

The Decline and Fall of the American Republic

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LECTURE I. AN EXTREMIST PRESIDENCY

Constitutional thought is in a triumphalist phase. The American mind is dominated by heroic tales of the Founding Fathers—who built an Enlightenment machine that can ticktock its way into the twenty-first century. The basic machinery has stood the test of time for two centuries—so why not three?

America's leading constitutionalists broadly share this premise. While many criticize the extreme ancestor worship of Justices Scalia and Thomas, almost everybody is trying to fill the gap with other heroes. Judicial activists celebrate the genius of the Warren Court; judicial minimalists, the prudence of crafty judges; popular constitutionalists, the creativity of mass movements. These are different themes, but they add up to a triumphalist chorus: We must be doing something right. The only question is what?

Law follows life. The participants in the contemporary debate have all lived through the rise and rise of the American state at home and abroad. We have had defeats along the way, but there is no mistaking the general arc of ascendancy: America's victory over the Axis powers and the Communists, its civil rights revolution, and the extraordinary success of its free-market system have propelled the country to the center of the world historical stage—economically, militarily, morally. Little wonder that its lawyers merely disagree about the magic constitutional formula that accounts for this remarkable record of achievement.

But nothing lasts forever, not even the American Century. And looking forward, I do not think we can afford another generation of triumphalism. The pathologies of the existing system are too dangerous to ignore. We cannot limit our critique to details. We must ask whether something is seriously wrong—very seriously wrong—with the system of presidential government that we have inherited.

My argument takes the form of classic tragedy: it is not as if there is one aspect of the presidency that is a force for good and another that is a force for evil. The office, as it has evolved, is scarred with tragic flaws: *the very same features* that have made it into the platform for credible tribunes

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of the people, like Abraham Lincoln or Franklin Roosevelt, are also conspiring, under different conditions, to make the presidency into a catapult of destruction in the century ahead.

But haven't we heard all this before? Arthur Schlesinger sounded the alarm in his *Imperial Presidency*¹ almost half a century ago—yet the Republic has managed to stumble along despite the warnings of countless Cassandras since then. What is more, President Obama's performance in office has been anything but imperial. Rather than worrying about presidential overreach, shouldn't we be cutting back on the powers of Congress that make effective presidential government impossible?

No. Talk about a "crisis of governability" will only accelerate when Republicans gain in Congress after the midterm elections. But it will serve to generate only greater tolerance for runaway presidencies in the middle run. I certainly hope that President Obama's appeals to bipartisanship are consistently rewarded by significant legislative breakthroughs. But if he fails, this will only deepen the growing suspicion that superstrong presidential leadership is the only way to resolve the very serious problems we confront as a nation.

While Schlesinger was prophetic in sounding the alarm fifty years ago, the presidency poses *much* greater dangers today than when he wrote his book. In the present lecture, I will be suggesting how changes in the forms of presidential selection, communication, and administration make the presidency far more dangerous in the twenty-first century. I will next turn to the military and show how its ongoing politicization heightens the dangers.

Begin with the presidency and parties. For modern Americans, regular party competition is the defining characteristic of democracy: if the same party stays in power for seventy years, as in the case of Mexico, we know all we need to know about its undemocratic status.

This was not the way the founders thought about things. Like other Enlightenment gentlemen of the eighteenth century, to them *party* was a synonym for *faction*. Factions were bad, and the aim of the electoral college was to create a system in which public-spirited gentlemen might win the presidency by transcending the wheeling and dealing of petty factionalists.

But the rise of a two-party system in the 1790s shattered the founding vision. With Federalists and Republicans battling over the meaning of

1. See Arthur Schlesinger Jr., *The Imperial Presidency* (Boston: Houghton Mifflin, 1973).

the French Revolution and the future of American democracy, the presidency became a platform for Thomas Jefferson to claim a mandate from the people to proceed with a sweeping program of revolutionary change. This was just the kind of demagogic claim the Philadelphia convention had sought to prevent.²

So much the worse for the founders. Over the course of the nineteenth century, each generation used the party system to impress the presidency with new plebiscitary meanings—with the Democratic Party of Andrew Jackson, the Republican Party of Abraham Lincoln, and the Populist-Democratic Party of William Jennings Bryan seeing the presidency as an engine of radical transformation. Jackson and Lincoln succeeded, Bryan failed, but win or lose, the recurring pattern impressed the presidency with a new constitutional significance: Americans now took it for granted that their presidents could legitimately claim popular mandates for sweeping changes in the name of We the People.

At the same time, nineteenth-century parties also constrained the presidency's plebiscitary thrust. Presidential candidates did not then create their own campaign organizations. They were selected by state party leaders and depended on local party organizations to mobilize the faithful for election day. Candidates were remote figures who did not try to make direct contact with their mass following.

But this system is as distant from us as the founding vision of the electoral college. While its decline was long and complex, the disastrous Democratic Convention of 1968 marked its collapse, which discredited party professionals and led to the current system in which ordinary voters choose presidential candidates.³

This removed a crucial moderating element. When party chieftains did the picking, they looked for candidates who might win the support of the median voter in their state. Even during moments of ideological fervor, the professionals steered the nomination to figures who would maximize their appeal to the political center—the moderate Lincolns, not the extremist Swards, of their parties.

The new system shifted the balance in the direction of extremism—away from the median voter in the general election, toward the median voter in the primary or caucus. Candidates might move even further to the left or right to encourage activists to get out the vote in the primary

2. See Bruce Ackerman, *The Failure of the Founding Fathers* (Cambridge: Harvard University Press, 2005).

3. See Byron Shafer, *Quiet Revolution* (New York: Russell Sage Foundation, 1983).

campaign. Given low primary turnouts, mobilizing the base will often be a recipe for victory at the polls.

No need to exaggerate. Although party chieftains no longer meet in smoke-filled rooms, a more diffuse group of political influentials can play a moderating function. Running a nationwide primary campaign requires vast resources, and this gives a lot of power to the elites who provide the money, organization, and volunteer energy required for an effective race. Since the primary season is compressed into a few months, candidates who come to the starting line with these assets have a decisive advantage. As a consequence, they spend the preceding year competing for pledges of support from the political elites who control the crucial resources. This is the so-called invisible primary, but its reign is coming to an end with the rise of the Internet.⁴

Consider the way Obama beat Hillary Clinton, the winner of the “invisible primary.” During the single month of January 2008, he raised \$28 million online. By the end of February, he had received gifts from more than 1 million Americans. What is more, MoveOn.org directly challenged the money primary by inviting more than 300,000 liberal activists to vote nationwide in an online primary—more than the combined number of Democrats voting in New Hampshire and Iowa. When they chose Barack Obama over Hillary Clinton by 70 percent to 30 percent, MoveOn endorsed Obama, encouraging its 3 million members to join the Obama campaign effort.⁵

The emerging system also changes the likely composition of the candidates coming forward to claim the presidency. It encourages charismatic types to compete with successful politicians with long track records. Sitting governors and senators have responsible day jobs, which make it tough for them to go on the road for months and months in pursuit of the nomination. In contrast, governors and senators who have lost the last election may see a primary campaign as an opportunity to rehabilitate their careers. High-profile media pundits may also take the plunge.

4. Professor John Zaller and a team of outstanding associates have recently published a fine book on the “invisible primary.” See Marty Cohen, David Krol, Hans Noel, and John Zaller, *The Party Decides: Presidential Nominations Before and After Reform* (Chicago: University of Chicago Press, 2008). The authors suggest that elite gatekeepers called the shots in eight of the nine contested nominations between 1980 and 2000 (chap. 7). I would dispute their treatment of some cases, but it is not necessary to provide a blow-by-blow critique, since they recognize that the primary elections of 2004 and 2008 fail to support their claim of elite control (230, 338) and that insurgent candidacies will become increasingly important in the age of the Internet (337).

5. “MoveOn Endorsement Throws Progressive Weight Behind Barack Obama,” MoveOn.org, February 1, 2008, <http://www.moveon.org/press/pr/obamaendorsementrelease.html>.

Worse yet, when successful leaders escape their jobs to fly into crucial primary states, they must engage in “debates” with insurgent candidates who denounce corrupt Washington politicians in stirring one-liners. In this new world, charisma counts, sound bites count, and experience counts a lot less to the mobilized activists on the right and left of their respective parties. Some candidates may resist temptation and cleave to the center—and primary voters may reward them in the end.

But then again, they may not. Once a charismatic insurgent candidate breaks out of the pack, she will generate enormous momentum.⁶ By the end of the primary season, the winning candidate will be invited to claim a popular mandate for his extreme positions. But a few million mobilized supporters do not amount to much in a country with 140 million voters.

Predicting the future is a tricky business. When a strong ideologue captures one party’s nomination, the other side may come up with a credible centrist who manages to carry the day. But perhaps extremists will capture both parties at the same time. Or perhaps the centrist comes from a party burdened by some public policy disaster, and the extremist reaps the whirlwind. Only one thing seems clear: if we take a step back from particular scenarios, more presidents will be governing from the ideological extremes over the next fifty or a hundred years.

Now that our candidate—extremist or not—gets to the White House, how will he govern? Broadly speaking, the data show that presidents since Roosevelt have generally governed as partisans, attempting to persuade centrist voters to move to the left or right, as the case may be.⁷ The question before us is whether emerging trends promise to escalate this extremist tendency in the future. I shall be focusing on two fundamental changes—one propelling the president to adopt a communications strategy that emphasizes sound-bite appeals, the other enabling him to use his superpoliticized White House staff to override legalistic objections from his massive bureaucracy and to order them to implement his claimed “mandate from the people.”

Let’s begin with the president’s reliance on a new breed of political consultant to help guide the course of policy. In contrast to the party

6. My discussion cherry-picks from the more complex analysis offered by Larry Bartels in *Presidential Primaries and Dynamics of Public Choice* (Princeton: Princeton University Press, 1988). Bartels’s empirical work is limited to the first few elections conducted under the new regime, but I expect many political scientists to put the momentum candidacies of the last two elections under the microscope in the near future.

7. See B. Dan Wood, *The Myth of Presidential Representation* (Cambridge: Cambridge University Press, 2009).

bosses of the past, these men and women would not think of running for public office.

The president's trust in them is instead a tribute to the rising authority of social science in our national life. He believes, like the rest of us, that these gurus, through the scientific use of polling and focus groups, can frame story lines, sound bites, and dramatic images in ways that will effectively shape the perceptions of ordinary voters—and thereby sustain and build his popular support.

There is, of course, a lot of pseudoscience, and sheer incompetence, mixed into the actual work produced by consultants operating under immense time pressures. But the president is not going to allow such doubts to afflict him. After all, *his* consultants have used their impressive-looking data and scientific sloganeering to catapult him to the White House; if they got him this far, they have to be doing something right!

But different presidents have used their pollsters differently. On the one hand, they may use the polls as a mirror of public opinion and try to adapt their own positions to the shifting numbers. If Bill Clinton's pollster Dick Morris is to be believed, his boss was a paradigmatic case: "For Bill Clinton, positive poll numbers are not just tools—they are vindication, ratification, and approval—whereas negative poll results are a learning process in which the pain of the rebuff to his self-image forces deep introspection. . . . He uses polls to adjust not just his thinking on one issue but his frame of reference so that it is always as close to congruent with that of the country as possible."⁸ When presidents take this approach, polling operates as a big restraint on extremism—constantly pulling the president back into the mainstream.

