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## CHAPTER 2

### CIVILIAN CONTROL OF THE MILITARY

#### A. INTRODUCTION

An examination of the soundness of civil-military relations is essential to any study of the organization and decision-making procedures of the Department of Defense. More than any other institutional issue, the relationships between civilian and military authorities in the U.S. military establishment are key to sustaining American democracy.

Since the founding of the Nation, civilian control of the military has been an absolute and unquestioned principle. The Virginia Declaration of Rights of June 12, 1776 stated this principle as follows:

In all cases the military should be under strict subordination to and governed by civil power.

The Constitution incorporates this principle. Both the President and the Congress were given power and responsibilities to ensure civilian supremacy.

Despite the importance of the concept of civilian control, it remains ill-defined and poorly understood. As Samuel P. Huntington stated in 1957 in *The Soldier and the State*:

The role of the military in society has been frequently discussed in terms of "civilian control". Yet this concept has never been satisfactorily defined. (page 80)

Although troubling to some scholars and theorists, the lack of a consensus on a definition of civilian control has not proved a serious drawback to the success of the general principle, because the principle itself is so deeply ingrained. Thus this vague, but strongly-held, belief has seen American civilian government and its military through two centuries of evolution and events. Like other broadly defined, but fundamental, tenets set out in the Constitution, civilian control has benefited from the flexibility inherent in the Constitution. It has allowed civilian authorities to meet crises and to adapt to changes in the world and America's role in it. Civilian control by its very nature is subjective, dependent in large measure on personalities and circumstances.

The issues which have arisen in civilian-military relations fall into two general categories. First are those issues which relate to operational control of military forces. Second are those issues which relate to such non-operational matters as allocation of resources, the influence of the "military—industrial complex" and the expanding role of active and retired military officers in government.

This chapter focuses on the operational side of civilian control which, by virtue of the Constitutional separation of powers, is concentrated in the Executive Branch. This focus was selected for four reasons. First, operational military forces pose the greatest theoretical threat to civilian control. Second, although the military's ability to influence the allocation of defense resources may have some impact on the exercise of civilian control, it has never presented a threat to the constitutional structure or the functioning of the government. Third, the administrative dimension of civilian control is extensively discussed in other chapters of this study, especially Chapter 7 (Planning, Programming and Budgeting System) and Chapter 9 (Congressional Review and Oversight). Fourth, one of the central and most emotional issues in debates on the organization of the U.S. military establishment has been whether civilian control of the military would be strengthened or weakened by various changes. This debate has almost always been cast in terms of civilian control over military operations, not allocation of resources or other administrative matters. But this is not to downplay the significance of the balance between civil and military authorities regarding non-operational matters. As noted, certain aspects of these issues are discussed in Chapters 7 and 9. In addition, four major trends affecting the administrative dimension of civilian control are presented in Appendix A of this chapter.

## **B. CURRENT FRAMEWORK FOR CIVILIAN CONTROL**

### **1. The Constitution**

Civilian control of the military is reflected in several provisions of current law. The Constitution establishes the President as the Commander-in-Chief, but gives the Congress the power to declare war and to "raise and support Armies,...provide and maintain a Navy [and] to make Rules for the Government and Regulation of the land and Naval forces." In addition, the President can appoint military officers only with the advice and consent of the Senate.

### **2. Legislative Prescriptions**

The National Security Act of 1947 established the National Security Council to "provide for the establishment of integrated policies and procedures for the departments,...relating to the national security to provide for unified direction under civilian control of the Secretary of Defense." (50 U.S.C. section 401) The members of the National Security Council are also specified, all of whom are civilian.

In addition, section 133 of title 10, United States Code, provides "there is a Secretary of Defense, who is the head of the Department of Defense, *appointed from civilian life.*" (emphasis added). Section 133 also provides that a person may not be appointed as Secretary of Defense within 10 years after relief from active duty as a commissioned officer of the armed forces.

Under title 10 of the United States Code, the Secretary, Deputy Secretary, two Under Secretaries, eleven Assistant Secretaries of Defense, and the Director of Operational Test and Evaluation are appointed by the President from civilian life with the advice and consent of the Senate (sections 133, 134, 135, 136, and 136a). The top four officials may not be appointed within ten years of having

served as a commissioned officer on active duty in the armed forces. The Secretary of the Air Force, by statute (section 8012), and the Secretaries of the Army and Navy, by tradition, are appointed by the President from civilian life with the advice and consent of the Senate. However, the under secretaries and assistant secretaries of the Army, the Navy, and the Air Force must, by statute, be appointed from civilian life (sections 3013, 5033, 5034, and 8013 of title 10). No provision governs the length of separation from the armed forces for the Service Secretaries.

### 3. View of the Current DoD Leadership

The elements of civilian control are described thus by the current Deputy Secretary of Defense, William Howard Taft IV:

Below the President and the Congress, central responsibility for civilian control within the Department of Defense is assigned to the Secretary of Defense by the National Security Act of 1947, as amended. The Secretary is the principal advisor to the President on all matters relating to the Department. He is a statutory member of the National Security Council (NSC) and the President's executive agent in the authority, direction, and control of the Department. He exercises operational authority through the Joint Chiefs of Staff to the commanders of the unified and specified commands; he exercises direction of support activities through appointed officials in the Military Departments.

The Secretary has at his disposal a number of means by which he exercises authority, direction, and control over the Department of Defense. These include: authority to realign the organizational structure of the Department; various management staffs throughout the Department; major management systems such as the Planning, Programming, and Budgeting System (PPBS), and the Defense Systems Acquisition Review Council (DSARC); and the DoD Directives System through which he communicates Departmental policies.

Civilian control elements are distributed throughout the DoD by way of a system of appointive civilian officials, many with statutory charters, who are interspersed at levels below the Secretary of Defense. These positions include the Under Secretaries, Assistant Secretaries, General Counsel, Inspector General, and Assistants to the Secretary within the Office of the Secretary of Defense, and the Service Secretaries and their appointed civilian subordinates.

## C. HISTORICAL CONTEXT OF U.S. CIVIL-MILITARY RELATIONS

### 1. Traditional Threats to Civilian Control

Throughout history, including the contemporary period, military power and authority have diminished civil authority in a variety of ways. In some countries, the military has simply gained control of the national government through a coup or other takeover. In other cases, military officers have taken actions on their own initiative beyond the scope of their authority but which do not challenge the government. These traditional threats to civilian control

are presented in order to examine their applicability to the course of civil-military relations in the United States.

