizens can no longer afford.

The problem with this argument is that the traditions at stake are not mere luxuries. Thinking critically about both about the benefits and costs of reorienting security structures and redefining the activities of public institutions is essential. Yet transforming the United States' military's role in internal security represents more than a natural evolution of values and practices to suit the contemporary era. Rather, doing so would challenge some premises of core societal and cultural values. Americans live in society based on the philosophy of Liberalism (that is Liberalism in the philosophical sense, not in the sense of contemporary politics). They value individual rights, and set up institutions to facilitate commerce. They retain a basic mistrust of an imposing state that might hinder individual rights. They are fundamentally anti-militarist.

A large domestic security role for the military goes against this cultural grain. Cultural change happens slowly and usually with little notice. We have already begun to alter some of our traditions by relaxing protections on rights of privacy and other civil-liberties with the passage of the USA PATRIOT Act, related legislation and regulation that grants civilian entities greater prerogatives to monitor the activities of the U.S. population.¹⁶ While these actions are controversial, they are mild compared with the cultural implications of allowing the military a visible, institutionalized role in monitoring and policing our schools, work places, churches and communities. Such activities smack of the role of militaries in autocratic regimes and in pseudo democracies—regimes and societies the U.S. has traditionally reviled for failing to divorce their militaries from civilian society. In short, by acquiescing in an expansion of the military's role in domestic society, we may inadvertently promote distortions in the basic principles of civil liberty, individual rights and freedom upon which our society rests.

What Is To Be Done?

Certainly there is room for a sensible compromise. Some role for the military in homeland security is arguably appropriate

and desirable. But a number of actions must be taken in order to define that role.

First, we need clarification of *Posse Comitatus* based on a comprehensive assessment of the principles of civil-military relations in United States. Traditionally, Congress has offered ad hoc amendments to the PCA. They did so in the early 1980s to facilitate the military's expanded role in drug interdiction, and more recently with a series of legislative initiatives in the 1990s (Taylor, 1998). But *ad hoc* amendments are no substitute for a coherent concept of how to use the military domestically. We need a clear, principled view on which to base law and regulation. Specifically, we should clearly delineate what activities are permissible and appropriate in supporting homeland security. Any new legislation should provide comprehensive guidelines for how and when the military should and can participate in protecting the U.S. population against terrorist activity. This would create a legislative fire-wall against the slow erosion of limits on the military's role in homeland security. Note, moreover, that such a clarification would be helpful not only to civilian authorities, but to military officials who must now try and interpret the Act's and related legislation's relevance on a case-by-case basis. Military authorities, as well as their civilian counterparts, would have a clearer understanding of what was and was not allowable.

Second, these newly clarified principles should be based on the premise that the active duty military and reserves are, in all cases, tools of last resort. We should not institutionalize any regular roles for these forces in homeland security, which are the country's mainline combat forces. Instead, we should plan to use them primarily when no one else can do the job, as an emergency force, not a daily protector—in, for example, the event of a catastrophic WMD attack (a role Congress has already provided for in legislation in the 1990s). Regardless of the circumstance, when these forces' personnel are called upon to act, it must be done with clear plans for integrating their units and entities into a *civilian* led command structure. Research is essential on doctrine for how best military agencies can assist and support

civilian law enforcement agencies in emergencies, and on the dangers and pitfalls of such activities. Clear lines of authority and spheres of responsibility must be delineated and maintained. Otherwise, during crises military authority and activity will tend to fuse or coexist awkwardly with civilian law enforcement functions.

Third, although some roles for the National Guard in homeland security may be appropriate, these should be sharply limited. It may be appropriate, for example, to maintain Guard participation in civilian infrastructure protection and in air patrols over urban areas, as long as these activities remain distinct from any law enforcement related roles. Of the country's armed forces, the Guard is arguably best equipped for tasks that require interface with civilian populations and communities. It is under the peacetime command and answers to state officials (state governors). Members of the Guard often have ties to local communities and may even work for civilian law enforcement and emergency services. Hence, using the Guard as a supplemental protection force at dams, nuclear facilities and the like may make sense. However, prohibitions against directly involving it in surveillance or law-enforcement related activities should be maintained. The Guard is *still* the military, and its members are not trained in civilian protections and civil liberties. And, as noted above, National Guard units play a central, external role in stability operations abroad. In particular, they will likely play a pivotal role in Iraq for the foreseeable future. In short, the Guard, like the active duty force and reserves, should never act as a supplementary law enforcement entity, in charge of monitoring or investigating civilians.