Reacting against Clinton's example, George W. Bush announced a very different approach: "Great decisions," he told the Republican Convention, "are made with care, made with conviction, not made with polls," and once in office he was more or less true to his word.⁹ While he "out-Clintoned Clinton" in creating a White House Office of Strategic Initiatives, he did not rely on it to give voters what the polls and focus groups

8. Dick Morris, *Behind the Oval Office: Winning the Presidency in the Nineties* (New York: Random House, 1997), 11. Morris wrote these lines after he and Clinton quarreled, so his report must be taken with a grain of salt—but not too many grains? For a different view of Clinton's motivations, see Lawrence Jacobs and Robert Shapiro, *Politicians Don't Pander* (Chicago: University of Chicago Press, 2000).

9. "George W. Bush Acceptance Speech," 2000 Republican National Convention, <http://www.usatoday.com/news/conv/118.htm>.

said they wanted.¹⁰ He and his associates made up their own minds, and it was up to the office to design narratives and sound bites that would shore up support from his political coalition.¹¹ In contrast to mirroring the polls, Bush used his media gurus to manipulate public opinion.

This strategy encourages extremism—even if media manipulators do not turn out to be particularly successful in one or another case. At the critical moment of decision, no president can ever know how his manipulative strategies will work out. The question is whether he has sufficient confidence in his gurus to give it a try. From this vantage, the increasingly loud self-confidence of media manipulators suggests the shape of things to come.

Consider the remarkable writings of George Lakoff, an academic giant in the field of linguistics, who has more recently become a leading liberal public intellectual. In his *New York Times* best seller *Don't Think of an Elephant!* he faults his fellow progressives for allowing conservatives to frame the dominant narratives and slogans in the struggle for public opinion. The booming science of cognitive linguistics, he assures them, is just what they need to beat the conservatives at their own game.

For present purposes, it is irrelevant whether Lakoff is overselling his new science of unreason. The key point is the liberal establishment's emphatic support for his initiatives. His book jackets prominently display the endorsements of Howard Dean, George Soros, and many other leading lights. Professor Robert Reich offers a particularly provocative recommendation: "It's not enough to have reason on our side. Lakoff offers crucial lessons in how to counter right-wing demagoguery. Essential reading in this neo-Orwellian age of Bush-speak."¹² Is Professor Reich suggesting that progressives should counter "right-wing demagoguery" with "left-wing demagoguery"? This is a climate of opinion that encourages

10. See Kathryn Tenpas and Stephen Hess, "Bush's A Team: Just Like Clinton's, but More So," *Washington Post*, January 27, 2002, 5.

11. Andrew Card, Bush's chief of staff, was up front in his manipulative mode of operation, telling reporters, "If a policy goes amok, it may not be the policy that is at fault . . . but flawed marketing." Bill McAllister, "Bush Polls Apart from Clinton in Use of Marketing," *Denver Post*, June 17, 2001, A14. I take Card at his word, though others are more skeptical. Compare Tenpas and Hess, "Bush's A Team"; with Diane Heith, *Polling to Govern: Public Opinion and Presidential Leadership* (Stanford: Stanford University Press, 2004), 141.

12. George Lakoff, *Don't Think of an Elephant! Know Your Values and Frame the Debate* (White River Junction, Vt.: Chelsea Green, 2004). Lakoff has followed up with *Thinking Points: Communicating Our American Values and Vision* (New York: Farrar, Straus, and Giroux, 2006). Other proud endorsers of Lakoff's work include Nobel Prize winner George Akerloff, Sierra Club executive director Carl Pope, and Ariana Huffington, publisher of the *Huffington Post*.

future presidents, both left and right, to push forward with their extremist visions and trust their media manipulators to come up with the sound bites needed to sustain mass support.

As demagoguery becomes scientific, the great institutional checks on its abuse are disintegrating. During the twentieth century, the big-city newspapers and network newscasts served as the main communications highways connecting the president and the public. While the president might set the issue agenda, this system imposed significant limits on media manipulation.

But these journalistic gatekeepers are in serious decline.

This creates a new opening for a presidential end run around the mainstream media. In the words of a leading analyst, Presidents Reagan, Bush, and Clinton had already begun to shift away from the effort to address the general public and toward an emphasis on marketing campaigns that “target[ed] their party bases . . . [and] splinter[ed] the public into select subsets.”¹³

These tendencies will accelerate now that the Internet is destroying the economic foundations of professional journalism. The speed of this transformation is extraordinary: the overall number of newspaper reporters and broadcast news analysts dropped from sixty-six thousand in 2000 to fifty-two thousand in 2009, with devastating cuts in the Washington press corps.¹⁴ This is only the beginning. The very existence of professional journalism is at stake. We are losing a vibrant corps of serious reporters whose job is to dig for facts and provide both sides of the story in a relatively impartial fashion.

A professional corps of journalists serves a crucial function for the blogosphere. By generating a series of rival fact-based accounts of public events, it provides millions of bloggers the grist for dynamic democratic

13. See Jeffrey Cohen, *The Presidency in the Era of 24-Hour News* (Princeton: Princeton University Press, 2008), 203.

14. My report on job losses in journalism is derived from the Bureau of Labor Statistics, which changed its reporting categories in 2004. Before then, it aggregated journalists working in newspapers and broadcast news into a single group. More recently, it has treated “broadcast news analysts” and “reporters and correspondents” separately. My own figure for 2009 adds the two categories together, to permit comparison with the 2000 report. Compare Bureau of Labor Statistics at <http://www.bls.gov/oes/2000/oes273020.htm> (data for 2000) with <http://www.bls.gov/oes/current/oes273022.htm> and <http://www.bls.gov/oes/2009/may/oes273021.htm> (data for 2009). For a thoughtful qualitative assessment, see Leonard Downie Jr. and Michael Schudson, “The Reconstruction of American Journalism,” *Columbia Journalism Review* (October 19, 2009), which states that “most large newspapers” have already eliminated foreign correspondents and many of their Washington-based journalists, available at http://www.cjr.org/reconstruction/the_reconstruction_of_american.php?page=all.

debate. But if the economic foundation for serious journalism collapses, blogging will degenerate into a postmodern nightmare—with millions spouting off without serious concern for the facts of the matter.

So what, say the skeptics: After all, American democracy thrived in the nineteenth century with a partisan press. Why can't it do the same in the twenty-first century with a postmodern blogosphere?

Because the twenty-first-century presidency is a far more dangerous institution than its predecessors. As professional journalism disintegrates, the White House can fill the news gap with messages scientifically calibrated to push the hot buttons of different microaudiences. This temptation will be overwhelming during moments of real or imagined crisis, as the White House turns to YouTube and Twitter to generate a cascade of appeals for support of the Fearless Leader in the White House. Professional journalism has hardly been immune from such fearmongering campaigns, but its absence as a check and balance will be sorely missed.

These developments engage with some basic features of the presidential system in disturbing ways. Most fundamentally, the president remains in office regardless of what his fellow party members think of him. They cannot threaten to bring him down on a vote of no confidence if he takes the country in the wrong direction. Until recently, this basic point was tempered by the other bonds that tied the president to the rest of the congressional leadership—his need to gain their backing for renomination, their control over local party organizations, their access to public opinion on the ground, and so forth.

But these ties are now greatly attenuated. The most important legacy from the past is the myth of heroic leadership left by the examples of the Lincolns and Roosevelts. Every president dreams of reaching and overreaching these giants and relies on the new class of consultants to sustain their charismatic ascent to the Rooseveltian heights.

Another basic aspect of the system—which is harder to appreciate, since it requires us to take notice of a dog that doesn't bark—exacerbates this tendency. To see my point, consider what happens in a parliamentary system once the dust clears after election day: Not only do voters learn who has won, but they also learn who will be speaking for the losers. When the new parliament opens up for business, the leader of the opposition will be standing opposite the prime minister on the front bench—contesting his claims in a point-counterpoint on the nation's airwaves.

Not in America. Here, the losing presidential candidate is left in the wilderness without any official position, generating a variety of

pathologies. Begin with close elections, as in Bush versus Gore. Upon confronting the verdict of the Supreme Court, Gore had two choices. He could either spearhead an extraparliamentary opposition, denouncing the new president's claim to legitimate authority, or quietly depart from the political stage while his opponent flaunted his victory by repudiating the Kyoto Treaty and other leading elements of his political program. Gore's remarkable restraint in upholding the constitutional system has not been given the credit it deserves.

My point is not to praise Gore but to condemn the constitutional system that generated his dilemma. A healthy constitution, Madison told us, should not depend on the public virtue of a single man. Yet our current system *does* depend on the self-restraint of a single person—the losing candidate—whenever the presidential election generates a disputed result. It is only a matter of time before the loser chooses the option of extraparliamentary opposition, relying on his media consultants to mobilize the millions of activists he has inspired in his primary campaign.

Something like this actually happened in the Mexican rerun of Bush versus Gore in 2006—where Lopez Obrador responded to the negative verdict of Mexico's Supreme Electoral Tribunal by declaring himself the legitimate president of the republic.¹⁵ This particular adventure in extraconstitutional opposition has not worked out too well for Lopez Obrador or his political party. But this is hardly a guarantee against many dark scenarios in the future, in which the president and counterpresident make escalating charismatic appeals for popular support despite the clear and present danger of constitutional disintegration.

The problem is not as melodramatic in the standard case, where the loser has lost by a substantial margin and the winner's victory is beyond fair challenge—take the Obama election as an example. John McCain conceded defeat in a particularly gracious manner, demoting himself to the position of just another senator from Arizona and leaving the opposition party in its normal condition of disarray—with party leaders in Congress and the states competing for attention while President Obama monopolized the center of the political stage. As time moves on, the congressional leadership will have to share the spotlight with the leading contenders for the presidential nomination—who will be pandering to their base with extremist appeals.

15. See John Ackerman, "The 2006 Elections: Democratization and Social Protest," in *Mexico's Democratic Challenges*, ed. Andrew Selee and Jacqueline Peschard (Washington, D.C.: Woodrow Wilson Center Press, 2010), 102.

Worse yet, given the media revolution, pundits like Glenn Beck and Rush Limbaugh will also assert a claim as Republican Party spokesmen, even though they are entirely unconstrained by electoral calculations. Within this setting, the advantage will often go to the Becks of the world. Their extreme message is attention grabbing, and they are good at delivering it—otherwise, they would never have gotten to the top of the ratings chart in the first place.

In contrast, the opposition leadership in Congress and the states has the responsibility of decision making, and even presidential candidates cannot always afford to engage in irresponsible position taking. This shift of opposition “leadership” away from Congress feeds back into the dominant mode of presidential leadership—extreme media attacks from the spokesmen on the fringe will generate a flood of sound bites from the White House reasserting the president’s plebiscitary authority. In moments of crisis, won’t this media environment encourage the president to claim inherent authority to act decisively, overcoming or ignoring the objections raised by assorted naysayers in Congress and the courts?