#### a. Man-on-Horseback

One of the most basic theories of civil-military relations is the threat posed to democratic societies and civilian governments by "the Man on the White Horse." The Man-on-Horseback symbolizes the potential for a single military commander who possesses great personal authority and charisma to wrest control from civilian authorities, often, according to the theory, doing so to great popular acclaim. A Washington, McClellan, or MacArthur comes to mind as the closest example in the American experience of a military commander with such authority and popular support.

#### b. Benign, Objective Takeover

Another major theory of civil-military relations is the benign, objective military takeover when the civilian government's inability to govern has thrown the country into crisis. According to this theory, the military establishes stability and sound policies by which it governs until it determines that the country is secure enough to allow the civilians another chance at governing. At this point, it turns the reins of government over to the civilians and retreats watchfully into the background until it determines that it must again intervene. This has occurred repeatedly in Latin America.

#### c. Commander Taking Actions on His Own Initiative

A final theory is the threat posed by a military officer who acts—often for deeply patriotic reasons—beyond his authority and treads on areas reserved for civilian leaders. This was popularized in the classic 1960's film, *Dr. Strangelove*, the tale of a strategic bomber wing commander who takes it upon himself to start a nuclear war.

### 2. History of U.S. Civil-Military Relations

The instances in U.S. history when issues of civil-military relations rose to the fore are explored in the remainder of this section.

#### a. Revolutionary War Period

Americans' belief that standing armies pose a threat to liberty was clearly born of their colonial experience rather than philosophical or legal antecedents:

On the military side the war of the American Revolution was in part a revolt against the British standing army...It was a protest against the re-enforcement of British government by military regulars and the quartering of regulars on the people of the colonies. In its inception at Lexington and Concord the Revolution was literally an attack by militiamen on British regulars—an uprising of embattled farmers who had homes to fight for against disciplined regulars who had no homes and fought for pay under fear. (Alfred Vagts, *A History of Militarism: Romance and Realities of a Profession*, page 96)

Important though the Minutemen were, from the beginning it was clear that only by raising and supporting an army to fight the British could the American revolution succeed.

To the colonies' great good fortune, the cause of liberty was led by a military commander, General George Washington, who very firmly believed in military deference to civilian government. Washington's understanding of the appropriate role for the military was evident from the beginning of his service as commander-in-chief of the Continental Army. When he assumed command, the New York legislature sent a message which emphasized the moral contract implicit in his commission:

On a general in America, fortune also should bestow her gifts, that he may rather communicate lustre to his dignities than receive it, and that his country in his property, his indred, and connexions, may have sure pledges that he will faithfully perform the duties of his high office, and readily lay down his power when the general weal requires it.

And Washington replied for himself and his colleagues:

When we assumed the Soldier, we did not lay aside the Citizen; and we shall most sincerely rejoice with you in that happy hour when the establishment of American Liberty, upon the most firm and solid foundations, shall enable us to return to our Private Stations in the bosom of a free, peaceful and happy Country. (Gary Wills, *Cincinnatus: George Washington and the Enlightenment*, pages 21-22)

Historians have rightly made much of Washington's role in defusing a potential military revolt at the end of the war. As James Thomas Flexner recounts, Washington was sympathetic to the army's grievances when the Continental Congress, in increasingly dire financial straits, sought to cut expenses in 1782:

...by reducing the number of regiments in a way that would demobilize many officers. However, no provision was made for giving them any pay, although some were owed (as Washington noted) for "four, five, or perhaps six years." A promise of pensions previously made at a dark moment in the war showed no likelihood of being honored. To officials in Philadelphia, Washington wrote bitterly that the demobilized officers would depart "goaded by a thousand stings of reflection on the past and of anticipation on the future...soured by penury and what they call the ingratitude of the public, involved in debts, without one farthing of money to carry them home, after having spent the flowers of their days, and many of them their patrionomies, in establishing the freedom and independence of their country, and suffered everything human nature is capable of enduring on this side of death....I cannot avoid apprehending that a train of evils will follow of a very serious and distressing nature." (*Washington: The Indispensable Man*, page 167)

However, despite attempts to persuade him to join the cause with warnings that if he did not his own authority would be in danger, Washington stood adamantly against the attempts of the government's civilian creditors to give muscle to their demands for repayment by an alliance with the disgruntled army. He was equally firm in his opposition to plots afoot among his officers to send petitions to the Congress threatening not to disband until

paid, or even to seize power until the fiscally delinquent state legislatures were reformed. The turning point came at a meeting of his officers where he quelled the rebellion by the force of his own estimable character. During the meeting his exhortations of good faith, patience and civil responsibility failed to carry the day. But in a scene that has taken on mythic proportions, his simple act of putting on a pair of eyeglasses with the remark, "Gentlemen, you will permit me to put on my spectacles, for I have not only grown gray but almost blind in the service of my country," (*Washington: The Indispensable Man*, page 174) dissolved the hostile audience in a wave of admiration and devotion to their leader. As Jefferson later remarked, "The Moderation and virtue of a single character probably prevented this Revolution from being closed, as most others have been, by a subversion of that liberty it was intended to establish." (*Washington: The Indispensable Man*, page 175)

So great was Washington's reputation with both the army and the civilian population that at the end of the war he had no lack of over-zealous admirers to suggest he should step into the power vacuum created by a weak and discredited Continental Congress and become king. Instead, Washington hastened at the earliest opportunity to resign his commission, which he did before the Congress in Annapolis on December 23, 1783, closing his farewell remarks thus:

Saving now finished the work assigned me, I retire from the great theater of Action; and bidding an Affectionate farewell to this August body under whose orders I have so long acted, I here offer my Commission, and take my leave of all the employments of public life.

As Gary Wills has written:

At that moment the ancient legend of Cincinnatus—the Roman called from his plow to rescue Rome, and returning to his plow when danger had passed—was resurrected as a fact of modern political life. The fame of the deed sped around the world. The painter John Trumbull wrote his brother from London (May 10, 1784) that it

excites the astonishment and admiration of this part of the world. 'Tis a Conduct so novel, so inconceivable to People, who, far from giving up powers they possess, are willing to convulse the Empire to acquire more. (*Cincinnatus*, page 13)

Thus a seminal example was set, a concrete action to give substance to the constitutional precept of military submission to civilian government that would be adopted as the law of the land less than a decade later.

