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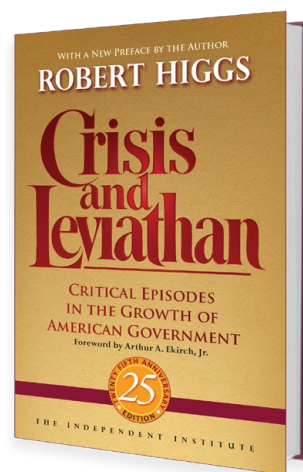
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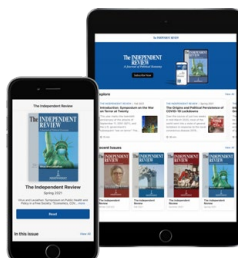
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The Militarization of U.S. Domestic Policing

ABIGAIL R. HALL AND CHRISTOPHER J. COYNE

Can government simultaneously be empowered and constrained? This “paradox of government” is the central question of constitutional political economy (see Buchanan 1975; Brennan and Buchanan 1985; Weingast 1995; Gordon 2002). In order for a government to function, individuals must allow governing forces to control different aspects of their lives. The danger in granting such powers, however, is that the government may abuse this authority and plunder the citizens.

The common solution is to establish checks and balances on government to prevent such abuses. History has demonstrated, however, that effective checks on government power are elusive. Nazi Germany; Idi Amin’s regime in Uganda; the dictatorships of Josef Stalin, Mao Tse-Tung, and Pol Pot; and the present-day Syrian regime are but a few examples of the tragic consequences of unconstrained government power. Beyond these examples, the poorest countries in the world today suffer from the actions of rapacious states, most of which are largely unconstrained in their predation against citizens.

One reason governments can exploit their citizens effectively is that they maintain a monopoly or near monopoly of military force. The concentration of military power, with its weaponry, organizational structure, and tactics, serves as the ultimate tool of government abuse. The threat of violent force raises the cost of deviations from government decree and can be used to repress citizens. As per the paradox of government, this repression leads to the central concern that although force, in theory, can serve the function of protecting citizens from threats to their person and

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property, government can also use force to undermine the very rights government is supposed to protect. Taking this crucial concern as our starting point in this article, we develop the political economy of the militarization of domestic policing. We identify the conditions and mechanisms through which a “protective state,” in which the government utilizes its monopoly on force to protect citizens’ rights, devolves into a “predatory state” that undermines the rights it is supposed to enforce.

Our analysis focuses on the United States, where a series of laws has attempted, at least in spirit, to draw a clear distinction between domestic policing and the military functions of government. This tradition is grounded in the fundamental differences between these two functions. State and local law enforcement are charged with upholding *domestic* laws that protect the rights of citizens. Although they “combat” crime within their jurisdictions, their goal is not to physically annihilate criminals, but to maintain public order and “keep the peace.” They are to protect the rights of the citizenry, both victims and criminals alike. In the realm of domestic policing, the police are, in principle, trained to resort to violence only as matter of last resort. Military forces, in contrast, are trained to engage in combat with the goal of destroying an *external* enemy deemed a threat to the rights of domestic citizens (U.S. Department of the Army 1962, 1). Typically operating in hostile environments, soldiers are trained to kill an adversary. The fundamental difference between policing and military functions is perhaps best highlighted by comparing the well-known Los Angeles Police Department motto, “To protect and serve [citizens],” with the U.S. Soldier’s Creed, “I stand ready to deploy, engage, and destroy the enemies of the United States of America in close combat” (qtd. in Rizer and Hartman 2011).

Despite historical efforts to make laws that enforce this distinction, during the past four decades domestic policing in the United States has become increasingly militarized. Domestic law enforcement has taken on the characteristics of the armed forces by engaging in military-style training, acquiring military weapons, and utilizing military tactics in everyday operations. To illustrate this militarization, consider the number of state and local law enforcement agencies that have acquired and maintained police paramilitary units (PPUs) or special weapons and tactics (SWAT) units. In 1982, 59 percent of police departments employed a PPU. By 1990, 78 percent of departments had a PPU, and by 1995, the portion had grown to 89 percent (Kraska and Kappeler 1997, 6). Police departments of all sizes around the country have obtained and maintained hundreds of millions of dollars worth of military equipment, ranging from M-16 assault rifles, riot gear, and body armor to tanks, grenade launchers, and armored vehicles. Further, the use of wire tapping, the examination of financial and other personal records without judicial clearance, and other violations of personal liberties that were once unimaginable are no longer uncommon practices among domestic police.

The militarization of domestic policing in the United States coincided with the onset of two ongoing “wars”: the “war on drugs,” which began in earnest in the 1980s, and the “war on terror,” which assumed much greater dimensions in the early

2000s. Like any other war, these conflicts utilize military personnel, equipment, and tactics to combat and eradicate real and perceived enemies. Because they are carried out both internationally *and* domestically, they have had the effect of transforming the culture and behavior of domestic police. Instead of maintaining a focus on “keeping the peace,” many police have assumed the characteristics of soldiers and have adopted a militaristic strategy in their domestic activities. As the paradox of government suggests, these changes may inspire fear that the progressive militarization of domestic policing will lead to the abuse of force and power. Indeed, examples of such abuses abound. There are hundreds of reports of police “no-knock” raids and other tactics that resulted in the injury or death of unarmed, nonviolent, and innocent civilians (Cooper 2004; Balko 2006; Brown 2010; Lodge 2011).