This dynamic will be at its maximum if the president gains his office through extremist appeals to primary activists, but even candidates who run as moderates will be sorely tempted to take this path in times of emergency. Recall that George W. Bush was elected as a mainstream moderate, running on a platform that made him seem almost indistinguishable from the equally moderate Al Gore. Imagine how the last decade would have developed if the victor in 2000 had won on the basis of extremist appeals in the primaries.

But the modern president not only dominates the polity. He also commands a vast bureaucratic machine: will it resist, or facilitate, his demagogic impulses?

The framers were in no position to answer this question. They supposed that administration, like politics, would be a gentlemen’s game. During its early years, the federal government barely had an administrative existence.¹⁶ There was no need to worry about the operation of a massive federal bureaucracy—such a prospect was simply beyond the

16. When Thomas Jefferson settled down in the White House in 1802, the executive establishment residing in Washington, D.C., consisted of 132 federal officials of all ranks. (One was Jefferson’s personal secretary, who served as his staff.) Moving beyond the nation’s capital, the entire “executive branch” consisted of 2,875 civilian officials. About 2,300 were revenue collectors and deputy postmasters. See James Young, *The Washington Community, 1800–1828* (New York: Columbia University Press, 1966), 29–31 (tables 1 and 2).

horizons of eighteenth-century thought. But we *do* have to worry about it—because the founders’ system has had a pathological impact upon the modern bureaucratic state in America, vastly increasing the dangers of a runaway presidency in the century ahead.

Begin with the basics. The modern bureaucracy has become a central arena in the struggle between the president and Congress for political ascendancy. The president cannot rely on longtime civil servants to stand up to congressional browbeating. If he hopes to maintain bureaucratic momentum behind his own policies, he must put his political appointees in command positions—and rely on their loyalty to fend off congressional resistance to White House initiatives.

These imperatives have played themselves out in two ways over time. First, presidents have won the right to colonize the bureaucracy with more and more of their political appointees. The number of top-level positions requiring Senate confirmation grew from 196 under the Kennedy administration to 786 under Clinton to 1,141 under Bush II. The president can also fill many key posts unilaterally, giving him 3,000 political appointments in all.¹⁷

Second, presidents have surrounded themselves with a White House staff of superloyalists—numbering more than 500 in recent years. This is a modern development.¹⁸ It was only in 1939 that President Roosevelt won the right to name 6 “presidential assistants.” Until then, the president governed through his cabinet, relying only on occasional advisers loaned to him by an obliging cabinet secretary. But over the past two generations, the White House staff has become a powerhouse. White House “czars” sometimes have more power than cabinet secretaries.

And they have created new institutional tools to bend the bureaucracy to their will. The creation of these centralizing mechanisms has

17. See Anne Joseph O’Connell, “Vacant Offices: Delays in Staffing Top Agency Positions,” *Southern California Law Review* 82 (2009): 913, 926, 935.

18. I am playing it safe in saying that White House superloyalists number “more than 500.” The last available breakdown is from 2005: there were 411 on the “White House staff,” 61 at the National Security Council, 27 at the Domestic Policy Staff, 24 at the Council of Economic Advisers, and 30 at the Office of Science and Technology—adding up to 553. The White House also has an outstanding support staff of about 200. See Harold Stanley and Richard Niemi, “White House Staff and the Executive Office of the President, 1943–2005,” table 6.6 in *Vital Statistics on American Politics, 2007–2008* (Washington, D.C.: CQ Press, 2008). There were also 210 at the Special Representative for Trade Negotiations and 473 at the Office of Management and Budget. While these offices are controlled by the president’s political loyalists, they contain a larger proportion of officials who are relatively apolitical professionals or career civil servants. Nevertheless, as the text explains, the OMB has played a crucial role in the project of presidential centralization.

been a sustained and bipartisan project of presidents from Nixon to Obama, but Ronald Reagan made a decisive breakthrough.¹⁹ His executive order required all agencies in the executive branch to submit a regulatory analysis to a special White House office before promulgating a major regulatory initiative. No congressional statute authorized this step. Nevertheless, Reagan transformed his Office of Information and Regulatory Affairs—pronounced “Oh, Ira”—into the supreme regulator for the entire executive branch.

President Clinton took the next big step. He authorized his White House staff to kick-start the regulatory process by directing department heads to take action, often specifying a deadline. They also explicitly told the agency what the president wanted the regulations to look like (at least in general terms). To top it off, Clinton often went into the pressroom himself to announce his top-down initiatives with great fanfare.

Clinton repeated this credit-claiming ritual once the bureaucracy responded with a concrete regulatory proposal. After gaining the approval of OIRA, the cabinet agency stood in the shadows as the president took the spotlight to announce his latest regulatory initiative to the public.

Congress never explicitly authorized this latest power grab. But its awkward silence did not lead to widespread legal condemnation of Clinton’s great leap forward. To the contrary, it provoked ingenious legal theories that aimed to fill the void. The most notable contribution was a hundred-page essay on “presidential administration” by our new Supreme Court justice Elena Kagan. She had played an important role as a White House staffer in designing the Clinton initiative. She then proceeded to defend it in the pages of the *Harvard Law Review*. Written shortly before she became Harvard’s dean, it presents a vigorous defense of the legality and wisdom of Clinton’s breakthrough.

Kagan is not just another legal apologist for presidential power. She fully recognizes that centralization brings new dangers: in her words, it creates the risk of “lawlessness—that Presidents, more than agency officials acting independently, tend to push the envelope when interpreting statutes.”²⁰ In accepting this risk as an acceptable price to pay, Kagan’s essay played a key role in building a bipartisan consensus among elite Washington lawyers in support of strong executive prerogatives. It is no

19. For a fine overview, see Peter Shane, *Madison’s Nightmare* (Chicago: University of Chicago Press, 2009), 146–56.

20. See Elena Kagan, “Presidential Administration,” *Harvard Law Review* 114 (2001): 2245, 2349.

surprise, then, that both Bush II and Obama have continued down the centralizing path blazed during the Clinton years.

I mean to challenge this growing Beltway consensus. By constructing a new form of presidential administration, centrists like Clinton and Obama are preparing the way for a tragic future in which extremist presidencies take the center of the bureaucratic stage. Their steady stream of presidential directives will override expert assessments of the facts, or traditional understandings of the law, provided by the agencies. They will call upon the entire executive branch to join the exciting enterprise of executing the president's mandate from the people. And these instructions will receive an enthusiastic reception—since the bureaucracy will be under the command of presidential appointees, who gained their deputy assistant secretaryships on the basis of their partisan loyalties. Is this what we really want?

I have been trying to shake Americans out of their complacent assumption that the past is prologue and that we will continue to keep the presidency under constitutional control. My point, quite simply, is that the presidency of the twenty-first century is a vastly different institution from its predecessors. Instead of supposing that the founders told us (almost) all we need to know, we should recognize that the modern system generates three distinctive dangers.

The first is extremism, which I have been defining in terms of a president's distance from the median voter: do his positions approximate those held by mainstream Americans, or do they track the left or right wing? If the latter, the president counts as an extremist, regardless of the content of these positions. Call this *structural* extremism, because it does not depend on claiming that left- or right-wingers are substantively wrong in their critique of mainstream values. Indeed, it is easy to think of cases in which the "extremists" of one generation have launched a morally compelling critique that ultimately transforms the status quo.

But in America, it is not enough to be right. Before you can impose your views on the polity, you have to convince your fellow citizens that you are right. That is what democracy is all about. So an extremist presidency is problematic even when the extremists are right. It is an even bigger problem when an extremist president is wrong—and this will be an all-too-common case. Right or wrong, an extremist president may well provoke a constitutional crisis to break through institutional roadblocks as he leads the American people to the promised land of Glory.

The modern primary system makes this extremist scenario an all-too-real possibility.

It also promotes a second great danger: a politics of unreason. Once presidents have relied on their media gurus to sound-bite their way to the White House, they are naturally predisposed to believe in their near-magical powers. Even when a moderate wins the White House, media manipulation will be an entrenched part of twenty-first-century politics. It makes sense, then, to treat the politics of unreason as a distinctive evil that is analytically independent of the danger posed by extremism.

The same is true of our third problem: presidential lawlessness. From the very beginning of the Republic, our Constitution gave the president a “first-mover” advantage in dealing with the other branches. George Washington, no less than Barack Obama, could act unilaterally and place the burden on Congress or the Supreme Court to undo the damage by passing a statute or declaring his actions illegal or unconstitutional. But this first-mover advantage has a very different meaning in a bureaucratic world in which the White House staff can create sweeping changes that will be very hard to reverse once set in motion.

Extremism. Irrationality. Unilateralism. These elements will interact with one another over the course of the twenty-first century, generating a wide variety of patterns. Sometimes one or two patterns will be significant, but the worst pathologies will involve all three. Under these scenarios, an extremist president relies on his media manipulators to project his sound bites and images over the cacophony of voices generated by his opponents in Congress and elsewhere. At the same time, presidential loyalists place the power of the federal bureaucracy at his command, substituting his dictates for the rule of law. Under these conditions, both Congress and the courts may be reduced to impotence, or if they resist, the institutionalized presidency may become the springboard for an authoritarian takeover.

This grim prognosis depends on structures, not personalities, permitting us to move beyond knee-jerk reactions to the politics of the day. Most obviously, the election of President Obama has, for many, sufficed to dispatch any serious doubts about the system: good-bye imperial presidency; hello, America’s first black president and the nation’s remarkable capacity for constitutional renewal!

This moment of triumph has already passed, giving way to pervasive uncertainty. As President Obama’s calls for change shatter against the rock of a resistant Congress, his restless followers demand more assertive

leadership—recalling his brave words in the campaign. But how can Obama give them what they want when he lacks the votes in Congress? He may be charismatic, but he is no extremist: there is zero chance of his running roughshod over congressional prerogatives, even those as indefensible as the filibuster.

If I am right, though, the next insurgent president may not possess the same sense of constitutional restraint. He may insist on fulfilling his self-proclaimed popular mandate even if it provokes a profound constitutional crisis. And so long as he has enough partisan supporters in the Senate, the prospect of impeachment will not serve as a significant deterrent.

But am I right? This initial survey does not suffice for a considered judgment. Most important, the president is commander in chief as well as the nation's chief executive. We cannot glimpse the full extent of our predicament without bringing the military into the foreground. As the next lecture will suggest, this will complicate our story, but not diminish its darker aspect.

LECTURE II. A POLITICIZED MILITARY

Our eighteenth-century Constitution was written for a republic of notables. It supposed that the electoral college would consist of great landowners, merchants, and lawyers who would filter out demagogic claptrap and choose seasoned statesmen like Washington as president.

The Constitution now governs a very different world: party primaries have displaced the electoral college, allowing extremist candidates to mobilize true believers; presidents rely on consultants to manipulate public opinion; and the separation of powers concentrates power in the White House and politicizes the operation of a massive bureaucracy. These three factors have transformed the presidency into something the founders would not recognize. It is now a large and complex institution that can operate as a platform for charismatic extremism and bureaucratic lawlessness. It is past time for constitutional thought to confront these ominous realities. Or so I argued in the first lecture.