The U.S. Constitution established civilian control of the military by (1) making an elected civilian president commander-in-chief (Art. II, Sec. 2, clause 1) and (2) giving Congress the power to raise and support armies, provide and maintain a navy, and make rules for regulation of the land and naval forces (Art. I, Sec. 8, clauses 12-16). Although finally adopted in 1789, the Constitutional establishment of two separate centers of civilian control was not enough to allay the deep American mistrust of military power without a sharp national debate.

In Federalist Paper No. 41, James Madison expounded the view that ultimately carried the day:

The veteran legions of Rome were an overmatch for the undisciplined valor of all other nations, and rendered her the mistress of the world.

Not the less true is it, that the liberties of Rome proved the final victim to her military triumphs; and that the liberties of Europe, as far as they ever existed, have, with few exceptions, been the price of her military establishments. A standing force, therefore, is a dangerous, at the same time that it may be a necessary, provision....A wise nation will combine all these considerations; and, whilst it does not rashly preclude itself from any resource which may become essential to its safety, will exert all its prudence in diminishing both the necessity and the danger of resorting to one which may be inauspicious to its liberties.

#### b. Early 1800's

Between 1789 and the Civil War, Americans' attitude toward the military did not change. As historian Henry Adams wrote in the early nineteenth century, "antipathy to war (and all manifestations of the martial spirit) ranked first among political traits" of Americans. (*History of the United States of America during the Second Administration of James Madison*, Vol. 3, page 226) During this period there was only one instance of the military exceeding the bounds of its authority. As recounted by David Lockwood, General Andrew Jackson invaded Florida in 1817 without authorization:

At that time, it will be recalled, Florida was a possession of Spain, whose government was not prepared to sell the territory to the United States. Georgia as well as other neighboring Southern states were especially annoyed by this uncompliant attitude because Florida had become a refuge for runaway slaves. As commander of the armed forces in the South, General Jackson wrote to President Monroe asking for permission to invade Florida in order that he might "restore the stolen Negroes and property to their rightful masters." He asked for the President's reply through a Tennessee Congressman. President Monroe said nothing, but General Jackson proceeded on his own initiative to seize Florida, burning Indian and Negro villages and hanging two suspected English agents in the process. There was great discomfort in Washington when news of these exploits reached the nation's capital. The Spanish ambassador threatened war; the British representative fumed in indignation. President Monroe lamely explained that he had been ill when he received the letter and had not been given enough time to study it properly. (*A Brief History and Analysis of Civilian Control of the Military in the United States*, page 30).

The American population at large celebrated Jackson's actions, but Jackson's enemies in the Congress did not:

A senatorial committee undertook an investigation, and its members began to carry arms after Jackson, raving "like a

madman," allegedly threatened to cut off the ears of any who reported against him. (Thomas Bailey, *A Diplomatic History of the American People*, page 171)

In the end, after a 27-day debate, the Congress rejected four resolutions condemning Jackson's action. For their part, President Monroe and his Cabinet, save one, believed Jackson's raid constituted an unsanctioned act of war against Spain. Jackson's only ally was Secretary of State John Quincy Adams who saw Jackson's foray as strengthening his hand in negotiations with Spain for the acquisition of Florida. According to Adams' logic, which proved persuasive not only to Monroe and the Cabinet but also the Spanish, Jackson's foray had been in self-defense and demonstrated that Spain could no longer control Florida or its Indians. Less than a year later, Spain ceded Florida to the United States.

### c. Civil War Period

The Civil War provided the next significant episodes in the history of civilian authority over the military.

In an early incident, General John C. Fremont, whom Lincoln had appointed commander of the Western Department of the War (with headquarters in St. Louis), not only overstepped the bounds of military authority but in doing so almost caused irreparable damage to the Union cause. In August 1861, rebels defeated Union troops and moved into Missouri. In response, a panicky Fremont issued a proclamation declaring martial law in the state and ordering rebels' slaves to be seized and freed. Lincoln had no prior knowledge of the proclamation, which far exceeded the existing law—the "confiscation act"—authorizing the seizure of slaves used by the rebel military.

It was the slave provision that raised a storm of controversy. Abolitionists and radical Republicans enthusiastically supported Fremont's initiative. This was precisely what they had been, and would be, pushing Lincoln to do for months. Thus, it was politically embarrassing for Lincoln to be placed in this position.

But more importantly, the Union slave-holding border states — Kentucky, Tennessee and Maryland — interpreted Fremont's proclamation as an official and extremely unwelcome emancipation act. Lincoln was warned that if he sustained Fremont's act, Kentucky would be lost to the Union and the other border states would be in jeopardy.

So Lincoln acted, with the tact and restraint which always marked his behavior with his difficult generals: he *asked* Fremont to *modify* the proclamation to conform to the confiscation act. In a letter hand-delivered by his wife, Fremont refused to change his order unless Lincoln publicly commanded him to. In addition, Mrs. Fremont had harsh words for Lincoln, proclaiming that she and her husband understood better than he the politics of the war. To which Lincoln replied:

"This was a war for a great national idea, the Union, and that General Fremont should not have dragged the negro into it." Bristling, she warned Lincoln that it would be hard on him if he opposed her husband. If he did, she asserted, then Fre-

mont would "set up for himself." (Stephen B. Oates, *With Malice Toward None*, page 281)

Finally, Lincoln commanded Fremont to modify his proclamation and, as requested, sent a copy to the press—thereby bringing down upon himself the wrath of abolitionists and radical Republicans. Lincoln did not reprimand Fremont, but the general was relieved of command without incident six weeks later, following a congressional investigation which found large-scale abuse of public funds in Fremont's Department.

Fremont was not the only general to cause Lincoln distress in the early years of the war. In fact, Lincoln was beset with problems concerning generals who would not fight. Their reasons were legion for not carrying out the orders of their commander-in-chief—not enough men, not enough supplies, "overwhelming" enemy numbers. The history of the opening years of the war is the history of Lincoln's patience with his recalcitrant generals, in the face of public and congressional cries for battles and victories. Lincoln the civilian was reluctant to overrule military judgment, but his increasing frustration led him to borrow books on military strategy from the Library of Congress to educate himself so that he might do what his generals refused to do for him. Thus, only after many failures and lost opportunities by a succession of generals did Lincoln in desperation begin exercising his powers as commander-in-chief to their fullest extent.