Fourth, we must invest in civilian law enforcement itself. It is meaningless to intend to use the military as a tool of last resort, if we have not actually prepared civilian entities to handle all but the worst jobs. This means anticipating the types of terrorism crises the U.S. may face, and providing the necessary resources and infrastructure far ahead of time. Specifically, we should continue to explore reform of our processes and structures for immigration and border control; this includes examining the

Coast Guard's functions in these areas and clarifying its appropriate roles in safeguarding our territorial waters and ports (important work which has begun, but must continue). We also need to better fund and administer not just the FBI, but organizations such as the Department of the Interior's police forces.¹⁷ Public pressure on civilian intelligence agencies must be maintained, so they operate by the highest standards. High technology equipment useful for surveillance and other activities, now only in the hands of military services, should be supplied to civilian agencies with clear prescriptions about how and when it can be used. Innovative training programs for this equipment also must be institutionalized, so that civilian officials will not always have to call upon the military to fly airplanes and operate computers.

Last, and most importantly, we should establish a better dialogue about civil-military relations in the United States. The military is more important to U.S. citizens than ever before. The military, politicians and the society which the former serve, need to be in constant conversation about how and when to use the military in the war on terrorism. Civilians have a duty to educate themselves about the issues. And our politicians and military professionals have a responsibility to consider carefully the short and long term ramifications before altering our traditions.

Notes

(1) Eric Rosenberg, "Global crises push Army to the limit," *The State*, July 27, 2003.

(2) See Bill Miller, "National Guard awaits niche in Homeland Security plan; White House's caution chafes against those urging action," *Washington Post*, August 11, 2002. Also, the Hart-Rudman report (authored before September 11), "Road Map for National Security: Imperative for Change," U.S. Commission on National Security/21st Century, January 31, 2001, p. 10. Joseph Lieberman a potential presidential candidate, has for example on multiple occasions advocated creating a host of new national Guard units trained and assigned exclusively domestic roles Sydney Freedberg, Jr. "Changing of the Guard," *The National Journal*, August 20, 2002.

(3) Eric Lichtblau and James Risen, "Broad Domestic Role asked for C.I.A. and the Pentagon," *New York Times*, May 2, 2003.

(4) For example, the Iraq war has apparently fueled the mobilization effort. Don Van Natta Jr. and Desmond Butler, "Anger on Iraq seen as new Qaeda recruiting tool," *New York Times*, March 16, 2003.

(5) See, for example, the report by the Council on Foreign Relations independent task force chaired by Gary Hart and Warren B. Rudman, "America-still unprepared, still in danger," New York: Council on Foreign Relations, 2002.

(6) As long as the military refrains from active support (search and seizure) courts have declared it in compliance with the PCA. Legislation passed in the 1980s and 1990s codifies the military's passive support rules. For a review of these changes see Steven L. Miller, "The Military, Domestic Law Enforcement, and Posse Comitatus: A Time for Change," Air Command and Staff College, Air University, Maxwell Air Force Base, Alabama, April 2000, pp. 5-9.

(7) Eric Rosenberg, "Global crises push Army to the limit," *The State*, July 27, 2003. In November 2003, 20 brigades from the active duty component were deployed. See <<www.globalsecurity.org/military/ops/global-deployments.htm>>

(8) For discussion of this point, and other concerns about military readiness see Mathew Hammond, "The Posse Comitatus Act: A Principle in Need of Renewal," *Washington University Law Quarterly*, Vol. 75, No. 2 (Summer 1997).

(9) James D. Delk, *Fires and Furies: the LA Riots* (Palm Springs, CA: ETC Publications, 1995), pp. 221-222. Cited in Christopher M. Schnaubelt, "Lessons in Command and Control from the Los Angeles Riots," *Parameters* (summer 1997), pp. 88-109.