In this article, we use the tools of political economy to explain how the line between domestic police forces and the military in the United States has blurred over time. In doing so, we explain the erosion of rules intended to separate military and policing functions permanently. Our analysis contributes to several strands of literature. First, we contribute to the literature on the role of rules in constraining abuses of government power by exploring how rules that constrain the use of military power can be eroded or circumvented over time. Second, we contribute to the literature on the political economy of crises (Higgs 1987, 2004, 2005, 2007, 2012; Congleton 2005; Coyne 2011) by demonstrating how crises may lead to the erosion of rules separating domestic policing from military functions. Finally, we contribute to the small but growing literature on the militarization of domestic police in the United States (Kraska and Kappeler 1997; Haggerty and Ericson 1999; Lutterbeck 2004; Balko 2006). Although these works explore the magnitude of the growth of militarization and the ways in which this growth occurs, none of them has examined *why* and *how* such changes occurred. Our analysis fills this gap.

The Political Economy of Militarization

The militarization of domestic policing may occur directly or indirectly. Direct militarization occurs when governments utilize their military forces domestically to control and repress citizens. Recent civil conflicts in Libya and Syria provide examples of direct militarization in that these countries’ respective governments deployed the military to attempt to repress citizens in order to maintain their grip on power. In this scenario, constraints demarcating policing and military functions are either ineffective or absent.

Indirect militarization occurs when domestic police forces acquire military characteristics over time. Instead of performing their standard function of enforcing laws to protect property, police begin proactively to seek criminals and to use military strategy, weaponry, and tactics (for example, no-knock raids, counterterrorism operations, and so forth). Effective constraints ideally exist to prevent the blurring of police and military functions. However, political economy explains how constraints

can erode over time owing to the nature of the political process through which policing and military activities are carried out.

To begin to understand this process, we must first appreciate government bureaucracies' inherent tendencies. Existing literature indicates that in the absence of profit and loss, success in bureaucracies is measured by the size of discretionary budgets and the number of subordinates (Niskanen 1971, 1975; Migue and Belanger 1974). The result is that even though government agencies do not vie for profit through private markets, stiff competition occurs in regard to the distribution of a given pool of resources. The possibility of securing a windfall profit creates incentives for bureaus to engage in intense rent seeking to secure as much of the available budgetary pie as possible.

One result of this tendency is "mission creep," whereby bureaus attempt to expand their portfolio of activities to increase the size of their budgets and the number of personnel employed. Through expansion of the scale and scope of their activities, bureaucrats attempt to signal to other parts of government and to the public that the agency is engaged in the provision of crucial services. Functionaries then use this expansion to justify requests for additional funding and employees. Just as mission creep signals the public and the government that a bureau's work is "relevant," exhausting a bureau's budget also sends an important signal. By spending its entire budget, a bureau signals specifically that it needs additional resources in future periods to accomplish its increasing portfolio of "crucial" activities.

These characteristics of government bureaus matter in the context of our analysis because both the police and the military are organized as bureaucracies and have an inherent tendency to push to expand the range of their activities. Both look to increase steadily their spending on new and existing activities. Consider that in 1988 the U.S. government spent \$306 billion on the military. By 2010, the amount had climbed to \$698 billion (Stockholm International Peace Research Institute 2011). Domestic police spending followed a similar pattern, with police spending jumping 445 percent between 1982 and 2007 (Justice Policy Institute 2012).

The incentives facing the military and the police departments results in a relationship between the two whereby each benefits from expanded interactions. The military, looking to extend its powers, expand its budget, and increase its personnel, has an incentive to expand into and exert influence over domestic police activities. By providing weapons, training, and other resources to the police, the military effectively augments the power of its various agencies and the number of personnel under its influence. Domestic law enforcement likewise benefits by extending operations in hopes of acquiring additional funds and staff. If the military is engaging in activities that yield significant windfall profits—for example, counterterrorism efforts or drug interdiction—police forces face a strong incentive to adopt similar activities and methods. Once domestic police forces acquire additional funding, tactical training, and weaponry, they face an incentive to use this training and equipment to justify the spending and to seek further increases. The result of this process is a

blurring of the police/military distinction and the erosion of constraints on domestic police activities.

Yet another factor working to erode constraints on policing and military functions is special-interest groups. Special-interest or “pressure” groups work to influence government for the benefit of their members and in the process contribute to the erosion of checks and balances on government power. As bureaus compete for government funds, special-interest groups also do so as they seek to secure a share of available funds. This action results in intense political competition as these groups lobby Congress, finance political campaigns, and work to sway public opinion in order to influence policy. They not only work to maintain the status quo but also push to expand spending and to influence resource allocations in the areas that will benefit their members. John Mueller (2006) provides an example of this logic, arguing that the war on terror has generated a “terrorism industry” that consists of various government agencies, technocrats, consultants, and private firms who offer security and antiterrorist services. Each of these parties represents a special interest that actively lobbies government and works to foster a persistent state of fear in order to secure more resources (see Higgs 2007, 2012).