The following incident is representative of the extent of Lincoln's involvement, if unique in terms of his active on-site participation:

On May 6, 1861, Lincoln sailed for the Peninsula with [Secretary of the Treasury] Chase and [Secretary of War] Stanton....When he reached Fort Monroe, he found that the commander—fusty old John Wool—hadn't even tried to seize Norfolk, which served as base for the Virginia [a Confederate ship]. Damn! Lincoln threw his stovepipe hat on the floor. Was the army full of timid incompetents? All right, then, he would take command of Wool's troops and capture Norfolk himself. At Lincoln's orders, Union gunboats shelled rebel batteries protecting the city and Union soldiers crowded into transports for an amphibious assault. Lincoln even reconnoitered the Norfolk coast—he and Stanton in a tug and Chase in a revenue cutter, all looking for a place to land Wool's men. They went ashore and walked along the beach, with its ocean smells and lapping waves, until Chase located a perfect spot for a landing. At last Union troops swarmed ashore and drove against Norfolk, forcing the rebel garrison to blow up the Virginia and abandon the city. "So has ended a brilliant week's campaign of the President," Chase recorded in his diary, as Lincoln and his two Secretaries sailed back to Washington rather pleased with themselves. (*With Malice Towards None*, page 326)

One general above all others exemplified the civil-military disputes which marred and hampered the Union war effort for several years. General George McClellan, commander of the Army of the Potomac, the major eastern Union army, deserves to be noted in any recounting of the problems of civilian control which beset Lin-

coln. McClellan stands as a representative case study of those generals "who would not fight"—Buell, Rosecrans, Burnside, Hooker, and Meade, among others, who drove Lincoln to distraction as he watched inferior rebel forces gain the advantage time and again.

The following passage accurately conveys the tenor of Lincoln's relations with most of his early commanders and consequently, the considerable problems he had in conducting the war:

Portentous news from Richmond: on May 31 and June 1, [1862] the rebel army fell on McClellan in the battle of Seven Pines, but McClellan repulsed the attack. Wild with excitement, McClellan wired Washington that he'd just fought "a desperate battle" against "greatly superior numbers." "Our loss is heavy, but that of the enemy must be enormous."

Lincoln expected McClellan to counterattack. But McClellan didn't budge. In truth, the battle of Seven Pines unnerved him. He couldn't bear the sight of all his dead and wounded men. This was not the way to fight a war. In his mind, war was a game in which you defeated your opponent by brilliant maneuvers with minimal loss of life. McClellan loved his soldiers, and the feeling was mutual....They looked up to him as no other general in the army. How could he sacrifice their lives by hurling them insanely against a superior foe? So, no, he did not counter-attack. Once again he dug in and called for reinforcements. Once again he upbraided the administration for not supporting "this Army." When Lincoln and Stanton sent him one of McDowell's divisions, McClellan found other reasons for delay. Continuous rains had lashed the marshy plains east of Richmond. McClellan reported that his artillery and wagon trains were bogged down in muddy roads, his army immobilized. Before he could move against Richmond, the general must build footbridges, must corduroy the roads....

In Washington, Lincoln threw the dispatches aside. The rebels attacked in bad weather, Lincoln complained. Why couldn't McClellan? The general seemed to think that Heaven sent rain only on the just. Then on June 25 came an even more alarming letter from the front. McClellan declared that the rebel army now had 200,000 men (it actually numbered about 85,000; McClellan had 100,000 men) and was preparing to attack him. In righteous indignation, the general bemoaned his "great inferiority in numbers," chastised the government for scorning his pleas for help, and announced that he would die with his troops. And if the rebels did annihilate his "splendid Army," the responsibility must "rest where it belongs."

Lincoln had just about had enough of this. Your complaints "pain me very much," he informed McClellan. "I give you all I can." Anyway, Lincoln feared that McClellan's outburst was just another excuse for not advancing on Richmond. He really should never have let the general go down to the Peninsula. (McClellan had insisted on his plan, and Lincoln had been reluctant to overrule military judgment) McClellan should've launched his big battle at Manassas, should've struck the rebel army while it was there. Now the enemy was entrenched in front of Richmond with a stronger force, McClellan was belligerently inert, Union commands in Virginia badly spread out,

the chances of a victory increasingly dim. (*With Malice Towards None*, pages 328-329)

However, as the war progressed and Lincoln found generals, such as Grant, whom he could trust to execute his strategic plans for the war, Lincoln determinedly refused to interfere with their operational plans.

McClellan also won his own unique place in any history of civilian control of the American military by virtue of a single incident that occurred when Lincoln relieved him of command in November, 1862, after 16 rancorous months of service. When McClellan said his farewell to his army:

The soldiers gave him an almost hysterical farewell, cheering themselves hoarse, and doing a power of cursing as well. McClellan said that "many were in favor of my refusing to obey the order and of marching upon Washington to take possession of the government," and European officers who were present muttered that Americans were simply incomprehensible—why did not this devoted army go to the capital and compel the President to reinstate its favorite general? But there never had been much danger that this might really happen, regardless of the loose words that had been uttered; it is extremely hard to imagine McClellan actually leading an armed uprising...and it is quite impossible to imagine the Army of the Potomac taking part in one. (Bruce Catton, *Terrible Swift Sword*, page 478)

Undeniably the Army of the Potomac possessed a politicized officer corps due to its long service in the environs of Washington, D.C. And undeniably the politics of the Army were Democratic, as were those of its commander, who was to be the Democratic presidential candidate in 1864. Furthermore, McClellan's contempt for both Lincoln, whom he referred to privately as a "gorilla", as well as for the Republican Congress, was well-known at the time. But despite the loose camp talk and wild rumors circulating in Washington, McClellan always swore he was loyal to the Union, and Lincoln did not doubt him.

#### d. World War II

The current framework in which civilian-military relations are played out is in large part the outgrowth of the structure which developed during World War II. Its beginnings lie in a Military Order issued by President Franklin Roosevelt in July 1939 which took the Joint Army-Navy Board, the Joint Army-Navy Munitions Board and additional procurement agencies from the Military Departments and consolidated them into the Executive Office of the President, thus making the members of the Joint Army-Navy Board the President's chief military advisors with direct access to the President. In 1942 the board was reconstituted as the Joint Chiefs of Staff.

This was very much in keeping with Roosevelt's approach to governing:

Within his cabinet and within his administration generally, he permitted and encouraged a duplication of effort, an over-

lapping of authorities, and a development of personal antagonisms amounting in some cases almost to civil wars. Whatever his motives, the effect was to increase, and at the same time often to disguise, his own authority. The Military Order of 1939 had, on the whole, that effect. As concerned foreign policy, strategy, and military procurement, it left Roosevelt the sole co-ordinating link between the various subordinate agencies in these fields. Co-ordination as a consequence was not very effective....through its very dispersion of subordinate authority, the Military Order of 1939 gave the President powers of decision in the military field which were real and not merely apparent, for in many areas of military concern, he, the Commander in Chief, alone could decide. (Ernest May, *The Ultimate Decision*, pages 138-139)

Thus, civilian control became largely a matter of presidential control for the purpose of conducting the war. Roosevelt did actively exercise this power often in the pre-war and early war years, making decisions over the opposition of his chiefs of staff.