The president's position as commander in chief was also designed for a republic of notables. The founders expected the same group who ran the civilian government to take command of the army at moments of crisis. Given the Atlantic Ocean, the European superpowers could not easily launch a serious attack, and it was pointless to prepare for one in advance. When President Thomas Jefferson moved into the White House in the nation's new capital, the entire army, navy, and marine corps numbered sixty-five hundred men—and this at a time when France and Britain were aggressively threatening American interests.¹ If an invasion did take place, the founders relied on local notables to rally citizen militias and lead a counterattack, in the manner of Washington and his fellow officers during the Revolution.²

All this seems quaint today. We rely on a professional officer corps for leadership on the high-tech battlefield of the twenty-first century. But when the founders were writing the Constitution in 1787, professionalism was not a real-world option. The first serious steps toward a modern officer corps were taken only twenty years later—when the Prussians

1. See James Young, *The Washington Community* (New York: Columbia University Press, 1966), 29–31 (table 1).

2. See generally Richard Kohn, "The Constitution and National Security: The Intent of the Framers," in *The United States Military under the Constitution of the United States, 1789–1989*, ed. Richard Kohn (New York: New York University Press, 1991), 61.

responded to their crushing defeat by Napoleon by beginning to churn out officers trained in the science of war. Even after Europe began to get serious, America lagged far behind. West Point was primarily a school for civil engineers until the Civil War; the academies began to emphasize military strategy only in the last decades of the nineteenth century.³

Despite this fundamental transformation of our military establishment, one founding concern remains alive and well today. We have a deep constitutional commitment to the principle of civilian control: the professional military officer corps should take its orders from democratically elected politicians on the big issues of war and peace.

Easier said than done: the rise of the professional military raises a host of distinctive problems, yet the last major constitutional thinker to confront them was Samuel Huntington. His 1957 book, *The Soldier and the State*, continues to shape the thinking of specialists, but it has been forgotten by scholars in law and political science who consider broader constitutional issues. This is a mistake.

When Huntington published his book, America was at the dawn of a new age of military-civilian relations. For the first time in history, it had a massive peacetime army. In response to America's rise as a superpower, the Truman administration constructed new foundations for civilian control. A Department of Defense, with a strong civilian presence, was superimposed upon the old military departments, and a National Security Council (NSC) in the White House gave the president new institutional resources to cope with the steady stream of military demands.

Huntington was pessimistic about the future of these experiments. He did not think they would restrain the rising political power of the military and suggested that we had a new problem on our hands. Generals would not only dominate the political stage after winning some glorious victory on the battlefield. They would intervene on a permanent basis, undermining core principles of civilian control. But Huntington was writing at an early phase of the cold war era. The question is whether his pessimistic predictions have been vindicated.

The answer is yes. The 1980s marked a turning point: the Reagan years saw an increase in the political power of the chairman of the Joint Chiefs of Staff (JCS), an erosion of effective civilian control in the Pentagon and National Security Council, and a transformation of the senior officer

3. See Samuel P. Huntington, *The Soldier and the State* (Cambridge: Harvard University Press, 1957), chap. 9.

corps into a partisan Republican force. These developments are now entrenched, and they require us to rethink fundamentals.

Traditional constitutional thought follows Montesquieu in separating power into three—and only three—aspects: legislative, executive, and judicial. But the systemic threats generated by “executive” power in the modern age do not arise from a single source. On the civilian side, the dangers come from the charismatic presidency generated by the transformation of domestic politics and administration, but on the military side, they come from an increasingly politicized officer corps. When a charismatic president encounters a politicized military, a number of things can happen. We cannot suppose that there is one, and only one, pathological scenario describing the decline and fall of the American Republic. We must sketch a number of scenarios, each requiring separate attention.

But I am getting ahead of myself: The place to begin is with my debt to Huntington—which is real, but limited. It would be pointless to elaborate on points of disagreement. My aim here is to build on some of his key insights, adapting them for my own purposes. So blame me, not Huntington, for what follows—though it is only fair for me to acknowledge his influence from time to time.

Like Huntington, I will be distinguishing between two forms of civilian control.⁴ *Participatory* control represents the founders’ strategy. Under

4. I follow Huntington in distinguishing two forms of civilian control—he calls them *subjective* and *objective*—but I use different terms to emphasize differences in our definitions. *Participatory control* is a special case of Huntington’s notion of subjective control, which he defines very broadly indeed: “Subjective military control achieves its end by civilianizing the military.” *Ibid.*, 83. My notion of *supervisory control* is “Huntingtonian” in focusing on the role of the professional officer corps, but it is different from his notion of “objective” control. In defining his concept, Huntington asserts that politicians should specify the aims for the use of military force while the officer corps should define the means, and he believes these two tasks could be sharply distinguished from one another. This sharp dichotomy permits him to portray elected politicians as violating his principle of “objective” control if they invade the military’s privileged sphere of instrumental rationality: “The essence of objective civilian control is the recognition of autonomous military professionalism.” *Ibid.* Most contemporary scholars believe that Huntington was wrong in positing this sharp dichotomy between means and ends. See Suzanne Nielsen and Don Snider, eds., *American Civil-Military Relations* (Baltimore: Johns Hopkins University Press, 2009), 291–92. I agree, and my approach does not indulge this problematic premise. I focus on a single aspect of Huntington’s problem: a violation of supervisory control takes place only when the military refuses to follow the commands of the civilian leadership. In practical terms, my definition implies that McNamara or Rumsfeld did *not* violate the principle of supervisory control in micromanaging the military. I do not endorse the wisdom of their strategies in Vietnam or Iraq, but the principle of supervisory control does not guarantee that civilians will act wisely. It only says that it should be up to civilians, not military officers, to decide how intensively they should micromanage. It is a fair question whether Huntington takes a different position. But if so, we are in fundamental disagreement. I also disagree with Huntington on many other points, but only this one warrants

this approach, civilians control the military by joining the military for short tours of duty before returning to civilian life.

Participatory control is not entirely obsolete. Until the Vietnam War killed the draft, the rank and file was largely composed of ordinary civilians—and this played a key role in maintaining democratic accountability for the use of military force. It remains possible, though not likely, that a civilian draft will return in the future.⁵ But so far as the officer corps is concerned, there is no going back, and Huntington is right to insist that this permanent transformation requires a different strategy to sustain civilian control.

Call it *supervisory* control, and it relies on democratically elected leaders to keep the officer corps in its rightful place. While politicians should consult with the generals as to the military feasibility of their goals, it is up to civilians to make the big decisions. When a supervisory system is firmly in place, the officer corps cannot leverage its technical expertise to oust democratically elected politicians from their central role in defining the legitimate uses of force. The key question is whether the American Constitution contains the institutional resources needed for an effective supervisory system.

Huntington denied this. His villain was the founding separation of power between the president and Congress, which generated intense competition between the branches in a way that would inexorably politicize the officer corps. On his view, the ongoing competition between House, Senate, and president would give top officers endless opportunities to become an independent political force—allowing them to tip the balance of political support in one direction, then another, in the civilians' ongoing struggle for political contenders for power.

The high command might, of course, refuse this structural invitation to play politics. It might follow a professional code that dictates rigorous self-restraint on hot-button issues. But when Huntington looked around in the early 1950s, this did not seem very likely. And as I shall show, the structural transformations of the Reagan years have now thoroughly politicized the high command.

Begin with the Goldwater-Nichols Act of 1986. Until then, the Joint Chiefs of Staff did not have the capacity to present a united front to its

explicit attention. Otherwise, a generalized caution should suffice: silence does not mean consent; I subscribe only to those Huntingtonian theses that I expressly endorse in the text.

5. Elaine Scarry, *Who Defended the Country?* (Boston: Beacon Press, 2003).

civilian bosses. It was a forum for intense interservice rivalry, with each service head fiercely promoting his distinct interests and weapon systems. The chairman could present only the unanimous views of the Joint Chiefs.⁶ Since there was often a deadlock, he could not “force a resolution, [or] substitute his own advice . . . to the civilian authorities.”⁷ His reports tended to paper over sharp differences with amorphous policy recommendations—leading a string of presidents to complain about the quality of military advice.⁸

Goldwater-Nichols changed all that—transforming the military into a unified force that can play the president off against Congress in the service of its own political vision. This was not the central aim of the statute, which focused on functional, not constitutional, imperatives.⁹ When the military failed to free the hostages in Iran, and then botched the invasion of Grenada, it looked like interservice rivalries were undermining even minor operations.¹⁰

Congress responded with a sweeping reorganization. It subordinated the individual services to regional commanders in each “unified combatant command.”¹¹ If officers hoped to become generals or admirals, they

6. See 50 U.S.C. §211 (1947) and Peter J. Roman and David Tarr, “The Joint Chiefs of Staff: From Service Parochialism to Jointness,” *Political Science Quarterly* 113 (1998): 91, 94.

7. Roman and Tarr, “Joint Chiefs of Staff,” 94.

8. “At one time or another, all of the post–World War II presidents have accused the JCS of failing to fulfill its responsibilities in the policy process.” *Ibid.*, 96. When disagreements were intractable, the Joint Chiefs could send a “split” paper to the secretary of defense and the National Security Council. But this happened rarely, since it invited civilian leaders to make policy decisions that would otherwise remain with the military. See *ibid.*, 94.

9. See Charles J. Dunlap Jr., “Welcome to the Junta: The Erosion of Civilian Control of the U.S. Military,” *Wake Forest Law Review* 12 (1994): 341, 351–53.

10. See Roman and Tarr, “Joint Chiefs of Staff,” 98.

11. The position of commander in chief in each military zone was created by the National Security Act of 1947. See 50 U.S.C. §15 (1947). Thanks to Donald Rumsfeld, these commanders are now officially called CINCs, since Rumsfeld (correctly) believed that only the president should bear the title of commander in chief. See Dana Priest, *The Mission: Waging War and Keeping Peace with America's Military* (New York: W. W. Norton, 2004), 29. But before Goldwater-Nichols, the effort by CINCs to plan and execute joint operations was overwhelmed by “parochial service cultures, promotion regulations that dissuaded officers from serving in joint positions, directives that limited a CINC’s authority over his forces, and the legacy of an executive-agent system for service management of the commands.” Roman and Tarr, “Joint Chiefs of Staff,” 95. Goldwater-Nichols revolutionized the system by placing the CINCs directly below the secretary of defense and the president in the chain of command, enabling them to design strategies independently of the parochial interests of the services. Goldwater-Nichols also cut the chairman of the Joint Chiefs of Staff out of the chain of command. But it contained a proviso allowing the president to “direct that communications between the President or the Secretary of Defense and the commanders of the unified and specified combatant commands be transmitted through the Chairman of the Joint Chiefs of Staff.” 50 U.S.C. §163 (1986). This has been the rule in practice, greatly strengthening the

would now be required to serve tours within integrated commands that provided a broader view.