Although bureaucracies and special-interest groups have existed in the United States throughout its history, the militarization of domestic policing did not accelerate until recently. Therefore, the political economy of bureaucracy and special-interest groups cannot by themselves explain the indirect militarization of domestic policing. In order to provide such an explanation, we need to identify mechanisms through which these forces are unleashed in a largely unchecked manner.

We find one such mechanism in the literature on the political economy of crises (see Higgs 1987, 2004, 2005, 2007, 2012; Congleton 2005; Coyne 2011). Arguments presented in this literature imply that crises, whether they are actual or merely perceived (for example, the threat of drug gangs, terrorism, nuclear war, and so forth), provide an opportunity for government to increase in size and scope. During times of crisis, the public cries out for government to “do something.” As indicated by the political economy of bureaucracy and special interests, these groups take advantage of the crisis-spawned openings to expand their operations. Increased government spending on new programs and initiatives results in rent seeking and the entry of new political competitors, each attempting to secure a portion of the windfall profits associated with the crises. As Robert Higgs (1987) indicates, crises have a “ratchet effect” on the size, scope, and power of government. Once the crisis has ended, the government reduces its activities, but it does not return to its precrisis dimensions because some new programs, agency expansions, and spending increases persist.

As we detail later, the war on drugs and the war on terror are two examples of how crises create openings for massive expansions in police and military operations. These particular crises are especially troubling for two reasons. First, they are carried out both domestically and internationally, and, hence, military operations are carried

out on domestic soil. Second, neither war can have a clear end. Therefore, the crises and the associated expansion in government will continue into the foreseeable future, resulting in an ongoing “ratcheting up” of government spending and power.

A complementary mechanism that helps to explain the militarization of domestic policing over the past several decades is improvements in military-related technologies. Tyler Cowen (2009) has argued that a large part of the overall growth of government is attributable to the rise in certain technologies. He posits that only with the invention of new technologies—electricity, better transportation and communication devices, and so forth—was government able to expand to its current scale and scope. For example, enhanced transportation permitted government workers and lobbies to travel easily over the whole country, thus contributing to an “increased national consciousness” and a greater emphasis on national issues. Further, Cowen argues, the increased availability and lower cost of communication devices allowed government officials to contact each other and to communicate directly with their constituencies by telephone and telegraph and eventually by radio and television. Advances in technology similarly enabled the government to better keep records of its citizens and to collect taxes, both of which allowed it to expand its size and the range of its activities.

If technological change has been important in the growth of government in general, it has been vital in the expansion of the U.S. military and in the militarization of domestic policing. Improvements in surveillance and information technology are incontrovertibly crucial in the present operations of police and military forces both domestically and abroad. Advances in computer technologies have significantly decreased the costs of gathering nearly all types of information. Activities such as crime mapping, compiling and accessing criminal histories, and suspect monitoring, which were once impossible or could be carried out only through hundreds of hours of onsite surveillance and other “leg work,” can now be conducted via the use of the Internet and other technological methods (Byrne and Marx 2011). Further, technologies once used exclusively by the military, such as facial-recognition systems, thermal imaging, satellite monitoring, and retinal scanners, are now regularly transferred to and utilized by police agencies across the country for domestic activities (Nunn 2001). The aforementioned crises opened the door for the militarization of the domestic policing, and technological improvements facilitated the relatively easy transfer of military capabilities to domestic police forces.

Attempts to Constrain Militarization in the United States, 1787–1970

The attempt to create rules to separate domestic policing from military operations has a long history in the United States. From the time the U.S. Constitution was ratified in 1788, numerous laws, rulings, and events have served both to empower and to restrain the federal government and its military forces. In the five years immediately

following the Constitution's adoption, legislation affirmed that although civilian militia groups may be called upon as military recruits in times of extreme crisis, the military should not be used to enforce civil laws unless extreme circumstances prevent local officials from properly enforcing state and local laws. Even in these circumstances, the law required government officials to obtain congressional permission to use the militia and limited the length of time it could be used.¹

The end of the Civil War posed a significant threat to the separation of domestic policing and military operations. The Reconstruction Act of 1867 divided the former Confederate states into military districts and placed them under the control of the U.S. Army, various commanders, and the U.S. attorney general.² The military was used as the primary source of civil law enforcement.³ This situation continued until 1878, when Congress passed the Posse Comitatus Act following the controversy surrounding the presidential election of 1876. Underpinning this controversy were accusations that U.S. marshals used physical force to intimidate southern voters, prompting some to claim that the election results were fraudulent.

The act prohibited use of the army as a posse comitatus (force of the people) except in cases where it was specifically allowed by the U.S. Constitution or ordered by Congress. The act also allowed state governors to request military assistance when domestic forces were unable to enforce the law. By declaring it illegal for the army to enforce civil laws except in specific circumstances, the act effectively ended military governance in the post-Reconstruction South. The Posse Comitatus Act sought explicitly to constrain the federal government's domestic use of its military power. Although the original law applied only to the army, it was later amended to include the air force, the navy, and the marine corps.⁴ The National Guard and the Coast Guard are exempt from the act so long as they remain under state government control.