However, with the coming of war, the Commander in Chief found himself at the apex of a vast structure of military command. In theory the machinery was under his control and supervision. In fact the immensity of the war panorama as well as the burden of Roosevelt's other concerns as President meant that his control could be only partial and somewhat indirect in its working. The relative independence of the theater commanders, the central position and influence of the planning staffs, the wide powers and public respect enjoyed by his chiefs of staff—all these factors placed real limits on the Commander in Chief's independence of action which had not existed during the pre-war period. His role had become highly institutionalized. (*The Ultimate Decision*, page 151)

Consequently, as far as policy and strategy were concerned, the military ran the war. As Samuel P. Huntington has observed:

When the nation went to war, it went wholeheartedly, turning the direction of the conflict over to those who made that their business. The national aim of total victory superseded all else. The military became the executors of the national will,... (*The Soldier and The State*, page 317)

Huntington quotes a Representative who typified Congress' view of its proper role vis a vis the military commanders under the circumstances of the war:

I am taking the word of the General Staff of the War Department, the people who are running this show. If they tell me this is what they need for the successful prosecution of this war and for ultimate victory, I am for it. Whether it staggers me according to its proportions or not, I am still for it. (*The Soldier and The State*, page 317)

Thus even the Truman Committee, which spearheaded Congress' involvement in the war effort, did not consider participation in, or critique of, strategy and policymaking to be an appropriate part of its function. This contrasted sharply with the Committee's very

active involvement in economic mobilization and production where they were sometimes very critical of the military, siding with the civilian Office of War Mobilization and War Production Board against the armed forces.

In the Executive Branch, the military found itself confronting a power vacuum created by the lack of a high-level agency, particularly some sort of civil-military board, to establish the government's policy on the conduct of the war. The lack of such an agency was due to President Roosevelt's own particular style of administration. As discussed above, the consequence was an almost complete loss of civilian control below the presidential level during the war and in the formulation of U.S. policy in the immediate post-war period. Their special relationship with the President and Roosevelt's method of operation gave the Joint Chiefs little choice but to fill the power vacuum in order to fight the war effectively. The result was that Secretary of War Stimson and Secretary of the Navy Knox had no formal authority in formulating military strategy, nor did they attend the inter-allied war conferences. It was instead the Joint Chiefs who accompanied the President. They were not even on the list for routine distribution of JCS papers.

However, their remoteness from the decision-making process paled in comparison to the complete isolation in which Secretary of State Cordell Hull was placed. He was never included in meetings in which the war was discussed; he was merely informed of decisions after they were made. As a result, during the course of the war, the military became involved in diplomacy and negotiations as well as international politics and economics. Huntington sums up the transformation in the military role this way:

Originally, the War Department did not like this situation, but by the end of the war, the pressure of events had "overcome all scruples on the part of OPD (Operations Division of the General Staff) about getting into matters that traditionally were none of the Army's business. Considerably more than half the papers OPD prepared for the 1945 Potsdam conference were devoted to matters other than military operations. (*The Soldier and The State*, page 324)

#### e. Korean War

The most celebrated exercise of civilian control over the military in this century was President Truman's dismissal of General Douglas MacArthur during the Korean War. The fundamental disagreement between MacArthur and his Commander-in-Chief was over the nature and scope of the Korean War.

Nothing in MacArthur's personality or previous military service had prepared him to fight the kind of limited war of murky and shifting goals that he found prescribed by the military directives emanating from Washington, in consultation with the United Nations allies. It was MacArthur's and America's first experience with a modern military conflict in which the civilian leadership established political objectives that were a substitute for victory. In fact, MacArthur's frustrations foreshadowed those of the military during the Vietnam War. Unlike the commanders of the later war, MacArthur's personal authority and prestige were such that he was able to successfully challenge civilian directives on the conduct

of the war on several occasions prior to the incident which led to his dismissal.

The circumstances of the most notable of these incidents indicate a significant lack of firmness and policy coherence in the conduct of the war on the part of both MacArthur's military and civilian superiors. On September 27, 1950, after the victory at Inchon, MacArthur was told to "conduct military operations north of the 38th parallel for the purpose of the destruction of the North Korean armed forces", with two conditions: no aircraft was to be sent over Sino-Soviet territory and only South Korean troops were to approach the Yalu River. A month later MacArthur ordered his forces into the northeastern provinces which border the Soviet Union and China.

This looked very much like a flouting of his September 27 orders from the Joint Chiefs. Acheson later wrote: "If General Marshall and the Chiefs had proposed withdrawal to the Pyongyang-Wonsan line and a continuous defensive position under united command across it—and if the President had backed them, as he undoubtedly would have—disaster probably would have been averted. But it would have meant a fight with MacArthur." The Pentagon was unwilling to risk that fight. Intimidated by the victor of Inchon, the Chiefs timidly radioed him that while they realized that CINCFE (MacArthur/Commander-in-Chief, Far East) "undoubtedly had sound reason" for his move, they would like an explanation, "since the action contemplated" was a "matter of concern" to them. MacArthur replied that he was taking "all precautions," that the September 27 order was not a "final directive" because Marshall had amended it two days later by telling him that he wanted SCAP (MacArthur/Supreme Commander for the Allied Powers) to "feel unhampered tactically and strategically" in proceeding "north of the 38th Parallel," and that "military necessity" compelled him to disregard it anyhow because the ROKs (Republic of Korea troops) lacked "strength and leadership." If the Chiefs had further questions, he referred them to the White House. The entire subject, he said, had been "covered" in his "conference with the President at Wake Island."

That was news to Harry Truman. On Thursday he weakly told a press conference that it was his "understanding" that only South Koreans would approach the Yalu. Informed of this, the General contradicted him through the press, saying, "The mission of the United Nations forces is to clear Korea." The Pentagon advised the President to ignore this challenge from SCAP because of a firmly established U.S. military tradition—established by Lincoln with Grant in 1864—that once a field commander had been assigned a mission "there must be no interference with his method of carrying it out." That, and MacArthur's tremendous military prestige, persuaded Truman to hold his tongue. He did more than hold it; he endorsed SCAP's strategy in a statement declaring that he would allow North Koreans to take refuge in a "privileged sanctuary" across the Yalu. (William Manchester, *American Caesar*, pages 599–600.)