Even more important, Goldwater-Nichols also transformed the role of the chairman of the Joint Chiefs. He was no longer a mediator for the competing services, but the military's principal spokesman at meetings of the National Security Council.¹² Colin Powell quickly exploited this new opportunity.¹³ As chairman under George H. W. Bush, he treated the Joint Chiefs as a purely advisory body: "I did not have to take a vote among the Chiefs before recommending anything. I did not even have to consult them, though it would be foolish not to do so."¹⁴ Supported by a powerful staff,¹⁵ he now had the capacity to frame the key military-strategic options to the civilians on the NSC—and he used this power to outmaneuver his hawkish secretary of defense, Dick Cheney, in devising administration policies responding to the disintegration of the Soviet Union. He then implemented his Powell Doctrine,¹⁶ advocating overwhelming military superiority in the run-up to the first Iraq War. When his policy was rewarded by a sweeping victory in the field, he became the first "celebrity" chairman.

In earlier eras of American history, Norman Schwarzkopf, the victorious field commander, might have parlayed his rapid triumph over Saddam into a brilliant political career—going down the path marked by the likes of George Washington, Andrew Jackson, and Dwight Eisenhower. But

position of the chairman and the CINCs at the expense of the civilian secretaries and military chiefs of the individual services.

12. Previously, the statute had designated the entire Joint Chiefs, not the chairman, as principal military adviser to the NSC. Compare 50 U.S.C. §211 (1947) and 50 U.S.C. §151 (1986). Goldwater-Nichols did authorize individual service chiefs to disagree with the chairman in writing and submit it to civilian leaders. It also authorized their requests for advice from civilian leaders. 50 U.S.C. §151 (d), (e) (1986). But such moves have not in fact occurred, since it would be taken as a signal of extreme disarray in military ranks.

13. The first chairman after the passage of Goldwater-Nichols, Adm. William Crowe, implemented the act gradually, leaving it to Powell to exploit its full potential.

14. Bradley Graham, *By His Own Rules* (New York: PublicAffairs, 2009), 239.

15. Given the new promotion system, service on the Joint Chiefs became a prize for the most able and ambitious officers, while it was previously "populated by the soon-to-be-retired and, in the words of one flag officer on the Joint Staff, the 'sick, lame, and lazy.'" Roman and Tarr, "Joint Chiefs of Staff," 94.

16. Powell first elaborated his doctrine as a military assistant to Secretary of Defense Caspar Weinberger, who presented it in a speech in 1984. Caspar W. Weinberger, "The Uses of Military Power," National Press Club, Washington, D.C., November 28, 1984, in Weinberger, *Fighting for Peace: Seven Critical Years in the Pentagon* (New York: Warner Books, 1990), 433–45. Powell's role in formulating the new strategy was "the most explicit [military] intrusion into policy since MacArthur's conflict with Truman." Richard Kohn, "Out of Control: The Crisis in Civil-Military Relations," *National Interest* 35 (Spring 1994): 1, 12.

for the first time in history, it was Colin Powell, the paradigmatic bureaucratic warrior, who dominated the media coverage and gained enduring political influence.¹⁷

The triumphant bureaucratic warrior then began to lecture Bill Clinton on his responsibilities during the presidential campaign of 1992—writing a *New York Times* op-ed opposing American intervention in Bosnia,¹⁸ following up with a *Foreign Affairs* article elaborating his broad strategic vision: “As chairman of the Joint Chiefs of Staff of the U.S. armed forces, I share the responsibility for America’s security. I share it with the president and commander in chief, with the secretary of defense and with the magnificent men and women—volunteers all—of America’s armed forces.”¹⁹ In this epochal shift, Powell staked a claim to membership in a supreme troika, “shar[ing] responsibility” with the civilian president and secretary of defense. His public interventions on “Don’t Ask, Don’t Tell” were no less remarkable, since they involved an issue of public morality far removed from questions of military strategy.²⁰ The rise of the “celebrity” chairmanship was creating a large challenge to the principle of civilian control—all the more so, since it did not generate a negative response from the larger public.

But Bill Clinton noticed. Seeing Powell as a potential presidential candidate on the Republican ticket in 1996, he tried to preempt the political threat by co-opting him as his secretary of state. Powell refused the invitation (twice),²¹ but in deciding on Powell’s successor, Clinton had clearly recognized that the character of the chairmanship had radically changed. Presidents had traditionally promoted one of the sitting members of the Joint Chiefs, but Clinton looked elsewhere in search of a chairman who would give him more reliable political support. Gen. John Shalikashvili was only the chief of a regional command when Clinton made him chairman. Once elevated to the top job, he greatly assisted Clinton in gaining

17. Powell even succeeded in preventing Schwarzkopf “from coming to Washington to brief his own offensive campaign plan.” *Ibid.*, 7.

18. Colin Powell, “Why Generals Get Nervous,” *New York Times*, October 8, 1992.

19. Colin Powell, “U.S. Forces: Challenges Ahead,” *Foreign Affairs* 32 (Winter 1992–93).

20. In February 1992, Powell used a House hearing to oppose lifting the ban on gays, asserting that “it would be prejudicial to good order and discipline to try to integrate that in the current military structure.” Joseph E. Persico and Colin L. Powell, *My American Journey* (New York: Ballantine Books, 2003), 531.

21. Clinton first tried to recruit Powell just before election day and again in December 1994, when Secretary of State Warren Christopher told Clinton that he wanted to step down. *Ibid.*, 547–51, 602–3.

congressional support for initiatives in Haiti and Bosnia.²² Shalikashvili was a highly competent officer. But his appointment put younger officers on notice that, in a world of celebrity chairmanships, presidents were concerned with politics, as well as professionalism, in making their picks.²³

The Bush years also made a paradoxical contribution to the politicization of the high command. They began with a strong reaffirmation of civilian control, but they ended with the president in chaotic retreat, politicizing the military further in a rearguard defense of his initiatives.

The rise and fall of Donald Rumsfeld is the more notorious half of the story. Even before September 11th, Rumsfeld was vigorously asserting civilian leadership, provoking the Joint Chiefs to rethink cold war legacies and to confront the challenges of twenty-first-century warfare. Given the difficulty of the task, he was making real headway. The Pentagon had not seen anything like it since the heady days of Robert McNamara.²⁴

Rumsfeld was also successful in imposing his strategic vision in the run-up to the second Iraq War—maintaining civilian control despite the operation of the separation of powers. When a Senate hearing gave a public platform to army chief General Shinseki, he used it to warn the nation that a successful occupation of Iraq would require “several hundred thousand” troops.²⁵ In response, Rumsfeld repeatedly humiliated Shinseki during his remaining time in office.

22. Powell had resisted efforts to intervene in Haiti, but Shalikashvili was ready to endorse an invasion plan. Robert Worth, “Clinton’s Warriors: The Interventionists,” *World Politics Journal* (1998): 43, 46. With the help of his new chairman, Clinton then modified the Powell Doctrine in the 1996 National Security Strategy, which approved intervention in cases where “important” national interests were on the line. The White House, “A National Security Strategy Engagement and Enlargement” (February 1996), available at <http://www.fas.org/spp/military/docops/national/1996stra.htm>. The Powell Doctrine only authorized intervention to protect America’s “vital interests.” See Weinberger, *Fighting for Peace*.

23. Shalikashvili initially encountered resistance in the Pentagon, where many officers took to calling him “globocop.” See Worth, “Clinton’s Warriors,” 45. But Clinton responded by appointing new officers to the Joint Chiefs who followed his interventionist line: Charles C. Krulak, the new marine corps chief, was “maybe an even more eager sponsor of nontraditional missions than Shalikashvili was,” and Jay Johnson, the new navy chief, was also in favor of humanitarian missions. *Ibid.*, 46–47. Many of Clinton’s appointees to the JCS remained in office during the early Bush II administration, contributing to the enormous strain between the military and Secretary of Defense Donald Rumsfeld. See Graham, *By His Own Rules*, 205–7.

24. Graham, *By His Own Rules*, 673.

25. In his Senate testimony, Shinseki initially deferred to official estimates. When Senator Levin pressed further, Shinseki went off the reservation to suggest that “something on the order of several hundred thousand soldiers, is probably a figure that would be required.” *Department of Defense Authorization for Appropriations for Fiscal Year 2004, Hearings before the Committee on Armed Services, United States Senate, 108th Cong., S. 1050, pt. 1 (2003), 108, 241.* Damon Coletta has suggested that Shinseki could have informed Congress of his opinion

Which leads us to the promised paradox. Shinseki's opposition is already playing a part in a retrospective morality play—in which the civilian Rumsfeld is cast as the archvillain and the professional military is cast as the heroes. Like McNamara's failure in Vietnam, Rumsfeld's failure in Iraq may well discredit further aggressive efforts at civilian control for a long time to come—opening the way for future military men to dominate the political stage.

This is just what happened during Bush's final years. Faced with rising opposition to the Iraq War, the president lost control of Congress to the Democrats in the 2006 elections. At the same time, a bipartisan group of notables in the Iraq Study Group were urging an about-face in Iraq, endorsing a phased withdrawal and a sweeping diplomatic initiative.²⁶

Bush responded by firing Rumsfeld, but this was merely a gesture to deflect his critics. In a final effort to redeem his military gamble, he ordered more troops into Iraq. But at the end of the day, he was obliged to convince Congress to appropriate the extra money necessary to sustain his "surge" into the future. With his poll numbers in the 30s,²⁷ how was he to gain support from a skeptical Congress now under the control of opposition Democrats?

The president used Gen. David Petraeus, his new commanding general in Iraq, as his principal political weapon. The climax came on September 11, 2007. As the nation paused to remember the attack on the Twin Towers and the Pentagon, the president's general appeared on television as the steely-eyed hero of the hour, urging Congress to endorse the "surge" as a key step in our ultimate victory in "the war on terror."²⁸ In

in ways that did not undermine effective civilian control. See Coletta, "Courage in the Service of Virtue: The Case of General Shinseki's Testimony before the Iraq War," *Armed Forces and Society* 34 (2007): 109, 116. According to Bradley Graham, Shinseki "resented Rumsfeld's often harsh, abrasive treatment of subordinates and what he perceived as arrogance and, at times, overbearing infringement on prerogatives of military leaders." See Graham, *By His Own Rules*, 253. For his part, Shinseki has sometimes denied any intention to undermine the civilian leadership, suggesting that he was merely trying to keep Rumsfeld's options open in postwar Iraq. *Ibid.*, 412. At other times, he has taken a different line, telling David Gergen that "once the senator directed that question to him, core values of honor, professionalism, and courage had left him little choice but to take the hard road." *Ibid.*, 115.

26. See James A. Baker III et al., *The Iraq Study Group Report: The Way Forward—a New Approach* (New York: Vintage Books, 2006).

27. See <http://www.pollingreport.com/BushJob.htm>.

28. Petraeus testified before Congress on September 10–11, 2007, at a time when the "surge" had been operating for only three months. He warned that "a premature drawdown of our forces would likely have devastating consequences," and also supported administration claims that "Iraq is now the central front in the war on terror." *Iraq Benchmarks: Hearings before the Committee on Armed Services, United States Senate*, 110th Cong. (2007), 110, 165, 172.

fact, if not in name, it was an army general who was calling the shots—an especially bitter pill for a president who had celebrated his supreme control over a “unitary executive.”

The president did not pick Petraeus by accident. In selecting him right after the 2006 election, he chose a commander whose views he could count on.²⁹ Nonetheless, Petraeus’s critical role in rescuing the president in 2007 emphasized the military’s political authority and set the stage for an early challenge to the Obama presidency: the Afghan war.