The Posse Comitatus Act provided the legal foundation for separating policing from military operations. Nevertheless, limitations of the act's constraints became evident soon after its passage. For example, concerns over local law enforcement's capabilities in the western territories prompted the government to deploy troops as early as 1878 under the pretense that Posse Comitatus applied only to unionized states (Laurie and Cole 1995, 57–61). During World War I, Secretary of War Newton D. Baker suspended the Posse Comitatus Act so the military could be used to quell domestic disturbances while the National Guard was deployed abroad. From 1917 to 1921, Baker's policy of "direct access" allowed state and local agencies to call on the military for assistance without the usual permissions (Laurie 1991).

1. Militia Act of May 2, 1792, chap. 28 § 2.

2. Reconstruction Act of March 2, 1867, session II, chapter 153.

3. A supplement to the Reconstruction Act of March 2, 1867 (July 19, 1867), Session I, chap. 30, §§ 2 and 3.

4. United States Code, section 10 § 375; Department of Defense Directive 1986.

In the 1970s, the Posse Comitatus Act was invoked in several high-profile legal cases, which led to a redefinition of the act's scope and application and hence of the military's role in domestic law enforcement. The most important of these legal proceedings were the Wounded Knee cases. During a seventy-one-day standoff between police and members of the American Indian Movement (AIM) in Wounded Knee, South Dakota, state and local police, FBI agents, U.S. marshals, and other federal personnel acted together to enforce order. They enforced road blocks, shut off water and electricity to the AIM compound, and exchanged gunfire with AIM members (Nelson 2009; U.S. Marshals 2012). Upon conclusion of the incident, many AIM members were arrested and charged with various crimes. Their defenders claimed the presence of federal forces constituted a violation of the Posse Comitatus Act.

After a series of trials, the court concluded that the act applies only in instances where federal forces play an "active role."⁵ The ruling in *U.S. v. Jaramillo* (1974) established that military forces may act so long as these activities are not "pervasive."⁶ *U.S. v. McArthur* (1975) would become the most important of the cases because it established the baseline test for determining whether the army's participation rose to the level of "executing the law" or not. The judge in the case concluded that the armed forces had not violated the act because their presence had not "[s]ubjected citizens to the exercise of military power which was *regulatory, proscriptive, or compulsory in nature, either presently or prospectively*."⁷ These cases, especially the *McArthur* ruling, created a definite opportunity for the police and military to cooperate on domestic soil with legal impunity.

Beyond the Wounded Knee cases, defendants in several other cases attempted to invoke the Posse Comitatus Act as a means to exclude evidence or have charges dismissed in court. For example, *U.S. v. Walden* (1974) ended in a conviction of the defendant despite the court's conclusion that the U.S. marines involved had violated the law.⁸ Other defendants made similar attempts to suppress evidence or obtain acquittal by claiming a violation of the act. In many of these cases, both trial judges and appellate courts denied requests for exclusion or acquittal.⁹ Further, courts ruled that a violation of Posse Comitatus does not require evidentiary exclusion or the acquittal of a defendant because the penalties for violating the act are plainly stated in the language of the law.¹⁰ Courts further concluded that a violation of the act does not violate an individual's constitutional rights, which excludes a case's dismissal on

5. *U.S. v. Red Feather*, 392 F. Supp. 916 (D.C.S.D. 1975).

6. *U.S. v. Jaramillo*, 380 F.Supp. 1375 (D.C.Neb. 1974).

7. *U.S. v. McArthur*, 419 F.Supp. 186 (D.N.D. 1975), emphasis added.

8. William and Ruby Walden were convicted of illegal firearm sales. Their conviction was based in large part on the testimony of three U.S. marines.

9. *Gilbert v. U.S.*, 165 F. 3d 470 (6th Cir. 1999); *U.S. v. Griley*, 814 F. 2d 967 (4th Cir. 1987); *U.S. v. Wolff*, 594 F. 2d 77 (5th Cir. 1979); *Taylor v. State*, 640 2d 1127 (Fla. 1st DCA 1994).

10. *State v. Valdobinos*, 858 2d 199 (1993); *U.S. v. Roberts*, 799 F. 2d 565, 567 (9th Cir. 1986).

the basis of a Posse Comitatus violation.¹¹ By establishing the act's limitations, these rulings created expanded space for the greater domestic use of the military.

Although the Posse Comitatus Act was reinterpreted in the courts in the 1970s, two other events—the ongoing war on drugs, beginning in the 1970s, and the ongoing war on terror, being greatly expanded in the 2000s—were driving forces behind the militarization of domestic policing. The events surrounding these ongoing “wars” further weakened the separation of police and military functions. Further, the unique nature of these events has led to an unprecedented acceleration of the militarization of domestic policing with no end in sight.