It was in this climate that MacArthur began to challenge Truman's conduct of the war through public statements which were not submitted for the required clearance from Washington. In taking this approach, MacArthur was feeding the flames of virulent criticism of Truman's policies by congressional Republicans. The crisis came when Truman notified MacArthur he was preparing to propose peace negotiations before considering any further significant drive above the 38th Parallel. Four days later, MacArthur released, without clearance from Washington, what he called a military appraisal of the war, but what was really an ultimatum so insulting to the Chinese that it effectively scuttled any possibility of China accepting Truman's proposal.

The appraisal declared that China:

...“lacks the industrial capacity” for “the conduct of modern war”....Its troops had displayed “an inferiority of ground firepower.” Even under the inhibitions which now restrict the activity of the United Nations forces” China had “shown its complete inability to accomplish by force of arms the conquest of Korea. The enemy, therefore, must by now be painfully aware that a decision by the United Nations to depart from its tolerant effort to contain the war would doom Red China to the risk of imminent military collapse.” Therefore he stood “ready at any time to confer in the field with the commander-in-chief of the enemy forces in the earnest effort to find any military means whereby realization of the political objectives of the United Nations in Korea, to which no nation may justly take exception, might be accomplished without further bloodshed.” (*American Caesar*, page 634)

Truman then unceremoniously relieved MacArthur of command. The public furor caused by this act and MacArthur's subsequent return to the United States was high drama. The Armed Services and Foreign Relations Committees of the Senate held two months of hearings on MacArthur's dismissal and Truman's foreign/military policy. In the end, the committees did not issue a formal report. Most significant about the hearings, and in fact about the entire MacArthur dismissal crisis, was that while many criticized Truman's conduct of the war and his judgment in dismissing MacArthur, no one seriously questioned his right, as Commander-in-Chief, to act as he did. Thus, due to the deeply ingrained belief in the constitutional prerogatives of a civilian President, what could have been a grave constitutional crisis for the country became simply a political crisis for the Truman Administration.

#### f. Vietnam War

The most recent example of the military exceeding the bounds set by civilian authorities was that of General John D. Lavelle during the Vietnam War.

General Lavelle was the commander of the Seventh Air Force who in 1971-72 stretched the “Rules of Engagement” governing bombing North Vietnam to the point where “Protective Reaction Strike” became in fact “Pre-emptive Strike.” The Rules of Engagement would not permit pilots to engage certain ground targets unless the targets had first fired on or engaged the planes. The

operational reports on these unauthorized bombing raids, of which there were no more than 28 in all, were falsified by the General's staff to include the key criteria of "enemy reaction" to the planes' presence over North Vietnam, when in fact the planes had not been engaged by the enemy.

The falsification came about because General Lavelle's Director of Communications misinterpreted a comment the General made to the effect that his pilots must not report "no enemy reaction" to their presence. The Director of Communications thus set up a system of falsifying the mission reports. The system lasted only a short time because a sergeant could not square it with his conscience and wrote his Senator, Harold Hughes, a member of the Senate Armed Services Committee.

The Armed Services Committee launched an extensive investigation of the matter, during which Lavelle's military superiors testified they believed Lavelle had exceeded a reasonable interpretation of the bombing Rules of Engagement. Lavelle testified that in a meeting in December 1971, Secretary of Defense Laird advised him to take full advantage of the authority at his disposal and assured him the Department would support him. This is what Lavelle believed he was doing.

The key factors that led to the Lavelle incident were:

Ambiguous rules of engagement that also proved to be unresponsive to the increasing demands for protection of U.S. Air Force pilots;

Faulty judgment on Lavelle's part in deciding to bend (break) the rules on "protective reaction" strikes in the absence of formal authority from higher levels and on the basis of equivocal statements by Secretary of Defense Laird and other senior level officials; and

Negligence on Lavelle's part in issuing ambiguous instructions on reporting procedures and, then, failing to detect the falsified reports. (*A Brief History and Analysis of Civilian Control of the Military in the United States*, page 8)

But in sum, whatever Lavelle's faults, they did not include a deliberate intent to subvert the constitutional principle of civilian authority.

#### **D. ANALYSIS OF U.S. CIVIL-MILITARY RELATIONS**

As can be seen from the foregoing historical review, the military has never posed a serious threat to civilian control in the United States in terms of the three traditional threats to civilian control.

##### **1. Man-on-Horseback**

During two centuries of American history, numerous military leaders possessed substantial personal authority and charisma and had wide public support. Yet, none posed the threat of a "man-on-horseback."

Generals Washington, McClellan, and MacArthur are probably the best examples. However, each of these generals eschewed any temptation to wrest control from civilian authorities. The cases of the rebellious generals —McClellan, Fremont, and MacArthur —illustrate the fundamental difference in perspective which has rendered "the Man on the White Horse" an improbable event in the

United States. The crucial distinction lies in these commanders' attitude towards their civilian superiors. They were undeniably contemptuous of the *particular* civilians they served under, but not of the principle of civilian supremacy. It is revealing that each of these generals was allied with the political party out of power at the time, and each desired to be elected as a civilian to the Nation's highest office. In fact, McClellan and Fremont did run unsuccessfully for President.

Thus, all significant conflict between U.S. military commanders and their civilian superiors has taken place within the context of the American political system rather than as a challenge to the system.

This is all the more remarkable when one considers that although Americans possessed an innate distrust of standing armies, this distrust was not, for a century, coupled with adherence to a policy of keeping the armed forces free of the influences of partisan politics. The national attitude towards military participation in politics has changed substantially as U.S. governmental institutions have developed. In the Nineteenth Century, it was not unusual for officers to participate in politics. This was due to the "spoils system" approach to Federal hiring, both civil and military. However, by the turn of the century, a civil service employment act had been adopted and the tide began to turn against politically active soldiers as well.

In this century, regulations were adopted which forbade active duty military personnel from engaging in political activity. Echoing the MacArthur incident, but occurring in peacetime, two recent examples of disciplinary action against generals demonstrate that public political action or speech is not permissible in the U.S. armed forces. In the first instance, General Edwin Walker, USA, commander of the 24th Infantry Division in West Germany, was admonished by the Kennedy Administration for distributing right-wing propaganda to his troops and for publicly criticizing Administration policies. He subsequently resigned his commission. In 1978, General John Singlaub, USA, Chief of Staff of the U.S.—South Korean Combined Forces Command, was removed from his position after publicly condemning Carter Administration policies. He subsequently retired from the Army following a second similar incident.