In deciding on the future of this war, Obama was in a far stronger political position than Bush. He was doing well in the polls and remained a compelling presence on the political scene. He did not need the military nearly as much as his lame-duck predecessor.

Mike Mullen, the chairman of the Joint Chiefs, had already publicly opposed Obama’s position on the Iraq War during the election campaign.³⁰ In early September 2009, he had a high-visibility opportunity to pressure Obama on Afghanistan. At Senate hearings on his confirmation to a second term as chairman, Mullen made an aggressive case for a long-term commitment.³¹ At about the same time, David Petraeus was backing a “fully resourced, comprehensive counterinsurgency campaign” in an interview with the *Washington Post*.³²

29. In contrast to high-ranking skeptics like General Shinseki, Petraeus was an enthusiastic supporter of Bush’s ambitious goals from the very beginning. See David Petraeus, “Battling for Iraq,” *Washington Post*, September 26, 2004, B7.

30. See Zachary A. Goldfarb, “Mullen Warns against Obama’s Iraq Troop Plan,” *Washington Post*, July 20, 2008, available at <http://voices.washingtonpost.com>.

31. Mullen testified before the Senate on September 15, two days before McChrystal’s report was leaked to the press. But he was already backing up its recommendations in public: “I do believe that, having heard [General McChrystal’s] views and having great confidence in his leadership, a properly resourced counterinsurgency probably means more forces and without question more time and more commitment to the protection of the Afghan people and to the development of good governance.” *Nomination of Admiral Michael G. Mullen, USN, for Reappointment to the Grade of Admiral and Reappointment as Chairman of the Joint Chiefs of Staff: Hearings before the Committee on Armed Services, United States Senate, 110th Cong., September 15, 2009*, 1, 8. Mullen’s testimony before the Senate “enraged” Rahm Emanuel, Obama’s macho chief of staff, who “let the Pentagon know” of his displeasure. See Jonathan Alter, *The Promise* (New York: Simon and Schuster, 2010), 377. My account relies on Alter’s recently published book, which tells the story of Obama’s first year in office on the basis of insider interviews. His blow-by-blow description of the decision-making process on Afghanistan seems remarkably well informed, and he presents it without any obvious biases. *Ibid.*, chap. 21. It is also broadly compatible with previous journalistic accounts. See Peter Baker, “How Obama Came to Plan for ‘Surge’ in Afghanistan,” *New York Times*, December 5, 2009, 1. Alter’s analysis will not be the last word, but it is by far the best we have at the moment.

32. See Michael Gerson, “In Afghanistan, No Choice but to Try,” *Washington Post*, September 4, 2009, A23. According to Gerson, “Petraeus is strongly behind the approach recently advocated by America’s lead general in Afghanistan, Stanley McChrystal.” *Ibid.* Note that Petraeus is publicly invoking McChrystal’s confidential report two weeks before it was leaked

The generals were throwing their support behind a confidential report by Gen. Stanley McChrystal, the Afghan field commander, who warned of “mission failure” unless the American commitment was increased by forty thousand—from sixty to one hundred thousand troops.³³ To drum up further support, Mullen then summoned the bureau chiefs of five television networks for a background briefing, telling them that “the McChrystal Plan had to be adopted in full, including a five- to eight-year commitment of forces, maybe longer, or the United States faced defeat.”³⁴

With Obama beginning a series of top-level strategy sessions on September 13, the Pentagon escalated its pressure campaign: on September 17, it leaked McChrystal’s report to the press, with the White House suspecting the Joint Chiefs as the source.³⁵ Then McChrystal followed up with a show of defiance. At a question-and-answer session in London, he was asked whether he could support a battle plan, championed by Vice President Biden, that relied on drone aircraft and special forces rather than a large troop surge. His response: “The short glib answer is no.” This verged on outright insubordination, and Obama immediately summoned him for a private dressing-down.³⁶

But the president reserved his real fire for Mullen and Secretary of Defense Gates. Calling them to the Oval Office, he condemned the Pentagon campaign as “disrespectful of the process” and insisted on knowing “here and now” whether the secretary and the chairman would faithfully

to the public. Petraeus then went further to reject the leading alternative to McChrystal’s policy. On Gerson’s account, “Petraeus dismisses the idea that a strategy of drones, missiles and U.S. Special Forces would be sufficient in Afghanistan.” *Ibid.* Note that this is precisely the policy option that would gain the strong support of Vice President Biden in Obama’s strategy sessions. See Alter, *The Promise*, 375. According to Alter, Mullen and Petraeus later professed innocence as to the political significance of their public statements. They did not realize, they said, that the president was placing his entire Afghan strategy under review. So they thought it was appropriate to come to the defense of earlier administration policy guidelines. Once they heard of the policy review, they stopped talking. *Ibid.*, 377. This seems implausible. Mullen’s Senate testimony took place on September 15, two days after Obama launched the first of his series of high-level strategy sessions in the White House situation room. *Ibid.*, 372. And Petraeus plainly was arguing for McChrystal’s policy over its most significant competitor. He needlessly politicized his position further by conducting his interview with Michael Gerson, a leading speechwriter for President Bush. Alter reports that the politically savvy Petraeus claims that he was unaware of Gerson’s political pedigree. *Ibid.*, 377. In any event, McChrystal continued his public campaign in support of the surge even after his report was leaked to the public, until the president himself cut it short.

33. *Ibid.*, 372.

34. *Ibid.*, 376.

35. *Ibid.*

36. *Ibid.*, 378. See also Bruce Ackerman, “A General’s Public Pressure,” *Washington Post*, October 3, 2009, 13.

carry out any and all presidential commands.³⁷ This finally got their attention, and Gates quickly made a public speech emphasizing that it was “imperative” for generals to advise the president “candidly but privately.”³⁸ The public-pressure campaign finally came to an end.

As for Mullen, he described himself as “chagrined” by the strong presidential push back, especially since he viewed himself as a proponent of civilian control.³⁹ Perhaps he was right to be surprised: despite his efforts to pressure Obama on Iraq (during the campaign) and Afghanistan (during the run-up to the decision), he had indeed earned a reputation as a relatively nonpartisan chief.⁴⁰ But this only suggests how hyperpoliticized the office has become.

The meaning of this latest misadventure is still uncertain. Despite Obama’s strong reaction to the public challenge to his authority, the military managed to get a lot of what it wanted: the president finally did endorse a McChrystal-style surge of thirty to forty thousand troops.⁴¹ Nevertheless, the military did not get everything. In particular, the president refused to make the “five- to eight-year commitment” that Mullen had been lobbying for. Obama insisted that the “surge” would be temporary and that troops would begin to leave Afghanistan by July 2011—in plenty of time for the next presidential election.⁴²

We shall see whether the president makes good on this promise. At the very best, we are left with an ambiguous precedent: Does Obama’s escalation of the Afghan war suggest that even a popular president caved in to the military? Or is it a case of a strong president shutting down the military effort to browbeat him—and then using his own best judgment to craft a sensible middle course? Or a bit of both?

Whatever the answer, it does not affect my basic thesis: since the passage of the Goldwater-Nichols Act of 1986, the accumulating precedents established by Colin Powell and his successors may well explode in the face of some future president. Call it the “Colin Powell scenario”—under

37. Alter, *The Promise*, 379.

38. *Ibid.*, 380.

39. *Ibid.*, 379.

40. Despite his own opposition to Obama during the presidential election race, Mullen had reminded all service personnel to stay out of politics during the campaign. See David Ignatius, “The Quiet Wisdom of Apolitical Admiral Mike Mullen,” *Washington Post*, December 27, 2009, available at <http://www.washingtonpost.com/wp->

41. I say that Obama endorsed a “McChrystal-style” surge because he watered it down a bit: the field commander requested forty thousand troops, but the president authorized a surge of only thirty thousand American soldiers and said he would try to induce the (reluctant) Europeans to contribute ten thousand more troops to the NATO effort.

42. Alter, *The Promise*, 392–93.

which a celebrity chairman of the Joint Chiefs, or a renowned regional commander, leads a public campaign to bring his “commander in chief” into line with prevailing military opinion. But next time around, the escalating conflict between the chairman and the president may get out of hand and precipitate a constitutional crisis.

The political power of the military is enhanced by a second dynamic. When the postwar generation created the Defense Department and the National Security Council, it aimed to place the new and massive military establishment under firm civilian leadership.⁴³ But the past generation has seen a serious erosion of this commitment—key “civilian” positions are increasingly colonized by retired officers whose basic values have been shaped by their successful military careers.

Once again, the Reagan administration marked a turning point. Before 1980, the Senate confirmed forty-two secretaries of the army, navy, and air force, and nearly all were civilians in fact as well as name: one had fifteen years of military service, and 17 percent had served for as many as five years. Since 1980, twenty-seven have been confirmed, and nearly a quarter had fifteen years of service, while 44 percent had five years.⁴⁴ Only the secretary and undersecretary of defense remain reliably civilian.⁴⁵

Military colonization is also proceeding in the White House. The National Security Council only gradually turned itself into a powerhouse, with the big shift coming in 1960. That was when John Kennedy revolutionized the job of national security adviser in naming McGeorge Bundy. Like all his predecessors, Bundy was a civilian, coming to the job after a brilliant career at Harvard.⁴⁶ But he vastly increased the job’s importance, becoming a key player on the president’s team. His success paved the way

43. See Douglas T. Stuart, *Creating the National Security State* (Princeton: Princeton University Press, 2008), which emphasizes the significance of the principle of civilian control in the early postwar years.

44. Under the law, a military officer must retire at least six months before taking up a civilian position in the Defense Department (5 U.S.C. §3326 [2009]), but this legal hurdle has not sufficed to check the trend. Matthew Pearl, one of my outstanding research assistants, has compiled the statistics cited in the text. He has made other calculations that confirm the tendency toward colonization. For example, only 10 percent of the service secretaries had ten or more years of military experience before Reagan. But 30 percent of more recent appointments have served for this period. Similarly, only 2 percent of the secretaries attended four-year service academies before Reagan, 19 percent after.

45. The only exception came early, when Harry Truman appointed Gen. George Marshall as secretary of defense. See http://www.defense.gov/specials/secdef_histories/.

46. Although civilians dominated the NSC advisership during the early decades, the law has never explicitly sought to constrain the selection of military officers. Colin Powell, for example, remained an active-duty general when serving as national security adviser.

for a series of intellectual leaders—Walt Rostow, Henry Kissinger, and Zbigniew Brzezinski—who often eclipsed the secretary of state during the presidencies of Johnson, Nixon, and Carter. The only exception to the rule of civilian control was Brent Scowcroft, who served as adviser to Gerald Ford when Henry Kissinger was dominating the field as secretary of state.

Things changed under Reagan. After running through two undisputed civilian advisers in three years, Reagan wanted to ask heavyweight James Baker to reinvigorate the job, but retreated when his initiative provoked bureaucratic opposition. He then made a fateful turn to the military—first choosing Col. Robert (Bud) McFarlane and then Vice Adm. John Poindexter for the job.