Acceleration of the Militarization of Domestic Policing

The war on drugs and the war on terror differ greatly from other conflicts in U.S. history. During the world wars, the conflicts in Korea and Vietnam, and even the Cold War, the enemy combatants were external to the United States. These new “wars,” in contrast, changed the face of the enemy. Although there are foreign enemies in the wars on drugs and terror in the form of South American drug cartels and al-Qaeda, other enemies reside much closer to home—American citizens.

These domestic enemies reside within the United States in the form of actual and potential drug dealers, drug manufacturers, and drug users. In the war on terror, the U.S. government has placed an emphasis on combating “homegrown terrorists” and expanded its focus from curtailing the activities of terrorist groups abroad to monitoring the activities of U.S. citizens. These domestic enemies and their foreign counterparts are viewed as equally threatening. In a recent interview, Attorney General Eric Holder bluntly expressed the Obama administration's views on the homegrown terror threat, commenting that the threat “keeps me up at night. . . . You didn't worry about this even two years ago—about individuals, about Americans, to the extent that we now do . . . and that of great concern. . . . *The threat has changed from simply worrying about foreigners coming here, to worrying about people in the United States, American citizens.*” He further discussed a specific American-born terrorist, stating that “[h]e would be *on the same list with Bin Laden.* . . . He's certainly on the list of the people who worry me the most” (Epstein 2010, emphasis added).

The wars on drugs and terror differ from previous conflicts in other ways as well. Although the events that sparked the majority of the changes in the Posse Comitatus Act and other restrictions on the military were largely localized (for example, violence in the western territories, the absence of the National Guard during World War II, race riots in the South, and so forth), the war on drugs and the war on terror have their roots in national crisis. These perceived crises have prompted a mass shift in public opinion, providing opportunities for bureaucratic expansion and openings for pressure groups to attain their ends as previously indicated.

11. *U.S. v. Unis*, 924 F. 2d 1086 (D.C. Cir. 1991); *U.S. v. Hartley*, 796 F. 2d 115 (5th Cir. 1986).

After Richard Nixon declared drugs to be a major threat to the United States in the early 1970s, concerns about the “drug problem” grew. Throughout the 1970s, 1980s, and 1990s, the U.S. government engaged in a number of operations in Mexico, Panama, Nicaragua, and Colombia to stop the flow of drugs into the United States (*Timeline* 2007). Creation of the Drug Enforcement Administration (DEA) in 1973 led to more drug arrests and increased the publicity of drug use. Consider that in 1980 there were approximately 375,000 drug-related arrests, but by the end of the decade that number had climbed to almost one million (Human Rights Watch 2009). The increase in arrests served as an important signal for the DEA because it provided a readily observable indication that the government was proactively combating the use of illegal drugs. By steadily increasing the number of drug arrests, the bureau justified its present expenditures and its requests for additional funds.

During the same period and afterward, the government undertook a public-relations campaign to gain public support for its ongoing “war.” This campaign included a series of television and radio ads to increase public awareness of illegal drug use and of the supposed dangers of illegal substances. Public-service announcements aimed at parents and children highlighted the use of marijuana, cocaine, and other drugs as well as the possibility of arrest and physical side effects. Horror stories of drug use during pregnancy and an “epidemic of crack babies” placed illegal drugs at the forefront of American news (Fe Cases and Zobeck 2001; Glenn 2006). Nancy Reagan’s “Just Say No” campaign and programs such as Drug Abuse Resistance Education (DARE) provided an antidrug message to millions of American schoolchildren (DARE 2012).

Higgs (2004, 2005, 2007, 2012) notes that governments use crisis-related fear to expand their size, scope, and power. The government campaign surrounding the war on drugs fits this logic well. And it worked. As a result of the massive government campaign highlighting the supposed national and global drug crises, popular support for the drug war increased. The number of Americans who identified the use of illegal drugs as a serious problem increased steadily throughout the period. In 1968, 48 percent of Americans described illegal drug use as a problem in their community (Robinson 2002). By November 1989, nearly 40 percent of the public thought of illicit drugs as the “primary” problem facing the United States (U.S. Bureau of Labor Statistics 1994, 140, Table 2.1). During the same year, 71 percent of adults thought the federal government was spending “too little” to counteract the “drug problem” (U.S. Bureau of Labor Statistics 1994, 164, Table 2.28). As of 1993, 64 percent of Americans saw drugs as a “critical” influence on crime (U.S. Bureau of Labor Statistics 1994, 158, Table 2.23). And, according to a 1994 poll, 78 percent viewed drugs as “very important” in explaining the rise in violence in public schools (U.S. Bureau of Labor Statistics 1994, 143, Table 2.5). Moreover, in 1989, 70 percent favored using military assistance (equipment and supplies) abroad to fight drug trafficking, and 69 percent favored using military advisors to support foreign troops in their efforts to combat drugs (Gallup 1990, 194). These mounting concerns about the manufacture, sale, and use of illegal drugs resulted in ever-increasing calls by the public for the government to “do something” about the growing crisis of illegal drugs. This clamor

opened the door for the militarization of domestic policing as domestic law enforcement agencies expanded their operations in accordance with the aforementioned political economy of militarization.