## 2. Benign, Objective Takeover

Similarly, the American approach refutes another major theory of civil-military relations: the benign, objective military takeover when the civilian government's inability to govern has thrown a country into crisis. Even in the gravest national emergency faced by the United States, the Civil War, there was not a serious threat that the military would take over the government. Furthermore, in those instances in which Federal troops have been used to enforce civil laws, such as the veterans march on Washington in 1932 or, more recently, in the civil disturbances of the 1960's, the forces have always remained under civilian control and have surrendered their responsibilities to civilian law enforcement authorities when ordered to do so.

## 3. Commander Taking Actions on His Own Initiative

Popular though the Dr. Strangelove image is, instances of American commanders overstepping the bounds of their authority have been rare. General MacArthur's actions in Korea come close to such action and, in that case, his actions were more insubordination than exceeding his authority. Indeed, the most prevalent occurrence is that of a senior officer who voices an opinion on a political subject, such as Generals Walker and Singlaub. None of these examples pose any serious threat to civilian control of the military.

The greatest threat, of course, is that an officer could initiate armed action on his own. This threat runs all the way from the rifleman on the East German border, to the Captain of a nuclear armed submarine, and to more senior commanders. The assurance against such action is discipline and an ingrained sense of the subordination to civilian control. In the realm of nuclear weapons, great security precautions have been taken to prevent anyone other than the President from initiating a nuclear attack.

#### 4. Overview

Thus, from Washington to Lavelle, throughout American history, an inculcated belief in the right of civilians to control the country's armed forces has triumphed over threatening circumstances and individual egos. As the Steadman Report on the national military command structure in 1978 concluded:

We find that the concept of civilian control over the military is unquestioned throughout the Department. It is a non-issue. Our military forces are fully responsive to the command and control of the duly constituted civilian authorities; the President, the Secretary of Defense, and the Deputy Secretary. (page 40)

The historical review supports this conclusion.

The current attitudes, both in the society at large and in the military, were framed by the experiences of World War II. As discussed above, President Roosevelt gave the military extraordinary power during World War II and, although he retained absolute control, he was physically able to make only the very largest decisions. All of the lesser decisions, including ones related to diplomacy and economics —areas usually reserved for civilians —were left to the military. It is therefore no surprise that the early proposals of the Joint Chiefs for the postwar organization of the Department of Defense preserved for the military great responsibility and direct access to the President. In enacting the National Security Act of 1947, Congress rejected these proposals in favor of the National Security Council, a Secretary of Defense and firm civilian control.

But the attitude of many military men that they should have very broad responsibility and authority in the national security field is still seen. Indeed some of the current writings on DoD organization suggest that the balance between military and civil authorities should be shifted in favor of increasing the authority and responsibility of military officers at the expense of civilians. The argument is made that civilian authorities are not competent to deal with many of the technical questions of national security which should properly be left to the military.

On the other hand, many people have criticized President Roosevelt's decision-making authority because it gave too much authority to the military, particularly in areas such as diplomacy. It is sometimes said that "we won the war but lost the peace". This view is that the military, particularly in Europe, did not take adequate cognizance of the political considerations which would govern postwar Europe. Subject to particular criticism are the failure to move further east with our forces and the failure to establish a land corridor to occupied Berlin. Some have suggested that if a civilian diplomat had been present during the final negotiations for the arrangements governing Berlin, the civilian might have foreseen the need to have guaranteed land access to Berlin. The absence of such a provision permitted the Soviets to blockade Berlin in 1948 which was broken only by a massive American airlift. (See e.g., Robert Murphy, *Diplomat Among Warriors*, pages 262-263)

But these arguments go to the relative balance between civil and military authorities, not to the underlying principle that, in the end, civilians control the military.

There are a number of other trends in civil-military relations which affect the degree to which civilians are able to control the military. Chief among these is the blurring of military and civil relations.

The United States' role as a world power has created international commitments and interests which have blurred the division between civilian and military responsibilities. Several factors have led to increased civilian involvement in what were formerly areas left to the military in peacetime, and *vice versa*.

The advent of nuclear weapons has placed greater requirements on civilian control than have been necessary at any time in American history. The dangers and responsibilities of nuclear forces, combined with modern communications, both require and enable civilians to exercise minute control of crises around the world. The Cuban missile crisis was a prime example of such micro-management. (See Chapter 5 for a discussion of the Cuban missile crisis and how some elements of the military resisted detailed questions from Secretary of Defense McNamara.) Some critics feel that civilian direction pursued to this extent represents an unwarranted intrusion into the realm of military responsibility and expertise. However, the President is within his rights as Commander-in-Chief to exercise or delegate such control. Furthermore, the complexity of modern international politics and the potential for distant incidents to escalate into major international crises compel civilian political leaders to be more actively involved than would have previously been necessary.

In addition, strategic military considerations have come to carry unprecedented weight in peacetime planning and policy decisions. Yet, some critics have expressed concern that civilian officials are not devoting adequate time and attention to reviewing military contingency plans. They allege that, as a result, when contingency plans are reviewed during crises, they are often not realistic because they do not reflect the political realities which the civilian decision-makers must confront.

While it is true that political considerations impinge on military prerogatives in the modern world, it is also true that many so-

called foreign policy issues deeply involve the military and require them to become involved in what, heretofore, would have been a purely civilian domain. A significant example of this phenomenon is U.S. policy towards the Middle East. Assuring continued access to Middle East oil is a major component of U.S. policy towards the region; however, even barring a crisis where the use of force becomes necessary, a U.S. military presence in the region plays an important part in sustaining this policy. For example, in 1983, Marines were sent to Lebanon on an essentially political mission.

An additional problem that diminishes civilian control over the military is the collusion between the military Services. This occurs when the Services agree on a course of action, before rendering advice to the civilian authorities. The drive for unanimity within the Joint Chiefs of Staff, as discussed in Chapter 4, means that the advice given is often tailored to the least common denominator. As a result, the value of the military advice is diluted. Moreover, the Secretary is confronted by all four Chiefs of the uniformed Services who have taken a unified stand on a position. As such, it is very difficult for him to overrule the Chiefs even if he believes their advice is poor. This dilutes his ability to control the Chiefs.