The result was the Iran-Contra catastrophe. In the words of Ivo Daalder and I. M. Destler, “Had the president stuck to his guns and appointed Baker as his NSC advisor, it is inconceivable that the kind of shenanigans and outright illegalities that characterized the NSC during the next three years would have occurred. Baker was too aware of the political context of the presidency and the conduct of foreign policy and much too savvy to let anything like that come to pass. Reagan would later admit that his failure to appoint Baker was a ‘turning point’ for his administration—but the recognition would come too late.”⁴⁷

Even when Reagan finally came to this moment of truth, he did not respond by firmly returning the NSC advisership to civilian control. To the contrary, he named Colin Powell to the job near the end of his term, and George H. W. Bush followed up with Brent Scowcroft, the retired lieutenant general who had also served under Ford. Neither Powell nor Scowcroft provided the intellectual firepower of a Bundy, Kissinger, or Brzezinski, but they did well enough to blot out the disastrous precedents left by McFarlane and Poindexter, making the position ripe for further military colonization at later moments.⁴⁸ Most notably, Barack Obama has named former commandant of the marine corps James Jones to serve as his NSC adviser—yet nobody has seriously questioned the propriety

47. Ivo Daalder and I. M. Destler, *In the Shadow of the Oval Office* (New York: Simon and Schuster, 2009), 148–49.

48. Professors Daalder and Destler disagree with my assessment of Scowcroft’s tenure. They consider him an exemplary adviser, since he managed to gain the confidence of other leading players in the administration. *Ibid.*, 315–16. I disagree: America was very much in need of a Kissinger or Brzezinski, with the intellectual firepower that might have redeemed President Bush’s promise of a “new world order.” No amount of bureaucratic finesse compensates for Scowcroft’s failure to help the president elaborate a compelling grand strategy as the Communist bloc disintegrated. See generally Mary Sarotte, *1989: The Struggle to Create Post-Cold War Europe* (Princeton: Princeton University Press, 2009).

of putting a military man at the core of the process through which the president responds to military demands. In contrast to the secretary of defense, the NSC adviser is no longer marked out as a special preserve for civilian control.⁴⁹

Perhaps September 11th helps account for this—and other recent cases of military colonization. Consider the CIA—whose directorship has increasingly been occupied by civilian outsiders, capable of bringing a broad perspective to agency operations.⁵⁰ But in response to its recent intelligence failures, the CIA has lost its status as a lead agency. Nowadays its director no longer goes to the Oval Office to give the president his daily briefing. This is a job for the new director of national intelligence, who is in charge of coordinating the vast bureaucratic effort. There have been three directors thus far: the first was a civilian, and the next two were recently retired admirals.⁵¹

A similar pattern prevails at the Defense Department. Its recent decision to create an undersecretary of defense for intelligence is a big deal—the new office ranks just behind the reliably civilian undersecretary in the department's pecking order.⁵² But once again, only the first incumbent was a civilian, and he was followed by a retired military man. If this continues, the undersecretary will not function as a civilian check on the enormous intelligence operations run by the department's Defense Intelligence Agency or its National Security Agency—both under the leadership of active-duty three-star generals.⁵³ Instead, the new undersec-

49. In contrast to Obama, Presidents Clinton and George W. Bush relied on civilians to serve as their advisers.

50. The first four CIA directors were active-duty military officers, but Eisenhower's appointment of Allen Dulles in 1953 broke new ground. Dulles came to the job after playing a key role in intelligence operations during World War II, and he was the central figure in constructing the modern CIA. See generally James Srodes, *Allen Dulles: Master of Spies* (Washington, D.C.: Regnery, 1999). But when he was not in government, he was (like his brother, John Foster) a partner at Sullivan and Cromwell—and his eight-year tenure served to break the military mold. Since then, only three directors have been career military officers, with the rest coming from a broad range of backgrounds. See the biographies of CIA directors at <http://www.cia.gov/library/center-for-the-study-of-intelligence/csi-publications/books-and-monographs/directors-and-deputy-directors-of-central-intelligence/directors-of-central-intelligence.html>.

51. The first director was John Negroponte, who came to the job from a distinguished diplomatic career. See http://www.dni.gov/faq_about.htm. He has been succeeded by John M. McConnell, who was a retired three-star vice admiral with twenty-nine years of military service, and Dennis C. Blair, a retired four-star admiral with thirty-four years of service.

52. Executive Order 13394, in *Providing an Order of Succession within the Department of Defense* (Washington, D.C.: Government Printing Office, 2005).

53. The only exception has been Dennis Nagy, who served as acting director from September through November 1991.

retary will be looking at the world from the same professional perspective as his subordinates. And when he leaves the Pentagon to talk with the president's new director of national intelligence, the conversation will continue in the same vein: since the director is himself a military man, one retired three-star general will be talking to another retired three-star.⁵⁴ And if they get together to give the president advice, he will undoubtedly want to hear the opinion of his four-star national security adviser.⁵⁵

The principle of civilian control is losing its grip in sociological reality: senior officers are talking to (retired) senior officers about high matters of policy on a regular basis. These daily discussions make nonsense of the old-fashioned idea that military men should defer to "civilians" on the big issues. The point of the principle is to engage active-duty officers in day-to-day contact with supervisors who are more closely attuned to the values emerging from democratic politics. Existing trends endanger this fundamental point.

So does another recent change in the Pentagon command system. Starting in the 1980s, retired officers began to serve as "senior mentors" to active-duty officers, helping them plan strategy, oversee war games, and generally advise on high military matters. This created an official system in which top officers are encouraged to turn to senior military statesmen for advice when the going gets tough; there are now about 160 "mentors."⁵⁶ If these trends continue, active-duty generals will have fewer

54. The governing statute gestures toward the principle of civilian control by barring active-duty officers from serving simultaneously as both director and principal deputy director of national intelligence. See 50 U.S.C. 403-3a (2004). But this does not prevent an active-duty officer from serving in one position while a retired officer serves in the other. Indeed, the statute encourages a significant military presence by providing that, "under ordinary circumstances," one of these positions should be filled by an active-duty officer or someone else trained in military intelligence.

55. James L. Jones is a retired four-star general who served for forty years in the United States Marine Corps. <http://www.whitehouse.gov/administration/eop/nsc/nsa/>. The director of national intelligence has a high-powered staff, whose director has consistently been an active-duty military officer. The first two staff directors have been three-star lieutenant generals with more than thirty years of service: Ronald L. Burgess and John F. Kimmons. See http://www.dni.gov/press_releases/20070517_release.pdf and http://www.dni.gov/kimmons_bio.htm.

56. The mentoring program began in the army during the late 1980s and then spread to the Joint Forces command in 1995, to the air force in 2000, to the marines in 2002, and to the navy in 2004. In 2009, there were 158 senior mentors. Twenty-nine are full-time executives of defense companies, and the others typically have significant relationships to the defense industry—either as employees or as members of boards of directors. Secretary Gates has recently revised the program to eliminate some of the more obvious forms of conflict of interest. See United States Department of Defense, "Fact Sheet: Senior Mentors Policy," http://www.usatoday.com/news/pdf/mentors_facts.pdf. This reform is long overdue, but does nothing to confront the program's fundamental threat to civilian control.

opportunities to create strong personal bonds with real civilians at the Pentagon. But they will be constantly relying on the advice of politically savvy mentors who have shared their life experience. To whom, then, will they turn at a future moment of crisis in civilian-military relations?

Retired officers are not only mentoring top-ranking generals; they are also serving as their unofficial ambassadors to the general public. Former generals have become fixtures as pundits on news shows—where they appear as independent analysts, although some are mouthpieces for Pentagon talking points.⁵⁷

More ominously, retired officers organized a “revolt of the generals” against Donald Rumsfeld, setting the stage for his removal by President Bush after the 2006 election. While recently retired generals led the charge, they made it plain that they were speaking for many of their active-duty colleagues.⁵⁸

The generals’ complaints about Rumsfeld’s policies had a great deal of merit, but this only makes future “revolts of the generals” more likely. The next “revolt” may be spectacularly wrongheaded. But its leaders will use the success of the 2006 uprising as a precedent to legitimate their ill-considered assault on civilian authority.⁵⁹ The credibility of their campaign will be further enhanced by the widespread belief that the Joint Chiefs failed to push back hard enough when Robert McNamara ran the Pentagon during the Vietnam War. By placing the principal responsibility for Vietnam and Iraq on arrogant civilians, this story line legitimates a more assertive military role in the future.⁶⁰

I have been focusing on institutional dynamics: how the separation of powers thrusts the military into politics, how the Goldwater-Nichols Act created a new political platform for the military by permitting “celebrity” generals to speak on its behalf, how the sociological foundations of civilian control have been eroding over time, and how senior generals are

57. See David Barstow, “Message Machines: Behind TV Analysts, Pentagon’s Hidden Hand,” *New York Times*, April 20, 2008, available at <http://www.nytimes.com/2008/04/20/us/20generals.html>.

58. According to *Time*, “There is some evidence that the retirees are speaking for other generals still on active duty. ‘I think,’ said former U.S. Central Command boss Anthony C. Zinni, a retired Marine four star, ‘a lot of people are biting their tongues.’” Perry Bacon Jr., “The Revolt of the Generals,” *Time*, April 16, 2006, available at <http://www.time.com/time/magazine/article/0,9171,1184048-2,00.html#ixzzodjZiYIWH>.

59. See generally Kohn, “Out of Control.”

60. For the classic critique of political passivity of the high command during the Vietnam era, see H. R. McMaster, *Dereliction of Duty* (New York: HarperCollins, 1997).

increasingly looking for guidance to retired military, not current civilian, leaders for practical advice.

But it is time to turn away from the policy-making heights to a more general consideration of the spirit of the officer corps. Here too there has been a profound shift. When the army first developed a strong professional spirit in the late nineteenth century, strict nonpartisanship was the norm. The overwhelming majority of officers even refused to vote—since this required them to think of themselves as partisans for the time it took to cast a secret ballot. As late as World War II, iconic figures like Gen. Omar Bradley continued to insist publicly that voting was inappropriate.⁶¹

But change was already in the air. In the midst of total war, the federal government took extraordinary steps to enable millions of citizen soldiers to cast absentee ballots, and senior officers slowly began to take part: 25 percent of the nation's colonels and generals voted in the 1944 election. Political participation continued to increase during the postwar period, but this did not immediately lead to intense partisanship. While more officers were Republicans than Democrats, even more remained above the fray. As late as 1976, 55 percent of the higher ranks (majors and above) continued to identify as independent. After all, both parties shared a commitment to a strong defense in the battle against communism. And so long as this bipartisan consensus remained intact, the military could look upon party divisions on other issues with a good deal of detachment.

Things changed decisively in the aftermath of Vietnam. With leading Democrats challenging the cold war consensus, party politics now began to threaten key military interests, and many officers began abandoning their detached stance. With the rise of Ronald Reagan, the top officers moved from 33 percent Republican in 1976 to 53 percent in 1984. By 1996, 67 percent of the senior corps were Republicans, and only 7 percent were Democrats—and the basic pattern continued through 2004.⁶² While there are the usual short-term fluctuations,⁶³ we get a better sense of the

61. Huntington estimates that only one out of five hundred voted during the late nineteenth and early twentieth centuries. See Huntington, *Soldier and the State*, 258. According to Jason Dempsey, "Senior generals like Omar Bradley and George Marshall made a point of refraining from voting in uniform." Dempsey, *Our Army* (Princeton: Princeton University Press, 2010), 15.