(10) On some of these challenges see Sarah Kershaw: "The Struggle for Iraq," *New York Times*, September 15, 2003.

(11) In an effort to lessen the need for lengthy and frequent mobilization of reserves for duty in Iraq, the Pentagon is seeking to move more conventional combat oriented tasks into the Guard and shift some responsibilities larger located in the Guard (e.g. civil affairs) to the active duty force. See Thom Shanker, "Pentagon grapples with troop shortage," *The International Herald Tribune*, July 21, 2003. Bryan Mitchell, "Weekend Warriors in no one's shadow," *Knoxville News Sentinel*, October 12, 2003.

(12) There is an enormous literature on militaries' roles in internal politics in these countries and their implications for democratization, society and the organizations themselves. For a sample, see Alfred Stepan, *Re-Thinking Military Politics*. Princeton: Princeton University Press, 1988; Samuel Huntington, *The Third Wave*, Norman: University of Oklahoma Press, 1991; Adam Przeworski, *Democracy and the Market*, Cambridge: Cambridge University Press, 1991; Guillermo O'Donnell and Phillippe Schmitter, *Transitions from Authoritarian Rule: Tentative Conclusions about Uncertain Democracies*, Baltimore: Johns Hopkins University Press, 1986.

(13) See for example debates about Colin Powell's influence over decisions to intervene in Bosnia in the early 1990s. See the overview in Don Snider and Miranda Carlton-Carew, eds., *U.S. Civil-Military Relations: in crisis or transition*, Washington: Center for Strategic and International Studies, 1995.

(14) For the figures cited below, and further evidence of these trends, see the comprehensive and detailed studies by the Triangle Institute for Security Studies (TISS) compiled in Peter D. Feaver, and Richard H. Kohn, *Soldiers and Civilians: The Civil-military Gap and American National Security* (Cambridge, MA: MIT Press, 2001).

(15) Gallup surveys show that Americans consistently rate the military on surveys which measure confidence in public and private institutions see:

http://www.gallup.com/poll/specialReports/pollSummaries/aoa_index.asp. Also see figures cited in Paul Gronke and Peter D. Feaver, "Uncertain Confidence: Civilian and Military Attitudes about Civil-military Relations," in Peter D. Feaver, and Richard H. Kohn, *Soldiers and Civilians: The Civil-military Gap and American National Security* (Cambridge, MA: MIT Press, 2001), p. 134.

(16) Among them, the USA PATRIOT Act relaxes restrictions on CIA capacity to engage in domestic surveillance and grants police agencies greater prerogatives in telephone and internet surveillance. The Justice Department has also enhanced the powers of the FBI to track individuals suspected of potential terrorist activities without prior evidence of affiliation with terrorist groups. For more discussion of the civilian angle of homeland security and the debate about "security versus liberty" see Thomas F. Powers, "Can we be secure and free?" *The Public Interest* (spring 2003).

(17) For a discussion of the Interior Department's problems, in particular, see Joel Brinkley, "Interior Department Struggles to Upgrade its Police Forces," *New York Times*, November 3, 2002.

References

Brooks, Risa A. 2002. "Political Strategies of the Military in Democracies." Paper presented at the annual meetings of International Studies Association. New Orleans, LA, March 23-27.

Cohen, Eliot. 2002. *Supreme Command*. Baltimore: Johns Hopkins University Press.

Desch, Michael. 1996. "Threat Environments and Military Missions." In Larry Diamond and Marc Plattner, eds. *Civil-Military Relations and Democracy*. Baltimore: Johns Hopkins University Press.

Goodman, Louis W. 1996. "Military Roles Past and Present." In Larry Diamond and Marc Plattner, eds. *Civil-Military Relations and Democracy*. Baltimore: Johns Hopkins University Press.

Huntington, Samuel. 1957. *The Soldier and the State*. Cambridge: Harvard University Press.

Scroggs, Stephen. 2000. *Army Relations with Congress*. Westport, CT: Praeger.

Taylor, Scott . 1998. "Analysis of the Military Role in America's Domestic Counterdrug Effort." Carlisle Barracks, PA: Army War College.