In 1981, Congress passed the Military Cooperation with Law Enforcement Act (MCLEA). In addition to creating several exceptions to the Posse Comitatus Act, the MCLEA would “enhance” federal and domestic law enforcement agencies’ ability to enforce drug-interdiction laws. State and local law enforcement overwhelmingly supported the legislation and called for the military’s assistance in enforcing drug laws. Both the National Association of Attorney Generals and the U.S. Conference of Mayors called for the military to become a key player in drug-prohibition activities within the United States (Sanchez 1991).

According to the final version of the MCLEA passed by Congress, the Department of Defense (DOD) is permitted to share with state and local police any information collected in the course of “normal operations.” The act allows the military to provide advice to local agencies as long as the military officials involved do not assert that they are in charge of the operation. It grants the DOD permission to offer military equipment and facilities to domestic law enforcement and authorizes the DOD to maintain any equipment given to domestic agencies as long as the agencies are enforcing national immigration, drug, or customs laws.¹²

Following MCLEA’s enactment, the military’s participation in the war on drugs grew steadily. In many cases, this participation involved direct coordination with local law enforcement. In the first three years following the MCLEA’s enactment, the DOD granted nearly 10,000 requests from state and local law enforcement to assist in civil activities (Reuter, Crawford, and Cave 1988). It provided surveillance and support to agencies in the form of aircraft and naval vessels. In 1983, less than 1,000 aircraft provided 3,000 hours of aerial surveillance to a variety of agencies. Less than a year later, more than 3,000 aircraft provided police forces with nearly 10,000 hours of surveillance (Gonzales et. al. 1986, app. E). By September 1985, the DOD had assisted in thirty-eight vessel seizures across the United States. During the same year, the Joint Chiefs of Staff recommended that the military further expand its role in drug interdiction by providing more equipment and training to both domestic and foreign antidrug forces (Gonzales et. al. 1986, 383–84).

Proponents of military involvement in the drug war also called for greater use of the National Guard and Coast Guard in drug-interdiction activities, noting that those forces are well trained and not subject to the restrictions of the Posse Comitatus Act so long as they remain under state authority (Gonzales et. al. 1986, 385). As a result, many states utilized their Guard troops to combat the use and selling of illegal drugs. In 1985 alone, nineteen states employed the National Guard in more than 199 separate missions related to drug-enforcement operations (Gonzales et. al. 1986, app. E). In the early 1990s, Congress granted funds specifically to National Guard

12. United States Code, Title 10, sec. 371–78.

troops engaged in drug operations.¹³ The “drug crisis” in the United States thus provided a clear opportunity for police and military forces to expand their operations, increase their personnel, and expand their discretionary budgets. But they were not the only benefactors of the drug war. Pressure groups also utilized expanded drug-interdiction policies to attain their objectives.

Perhaps the most influential such pressure groups were the police and prison-guard unions. Police departments across the United States became increasingly dependent on the federal funds granted for antidrug measures. One program, Community Oriented Policing Services, allocated more than \$10 billion to more than 12,000 agencies in less than a decade (Eisler and Johnson 2005). The availability of these funds and the lure of further windfall profits prompted these groups to push for expanded drug laws and additional drug-interdiction activities. A relaxation of drug laws would mean smaller budgets for police and prison-guard unions. To understand the beneficial implications of more stringent drug laws for these groups, consider the following. In 1980, the number of individuals incarcerated for drug-related offenses was just more than 41,000. Today, that number is almost half a million, representing half of all persons in jail or prison—an astounding 1,100 percent increase in the number of persons incarcerated on drug-related charges (Maurer and King 2007).

In 2008, the National Fraternal Order of Police lobbied Congress to increase the penalties for offenses involving particular types of narcotics, to create a registry and public database for persons convicted of certain drug offenses, and to establish increased penalties and mandatory sentences for individuals involved in “large drug trafficking rings.” It also lobbied for stiffer penalties against individuals who “threat[en] violence against law enforcement officers” and for increased regulation on products used to manufacture drugs (Pasco 2008, 15). Each of these policies, if passed, would expand the resources available to police in order to enforce the more stringent laws.

Private prisons, whose main source of income is government contracts, also worked to expand and perpetuate the war on drugs. Income for these firms depends directly on the number of incarcerated individuals. The increased penalties for drug crimes advocated by police unions have made private prisons a particularly lucrative business. To provide some context, consider that the revenue for the two largest private prison businesses totals nearly \$3 billion annually (Corrections Corporation of America 2010). In 1990, private prisons contained an average of 7,771 inmates at a given time. By the end of 2009, that number had soared to 129,336—an increase of 1,664 percent (American Civil Liberties Union 2011, 12). The GEO Group, the second-largest operator of private prisons in the United States, explicitly identifies changes in drug policy as a threat to the profitability of its business. “Our growth depends on our ability to secure contracts to develop and manage new correctional, detention and mental health facilities. . . . *Changes with respect to the decriminalization of drugs and controlled substances could affect the number of persons arrested, convicted,*

13. H.R. 2461, National Defense Authorization Act.

sentenced and incarcerated, thereby potentially reducing demand for correctional facilities to house them. Similarly, reductions in crime rates could lead to reductions in arrests, convictions and sentences requiring incarceration at correctional facilities” (2011, 25, emphasis added). As this statement plainly shows, private prisons have a strong interest not only in sustaining the status quo, but also in increasing the number of individuals incarcerated. One way of working toward this outcome is to lobby governments to pass more stringent laws that ensure an ongoing stream of criminals to incarcerate.