62. For a more detailed historical overview, including all the data discussed here, see *ibid.*, chap. 1. Dempsey's book contains a very valuable analysis of recent survey data, including evidence that there is less partisanship among the most junior officers and the rank and file. But this important point should not divert attention from Dempsey's explicit recognition that his survey "does confirm" findings of lopsided Republican commitments among senior officers. *Ibid.*, 101.

63. Dempsey suggests that there was a "decline in Republican Party identification among active-duty army officers" between 2004 and 2007. *Ibid.*, 186. But he bases this claim on some

future by turning to the next generation: what do cadets in the service academies think?

The best data come from West Point, and it is not encouraging. A survey taken in the run-up to the 2004 election indicates that 61 percent of the cadets were Republicans, 12 percent were Democrats, and the rest were independent.⁶⁴ Almost half of the cadets said that “there was pressure to identify with a particular party as a West Point cadet.” While Republican cadets tended to minimize this pressure, others disagreed. Two-thirds of non-Republicans affirmed its existence, as did four-fifths of the small minority who were brave enough to identify themselves as Democrats (in a confidential survey).⁶⁵

Increasing partisanship places obvious pressure on the fundamentals of civilian control. But today’s officer corps does not have a firm grasp on basic principles. Studies suggest that “a majority of active-duty officers believe that senior officers should ‘insist’ on making civilian officers accept their viewpoints,”⁶⁶ 65 percent of senior officers think it is okay to go public and advocate military policies they “believe are in the best interests of the United States,”⁶⁷ and 57 percent assert that “in wartime, civilian government leaders should let the military take over running the

polls by the *Military Times* that he recognizes should “be evaluated with caution.” *Ibid.*, 178. See also Ole R. Holsti, “A Widening Gap between the Military and Civilian Society? Some Evidence, 1976–1996,” *International Security* 23 (1999). I would go further and say that the polls do not deserve serious attention. They are not based on standard social science techniques but merely represent the views volunteered by subscribers. Worse yet, subscribers are free to exaggerate their military rank to influence the results. Broadly speaking, these polls have a family resemblance to the notorious 1936 survey of subscribers to the *Literary Digest*, which predicted a Landon landslide over Roosevelt in the 1936 election. In contrast, the remainder of Dempsey’s analysis relies on data generated through standard social science techniques.

64. When asked a follow-up question, the independent cadets “leaned” in the Republican direction, but not by the same lopsided margin. When leaners are taken into account, 75 percent of all cadets are Republicans, and 22 percent are Democrats. Dempsey, *Our Army*, 166.

65. *Ibid.*, 169–70.

66. Frank Hoffman, “Bridging the Civil-Military Gap,” *Armed Forces Journal* (December 2007), available at <http://www.armedforcesjournal.com/2007/12/3144666>.

67. This finding, as well as others that will be noted, comes from an ambitious survey conducted by the Triangle Institute for Security Studies (TISS). The survey was twenty-four pages long and contained eighty-one questions, many of which had several components. The data are especially valuable since they focus on high-ranking career officers at the rank of major or above. See Ole R. Holsti, “Of Chasms and Convergences,” in *Soldiers and Civilians: The Civil-Military Gap and American National Security*, ed. Peter D. Feaver and Richard H. Kohn (Cambridge: MIT Press, 2001), 15, 19–21 (describing the TISS study); and James A. David, “Attitudes and Opinions among Senior Military Officers and a U.S. Cross-Section, 1998–99,” in *ibid.* (reporting additional results). It was conducted in 1998–99 and urgently requires updating. Nevertheless, something is better than nothing. For the particular finding reported here, see *ibid.*, 120.

war.”⁶⁸ In contrast, only 29 percent believe that high-ranking civilians, rather than their military counterparts, “should have the final say on what type of military force to use.”⁶⁹

There seems to be greater support for certain fundamentals: 89 percent believe that “the military should not publicly criticize a senior member of the civilian branch of the government,”⁷⁰ and 92 percent recognize that high-ranking civilian officials “should have the final say on whether or not to use military force.”⁷¹ It is also good to hear that only 35 percent thought they were free to express their political views “just like any other citizen”⁷²—less than a majority, though a pretty high number nevertheless.⁷³

There is more bad news when surveys consider the reactions of civilian elites, and the general public, to similar issues. They suggest that even civilians do not stand up for civilian control. Indeed, they are often more promilitary than the military itself.⁷⁴

I do not want to put too much weight on these pathbreaking studies. There are too few of them, and I suspect that traditional principles would gather far more support—especially on the civilian side—if the president forcefully made a case for them at a moment of crisis. Nevertheless, these findings should serve as a warning flag to the military, and especially to

68. *Ibid.* (TISS survey).

69. *Ibid.* A different survey of the officer corps suggests the prevalence of disturbing views concerning press freedom. This study reports that only 31 percent believed it was appropriate for the press to publish documents indicating that “federal government officials and military leaders misled the public about a military operation.” Krista E. Wiegand and David L. Paletz, “The Elite Media and the Military-Civilian Culture Gap,” *Armed Forces and Society* 27 (2001): 183–84.

70. Holsti, “Widening Gap,” 81.

71. See David, “Attitudes and Opinions,” 120.

72. Holsti, “Widening Gap,” 81.

73. Thomas Ricks expressed similar concerns when confronting similar findings in “The Widening Gap between the Military and Society,” *Atlantic*, July 1997, available at <http://www.theatlantic.com/past/docs/issues/97jul/milisoc.htm>.

74. The TISS survey surveyed 935 “civilian leaders” (drawn from *Who’s Who* and the like) and 1,000 ordinary citizens (selected at random). See Holsti, “Of Chasms and Convergences,” 21. It found that the civilian grasp of basic principles was often weaker than that of military leaders. For example, 88.6 percent of military leaders, 73.0 percent of civilian nonveteran leaders, and only 66.3 percent of the general public believe that “members of the military should not publicly criticize a senior member of the civilian branch of the government.” See David, “Attitudes and Opinions,” 120; and Holsti, “Of Chasms and Convergences,” 81. The survey found that 39.7 percent of military leaders, 61.7 percent of civilian nonveteran leaders, and 83.8 percent of the general public believe that “members of the military should be allowed to publicly express their political views just like any other citizen.” *Ibid.* Finally, 26.8 percent of military leaders and 40.7 percent of civilian nonveteran leaders agreed that “military rather than political goals” should govern the use of force. *Ibid.*, 39.

military educators. By all accounts, the curriculum of the service academies, and the war colleges, gives remarkably little attention to the central importance of civilian control. Nor does it expose up-and-coming officers to intensive case studies and simulations designed to give them a sense of the principle's real-world implications.⁷⁵ A generation ago, the great scholar Morris Janowitz decried this educational failure at a time when the officer corps had not yet become hyperpoliticized.⁷⁶ His prescient warnings have been taken up by a new generation of scholars. But there has been little to show for it—a few gestures, nothing more.⁷⁷

The Constitution stands at the center of America's ongoing debate over public values, and it is only right for scholars to join the chorus and help define the organizing principles of our tradition. But constitutional thought has a second large mission: critical diagnosis. Here we are concerned with problems, not solutions—pointing out the system's hidden vulnerabilities, not its grand affirmations.

The last generation has failed to take this task seriously. The reigning spirit of triumphalism simply does not invite critical diagnosis. It tells us that the system will remain in good repair so long as we heed the great lessons of the past. Some think that the great teacher of these lessons is the Warren Court, others the Founding Fathers, but these exercises in comparative hero worship serve only to obscure the critical inquiry: perhaps we are in deep trouble, my friends; perhaps we cannot rely on some ancient wisdom to solve our problems; perhaps it is up to us.

75. Recent studies have consistently painted a grim picture. See Don Snider, Robert F. Priest, and Felisa Lewis, "The Civilian-Military Gap and Professional Military Education at the Pre-Commissioning Level," *Armed Forces and Society* 27 (2001): 249, 268 (some principles of civil-military relations appear in isolated parts of the curriculum, but "it appears difficult, if not impossible, for cadets to integrate on their own a coherent understanding of the officers' role in American civil-military relations"); Damon Coletta, "Teaching Civil-Military Relations to Military Undergraduates: The Case of the United States Air Force Academy," 1 (2007): 13–14, available at <http://www.allacademic.com> ("the different pieces come across more like glancing blows" than "a comprehensive introduction" to civil-military relations; only a small number of students take an elective course that attempts a comprehensive treatment); Kathleen Mahoney-Norris, "Civil-Military Relations: Educating U.S. Air Force Officers at the Graduate Level" 1 (2007): 19, available at <http://www.allacademic.com> (the Air War College makes no attempt to integrate civil-military relations into the broader curriculum); and Marybeth Ulrich, "The Civil-Military Relations Education of the U.S. Army's Senior Officers," 1 (2007): 2–4, 16, available at <http://www.allacademic.com> (failure to provide a comprehensive course is symptomatic of the larger failure to develop a "common set of professional" norms on key civil-military issues).

76. Morris Janowitz, *The Professional Soldier* (Glencoe, N.Y.: Free Press, 1971), 136.

77. The most recent book-length study reaches a similar conclusion. See Dempsey, *Our Army*, 189.

This has been my thesis here. The framers went wrong in guessing the identity of our most dangerous branch. They thought that Congress would be most dangerous, and they took pains to constrain the threats emerging from that direction—most notably, by splitting the legislature into the House and Senate and having them check and balance one another. But over the course of two centuries, the most dangerous branch has turned out to be the presidency—requiring a fundamental overhaul of our thinking and practice, and one that may come too late if it comes at all.

In developing this thought, I have not tried to move prematurely to one or another “solution” to the problem posed by the twenty-first-century presidency. Instead, it is more important to refine our basic diagnostic terms. Following Montesquieu, we tend to think about our constitutional problems in trinitarian terms: threats emerge from the legislative, judicial, or executive branch, or some combination of these. But this holy trinity will not suffice for accurate diagnosis.

We should break down the notion of an “executive” into two branches. On the one side, the *civilian* presidency may be occupied by a political extremist, who possesses the institutional capacity to embark on unilateral action on a broad front. On the other side, the *military* presidency contains a politicized high command, which has assumed a powerful role in defining the terms of national debate and decision on a broad front. This means that we can no longer assume that the civilian president will be “commander in chief.” Instead, he may sometimes be reduced to a figurehead—and the generals may even dominate broad aspects of policy on the civilian side as well. On the other side, we must consider the very different pathologies that may arise when the extremist president is more or less in the driver’s seat and a politicized general staff follows his commands.

But I leave this chilling prospect to another time. It is enough for now to urge you to move beyond the easy triumphalism of the recent past and confront these grim realities in a realistic spirit. Then and only then can we turn to consider soberly what, if anything, we can do to reform the modern presidency before it is too late.⁷⁸

78. I take up these larger questions in the book-length version of these lectures, published by Harvard University Press as *The Decline and Fall of the American Republic* (2010).