Any effort to reorganize the Department of Defense cannot diminish the authority of the President, the Secretary of Defense and other senior civilian authorities to control the Department of Defense. Moreover, the Secretary of Defense must have adequate authority to carry out his responsibilities. It is not fair to expect a civilian Secretary of Defense to carry all these responsibilities himself. He must be able to delegate them to subordinates who are also civilians. Any scheme must also provide protection for a weak Secretary of Defense who must confront strong military leadership.

Any system must assure that the President and the Secretary of Defense are able to control detailed military operations in a crisis. Our experience of the last few years is that when military force is applied, the President and the Secretary of Defense have sought to control the operation with great precision. Some may question whether this is wise; none should question whether it is within their authority. Indeed, in a confrontation with the Soviet Union, such as the Cuban missile crisis, it is imperative that the President and the Secretary be able to exercise very careful control over U.S. military forces.

Finally, as noted at the outset, there is no readily available definition of the meaning of civilian control. However, the experience of nearly two centuries of American history suggests that this absence of a definition has served us well. As with other constitutional doctrines which are broad and do not have specific definition, civilian control of the military has given the system the political flexibility that is needed to maintain the essence of the principle, i.e., that the President as Commander-in-Chief must be able to control the use of the armed forces. But, at the same time, it has not crippled the valuable professional advice or the role played by the professional military officer. It also preserves the ability to adjust the system to changing circumstances and new challenges.

## **E. CONCLUSIONS**

This section presents the conclusions of this chapter relating to the operational dimension of civilian control of the military.

1. Throughout the course of American history, the lack of consensus on a definition of civilian control has not undermined its effectiveness as one of the governing tenets of the American republic.

2. The concept of civilian control of the military is unquestioned throughout the Department of Defense today; accordingly, fears that the U.S. military might threaten American political democracy are misplaced.

3. As long as American civil and military leaders continue to exercise respect for civilian control, there should be strong confidence in the ability of American political institutions to control the military under a range of possible structures for the Nation's highest military command.

4. As the world becomes more complex and demands on U.S. civilian and military establishments increase accordingly, the United States cannot afford to become complacent about the apparent balance in civil-military relations.

5. Any changes contemplated to the U.S. military establishment must be carefully assessed for their impact on civil-military relations.

6. No changes can be accepted which diminish civilian control over the military; the recommendations of this study either strengthen civilian control over the military or leave the balance as it currently exists.

## APPENDIX A

### TRENDS IN CIVIL-MILITARY RELATIONS

There are a number of significant trends in American civil-military relations, which have primarily emerged in the post-World War II era. They reflect an expansion of the military as an institution in American society.

#### A. EXPANDING PUBLIC CONTACT OF THE U.S. MILITARY

Traditionally, the small standing military forces of the United States stayed so removed from the mainstream of American life, save in time of war, that the vast majority of the American public had very little knowledge of who they were or what they did. The first significant break with this tradition came after World War I when the Army, instead of retreating into its customary isolation, instituted the Reserve Officers' Training Corps (ROTC) program. From this beginning, all military Services have increased their contact with the public, developing a variety of institutions to disseminate information about themselves. Examples of these organizational devices include: public information and education programs conducted by the National War College and similar institutions across the country; the military associations — Association of the U.S. Army, Navy League, Air Force Association — who, though technically independent of the Services whose names they bear, represent a significant force for promoting the views held by the Services, not only to the public at large but to Members of Congress and other policymakers; and finally, the substantial public and congressional relations efforts of the military Services and the Department of Defense itself.

#### B. MILITARY-INDUSTRIAL COMPLEX

In his farewell speech, President Eisenhower warned of the growing influence of the "military industrial complex." That warning was not directed at the highly unlikely event that military officers and industrialists would conspire to take over the government of the United States. Rather, it was a recognition that the sheer size and economic power of the defense establishment give a relatively few men enormous influence. The defense budget is so large, and so many dollars and jobs are at stake, that political power and influence are also at stake. As such, when the interests of the armed Services and the defense contractors coincide, they form a very powerful political force. This poses no immediate threat, but one should not lose sight of this potential threat to the ability of the civilians, both in the Executive and Legislative Branches, to control the whole defense establishment.

## **C. CONTROL OVER RESOURCES AND THE ROLE OF CONGRESS**

Effective control of defense expenditures is one of the major modern challenges to civilian control. More than a budgetary matter, it involves the fundamental issues of who in fact, not theory, establishes national security policy and determines the allocation of finite resources to fulfill security needs.

It is in this area that the Congress exercises the greater part of its responsibilities for civilian control of the military. To the Congress, the Constitution gives the powers of appropriation of funds, and raising and supporting a military establishment. The extent to which the Congress is responsible and effective in executing these powers represents the extent to which it has played a role in maintaining effective civilian control over the vast and complex defense establishment. Thus, when critics speak of the undue influence which individual programs, parochial interests, or institutions, such as the National Guard, have upon the allocation of defense resources, they are not addressing a problem created by an inherent flaw in our system of civilian control, but a problem created by the Congress' decision to exercise its control in a particular fashion. Of course, the Congress is not alone in being susceptible to these sorts of influence, but by the very nature of its institutional structure, it is more vulnerable to them.

## **D. APPOINTMENT OF MILITARY OFFICERS TO CIVILIAN POSITIONS**

A less dramatic theme concerning civil-military relationships has to do with the gradual encroachment of the military on civilian authority through the appointment of military officers to civilian positions. As discussed previously, the Congress required that the Secretary of Defense be appointed "from civilian life" and forbade anyone serving as Secretary within 10 years after leaving active duty as a commissioned officer. The principal historical example of this separation of civilian and military roles was the appointment in 1950 of General George C. Marshall, USA (Retired) to be Secretary of Defense. For Marshall to be confirmed, the Congress had to waive section 202(a) of title 10, United States Code, which stipulated that the Secretary of Defense be a civilian who has not been on active duty in the armed Services within the previous ten years. The Congress approved the waiver in Marshall's case, but not without debate over the dangers inherent in the blending of the two roles. This ingrained suspicion of military influence notwithstanding, where not specifically prohibited by law, military officers do occasionally fill less senior, traditionally civilian, positions in government without doing noticeable harm to civilian control.

A variation on this theme is the increasing service of retired military officers on presidential commissions whose work may have significant influence on U.S. policy. A prime example of this trend was the appointment of General Brent Scowcroft, USAF (Retired) to be Chairman of the President's Commission on Strategic Forces. The Scowcroft Commission's mission was to present the MX missile in a framework which would make it acceptable to the Congress. The commission succeeded not only in keeping the MX alive, but also in instigating the creation of the small mobile ICBM program.