Beginning in the 1990s, while the war on drugs was still expanding, a new threat emerged in the form of terrorism. The attacks on the World Trade Center in 1993 and the federal building in Oklahoma City in 1995 marked the beginning of a new era in American domestic and foreign policy. As a result of the terrorist threat, significant convergence between the military and domestic law enforcement occurred once again. In the late 1990s, Congress passed a statute titled “Military Assistance to Civilian Law Enforcement Officials in Emergency Situations Involving Biological or Chemical Weapons.” The law allows the secretary of defense to provide assistance to domestic law enforcement via the DOD during an emergency situation involving “weapons of mass destruction.”¹⁴

The FBI also began to expand its Joint Terrorism Task Forces (JTTFs) for the purpose of sharing intelligence, training, and other knowledge across agencies. Coordinated through the FBI, information flows freely between federal, state, and local agencies connected through the JTTFs. The original JTTF was based in New York City, but over time more than 100 such task forces expanded across the country. To understand this growth of JTTFs, consider that 71 forces were added after the terrorist attacks on September 11, 2001 (9/11). The JTTFs presently include more than 4,400 personnel from more than 600 local and 50 separate federal agencies (U.S. Federal Bureau of Investigation 2012). During this same period, Joint Task Force Six, a multiagency force first created in 1989 as part of counterdrug operations, was renamed Joint Task Force North and reorganized to include an antiterrorism component in its mission.

An important blurring of the military and police functions of government occurred in 1997 when Congress passed legislation (Program 1033) that allows the DOD to transfer excess military equipment to state and local law enforcement. Eligible agencies are those whose foremost function is enforcement of state and local laws, with particular preference given to agencies that engage in counterdrug and counterterrorism activities (Missouri Department of Public Safety 2012). Program 1033 augmented the earlier MCLEA and allowed state and local agencies to acquire more easily materials such as body armor, aircraft, armored vehicles, weapons, riot gear, watercraft, and surveillance equipment. Since 9/11, state and local agencies have used the program more and more. New records were set in 2010 and 2011, with \$212 and \$500 million in transfers, respectively (Ruppert 2011).

14. United States Code, chap. 10 § 382.

In order to understand the growth of government activities in the post-9/11 period, one must appreciate the dramatic shift in public opinion toward the role of government, both domestically and abroad. For example, following the 9/11 attacks, 63 percent of Americans thought it would be necessary for the average person to give up some civil liberties to curb terrorism (Saad 2002). Further, in the wake of the attacks, more Americans stated they trusted the U.S. government on both foreign and domestic issues. On September 7, 2001, a Gallup poll had found that only 14 percent of Americans trusted the government a “great deal” with regard to its ability to handle foreign problems, and only 6 percent trusted the government’s capabilities in regard to handling domestic troubles. By October 2001, however, 36 percent of Americans reported a “great deal” of trust in the government on foreign issues, and 24 percent “highly trusted” the government on domestic issues. A total of 83 percent felt a “great deal” or “fair amount” of trust on foreign issues. Finally, 77 percent expressed confidence in the government’s ability to handle domestic concerns (Saad 2002).

Public confidence in the president and support for the military and local police also jumped significantly after 9/11. For example, in December 2001, 82 percent of Americans approved of the way President George W. Bush chose to fight the global war on terror (Gallup 2001). Between 2001 and 2002, Americans’ confidence in the military jumped from 44 percent to 71 percent, and support for the police climbed from 48 percent to 58 percent (U.S. Bureau of Justice Statistics 2003, 112, Table 2.9). Moreover, a majority of Americans felt it necessary to increase the scope of government activities. For example, following the terrorist attacks, 86 percent of Americans approved of the use of facial-recognition software by authorities at public events. In addition, 63 percent favored extending the use of cameras and other surveillance technologies, and 54 percent approved of increased monitoring of private cell phones, emails, and Internet usage (U.S. Bureau of Justice Statistics 2003, 126, Table 2.27).

As indicated by the political economy of crises, this popular support for antiterrorism efforts and public calls for government to respond actively to the terrorist threat by expanding the scale and scope of its activities created an opening for the largest government reorganization in recent history—the USA PATRIOT Act, which was enacted in October 2001. This act reduced restrictions on law enforcement personnel and allowed them to gather more intelligence information on U.S. civilians. It also authorized indefinite detentions and the search of private property without the owner’s consent or knowledge and expanded the ability of federal forces to search telephone, email, and financial records without a court order.

In addition, the Homeland Security Act, signed into law by President George W. Bush in November 2002, created the Department of Homeland Security (DHS) for the specific purpose of coordinating operations against domestic terrorism aimed at “preparing for, preventing, and responding to terror attacks” (U.S. DHS 2012). The DHS maintains more than 200,000 employees and at its creation absorbed twenty-two separate agencies into a single cabinet department. DHS’s creation not only

enhanced communication and information sharing between agencies but also created a host of new bureaucratic arms, each of which seeks to expand its own discretionary budgets, personnel, and influence over policy.

In addition to the creation of a massive bureaucracy dedicated solely to “homeland security,” the extension of the military into domestic policing has been greatly enhanced by innovations in military technologies that are now being used domestically. Our theory of the militarization of domestic policing highlights the role of technological improvements that lower the cost for police to take on military-like characteristics. Such technological improvements allow the easy transfer and use of military equipment and capabilities, much of which is not readily observable by citizens. The following examples illustrate the role of technology in this regard.

During the wars in Iraq and Afghanistan, the military used drones—small, easily concealed, unmanned aircraft—to conduct surveillance and gather information on individuals and terrorist groups. The increased use of drones in foreign military interventions was intended to reduce the risk for U.S. soldiers while reducing the costs of gathering information in international settings. However, the use of this drone technology has quickly expanded, and on February 8, 2012, Congress passed House Resolution 658, the Federal Aviation Administration Air Transportation Modernization and Safety Improvement Act. This legislation authorizes *domestic* use of aerial spy drones by the U.S. government. State and local police departments have already expressed great interest in using these technologies in their daily operations (Hennigan 2011).

A key influence in the expanded use of drones is the lobby formed by the growing industry associated with this technology. The drone lobby includes the manufacturers of drones as well as those who provide support services—training, maintenance, and consulting services—for the aircraft. This interest group has invested significant resources in attempts to influence the government to expand the use of drones further, both domestically and internationally. For example, the Association for Unmanned Vehicle Systems International more than doubled its lobbying budget in 2011 in support of House Resolution 658 (Stone 2012). The possible benefit to these companies is substantial. Consider that one drone manufacturer has contracted with DHS for more than \$250 million in drone-related business since 2005. Another manufacturer’s unmanned aircraft business increased by \$25.6 million in one year, climbing to \$248.9 million in 2011 (Schulz 2012).

Although federal and local agencies intend to use drones, in conjunction with other surveillance technologies, to gather increasing amounts of information on U.S. citizens, they also intend to store that information, track its patterns, and analyze its contents. To provide some insight into the magnitude of this effort, consider that the National Security Agency is presently building a multi-billion-dollar complex for the purpose of intercepting, deciphering, and analyzing vast amounts of data from both domestic and international sources. The complex will house information that includes personal emails, cell phone calls, and financial records as well as other information such as Internet searches and travel itineraries. The amount of data to be stored in the

new facility's mainframe computers is almost unfathomable. James Bamford states: "Given the facility's scale and the fact that a terabyte of data can now be stored on a flash drive the size of your little finger, the amount of information that could be housed . . . is staggering. But so is the exponential growth in the amount of intelligence data being produced every day by the sensors of the intelligence agencies. . . . [T]he Pentagon is trying to expand its worldwide communications network . . . to handle yottabytes (1,024 bytes) of data. [A yottabyte] is a septillion bytes—so large that no one has yet coined a term for the next higher magnitude" (2012). As these examples illustrate, although the crises of the wars on drugs and terror opened the door for the growth of government, technological advances have also contributed to the militarization of domestic policing by reducing the cost of domestic police who take on military characteristics.

Conclusion

Our analysis has several implications. First, it provides evidence that undercuts the idea that the paradox of government can be permanently resolved by constitutional rules intended to check the government's power. Government agencies' inherent tendency is to expand beyond their designers' initial aims and goals. Special-interest groups exacerbate this problem by seeking to expand their power and influence. The onset of crises—whether real or manufactured—begins a long, far-reaching process that erodes the already imperfect constraints on the government's power. The question is ultimately one of speed. That is, following the onset of a major crisis, how quickly will this erosion take place?

Second, the convergence of the U.S. government's military and domestic police functions will likely continue. Higgs (1987) emphasizes that at the end of crises, government shrinks, but not back to its previous size. What happens, however, if there is a perpetual crisis with no clear enemy and no clear end? In general, the growth of government will continue. Our analysis indicates more narrowly that the militarization of domestic policing will continue into the future as the U.S. government continues its unrelenting "wars" on drugs and terrorism. These crises have created a set of conditions in which the blurring of police and military activities is self-enforcing and self-extending.

Third, no clear mechanism exists for reestablishing a separation of the U.S. government's domestic police and military functions. Although political economy highlights the process through which the militarization of domestic policing emerges, it also makes clear why policies aimed at reversing this situation are unlikely to be adopted. Even if one assumes that citizens generally agree that the separation of police and military functions must be reestablished (a huge assumption in itself), working against the present policies implies tearing apart the massive drug-terror complex, an institution that benefits from a permanent state of war domestically and internationally. This complex includes an array of government departments and agencies,

contractors, unions, and consultants whose very existence is predicated on the continuation of a culture of fear and crises.

Resolution of the accelerating militarization is by no means simple or even clear. In order to overturn the chimera of a sustainable “protective state,” citizens must become skeptical of the possibility of establishing permanent constraints on government power. This skepticism ultimately requires recognition and appreciation of the realities of government power and a rejection of government action as a solution to the perceived crises.

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